

refrain from granting a stay to ensure definiteness and finality in Commission proceedings.⁵ The Commission reviews requests for a stay under the standard established by the Administrative Procedure Act (“APA”), and will grant a stay when “justice so requires.”⁶ In determining the merits of a motion for stay, the Commission considers the following factors: “(1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.”⁷

The movant “must substantiate that irreparable injury is ‘likely’ to occur” and the injury “must be both certain and great and it must be actual and not theoretical.”⁸ By contrast, “[b]are allegations of what is likely to occur do not suffice” to demonstrate an irreparable injury.⁹ Moreover, “the movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.”¹⁰ Additionally, “the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.”¹¹ If the moving party is

⁵ See *CMS Midland*, 56 FERC ¶ 61,177, at p. 61,630 (1991), *aff’d sub nom.*, *Michigan Mun. Coop. Group v. FERC*, 990 F.2d 1377 (D.C. Cir. 1993); see also *Regulation of Cash Management Practices*, 104 FERC ¶ 61,217 at P 4 (2003) (denying stay of Commission order); *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at p. 61,710 (2000).

⁶ See, e.g., *Millennium Pipeline Company, L.L.C.*, 162 FERC ¶ 61,241 at P 4 (2018); *Transcontinental Gas Pipe Line Co.*, 160 FERC ¶ 61,042 at P 5 (2017); *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111 at P 9 (2016).

⁷ *Millennium*, 162 FERC ¶ 61,241 at P 4; *Enable Gas Transmission*, 153 FERC ¶ 61,055 at P 118 (2015); *Millennium Pipeline Company, L.L.C.*, 141 FERC ¶ 61,022 at P 13 (2012); *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103 at P 17 (2011).

⁸ *Millennium*, 162 FERC ¶ 61,241 at P 5 (citing *Transcontinental Gas Pipe Line Co.*, 150 FERC ¶ 61,183 at P 10).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not examine the other factors.¹²

The Township merely incorporates by reference its rehearing request to support its motion.¹³ In so doing, the Township fails to state with specificity, or even to state generally, that it is likely to suffer an irreparable injury if a stay is not granted. Moreover, “the Commission has the discretion to decline, and has repeatedly declined, arguments incorporated by reference.”¹⁴ In making such a general incorporation, the Township failed to inform the Commission which arguments in its rehearing request is relevant to the Township Motion.¹⁵ Accordingly, the Township fails to satisfy the standard to grant a stay established under the APA and Commission precedent, and its motion should be denied.

The DRN Motion includes a claim of irreparable environmental injury. DRN’s claim is vague and indirect. DRN argues that without a stay of the Certificate Order “DRN members who live, work, and/or recreate in the areas that the [Adelphia project] will adversely impact will permanently lose important ecological resources, be subjected to new or expanded industrial activity even after construction is complete, or otherwise be

¹² See, e.g., *Millennium*, 162 FERC ¶ 61,241 at P 5; *Millennium*, 162 FERC ¶ 61,241 at P 4; *Millennium*, 141 FERC ¶ 61,022 at P 14; *Ruby*, 134 FERC ¶ 61,103 at P 18; *AES Sparrows Point LNG, LLC et al.*, 129 FERC ¶ 61,245 at P 18 (2009); *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021 at P 6 (2009); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at p. 61,869 (2001); *Cash Management*, 104 FERC ¶ 61,217 at P 4; *CMS Midland*, 56 FERC ¶ 61,177, at p. 61,631; *Sea Robin*, 92 FERC ¶ 61,217, at p. 61,710. The D.C. Circuit has recognized that the injury alleged to establish irreparable harm must be both certain and great, it must be actual and not theoretical, and injunctive relief will not be granted with respect to something merely feared as liable to occur at some indefinite time. *Wisconsin Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985).

¹³ Township Motion at 1.

¹⁴ *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,269, at P 295 (2009).

¹⁵ See *id.* (rejecting an attempt to incorporate by reference arguments from a separate pleading “because such incorporation fails to inform the Commission as to which arguments from the referenced pleading are relevant and how they are relevant”); see also *Allegheny Power v. FERC*, 437 F.3d 1215, 1220 (D.C. Cir. 2006) (rejecting petitioner’s arguments that it raised on rehearing merely by incorporating by reference sections of its prior pleading); *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,206 at P 15 (2018) (rejecting movant’s arguments incorporated by reference because it placed the Commission in “the untenable position of determining which arguments are still relevant . . .”).

irreparably harmed.”¹⁶ These vague and broad allegations are the only claims that DRN makes regarding a supposed irreparable environmental harm.

Both the Commission and the courts have consistently denied motions for stay based on similar generalized and unsubstantiated claims of irreparable harm.¹⁷ For example, in *Tennessee Gas Pipeline Company, L.L.C.* (“*Tennessee Gas*”), DRN filed a motion for stay of construction and land disturbance activities.¹⁸ DRN similarly argued that its motion to stay should be granted because construction activities would cause irreparable harm to “sensitive and ecologically important resources in which [DRN] ha[d] significant interests.”¹⁹ The Commission found that DRN provided no evidence to support its claim and that “this generalized claim of environmental harm” therefore “does not constitute sufficient evidence of irreparable harm that would justify a stay.”²⁰

DRN also made similar claims in *Millennium Pipeline Company, L.L.C.* (“*Millennium*”).²¹ In *Millennium*, DRN argued that its motion to stay should be granted

¹⁶ DRN Motion at 148.

¹⁷ See, e.g., *Millennium*, 162 FERC ¶ 61,241 at P 5; *Transcontinental Gas Pipe Line Company, LLC*, 155 FERC ¶ 61,246 at P 6 (2016) (“Chesterfield states that a stay is necessary because the Garden State Expansion Project ‘will result in irreparable harm in the form of tree removal and destruction of wetlands.’ This generalized claim does not constitute evidence of irreparable harm that would justify a stay.”); *Tennessee Gas Pipeline Co., L.L.C.*, 155 FERC ¶ 61,087 at P 5 (2016) (denying stay because a “generalized claim [of environmental harm] does not constitute evidence of irreparable harm that would justify a stay”); *Transcontinental Gas Pipe Line Company, LLC*, 150 FERC ¶ 61,183 at PP 12, 13 (2015) (denying stay because DRN only provided “generalized environmental assertions about the project” and “no analysis incorporating facts or specific information”) (“*Transco*”); *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379, at P 11 (2015) (denying stay where movant “provided only unsupported, generalized allegations about environmental harm resulting from the project”); *Tennessee Gas Pipeline Co.*, 96 FERC ¶ 61,116, at 61,446 (2001) (“general allegations do not constitute evidence of irreparable harm that would justify staying the orders in this proceeding”).

¹⁸ *Tennessee Gas Pipeline Company, L.L.C.*, 160 FERC ¶ 61,062 (2017).

¹⁹ Motion for a Stay Pending Rehearing and Completion of the Record Pursuant to 15 U.S.C. § 717n(d) Submitted by Delaware Riverkeeper Network, Docket No. CP16-4-000, at p. 1 (filed Feb. 21, 2018).

²⁰ *Tennessee Gas*, 160 FERC ¶ 61,062 at P 6.

²¹ See *Millennium*, 162 FERC ¶ 61,241.

because “[DRN] members in the vicinity of the proposed [p]roject route will suffer from the loss of forest lands, wetlands, and streams ‘in and around where they live work and recreate,’ as well as ‘alteration of the unique character of their rural community.’”²² The Commission found that DRN made “little effort to substantiate a claim of irreparable injury” and “failed to provide specific information regarding the purported injury inflicted upon their members.”²³ As a result, the Commission concluded that “these are only generalized claims of environmental harm that do not constitute sufficient evidence of irreparable harm to justify a stay.”²⁴

The same conclusions from *Tennessee Gas* and *Millennium* apply to the nearly identical generalized assertions that DRN has raised here. DRN fails to provide any specificity as to which ecological resources will be permanently lost, or where the loss will occur. DRN fails to mention or explain the purported harm from “new or expanded industrial activity.” And DRN fails to explain how this alleged harm will likely and directly result if the Commission denies its motion to stay the Certificate Order.

DRN’s argument that “harm to the environment is almost always irreparable” is irrelevant because DRN has failed to demonstrate the immanency and likelihood of such harm.²⁵ The likelihood of occurrence is paramount. The U.S. Supreme Court has clarified that the mere possibility of such irreparable environmental harm is not sufficient to justify an injunction.²⁶ In fact, in the same case cited by DRN, *Amoco Production Co. v. Village*

²² *Id.* at P 6.

²³ *Id.*

²⁴ *Id.* (internal citations omitted).

²⁵ See DRN Motion at 148.

²⁶ *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (denying a motion for a preliminary injunction despite a lower court finding that irreparable environmental harm was a “near certainty”); see also *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (citing *Wisconsin Gas*

of *Gambell*, the Court stated that, “[h]ere, injury . . . was not at all probable” and held that the movant was therefore not entitled to a preliminary injunction.²⁷ The Commission should similarly find that DNR lacks support for its argument that irreparable harm is likely to occur and deny the DNR Motion accordingly.

DRN argues the issuance of a stay will allow for meaningful National Environmental Policy Act (“NEPA”) analysis to occur, but fails to explain how this argument is relevant to the Commission’s requirements for a stay, much less demonstrate that such requirements are met here.²⁸ Even assuming such an argument could be relevant to a stay, DRN’s contention is meritless. In compliance with NEPA, Commission Staff prepared a thorough Environmental Assessment (“EA”) in this proceeding concluding that “approval of [Adelphia’s] proposal would not constitute a major federal action significantly affecting the quality of the human environment.”²⁹ The EA reflects extensive consideration of environmental impacts and appropriate consultation and consideration of other agencies’ roles and analysis, and thus meets the Commission’s obligations under NEPA. In the Certificate Order, the Commission determined that it “agree[s] with the Commission [S]taff’s conclusion in the EA that . . . the project will not have a significant environmental impact.”³⁰ Moreover, the Commission has denied a motion to stay the certificate order of

Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985) (providing that there is a high standard for irreparably injury and it “must be both certain and great; it must be actual and not theoretical”).

²⁷ *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

²⁸ DRN Motion at 148-49.

²⁹ Environmental Assessment Report for Adelphia Gateway, LLC’s Adelphia Gateway Project at 194, Docket Nos. CP18-46-000, -001 (Jan. 4, 2019).

³⁰ Certificate Order at P 43 (“Further, as set forth in the environmental discussion below, we agree with the Commission staff’s conclusion in the EA that, if constructed and operated in accordance with applicable laws and regulations and with the implementation of the applicant’s proposed mitigation and staff’s recommendations, now adopted as conditions in the attached Appendix of this order, the project will not have a significant environmental impact.”).

a much more significant pipeline project based on an equivalently vague argument that the environmental analysis was deficient, finding that even in this more infrastructure-intensive project, justice did not require a stay of construction.³¹

Because DRN and the Township failed to establish any irreparable harm, no further analysis is necessary under the Commission's standards for granting a stay. However, even if the Commission further analyzed the stay motions, the DRN Motion and the Township Motion should also be rejected because both fail the other two prongs of the Commission's test.³² Other parties would certainly suffer substantial harm if a stay is granted. DRN is mistaken that, as a result of granting a stay, Adelphia would "at most, experience a construction delay."³³ Granting a stay would inflict substantial harm on Adelphia and the shippers that are currently receiving service on the existing facilities acquired by Adelphia,³⁴ and those additional shippers that have executed agreements with Adelphia with the expectation of receiving service at a date certain.

Staying the Certificate Order would result in a disruption of the currently-existing Zone North service and to the future shippers who have made business decisions related receipt of service on the Adelphia project. Further, a stay would not be in the public interest. In fact, granting a stay would subvert the public interest because it would deprive the electric generation, distribution, and end-use markets in Pennsylvania of a reliable

³¹ See *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103 (2011) (denying a motion to stay the certificate order of the 667-mile-long, 42-inch-diameter Ruby Pipeline based on an argument that the environmental analysis was deficient).

³² Again, the Township Motion fails to make any claim in regard to harm to other parties and the public interest. See *supra* at nn.13-14.

³³ DRN Motion at 148-49.

³⁴ Compliance Filing Pursuant to Section 157.20(c)(2) of Adelphia Gateway, LLC, Docket Nos. CP18-46-000, -001 (Jan. 13, 2020) (providing notice that Adelphia began providing authorized service on the Zone North Facilities on January 13, 2020).

source of natural gas. Because each of the Commission's established factors for assessing a stay request weighs against the DRN Motion and the Township Motion, the motions for stay should be denied.

II. CONCLUSION

For the reasons stated herein, Adelphia respectfully requests that the Commission deny the DRN Motion and the Township Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in Docket Nos. CP18-46-000, *et al.*

Dated at Washington, D.C., this 28th day of January, 2020.

/s/ Andrew D. DeVore
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