

In the Supreme Court of the United States

ALIGNIS, INC., AN OHIO C-CORPORATION, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA*

PETITION FOR A WRIT OF CERTIORARI

Counsel for Petitioner: Michael D. Lorton, M.D., J.D., MBA
Admitted and in Good Standing to Practice before the
United States Supreme Court
Alignis, Inc.
2201 Townley Road, Toledo, Ohio 43614
419-297-2943
alignis@gmail.com
Alignis.com

LEGAL QUESTIONS PRESENTED

- This case is not really about standing; it is about whether a small, relatively unknown group of Americans will be allowed to try to solve their own local environmental problems that the government has failed to solve. Yes, it is that simple: Do they even get to try?
- Petitioner, Alignis, Inc.—a small startup Ohio C-Corporation, set out to solve the toxic algae blooms in Lake Erie about which the government has done nothing for 25 years.
- There are no cheap, simple solutions. In order to secure private equity financing, the Alignis team was advised to proactively approach its potential regulators to manage risk and avoid the regulatory disaster of the failed V. C. Summer nuclear power plant.
- Alignis applied to the Federal Energy Regulatory Commission (FERC) for preliminary permits for exclusive Federal Power Act (FPA) licenses. Those licenses would prevent

Algnis projects from being subject to civil penalties, criminal sanctions, and stop orders.

- Without understanding or even having full read the applications, FERC immediately stonewalled Algnis, and dismissed the applications claiming that FERC had no jurisdiction to issue them under the FPA.
- Algnis appealed the FERC dismissal to the United States Court of Appeals for the District of Columbia (CADC). A panel of the CADC *sua sponte* dismissed the Algnis appeal for want of standing.
- We mean no disrespect, but we are going to examine the realities, uses, and abuses of the standing doctrine to show why this happened. First, some background.
- Two points: 1) Humans are highly social animals, and much of what we “know” is grounded on social validation—not actual knowledge; and 2) As a class, lawyers are bad at math and science. For instance, everyone “knows” the earth revolves around the sun, but when pressed to explain how they know that, almost no-one can. There was a time when everyone “knew” that the sun revolved around the earth.
- A perceptive National Review article about the Wright brother made the following points: 1) In 1903, the Wright brothers were not on the short list of those thought capable of achieving powered human flight; 2) Everyone (including the U.S. government) bet on the aviation “expert”, Samuel Langley, because he was socially validated as a “big” name; 3) Radical innovation comes from the unlikeliest places because unknowns are not shackled by convention; and 4) Socially validated corporate and governmental innovations are incremental at best and wrong at worst because people with power and social validation don’t want to risk appearing foolish.
- If our company had been named “Chevron” or represented by a top law firm, the very same FPA preliminary permit applications would not have been rejected out-of-hand by FERC not dismissed *sua sponte* for lack of standing by the CADC. When we, unknowns without social validation, showed up on the doorsteps of FERC and the CADC, respectively, consciously or subconsciously, they both essentially said, “Who do these people think they are? We are too busy and too important to be bothered with these wild claims that we lack the scientific knowledge to independently evaluate. If you, Algnis, don’t provide us with the safety and comfort of social validation, you are outta here!” Then they (FERC and the CADC) used the artifices of “jurisdiction” and “standing” to do exactly that. Understandable from a social perspective, but legally wrong.
- The title and subtitle of a Wall Street Journal article written to mark the 50th anniversary of Man’s first walk on the Moon said it all: *The Moonshot Mindset Once Came from the Government. No longer. Americans still take big risks to solve big problems. But now it's private enterprise that does it.* That is exactly what the Algnis team is doing: Taking big risks to solve the big environmental problems of 1) toxic algae blooms; 2) petroleum-based plastics pollution; and 3) premature retirement of our low-carbon nuclear power

plants. We have self-financed through prototyping of our technologies—just like the Wright brothers did. Like the Wright brother, we will need private finance to build out our projects.

- What FERC and the CADC fail to understand is that the order of operations of present-day moonshots has changed. They demand that we raise all the private capital that demonstrates social validation first, before they take us seriously, while the private investors demand that we proactively secure regulatory licenses to first mitigate regulatory risk before they will significantly invest. Catch-22.
- That Catch-22 is what makes this the most important case SCOTUS will hear in the Oct. 2020 term. The second standing paradigm is upon us. How will radically innovative private problem solvers be able to proactively approach the administrative state without getting kicked out of courts that use the standing as a docket management device to rid themselves of proposals they do not understand?
- The first standing paradigm arose in the 1930's when, for the first time, litigants attempted to commandeer the rising power of the administrative state to accomplish judicially what they could not accomplish in the majoritarian political process. In his seminal article, *The Structure of Standing*, Professor Fletcher correctly saw the standing doctrine not as a threshold determination, but as a determination on the merits by the majority of judges on any given federal court of whether they believe the substance of the case to be important enough to warrant judicially bypassing the failed political process. Everyone tacitly know this, and it is why confirmations to the U.S. Supreme Court are so brutal. Judges of a conservative bent are less likely to allow "standing" to judicially solve societal problems the majoritarian political process has failed to solve; judges of a liberal bent are more likely to do so. That is why Justice Kavanaugh, a good and decent man, was subjected to a savage, baseless attack. One side thinks he is more likely to overturn the judicial solution to abortion and return that problem to the political process in the states. No matter the window dressing, standing, at its core, is a judge's determination on the merits.
- Alginis presents the perfect case to create the second standing paradigm. The federal government is technically insolvent and highly dysfunctional. Increasingly, it cannot and will not solve the major problems of the American people. We are left to solve our own problems. Unfortunately, the administrative state is so expansive and all-encompassing that it cannot be avoided. If the Wright brother would have required regulatory approval, we would still be traveling by train and ship. The administrative state is also increasingly self-funding by the levy of massive fines and penalties. The second standing paradigm requires the recognition by the federal courts that radical innovators like Alginis are not attempting to commandeer the administrative state to solve their problems; rather, they are attempting proactively negotiate a truce with the agencies to reduce the regulatory risk to the financing their moonshots. We do not want the administrative state of solve our problems; we want it to get out the way so we can solve our own problems.

- Reduced to its most elementary terms, the second standing paradigm recognizes the “standing” of yet-to-be-socially-validated problems solvers to proactively engage the administrative state to negotiate licenses that will significantly reduce the regulatory risks to their proposed projects. Given the number and complexity of modern problems, the ability to proactively mitigate regulatory risk is of immense social value. We are asking the Supreme Court to tell the administrative state and the lower federal courts, that they (the agencies and courts) have to at least let these radically innovative problems solvers present the merits of their proposals. Simply put, Americans have standing to try to solve their own problems—even if nobody knows who they are yet.
- Below, we discuss the law of Article III and prudential standing in conventional terms. If our standing is determined by the law, we will be allowed to present the merits of our case in the Court of Appeals for the District of Columbia. If we are denied standing as a docket control device because we currently lack social validation, we are left with the First Amendment and YouTube to show how our government and court have failed the American people in their attempt to solve their own problems.
- In an attempt to demonstrate our social validity and credibility, we have placed several scientific, financial, and legal videos and white papers on our website, Algignis.com

- 1) *Does a for-profit Ohio C-Corporation have standing to appeal to a lower federal appellate court the Federal Energy Regulatory Commission’s dismissal of its applications for Federal Power Act preliminary permits for energy co-generation projects from which it will derive a profit (and avoid criminal and civil penalties) by solving toxic algae blooms in U.S. waters, petroleum-based plastics pollution, and the premature retirement of low-carbon nuclear power plants?*
- 2) *Do Americans have standing to try to solve their own problems?*

PARTIES TO THE PROCEEDING

Petitioner: Algignis, Inc., a for-profit, equity-financed Ohio C-Corporation headquartered in Toledo, Ohio.

Corporate Disclosure Statement: Algignis is a private, closely-held corporation that has no parent company, no subsidiaries, and no foreign ownership.

Respondents: Federal Energy Regulatory Commission (FERC), an independent federal regulatory agency not directly controlled by the Executive Branch.
The United States of America.

Motion for Joinder of a Party as a Respondent: Petitioner will respectfully ask that the United States Court of Appeals for the Federal Circuit be joined as a Respondent because a panel of that Court dismissed the Petitioner’s appeal for lack of standing *sua sponte*.

TABLE OF CONTENTS

Opinion below

A. The opinion below is in Appendix A

Jurisdiction Statement @ 8

A. The final judgment in the United States Court of Appeals for the District of Columbia was entered 9 December 2019. The final orders denying the motions for panel and en banc rehearing were entered 13 Feb 2020. Jurisdiction to seek a writ of Certiorari from the United States Supreme Court to review a final judgment from the United States Court of Appeals for the District of Columbia is granted by 28 U.S.C. § 1254.

Statutory provisions involved @ 8

- Administrative Procedure Act
- Federal Power Act
- Reclamation Act

Statement of the case @ 8

Reasons for granting the petition @ 11

A. The People of Northern Ohio and Southeast Michigan Are Suffering and Will Continue to Suffer from the Toxic Algae Blooms in Lake Erie, Plastics Pollution, and Climate Change. Algnis seeks to profit by solving those problems. @ 11

B. The Court of Appeals for the District of Columbia Misapprehended the Facts and Has Both a Constitutional and Statutory Duty to Determine the Proper Jurisdiction of the Federal Energy Regulatory Commission to Issue Preliminary Permits Under the Federal Power Act @ 12

C. Algnis Has Constitutional Article III Standing Under Massachusetts v. EPA @ 13

- a. Algnis Has Article III Standing: Factual and Legal Support @ 13
- b. Massachusetts v. EPA: Article III Standing Analysis: Injury-in-Fact @ 15
 - i. Algnis has Suffered Exposure to Civil and Criminal Liability
 - ii. Algnis has Suffered Loss of Time, Money, and Effort Invested in Projects to Date
 - iii. Algnis has Suffered the Loss of Profit Derived from the Projects
 - iv. Algnis has Suffered the Ability to Secure Financing at a Commercially Viable Risk-Adjusted Cost of Capital
 - v. Algnis has Suffered Exposure to FERC Stop Orders in Middle of Implementation of the Projects
- c. Massachusetts v. EPA: Article III Standing Analysis: Causation @ 17
 - i. The Proximate Cause of All of the Losses and Injuries-in-Fact Suffered by Algnis is the Dismissal of Its Preliminary Permit Applications
- d. Massachusetts v. EPA: Article III Standing Analysis: Redressability @ 17
 - i. All of the Injuries-in-Fact Suffered by Algnis Would be Redressed by Requiring FERC to Issue the Preliminary Permits Requested

D. Algnis Has Prudential Standing: Lexmark: Prudential Standing Analysis @ 18

- a. *Lexmark v. Static Control*: Zone-of-interests @ 18
- b. *Lexmark v. Static Control*: Proximate Cause. @ 18

E. FERC has issued a Minimum Offered Price Rule (MOPR) which precludes nuclear power plants receiving any form of state subsidies from bidding in the capacity auctions. The FPA licenses Algnis seeks are issued under federal law and would allow Algnis to partner with States seeking to preserve their nuclear power generation. @ 19

F. As discussed in Legal Questions Presented, the is the perfect case to usher in the second paradigm standing doctrine by which private problems solvers/innovators have standing to proactively engage the administrative state in an effort to reduce regulatory risk to their projects. @ 19

Appendix A: Final Order and Opinion of CADC dated 9 Dec 2019 @ 20

Appendix B: Index to the Record at FERC and CADC @ 23

Conclusion @ 19

Certificate of Compliance @ 20

Certificate of Service @ 20

TABLE OF AUTHORITIES

Cases relied upon:

- *Chemehuevi Tribe of Indians v Federal Power Commission*, 420 U.S. 395 (1975) @ 6
- *Chemehuevi Tribe of Indians v. Federal Power Commission*, 489 F.2d 1207 (CADC 1973) @ 13
- *Lexmark International Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 135-37 (2014) @ 11, 15, 16, 17
- *Massachusetts v. EPA*, 549 U.S. 497 (2007) @ 11, 13, 14, 15

Statutes and regulations:

- Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237, codified at 5 U.S.C. 551 *et seq.*
 - o 5 U.S.C. 706 @ 7, 14
- Federal Power Act, Act of June 10, 1920, 49 Stat. 863, codified at 16 U.S.C. 721-825r *et seq.*
 - o 16 U.S.C 796 (Sec. 3(18)(A)) @ 12
 - o 16 U.S.C. 796 (Sec. 3(18)(B)) @ 12
 - o 16 U.S.C. 797 (Sec. 4(e)) @ 10, 13
 - o 16 U.S.C. 797 (Sec. 4(f)) @ 13
 - o 16 U.S.C. 798 (Sec. 5(a)) @ 11, 12, 14
 - o 16 U.S.C. 798 (Sec. 5(b)) @ 11, 12, 14
 - o 16 U.S.C. 803 (Sec. 10(i)) @ 13, 14, 15
 - o 16 U.S.C. 817 (Sec. 23(b)(1)) @ 11, 12
 - o 16 U.S.C. 817 (Sec. 23(b)(2)) @ 11, 12
 - o 16 U.S.C. 825I (Sec. 313(b)) @ 13
 - o 16 U.S.C. 825o (Sec. 316(a)) @ 12
 - o 16 U.S.C. 825o (Sec. 316(b)) @ 12
- Reclamation Act of 1902, Act of June 17, 1902, 32 Stat. 388, codified at 43 U.S.C. 371 *et seq.* @ 16
- 28 U.S.C. 1254 @ 3

Miscellaneous:

- Alignis.com (Petitioner website with project videos and technical and legal memoranda). Can be accessed by Google search.
- Habeeb, L. and Leven, M.; *A Tale of 'Government Investment'*; National Review; April 9, 2013 @ 2
- Fletcher, W. A.; *The Structure of Standing*; 98 Yale Law J. (1988) @ 3
- Ip, G.; *The Moonshot Mindset Once Came from the Government. No Longer: Americans Still Take Big Risks to Solve Big Problems. But Now It's Private Enterprise that Does It*; The Wall Street Journal; July 14, 2019 @ 3

In the Supreme Court of the United States

No.

Algignis, Inc., an Ohio C-Corporation, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia

OPINION BELOW

On Dec 2019, a panel of the Court of Appeals for the District of Columbia issued the following opinion: The final order and per curiam “opinion” by Rogers, Griffith, and Rao dismissing the Petition for Review of the FERC Final Agency Orders (167 FERC 61,244 and 168 FERC 61,107) *sua sponte* for lack of standing dated 9 Dec 2019 is reproduced in Appendix A.

JURISDICTION

- A. Jurisdiction to seek a writ of Certiorari from the United States Supreme Court to review a final judgment from the United States Court of Appeals for the District of Columbia is granted by 28 U.S.C. § 1254. Final judgment was entered 9 Dec 2019; Order denying motions for rehearing were entered 13 Feb 2020.

STATUTORY PROVISIONS INVOLVED

- Administrative Procedure Act
- Federal Power Act
- Reclamation Act

STATEMENT OF THE CASE

Every year since 1995 the toxic algae blooms in Lake Erie have gotten worse. In 2014 Toledo, Ohio made international news when the residents of Northwest Ohio were not allowed to drink, bathe in, or otherwise use their tap water for three days. Twenty-five years later and the local, state, and federal governments have still done nothing to solve that problem—zero, zilch, nada. A group of Ohioans with expertise in chemistry, medicine, biotechnology, law, and finance came together to form a company to profitably solve the toxic algae problem. The company was named Algignis, Inc.—a portmanteau of two Latin words standing for seaweed (algae) and fire (ignis) and pronounced “Algae-ignis”. The company has posted several videos and white papers on its website (Algignis.com) explaining the scientific, financial, and legal aspects of its proposed projects.

The Algignis team did extensive research, planning, and due diligence. One aspect of the due diligence was a legal/regulatory analysis. It was immediately apparent that the company would need regulatory approval from the United States Environmental Protection Agency (USEPA) for genetically-engineered algae under the Toxic Substances Control Act (TSCA) and from the Nuclear Regulatory Commission (NRC) for installing heat exchangers on nuclear power plants. It was also apparent that Algignis would not need regulatory approval from the Department of the Interior, the Army Corp of Engineers, and the U.S. Coast Guard. The team proactively approached the USEPA and the NRC and those agencies were friendly and helpful.

Troubling were the findings in the Federal Power Act (FPA). The engineering and technical aspects of the Algignis projects were arguably within the licensure requirements of the FPA, and failure to secure FPA licenses could expose the company to massive civil penalties, criminal sanctions, and stop orders. FPA licenses have both very beneficial and very onerous provisions. FPA license applications are expensive, time-consuming, and required highly detailed disclosures. Realizing that FPA water quality projects were very advantageous to the United States, Congress created the right of any U.S. person or company to apply first for preliminary permits that would guarantee those applicants priority in licensing if they undertook the immense cost, time, and effort to compile project license applications. Congress expressly granted FPA preliminary permit holders 4-8 years within which to submit their water quality/energy co-generation projects to FERC.

On 27 Nov 2020 Algignis submitted to FERC its applications for preliminary permits for its water quality/energy co-generation projects expressly authorized by the FPA. In every one of its applications, Algignis indicated its desire to meet with the staff at FERC, to work cooperatively with FERC, and to answer any questions FERC might have about the projects. Algignis also clearly designated its public filings and its confidential trade secret and work product filings.

Within a few hours of completing its electronic FERC preliminary permit filings, Dr. Lorton received a voicemail from FERC asking why Algignis thought FERC had jurisdiction to issue said preliminary permits. Dr. Lorton promptly returned the call and spoke with a staffer who falsely told him he had to file on that same day the reasons Algignis thought FERC had jurisdiction to issue the requested permits. She indicated that FERC did not have jurisdiction to issue the requested preliminary permits. It was apparent that the staffer had not fully read even one of the applications, did not understand the proposed projects, and had no interest in learning anything more about the projects. In an effort to be pleasant and cooperative, the Algignis team worked feverishly to draft and file the requested jurisdictional information, and it did so in a timely fashion.

Fully expecting to afford due process opportunities to further discuss the water quality/energy co-generation projects with the FERC staff, Algignis was stunned to learn from a letter delivered on 11 Mar 2019 but dated 22 Feb 2019, that FERC has issued a "final agency action" (not a Final Agency Order) dismissing all of the Algignis preliminary permit applications by an informal adjudication. FERC stated that it did not have jurisdiction to issue licenses for "thermal-electric" generation projects citing, *Chemehuevi Tribe of Indians v. Federal Power Commission*, 420 U.S. 395 (1975). It did not seem to matter that nowhere in any of the Algignis applications did the company apply for thermal-electric generation projects. In an effort to prevent FERC from arguing that Algignis had waived its right to appeal, the team hurriedly put together and timely filed a motion for rehearing of the "final agency action". One of its many arguments for rehearing was the fact that the Public Utility Regulatory Policies Act of 1978 expressly amended the FPA to authorize energy co-generation projects (the language of which Algignis had expressly copied in its preliminary permit applications) and had legislatively overruled *Chemehuevi*.

On 20 June 2019 FERC issued a Final Agency Order (FERC) denying rehearing. FERC officially made revealing and binding administrative admissions in their accompanying legal analysis. Algignis pointed out that the FPA Part I language expressly defining and authorizing “energy co-generation” projects entitled Algignis to the requested preliminary permits. FERC stated that even though “energy co-generation” projects were expressly defined and authorized in Part I of the FPA, in reality “energy co-generation” projects were regulated under Part II of the FPA and as such, did not confer FERC jurisdiction to issue “energy co-generation” licenses under Part I.

Understanding that it could only raise on appeal issues presented at the agency level, Algignis created an extensive administrative record by submitting a large number of issues for consideration on its second motion for rehearing (of Final Agency Orders 167 FERC 61,244 and 168 FERC 61,107). Algignis pointed out that the Federal Power Act (FPA) was codified in Title 16 of the United States Code which is one of the Titles that has not been reenacted into positive law. The codifying body, the Office of Law Revision Counsel, in the U.S. House of Representatives has expressly stated that titles, heading, *parts*, and subdivisions of laws added during codification have no legal import whatsoever if the Title has not been reenacted into positive law. Algignis pointed out that FERC was denying jurisdiction to issue FPA energy co-generation licenses based on an FPA Part I/Part II distinction that was statutorily and constitutionally invalid.

On FERC denied the second motion for rehearing as a matter of law and did not make any counter-arguments to the numerous issues Algignis raised—even though FERC had a full quorum of Commissioners to deny the rehearing and none of the three commissioners was disqualified or conflicted in any way. Failure to raise or contest issues at the administrative level prevents a party from appealing or an agency from contesting the appeals of those issues. Denial of a rehearing of a Final Agency Order without affirmatively and substantively addressing the issues raised by an applicant/petitioner is legitimate if the agency does not have a quorum, but is a binding adverse litigation decision when the agency has full authority to deny the rehearing. FERC had no legitimate basis for refusing to substantively address the issues raised by Algignis in its second motion for rehearing. FERC realized that it had provided Algignis potent legal ammunition with the unlawful FERC Part I/Part II jurisdictional distinction outlined in its denial of Algignis’s first motion for rehearing. Curiously, FERC which was so ready to refute the Algignis assertions in the first rehearing motion, decided not to meet or even address the Algignis assertions in the second motion for rehearing.

Both Federal Power Act (FPA) and Administrative Procedure Act (APA) expressly grant Algignis the right to appeal in whole or in part the denial of its motion for rehearing of the dismissal of its applications for FPA preliminary permits. Algignis timely filed a Petition for Review of the FERC Final Agency Orders with the United States Court of Appeals for the District of Columbia (CADC). All the court-ordered filings were timely made. Algignis timely filed both procedural and dispositive motions. FERC filed a motion to dismiss out of time without Algignis’s consent and without filing a motion for leave to file out of time. Algignis indicated it would file a motion for a declaratory judgment. The FERC motion to dismiss was based on the assertion the any Algignis request for a declaratory judgment somehow made the appeal moot (??). Algignis moved to strike the untimely motion to dismiss and clearly showed that a motion for a declaratory judgment did not make the appeal moot.

What happened next was astonishing. On 9 Dec 2019, a three-judge panel of the CADC 1) dismissed the Algnis motion to strike the untimely FERC motion to dismiss without explanation; and 2) *sua sponte* dismissed the Algnis Petition for Review of the FERC Final Agency Orders for lack of standing. The 9 Dec 2019 final judgment is reproduced in Appendix A. Algnis timely filed 1) a motion for rehearing by the panel; and 2) a motion for a rehearing en banc. Algnis filed a memorandum of law with its rehearing motions clearly demonstrating that it had both Article III and prudential standing. On 13 Feb 2020, the CADC denied the motions for rehearing without any opinions or counterargument at all. Algnis timely filed a Petition for a Writ of Certiorari with this Court.

REASONS FOR GRANTING THE PETITION

A. The People of Northern Ohio and Southeast Michigan Are Suffering and Will Continue to Suffer from the Toxic Algae Blooms in Lake Erie, Plastics Pollution, and Climate Change. Algnis Seeks to Profit by Solving those Problems

The bureaucrats at FERC and the judges on the Court of Appeals for the District of Columbia do not have to drink water with the deadly toxin, Microcystin. They do not have to watch their water supply turn pea-soup green every summer. How nice for them. For 25 years the local, state, and federal governments have done nothing to solve this problem. Nothing. Cheap, plentiful food is a prized political objective, so the powerful Agriculture Lobby was able to get agricultural phosphorus, nitrogen, and carbon runoff exempted from remediation under the Clean Water Act. Artificial wetlands constructed near dense human populations pose a significant risk of mosquito-borne diseases. No less authorities than the World Health Organization (WHO), the Center for Disease Control and Prevention (CDC), and the Ohio Departments of Health (ODH) and Environmental Protection (OEP) have all warned that global climate change will significantly increase the risk of arthropod-borne diseases in the temperate climate zones like the upper Midwest. Artificial wetlands create more problems than they solve (See *Wetlands White Paper* at Algnis.com)

The Petitioner's proposed energy co-generation projects are the only scientifically proven/validated, economically feasible solutions to the problems of 1) toxic algae blooms; 2) petroleum-based plastics pollution, and 3) premature retirement of low-carbon nuclear power plants. Petitioner came respectfully and cooperatively to its government and its courts in an effort to implement those solutions, but the people in Washington could not be bothered. Petitioner will do all the work, raise all the money, and take all the risk, yet FERC and the CADC could not be bothered to even listen to the merits of the projects.

B. The Court of Appeals for the District of Columbia Misapprehended the Facts and Has Both a Constitutional and Statutory Duty to Determine the Proper Jurisdiction of the Federal Energy Regulatory Commission to Issue Preliminary Permits Under the Federal Power Act

First, the Panel misapprehends the facts. FERC did not merely state that, in its discretion, it believes Algnis does not need the Sec. 4(c) licenses sought. FERC expressly and repeatedly stated that it does not have the *jurisdiction* to issue those licenses. Nowhere in the record does

FERC state that is merely exercising its discretion not to issue the FPA preliminary permits. Discretion and lack of jurisdiction are two vastly different things, and the CADC Panel knows that. The Panel also knows that it is constitutionally and statutorily required to consider the merits of a case in which an agency denies *jurisdiction* under a statute, but the CADC panel can sweep under the rug a case mischaracterized as a mere dispute about agency discretion.

Lack of jurisdiction to issue a Sec. 4(e) license is also lack of jurisdiction to compel Algnis to secure such licenses. Agency discretion may be changed in the future to unpredictably expose Algnis to civil and criminal penalties. Agency jurisdiction can only be expanded by Congress. Given that Algnis can be subjected to civil and criminal actions under the Federal Power Act, it is critically important that Algnis reduce regulatory uncertainty by securing a final appellate court order stating that if, in fact, FERC has no jurisdiction to issue Sec. 4(e) licenses then FERC also cannot require Algnis to secure Sec. 4(e) licenses. The fact that the Panel can call a decision “substantively favorable” which leaves Algnis and its investors with the Sword of Damocles poised over their heads, demonstrates a lack of understanding of entrepreneurial finance. Few, if any, will invest in Algnis if at any time FERC can, in its discretion, change the rules of the game and require Algnis to secure Sec. 4(e) licenses. If FERC has no jurisdiction to issue Sec. 4(e) licenses, then why could the CADC not memorialize that in a binding declaratory judgment? Such a declaratory judgment would aid immensely in securing financing. The inability to secure investment or having to pay a significantly increased risk-adjusted cost of capital is clearly actual injury-in-fact—as is unpredictable exposure to civil and criminal liability.

There are additional types of licenses Algnis applied for under the FPA. Section 10(i) Minor Part energy cogeneration licenses confer many benefits including fifty years of exclusivity. The Panel’s assertion that FERC’s refusal to issue Sec. 10(i) cogeneration licenses is “substantively favorable” is nonsense. How can denial of beneficial licenses expressly authorized by Congress be “substantively favorable”? Congress created preliminary permits and Sec. 10(i) licenses as *incentives* for private capital to undertake energy cogeneration projects.¹ Congress expressly authorized FERC to issue “cogeneration facility” licenses², but FERC is unlawfully refusing to issue said Sec. 10(i) licenses and thereby depriving Algnis of the benefits of those licenses. FERC claims it has no jurisdiction to issue the Sec. 10(i) licenses based on a false dichotomy between Part I and Part II of the Federal Power Act. Algnis’s loss of the incentives to construct “cogeneration facilities” is clearly actual injury-in-fact.

Congress understood that the act of securing the information needed to apply for Sec. 10(i) licenses is costly and time-consuming, and that is why Congress gives Algnis 4-8 years of priority to file its license applications³. The Panel relies on elements (“speculativeness” and “remoteness”) of the “balancing test” that were expressly rejected in *Lexmark*⁴, when it said Algnis lacks standing for “license applications it might file several years from now”. The priority provided by the preliminary permits allows Algnis to invest the time and effort into preparing its project license applications knowing that others cannot jump in front and steal the

¹ See also the remarks of Senator Jones introducing the bill . . . “Through failure of Congress to pass water power laws under which money could be safely invested with a prospect of full return, water powers now wasting have been held back from development in at least 22 States of the Union.” 59 Cong. Rec. 241 (1919)

² Federal Power Act, Section 3(18)(A); 16 U.S.C. 796.

³ *Ibid*, Sections 5(a) and (b); 16 U.S.C. 798.

⁴ *Lexmark International Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 135-37 (2014).

projects. In that respect, the preliminary permits *increase the certainty* that Algnis will file its project license applications, not make filings less certain.

Proper Standing Analysis That Should Have Been Applied by the Court of Appeals for the District of Columbia

Standing is characterized as either constitutional or prudential with elements as follows:

- Constitutional standing (*Massachusetts v. EPA*, 549 U.S. 497 (2007))
 - o Injury-in-fact
 - o Causation
 - o Redressability
- Prudential standing (*Lexmark International Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014))
 - o Statutory construction
 - Zone of interests
 - o Proximate cause

The Panel's standing inquiry focused on the imminence/immediacy element of injury-in-fact stating, "Algnis also argues that it is at risk of losing priority for related license applications that it might file several years from now, but this alleged injury is neither 'actual' nor 'imminent.'" That statement exhibits a fundamental misunderstanding of both the law and the facts.

C. Algnis Has Constitutional Article III Standing Under Massachusetts v. EPA

Algnis Has Article III and Prudential Standing: Factual and Statutory Support

Algnis, Inc. is an equity-financed for-profit Ohio C-corporation founded to make a profit from energy cogeneration projects. The projects would solve 1) toxic algae blooms; 2) petroleum-based plastics pollution; and 3) premature retirement of low-carbon nuclear power plants.

Algnis has expended more than three years of time, effort, and money preparing these projects. All of that time, effort, and money is at risk if Algnis does not secure licenses under the Federal Power Act or a binding declaratory judgment that FERC cannot prosecute Algnis for not having FPA licenses.

Sections 23(b)(1) and (2) of the Federal Power Act (FPA) state in relevant part:

"(1) It shall be unlawful for any person . . . for the purposes of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or *other works incidental thereto* across, *along*, or in any of the navigable waters of the United States . . . except under and in accordance with the terms of a permit . . . or license granted pursuant to this Act. . . . (2) No person may commence any significant *modification* of any project licensed under, *or exempted from*, this Act unless such modification is authorized in accordance with the terms and conditions of such license or *exemption* and the applicable requirements of this Part." 16 U.S.C. 817.

The Algnis energy co-generation projects will 1) develop electric power from preserved nuclear power plants; 2) build algae cultivation facilities that are "works incidental" that development of electric power; and 3) build its projects "along" the navigable waters of the

United States. It seems very clear that Algnis potentially violates Section 23(b)(1) if it does not secure the necessary FPA licenses or a binding declaratory judgment that it is not subject to those provisions.

Unfortunately, if Algnis does not run afoul of Section 23(b)(1), it may run afoul of Section 23(b)(2). Nuclear reactors are not licensed as FPA Sec. 4(e) hydropower projects, and that would suggest, therefore, that they are *exempted* from such licensure. Algnis projects would *modify* the reactor cooling system in order to harvest the waste heat. Unfortunately, the language of Sections 23(b)(1), 23(b)(2), 316(a), and 316(b) (see below) poses significant risk for Algnis.

Section 316(a) imposes a criminal “fine of not more than \$1,000,000 or by imprisonment for not more than 5 years or both” for “Any person who willfully and knowingly does . . . any act, matter, or thing in this Act prohibited or declared to be unlawful . . .” Section 316(b) imposes civil penalties of “\$25,000 for each and every day during which such offense occurs.” 16 U.S.C. 825o.

Given the potential civil and criminal exposure in the FPA, Algnis applied for preliminary permits (PP) for two distinct types of FPA licenses [Section 4(e) Hydropower licenses and Section 10(i) Minor Part cogeneration facility licenses] to construct waste heat recovery facilities close to nuclear power plants around the United States. The Federal Energy Regulatory Commission (FERC) dismissed all of Algnis’s PP applications claiming that 1) it, FERC, does not have jurisdiction to issue Section 4(e) thermal-electric project licenses citing *Chemehuevi Tribe of Indians v Federal Power Commission*, 420 U.S. 395 (1975), and 2) that, in any event, the proposed Algnis projects did not meet the technical specifications for a Sec. 4(e) license. FERC also dismissed the Preliminary permits for the Section 10(i) Minor Part energy cogeneration licenses even though Congress expressly defined and authorized “cogeneration facility” projects in Section 3(18)(A) of the FPA. FERC expressly committed itself to the position that it has no jurisdiction to issue “cogeneration facility” licenses because they are regulated under Part II of the FPA and not Part I. Algnis clearly demonstrated that FERC’s Part I and Part II distinction is a constitutionally invalid basis for denying jurisdiction to issue the Sec. 10(i) energy cogeneration licenses.

Algnis brought the Petition for Review 1) seeking a declaratory judgment that FERC’s lack of jurisdiction to issue Sec. 4(e) Hydropower licenses also constitutes a lack of jurisdiction to compel Petitioner to secure Sec. 4(e) licenses for its projects; and 2) under Sec. 313 of the FPA and Section 10(e) of the APA alleging that FERC is exercising less jurisdiction than granted it by Congress to issue the Sec. 10(i) energy cogeneration licenses. 16 U.S.C. 8251 and 5 U.S.C. 706. If FERC denies Algnis the Sec. 10(i) Preliminary permits/licenses it seeks, it will be exposed to civil and criminal penalties. Algnis will also lose 1) the time, effort, and money it has already expended; 2) the reasonable expectation of profit from those projects; 3) investment needed to finance those projects; and/or 4) will be forced to pay a much higher risk-adjusted cost of capital for any financing it may secure. Thus, Algnis’s injuries-in-fact are actual, concrete, and particularized. The FERC final order denying the Preliminary permits/licenses proximately causes those injuries and requiring FERC to issue the Preliminary permits/licenses redresses the injuries.

Massachusetts v. EPA: Article III Standing Analysis: Injury-in-Fact

This case is squarely within the four corners of *Massachusetts v. EPA*. There the Court ordered a recalcitrant federal agency to take environmental action it had refused to take. Similarly, FERC has abdicated its environmental responsibility under the Federal Power Act (FPA) and must be compelled to issue the preliminary permits/licenses to which the Petitioner has both a procedural and substantive right.

In *Chemehuevi Tribe of Indians v. Federal Power Commission*, 489 F.2d 1207 (CADC 1973) “Judge Randolph avoided a definitive ruling as to petitioners’ standing . . . reasoning that it was permissible to proceed to the merits because the merits and standing inquiries ‘overlap[ped]’” Similarly, the Panel should have heard the merits before dismissing this case.

Congress has expressly authorized this type of challenge to FERC action. “That authorization is of critical importance to the standing inquiry: ‘Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.’”⁵ In the Federal Power Act, Congress expressly grants Petitioners like Algnis the right to licenses, preliminary permits, and the right to challenge FERC denial of those licenses and preliminary permits. Congress expressly confers standing on Algnis and exclusive jurisdiction on the CADC in the following sections of the Federal Power Act:

“(e) To issue licenses . . . to any corporation organized under the laws of the United States or any State thereof . . . for the purposes of constructing, operating, and maintaining [hydropower projects]” 16 U.S.C. 797

“(f) To issue preliminary permits for the purpose of enabling applicants for licenses hereunder to secure the data and perform the acts required by section 9 hereof . . .” Section 5(a) Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application not exceeding a total of 4 years . . . The Commission may (1) extend the period of a preliminary permit once for not more than 4 additional years . . .” 16 U.S.C. 797

“(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission in its discretion may waive such conditions, provisions, and requirements of this part except the license period of fifty years . . .” Section 10(i), 16 U.S.C. 803

“(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain review of such order in . . . the United States Court of Appeals for the District of Columbia . . . Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. . . .” 16 U.S.C. 825l.

In the Administrative Procedure Act, 5 U.S.C. § 706 Scope of Review, Congress also grants Algnis a procedural right to protect its concrete interests in the preliminary permits and licenses unlawfully withheld by FERC:

“. . . [T]he reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—(1) compel agency action

⁵ *Massachusetts v. EPA*, 549 U.S. at 517.

unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be . . . (C) in excess of statutory jurisdiction, authority, or limitations, *or short of statutory right*; . . . or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.” (Emphasis added)

“[A] litigant to whom Congress has ‘accorded a procedural right to protect his concrete interests . . .—here, the right to challenge agency action unlawfully withheld . . .—‘can assert that right *without meeting all of the normal standards of redressability and immediacy* . . . When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant.”⁶ (Emphasis added) The Panel’s application of the “immediacy” requirement is therefore misguided in the context of Congress’s statutory grant to Algnis of a right protect its concrete interests in its preliminary permits and licenses.

Algnis has suffered and will suffer “actual” injury-in-fact, and that such injury need not occur in the near future. It is inappropriate to require that a litigant suffer injury-in-fact within a very short time-frame after an unlawful agency action where Congress expressly sets the time-frame in which the litigant may exercise his/her congressionally bestowed rights. Congress understood that the act of putting together the FPA license applications is very costly and time-consuming. That is why Congress expressly gives holders of the preliminary permits 4-8 years in which to submit their FPA license applications⁷. The Panel’s inapt reasoning would deny standing to the very persons Congress seeks to incentivize to invest in risky, costly, time-consuming FPA projects benefitting the United States.

The Panel’s application of the “immediacy” standard also demonstrates a fundamental lack of understanding of entrepreneurial finance. A company such as Algnis that is private equity-financed is contractually bound to its investors to secure the preliminary permits and to apply for the project licenses on which its business model is based. Contrary to the Panel’s conclusion, the fact that Algnis must commit extraordinary money and resources in order to apply for the licenses within 4-8 years does not show it is less committed to the projects; rather it shows that Algnis and its investors are *more deeply committed over the long term*. They have already committed vast resources to these projects.

Massachusetts v. EPA: Article III Standing Analysis: Causation

FERC does not dispute the existence of a causal connection between greenhouse gas emissions and global warming. FERC does not dispute the causal connection between toxic algae blooms and plastics pollution, respectively and injury to human health and the environment. FERC does not dispute that energy co-generation projects solving major societal problems like toxic algae blooms, plastics pollution, and climate change could earn a significant profit. At a minimum, therefore, FERC’s refusal to issue such Preliminary permits/licenses proximately causes Petitioner’s injuries⁸.

Massachusetts v. EPA: Article III Standing Analysis: Redressability

⁶ *Massachusetts v. EPA*, 549 U.S. at 518-19.

⁷ Federal Power Act Section 5(a), 16 U.S.C. 798.

⁸ See *Massachusetts v. EPA*, 549 U.S. at 524 for parallel reasoning.

That FERC or this Panel may not think the proposed projects will fully remedy the above-noted problems has no bearing on Petitioner's right to the Preliminary permits/licenses. "[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind' They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed. . . ('Some principles must await their own development, while others must be adjusted to meet, particular unforeseeable situations'). That a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law."⁹

While it may be true that the issuance of FPA Section 10(i) Preliminary permits and licenses will not by itself reverse global warming, toxic algae blooms, and plastics pollution; it by no means follows that the CADC lacks jurisdiction to decide whether FERC has a duty to take steps to slow or reduce those harms.¹⁰ A declaratory judgment stating that FERC has no jurisdiction to require Algnis to secure FPA Sec. 4(e) licenses removes the potential for civil penalties, criminal sanctions, and stop orders; and allows the Algnis projects to move forward. Requiring FERC to issue preliminary permits for FPA Sec. 10(i) Minor Part licenses removes the risk of investing the time, effort, and money into preparation of those license applications.

D. Algnis has Prudential Standing: Lexmark: Prudential Standing Analysis

Lexmark v. Static Control: Zone-of-interests.

Algnis is exactly the party for whom Congress created the FPA preliminary permits and licenses. The Federal Water Power Act of 1920 was enacted to incentivize private capital to invest in projects that would help the federal government pay for irrigation and flood control dams in the western United States under the Reclamation Act of 1902¹¹. Congress has since amended the FPA to include cogeneration facilities and environmental water quality improvement as projects for which FERC may issue FPA licenses. The Algnis projects will confer an immense benefit on the United States when they clean eutrophic waters, reduce plastics pollution, and preserve low-carbon nuclear power plants.

"We have said, in the [Administrative Procedure Act] context, that the [zone-of-interests] test is not 'especially demanding,' *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012) . . . In that context we have often "conspicuously included the word 'arguably' in the test to indicate the benefit of any doubt goes to the plaintiff," and have said that the test "forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that'" Congress authorized the Plaintiff to sue. . . ."¹²

Algnis has applied for the preliminary permits and will apply for the licenses in order to carry those projects to fruition. Algnis is unequivocally within the "zone-of-interest" for whom Congress created standing in the Federal Power Act and the Administrative Procedure Act.

⁹ *Ibid* at 525.

¹⁰ See *Massachusetts v. EPA* at 526 for parallel reasoning.

¹¹ Reclamation Act of 1902, Act of June 17, 1902, 32 Stat. 388, codified at 43 U.S.C. 371 *et seq.*.

¹² *Lexmark Intern'l v. Static Control*, 572 U.S. at 131.

Lexmark v. Static Control: Proximate Cause.

It is FERC's unlawful denial of the preliminary permits and licenses that directly and proximately cause Algnis's injuries-in-fact. There are no intervening parties or circumstances. The Panel has applied a version of the "balancing test" (prongs #3 and #4) that the Lexmark Court expressly rejected.

"The balancing test Lexmark advocates . . . identified five relevant considerations: '(1) The nature of the Plaintiff's alleged injury: Is the injury the type that Congress sought to redress in providing a private remedy for violations of the [here the Federal Power Act and Administrative Procedure Act]? (2) The directness or indirectness or indirectness of the asserted injury. (3) *The proximity or remoteness of the party to the alleged injurious conduct.* (4) *The speculativeness of the damages claim.* (5) The risk of duplicative damages or complexity in apportioning damages." . . . "[T]he difficulty that can arise when a court attempts to ascertain damages caused by some remote action" is a "motivating principle" behind the proximate-cause requirement. . . . *Finally, experience has shown that the [balancing test] approach, like other open-ended balancing tests, can yield unpredictable and at times arbitrary results.*"¹³ (Emphasis added)

The Panel's "immediacy" test here is simply a version of the balancing test's "proximity or remoteness" prong (#3) and the "speculativeness" prong (#4). The Panel's reasoning was expressly rejected in *Lexmark*.

- E. FERC has issued a Minimum Offered Price Rule which precludes nuclear power plants receiving any form of state subsidies from bidding in the capacity auctions. The FPA licenses Algnis seeks are issued under federal law and would allow Algnis to partner with States seeking to preserve their nuclear power generation.
- F. As discussed in Legal Questions Presented, the is the perfect case to usher in the second paradigm standing doctrine by which private problems solvers/innovators have standing to proactively engage the administrative state in an effort to reduce regulatory risk to their projects.

Conclusion

On the 50th anniversary of the first manned Moon landing, the Wall Street Journal published an article stating that Americans still had a Moon-Shot mindset, but now those extraordinary technical feats were being attempted by the private sector. The last half of the 20th Century was the Computer era; the first half of the 21st Century will be the biotechnology era. Petitioner has assembled a team with expertise in chemistry, genetic engineering, polymers, medicine, patent law, finance, and environmental engineering to use genetic engineering to 1) substantially reduce toxic algae blooms by cleaning the waters of Lake Erie of the excess phosphorus, nitrogen, and carbon; 2) produce biodegradable bioplastics; and 3) install heat exchangers on our insolvent low-carbon nuclear power plants to monetize the waste heat.

¹³ *Lexmark Intern'l v. Static Control* at 136-37.

Needless to say, these projects are very technically and financially complex. The Algignis team has worked extremely long and hard to prototype the scientific aspects of the projects. Private equity financing requires financial risk-management. The failed V. C. Summers nuclear power plants in South Carolina went way over budget and schedule because the project team ran into regulatory issues that they had not anticipated nor planned for. From the beginning our advisors and potential investors required that we proactively engage our potential regulators in order to avoid a similar fate. That is exactly what we did. The record shows that we were friendly and cooperative from the beginning. The USEPA and NRC were helpful and friendly. FERC immediately decided that there was no way on God's green earth that they were going to listen to us, much less cooperate with us.

When Dr. Lorton was a law student at Duke, Alger Hiss told him and his fellow law students that if they wanted to change the world, they had to go to Washington, D.C., the power center of the world. Mr. Hiss also said, "If you go to Washington, never go without a constituency." The Algignis team knew this but wanted to approach the federal agencies and courts cooperatively and in good faith initially. It will allow us to say that we tried the honorable and straight forward approach. We respectfully submit that is a significant probability that certiorari will not be granted not because Petitioner lacks standing, but because FERC and the CADC do not believe the Algignis team is sufficiently socially validated for them to have to bother with. Given that Congress expressly grants Petitioner the FPA preliminary permits that allow it to file license applications in 4-8 years, the standing dismissal was pretext for not having to deal with the complex merits of a case the judges do not understand.

If the law is the basis for the decision on this petition, the Writ of Certiorari will be granted, and the Petitioner will have the chance to argue the merits of its case to the United States Court of Appeals for the District of Columbia.

Respectfully submitted.

/s/ Michael D. Lorton
Michael D. Lorton, Attorney for
Petitioner, Algignis, Inc.
2201 Townley Road, Toledo, Ohio
43614
Phone: 419-297-2943
Email: mdlorton@umich.edu
No Fax

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia is submitted in substantial compliance with the Rules of the Supreme Court of the United States. It is timely filed on the 13th day of May 2020. Michael D. Lorton, M.D., J.D., MBA, attorney for the Petitioner is admitted and in good standing to practice before the Supreme Court of the United States. The word count is 8,830; page count is 21. The font is size 12 (save for footnotes and indented quotes) Times New Roman in Word/PDF format. The Final Agency Orders and Actions that serve as the basis for this motion have been previously submitted as part the record relied upon. Mr. Scott Ediger, the attorney representing FERC in

this case, will receive notice through the Court's CM/ECF system. The Parties to the case are 1) Algnis, Inc., a closely-held Ohio C corporation that has no parental corporation; 2) the Federal Energy Regulatory Commission; 3) the United States, and potentially 4) the United States Court of Appeals for the District of Columbia. Corporate Disclosure Statement on pg. 4. Print booklets in route.

/s/ Michael D. Lorton

Michael D. Lorton, Attorney
Petitioner, Algnis, Inc.
2201 Townley Road, Toledo,
Ohio 43614
Phone: 419-297-2943
Email: mdlorton@umich.edu

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2020 I electronically filed a courtesy copy of the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia with the Clerk of Court for the United States Court of Appeals for the District of Columbia using the CM/ECF system. The Clerk will provide notification of such filing to: Respondent:

The Federal Energy Regulatory Commission
By the CM/ECF

/s/ Michael D. Lorton

Michael D. Lorton, Attorney for Petitioner,
Algnis, Inc.
2201 Townley Road, Toledo, Ohio 43614
Phone: 419-297-2943
Email: mdlorton@umich.edu

APPENDIX A: OPINION BELOW

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1169

September Term, 2019

FERC-167FERC61244

Algignis, Inc.,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

BEFORE: Rogers, Griffith, and Rao, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the response thereto, and the reply; the motion to strike the motion to dismiss; the motion for partial summary affirmance, the response thereto, and the reply; the motion to stay, which contains a motion for summary reversal, the response thereto, and the reply; and the motion to extend time to file the motion to stay, it is

ORDERED that the motion to strike be denied. Motions to strike are disfavored. See Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distributors Pty. Ltd., 647 F.2d 200, 201 (D.C. Cir. 1981). Moreover, this court is required to consider whether petitioner Algignis, Inc. has standing regardless of whether that issue was timely raised by the parties. See Cierco v. Mnuchin, 857 F.3d 407, 415-16 (D.C. Cir. 2017) (“Where a party’s Article III standing is unclear, we must resolve the doubt, sua sponte if need be.”) (internal citation and quotation marks omitted; emphasis in original). It is

FURTHER ORDERED that the motion to dismiss be granted. Algignis lacks Article III standing because it has not shown that it has “suffer[ed] an injury-in-fact that is both concrete and particularized and actual or imminent, not conjectural or hypothetical.” New England Power Gens. Ass’n, Inc. v. FERC, 707 F.3d 364, 368 (D.C. Cir. 2013) (internal citation and quotation marks omitted). Algignis challenges orders of the Federal Energy Regulatory Commission (“FERC”) in which the agency determined that it is without jurisdiction to consider 60 applications for proposed projects at nuclear power plants throughout the United States. But those orders made clear that FERC does not believe the projects require the licenses for which Algignis applied, and “mere disagreement with an agency’s rationale for a substantively favorable decision does not constitute the sort of injury necessary for purposes of Article III standing.”

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1169

September Term, 2019

Caribbean Transp., Inc. v. Pena, 37 F.3d 671, 674 (D.C. Cir. 1994) (internal citation and quotation marks omitted). Algnis contends that FERC might later seek to block its projects, but “[t]hat FERC may one day attempt to alter its position is insufficient injury” to confer standing. New England Power Gens. Ass’n, 707 F.3d at 369. Algnis also argues that it is at risk of losing priority for related license applications that it might file several years from now, but this alleged injury is neither “actual” nor “imminent.” Id. at 368. It is

FURTHER ORDERED that the motions to extend time, to stay, and for summary disposition be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX B: INDEX OF RECORD**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Algignis, Inc.)	
)	
Petitioner)	
)	
v.)	No. 19-1169
)	
Federal Energy Regulatory Commission,)	
)	
Respondent)	

CERTIFIED INDEX TO THE RECORD

Pursuant to the provisions of section 313(b) of the Federal Power Act, 16 U.S.C. § 825(b), the provisions of 28 U.S.C. § 2112, and Rule 17 of the Federal Rules of Appellate Procedure, the Federal Energy Regulatory Commission hereby certifies that the materials listed and described below are: (1) the order complained of, "Order Denying Rehearing," 167 FERC ¶ 61,244, issued June 20,

2019, in *Algiris, Inc.*, FERC Docket Nos. P-14896 to 14955, inclusive; and (2) the complete record upon which such orders were entered.

Record**Item No. Description**

1. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5104
Description: Application (Preliminary Permit for Davis-Besse Algae Cultivation Facility) of Algignis, Inc. under P-14896.
2. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5109
Description: Application (Application for Preliminary Permit for Perry Algae Cultivation Facility) of Algignis, Inc. under P-14897.
3. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5111
Description: Application (Application for Preliminary Permit for Beaver Valley 1 & 2 Algae Cultivation Project) of Algignis, Inc. under P-14898.
4. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5112
Description: Application (Preliminary Permit for Fermi Algae Cultivation Facility) of Algignis, Inc. under P-14899.
5. Filed By: Algignis, Inc. Filed
Date: 11/27/2018 Accession
No: 20181127-5121
Description: Appl. For Preliminary Permit for Arkansas 1 & 2 Nuclear Plant Algae Cultivation Facility of Algignis, Inc. under P-14900.

Record**Item No. Description**

6. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5122
Description: Application (Preliminary Permit for Braidwood 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14901.
7. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5123
Description: Application (Preliminary Permit for Browns Ferry 1, 2, & 3 Algae Cultivation Facility) of Algignis, Inc. under P-14902.
8. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5125
Description: Application (Preliminary Permit for Brunswick 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14903.
9. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5128
Description: Application (Preliminary Permit for Byron 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14904.
10. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5133
Description: Application (Preliminary Permit for Callaway Algae Cultivation Facility) of Algignis, Inc. under P-14905.
11. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5139
Description: Application (Preliminary Permit for Calvert Cliffs 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14906.

Record**Item No. Description**

12. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5143
Description: Application (Preliminary Permit for Catawba 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14907.

13. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5145
Description: Application (Preliminary Permit for Clinton Algae Cultivation Facility) of Algignis, Inc. under P-14908.

14. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5148
Description: Application (Preliminary Permit for Columbia Algae Cultivation Facility) of Algignis, Inc. under P-14909.

15. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5149
Description: Application (Preliminary Permit for Comanche Peak Algae Cultivation Facility) of Algignis, Inc. under P-14910.

16. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5150
Description: Application (Preliminary Permit for Cooper Algae Cultivation Facility) of Algignis, Inc. under P-14911.

17. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5151
Description: Application (Preliminary Permit for D.C. Cook Algae Cultivation Facility) of Algignis, Inc. under P-14912.

Record**Item No. Description**

18. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5152
Description: Application (Preliminary Permit for Diablo Canyon Algae Cultivation Facility) of Algnis, Inc. under P-14913.

19. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5153
Description: Application (Preliminary Permit for Dresden 2&3 Algae Cultivation Facility) of Algnis, Inc. under P-14914.

20. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5154
Description: Application (Preliminary Permit for Duane Arnold Algae Cultivation Facility) of Algnis, Inc. under P-14915.

21. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5181
Description: Application (Preliminary Permit for Farley 1&2 Algae Cultivation Facility) of Algnis, Inc. under P-14916.

22. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5182
Description: Application (Preliminary Permit for Fitzpatrick Algae Cultivation Facility) of Algnis, Inc. under P-14917.

23. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5183
Description: Application (Preliminary Permit for Ginna Algae Cultivation Facility) of Algnis, Inc. under P-14918.

Record**Item No. Description**

24. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5184
Description: Application (Preliminary Permit for Grand Gulf 1 Algae Cultivation Facility) of Algignis, Inc. under P-14919.

25. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5185
Description: Application (Preliminary Permit for Hatch 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14920.

26. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5186
Description: Application (Preliminary Permit for Hope Creek 1 Algae Cultivation Facility) of Algignis, Inc. under P-14921.

27. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5187
Description: Application (Preliminary Permit for Indian Point 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14922.

28. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5188
Description: Application (Preliminary Permit for LaSalle 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14923.

29. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5189
Description: Application (Preliminary Permit for Limerick 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14924.

Record**Item No. Description**

30. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5190
Description: Application (Preliminary Permit for McGuire 1&2 Algae Cultivation Facility) of Algnis, Inc. under P-14925.

31. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5191
Description: Application (Preliminary Permit for Millstone 2&3 Algae Cultivation Facility) of Algnis, Inc. under P-14926.

32. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5192
Description: Application (Preliminary Permit for Monticello Algae Cultivation Facility) of Algnis, Inc. under P-14927.

33. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5193
Description: Application (Preliminary Permit for Nine Mile Point 1&2 Algae Cultivation Facility) of Algnis, Inc. under P-14928.

34. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5194
Description: Application (Preliminary Permit for North Anna 1&2 Algae Cultivation Facility) of Algnis, Inc. under P-14929.

35. Filed By: Algnis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5195
Description: Application (Preliminary Permit for Oconee 1, 2, & 3 Algae Cultivation Facility) of Algnis, Inc. under P-14930.

Record**Item No. Description**

36. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5196
Description: Application (Preliminary Permit for Oyster Creek Algae Cultivation Facility) of Algignis, Inc. under P-14931.

37. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5197
Description: Application (Preliminary Permit for Palisades Algae Cultivation Facility) of Algignis, Inc. under P-14932.

38. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5198
Description: Application (Preliminary Permit for Palo Verde 1, 2, & 3 Algae Cultivation Facility) of Algignis, Inc. under P-14933.

39. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5200
Description: Application (Preliminary Permit for Peach Bottom 2&3 Algae Cultivation Facility) of Algignis, Inc. under P-14934.

40. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5201
Description: Application (Preliminary Permit for Pilgrim 1 Algae Cultivation Facility) of Algignis, Inc. under P-14935.

41. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5202
Description: Application (Preliminary Permit for Point Beach 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14936.

Record**Item No. Description**

42. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5203
Description: Application (Preliminary Permit for Prairie Island 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14937.

43. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5204
Description: Application (Preliminary Permit for Quad Cities 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14938.

44. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5205
Description: Application (Preliminary Permit for St. Lucie 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14939.

45. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5206
Description: Application (Preliminary Permit for Turkey Point Algae Cultivation Facility) of Algignis, Inc. under P-14940.

46. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5207
Description: Application (Preliminary Permit for Vogtle Algae Cultivation Facility) of Algignis, Inc. under P-14941.

47. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5208
Description: Application (Preliminary Permit for River Bend Algae Cultivation Facility) of Algignis, Inc. under P-14942.

Record**Item No. Description**

48. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5210
Description: Application (Preliminary Permit for Robinson Algae Cultivation Facility) of Algignis, Inc. under P-14943.

49. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5211
Description: Application (Preliminary Permit for Salem 1&2 Algae Cultivation Facility) of Algignis, Inc. under P-14944.

50. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5212
Description: Application (Preliminary Permit for Seabrook Algae Cultivation Facility) of Algignis, Inc. under P-14945.

51. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5213
Description: Application (Preliminary Permit for Sequoyah Algae Cultivation Facility) of Algignis, Inc. under P-14946.

52. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5214
Description: Application (Preliminary Permit for Shearon Harris Algae Cultivation Facility) of Algignis, Inc. under P-14947.

53. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5215
Description: Application (Preliminary Permit for South Texas Nuclear Algae Cultivation Facility) of Algignis, Inc. under P-14948.

Record**Item No. Description**

54. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5216
Description: Application (Preliminary Permit for Summer Algae Cultivation Facility) of Algignis, Inc. under P-14949.

55. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5217
Description: Application (Preliminary Permit for Surry Algae Cultivation Facility) of Algignis, Inc. under P-14950.

56. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5218
Description: Application (Preliminary Permit for Susquehanna Algae Cultivation Facility) of Algignis, Inc. under P-14951.

57. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5219
Description: Application (Preliminary Permit for Three Mile Island Algae Cultivation Facility) of Algignis, Inc. under P-14952.

58. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5220
Description: Application (Preliminary Permit for Waterford Algae Cultivation Facility) of Algignis, Inc. under P-14953.

59. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5221
Description: Application (Preliminary Permit for Watts Bar Algae Cultivation Facility) of Algignis, Inc. under P-14954.

Record**Item No. Description**

60. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5222
Description: Application (Preliminary Permit for Wolf Creek Algae Cultivation Facility) of Algignis, Inc. under P-14955.

61. Filed By: Algignis, Inc.
Filed Date: 11/27/2018
Accession No: 20181127-5223
Description: Application (Preliminary Permit and Privileged Exhibit 1 Davis-Besse Algae Cultivation Facility) of Algignis, Inc. under P14896, et al. PRIVILEGED

62. Filed By: Algignis, Inc. Filed
Date: 11/27/2018 Accession
No: 20181127-5224
Description: Application (Preliminary Permit and Privileged Exhibit 1 Davis-Besse Algae Cultivation Facility) of Algignis, Inc. under P-14896, et al.

63. Filed By: Algignis, Inc. Filed
Date: 11/28/2018 Accession
No: 20181128-5046
Description: Application (Notarized Oath for Applications for Preliminary Permits for Algae Cultivation Facilities at US nuclear power plants) of Algignis, Inc. under P-14896, et al.

64. Filed By: Barbara Boyle Weaner
Filed Date: 12/21/2018
Accession No: 20181221-5002
Description: Comment of Barbara Boyle Weaner in Docket(s)/Project(s) P-14899-000. Submission Date: 12/20/2018.

Record**Item No. Description**

65. Issued By: Energy Projects, Office of
Filed Date: 2/22/2019
Accession No: 20190222-3016
Description: Letter to Algnis, Inc. re the Dismissal of Preliminary Permit Applications for the Davis-Besse Nuclear Power Station Project, et al. under P-14896.

66. Filed By: Algnis, Inc.
Filed Date: 3/22/2019
Accession No: 20190322-5164
Description: Request for Rehearing of Dismissal of Algnis, Inc. Preliminary Permit Applications (Project No.'s 14896-000 through 14955-000, inclusive) under P-14896.

67. Filed By: Algnis, Inc.
Filed Date: 3/22/2019
Accession No: 20190322-5165
Description: Request for Rehearing of Dismissal of Algnis, Inc. Preliminary Permit Applications (Project No.'s 14896-000 through 14955-000, inclusive) under P-14896.

68. Filed By: Algnis, Inc.
Filed Date: 4/17/2019
Accession No: 20190417-5035
Description: Memorandum in support of request for rehearing for dismissal of 60 Algnis Nuclear Waste Heat Recovery Project Prelim Permit Applications and amendment of applications under P-14896.

69. Filed By: Algnis, Inc.
Filed Date: 4/17/2019
Accession No: 20190417-5036
Description: Memorandum in support of request for rehearing for dismissal of 60 Algnis Nuclear Waste Heat Recovery Project Prelim Permit Applications and amendment of applications under P-14896.
PRIVILEGED

Record**Item No. Description**

70. Issued By: Secretary of the Commission, FERC
Commissioners & Immediate Staff (THE COMMISSION)
Filed Date: 4/22/2019
Accession No: 20190422-3034
Description: Order Granting Rehearing for Further Consideration re Algignis, Inc. under P-14896, et al.

71. Filed By: Algignis, Inc.
Filed Date: 4/22/2019
Accession No: 20190422-5107
Description: Application (Specify...) of Algignis, Inc. under P-14896. Memorandum in support of motion for rehearing of dismissal of 60 Algignis Prelim Permit applications and to create an administrative record for appeal.

72. Filed By: Algignis, Inc. Filed
Date: 4/22/2019 Accession
No: 20190422-5108
Description: Application (Specify...) of Algignis, Inc. under P-14896. Memorandum in support of motion for rehearing of dismissal of 60 Algignis Preliminary Permit applications and to create an administrative record for appeal. PRIVILEGED

73. Issued By: Energy Projects, Office of
Filed Date: 5/16/2019
Accession No: 20190516-3034
Description: Letter to Algignis, Inc. re the Classification of Privileged Document for the Davis - Besse Nuclear Power Station Project under P-14896.

74. Filed By: Algignis, Inc.
Filed Date: 5/21/2019
Accession No: 20190521-5004
Description: Timely filed Amendment to Application of Algignis, Inc. under P-14896. Revision to comply with 10 CFR 388.112.

Record**Item No. Description**

75. Filed By: Algignis, Inc. Filed
Date: 5/21/2019 Accession
No: 20190521-5005
Description: Timely filed Amendment to Application of Algignis, Inc. under P-14896. Revision to comply with 10 CFR 388.112.
PRIVILEGED

76. Filed By: Algignis, Inc. Filed
Date: 5/21/2019 Accession
No: 20190521-5010
Description: Timely filed Amendment to Application of Algignis, Inc. under P-14896 to fully comply with 10 CFR 388.112.
PRIVILEGED

77. Filed By: Algignis, Inc. Filed
Date: 5/21/2019 Accession
No: 20190521-5011
Description: Timely filed Amendment to Application of Algignis, Inc. under P-14896 to fully comply with 10 CFR 388.112.
PRIVILEGED

78. Issued By: Office of the General Counsel
Filed Date: 5/30/2019
Accession No: 20190530-0023
Description: Letter to Algignis Inc. re the Davis - Besse Nuclear Power Station Project et al. under P-14896 et al.

79. Filed By: Algignis, Inc.
Filed Date: 6/5/2019
Accession No: 20190605-5011
Description: Supplemental Information of Algignis, Inc. under P-14896. Timely response to FERC letter of 30 May 2019.
PRIVILEGED

Record**Item No. Description**

80. Filed By: Algignis, Inc.
Filed Date: 6/5/2019
Accession No: 20190605-5012
Description: Supplemental Information of Algignis, Inc. under P-14896. Timely response to FERC letter of 30 May 2019.

81. Issued By: Secretary of the Commission, FERC
Filed Date: 6/20/2019
Accession No: 20190620-3027
Description: Order Denying Rehearing re Algignis, Inc. under P-14896 et al.

In witness whereof I have hereunto
subscribed and caused the seal of the Federal
Energy Regulatory Commission to be affixed this
3rd day of October 2019, at Washington, DC.

/s/ Kimberly D. Bose

Kimberly D. Bose _____
Secretary

CERTIFICATE OF SERVICE

I hereby certify that, on October 3, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Scott Ray
Ediger Scott Ray
Ediger Attorney

Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Tel.: (202) 502-8509
Fax: (202) 273-0901
Email: scott.ediger@ferc.gov

October 3, 2019

08/18/2019	<input type="checkbox"/>	PETITION FOR REVIEW CASE docketed. [19-1169] [Entered: 08/21/2019 09:54 AM]
08/18/2019	<input type="checkbox"/>	PETITION FOR REVIEW [1803043] of a decision by federal agency filed by Alignis, Inc. [Service Date: 08/18/2019] Disclosure Statement: Not Attached; Certificate of Parties: Not Applicable to this Filing. [19-1169] [Entered: 08/21/2019 09:56 AM]
08/21/2019	<input type="checkbox"/>	CERTIFIED COPY [1803046] of Petition for Review sent to respondent [1803043-2] [19-1169] [Entered: 08/21/2019 09:59 AM]
08/21/2019	<input type="checkbox"/>	CLERK'S ORDER [1803049] filed directing party to file initial submissions: PETITIONER docketing statement due 09/20/2019. PETITIONER certificate as to parties due 09/20/2019. PETITIONER statement of issues due 09/20/2019. PETITIONER underlying decision due 09/20/2019. PETITIONER deferred appendix statement due 09/20/2019. PETITIONER procedural motions due 09/20/2019. PETITIONER dispositive motions due 10/07/2019; directing party to file initial submissions: RESPONDENT entry of appearance due 09/20/2019. RESPONDENT procedural motions due 09/20/2019. RESPONDENT certified index to record due 10/07/2019. RESPONDENT dispositive motions due 10/07/2019 [19-1169] [Entered: 08/21/2019 10:12 AM]
08/21/2019	<input type="checkbox"/>	STATEMENT [1803080] with Disclosure Listing filed by Alignis, Inc. [Service Date: 08/21/2019] [19-1169] (Lorton, Michael) [Entered: 08/21/2019 11:29 AM]
09/20/2019	<input type="checkbox"/>	STATEMENT OF ISSUES [1807518] filed by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 05:54 PM]
09/20/2019	<input type="checkbox"/>	CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES [1807519] filed by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 05:57 PM]
09/20/2019	<input type="checkbox"/>	DOCKETING STATEMENT [1807520] filed by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:02 PM]
09/20/2019	<input type="checkbox"/>	STATEMENT OF INTENT REGARDING APPENDIX DEFERRAL [1807521] filed by Alignis, Inc. [Service Date: 09/20/2019] Intent: AppxDeferred [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:05 PM]
09/20/2019	<input type="checkbox"/>	MOTION [1807522] to extend time to file motion to 10/07/2019 filed by Alignis, Inc. (Service Date: 09/20/2019 by CM/ECF NDA) Length Certification: Alignis has complied with the length limits in requesting an extension of time to file a motion to stay. [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:13 PM]
09/20/2019	<input type="checkbox"/>	INCORRECT DOCKET ENTRY-DISREGARD-MOTION [1807523] to extend time to file suggestion to 09/20/2019 filed by Alignis, Inc. (Service Date: 09/20/2019 by CM/ECF NDA) Length Certification: Alignis is in compliance with the length limitations of this proposed order to grant extension of time.. [19-1169] [Edited 09/23/2019 by LMC] (Lorton, Michael) [Entered: 09/20/2019 06:18 PM]
09/20/2019	<input type="checkbox"/>	UNDERLYING DECISION IN CASE [1807524] submitted by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:21 PM]
09/20/2019	<input type="checkbox"/>	UNDERLYING DECISION IN CASE [1807525] submitted by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:23 PM]
09/20/2019	<input type="checkbox"/>	UNDERLYING DECISION IN CASE [1807526] submitted by Alignis, Inc. [Service Date: 09/20/2019] [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:25 PM]
09/20/2019	<input type="checkbox"/>	CERTIFICATE OF SERVICE [1807527] to statement [1807520-2], statement [1807521-2], motion to extend time [1807522-2], motion to extend time [1807523-2], statement [1807518-2], certificate [1807519-2], record [1807524-2], record [1807525-2], record [1807526-2] filed by Alignis, Inc. [19-1169] (Lorton, Michael) [Entered: 09/20/2019 06:34 PM]
10/03/2019	<input type="checkbox"/>	ENTRY OF APPEARANCE [1809168] filed by Scott Ediger and co-counsel Robert Solomon on behalf of Respondent FERC. [19-1169] (Larson, Karin) [Entered: 10/03/2019 09:36 AM]
10/03/2019	<input type="checkbox"/>	CERTIFIED INDEX TO RECORD [1809323] filed by FERC [Service Date: 10/03/2019] [19-1169] (Ediger, Scott) [Entered: 10/03/2019 03:58 PM]
10/03/2019	<input type="checkbox"/>	UNOPPOSED MOTION [1809337] concerning briefing format filed by FERC [Service Date: 10/03/2019] Length Certification: 131 words. [19-1169] (Ediger, Scott) [Entered: 10/03/2019 04:19 PM]
10/07/2019	<input type="checkbox"/>	MOTION [1809841] to stay underlying order in case filed by Alignis, Inc. (Service Date: 10/07/2019 by CM/ECF NDA) Length Certification: 2,643 words. [19-1169] (Lorton, Michael) [Entered: 10/07/2019 08:37 PM]
10/07/2019	<input type="checkbox"/>	MOTION [1809843] for summary affirmance (Response to Motion due on 10/17/2019) filed by Alignis, Inc. (Service Date: 10/07/2019 by CM/ECF NDA) Length Certification: 2951 words. [19-1169] (Lorton, Michael) [Entered: 10/07/2019 09:40 PM]
10/17/2019	<input type="checkbox"/>	RESPONSE IN OPPOSITION [1811260] to motion for summary affirmance [1809843-2] combined with a MOTION to dismiss case filed by FERC [Service Date: 10/17/2019 by CM/ECF NDA] Length Certification: 479 words. [19-1169] (Ediger, Scott) [Entered: 10/17/2019 12:38 PM]
10/17/2019	<input type="checkbox"/>	RESPONSE IN OPPOSITION [1811261] to motion to stay case [1809841-2] filed by FERC [Service Date: 10/17/2019 by CM/ECF NDA] Length Certification: 377 words. [19-1169] (Ediger, Scott) [Entered: 10/17/2019 12:41 PM]
10/24/2019	<input type="checkbox"/>	RESPONSE IN OPPOSITION [1812319] to motion to dismiss case [1811260-2] combined with a MOTION to strike the motion filed by Alignis, Inc. (Service Date: 10/24/2019 by CM/ECF NDA) Length Certification: 2,888 words. [19-1169] [MODIFIED EVENT-Edited 10/24/2019 by LMC] (Lorton, Michael) [Entered: 10/24/2019 11:22 AM]

5/13/2020

19-1169 Docket

10/24/2019	 	REPLY [1812435] filed by Alignis, Inc. to response [1811261-2] [Service Date: 10/24/2019 by CM/ECF NDA] Length Certification: 1,498 words in Reply to Response to Motion to Stay. [19-1169] (Lorton, Michael) [Entered: 10/24/2019 04:12 PM]
10/31/2019	 	REPLY [1813461] filed by FERC to response [1812319-2] [Service Date: 10/31/2019 by CM/ECF NDA] Length Certification: 215 words. [19-1169] (Ediger, Scott) [Entered: 10/31/2019 10:15 AM]
12/09/2019	 	PER CURIAM ORDER [1819438] filed denying motion to strike document [1812319-3]; granting motion to dismiss case [1811260-2]; dismissing as moot motion for summary affirmance [1809843-2]; motion to extend time [1807522-2]; motion to stay case [1809841-2]; motion concerning briefing format [1809337-2]. Withholding issuance of the mandate. Before Judges: Rogers, Griffith and Rao. [19-1169] [Entered: 12/09/2019 05:47 PM]
12/23/2019	 	PETITION [1821508] [1819438-2] for rehearing, for rehearing en banc filed by Petitioner Alignis, Inc. [Service Date: 12/23/2019 by CM/ECF NDA] Length Certification: 3,586 words. [19-1169]--[MODIFIED EVENT--Edited 01/06/2020 by LMC] (Lorton, Michael) [Entered: 12/23/2019 08:22 PM]
02/13/2020	 	PER CURIAM ORDER [1828388] filed denying petition for rehearing [1821508-3]. Before Judges: Rogers, Griffith and Rao. [19-1169] [Entered: 02/13/2020 09:52 AM]
02/13/2020	 	PER CURIAM ORDER, En Banc, [1828392] filed denying petition for rehearing en banc [1821508-4]. Before Judges: Srinivasan, Henderson, Rogers, Tatel, Garland, Griffith, Millett, Pillard, Wilkins, Katsas and Rao. [19-1169] [Entered: 02/13/2020 09:54 AM]
02/25/2020	 	MANDATE ISSUED to Federal Energy Regulatory Commission. [19-1169] [Entered: 02/25/2020 05:57 PM]

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1169

September Term, 2019

FERC-167FERC61244

Filed On: February 13, 2020

Algignis, Inc.,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

BEFORE: Srinivasan, Chief Judge, and Henderson, Rogers, Tatel, Garland, Griffith, Millett, Pillard, Wilkins, Katsas, and Rao, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk