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Administrative Law-- Natural Gas Production and Gathering -- Federal Power Commission Denied Power to Control Transfer of Gas Reserves

CASES NOTED

ADMINISTRATIVE LAW—NATURAL GAS PRODUCTION AND GATHERING—FEDERAL POWER COMMISSION DENIED POWER TO CONTROL TRANSFER OF GAS RESERVES

The Federal Power Commission brought suit for a preliminary injunction and temporary restraining order to prevent defendant from transferring gas reserves pending the completion by the Commission of an investigation authorized by the Natural Gas Act.[1] These gas reserves had been submitted to the Commission as used and usable properties in connection with defendant's application for certificate of convenience and necessity,[2] and for approval of its schedule of rates.[3] A temporary restraining order was issued and has been kept alive by renewals, but after a hearing, a preliminary injunction was denied by the District Court on the ground that the Commission had failed to show any justification for the relief asked. This judgment was affirmed by the Circuit Court of Appeals.[4] *Held,* on certiorari, affirming judgment of Circuit Court of Appeals, the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act and, therefore, the authority of the Commission cannot reach the sales. Since the Commission cannot stop the proposed transfer it should not be permitted to delay it by a temporary injunction. *Federal Power Commission v. Panhandle Eastern Pipe Line Company,* 69 Sup. Ct. 1251 (1949).

The primary aim of the Natural Gas Act was to protect consumers against exploitation at the hands of the natural gas companies.[5] To accomplish this aim, Congress drew within its regulatory powers three things: (1) the transportation of natural gas in interstate commerce for resale; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.[6] Basic procedure established by the Act required that prospective interstate distributors and marketers of natural gas should first obtain from the Federal Power Commission a certificate of convenience and necessity, and an approval of the proposed schedule of rates.[7] The Commission was required to issue certificates of convenience and necessity only when an interstate company proved itself able and willing properly to perform

1. 52 STAT. 824, 15 U.S.C. § 717f (b) (1938).
2. 52 STAT. 824, 15 U.S.C. § 717f (c) (1938), as amended, 56 STAT. 83 (1942).
3. 52 STAT. 822, 15 U.S.C. § 717c (1938).
4. Federal Power Commission v. Panhandle Eastern Pipe Line Co., 173 F.2d 57 (1949).
5. Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944); Panhandle Eastern Pipe Co. v. Public Service Comm'n, 332 U.S. 507 (1947).
6. Federal Power Comm'n v. Public Service Comm'n of Indiana, *supra.*
7. 52 STAT. 822, 15 U.S.C. § 717c (1938).

the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission.[8] Rate schedules were required to be approved on the basis of the most reasonable rate to the local distributor consonant with a fair return to the interstate distributor.[9] Upon its own motion the Commission could investigate the operations of any company under its jurisdiction, could require the submission of complete records of its purchasing contracts and lease holdings, and could require a reduction in rates if such reduction were justified.[10] Not only was the Commission authorized to require applicants for certificates to show the gas reserves which it had available to supply the proposed market, but the Act specifically prohibited a company from abandoning all or any portion of its facilities subject to the jurisdiction of the Commission without the prior approval of the Commission.[11]

In passing the Natural Gas Act, Congress did not contemplate using its constitutional limit of power but intended only to take under federal control that segment of the natural gas industry which the states were powerless to regulate.[12] Several phases of the industry's activities were specifically exempted from federal control, but the decision in the instant case hinges upon the interpretation of only one— ". . . the production and gathering of natural gas." A majority of the Supreme Court ruled that undeveloped gas leases were an integral part of the "production and gathering" phase of the natural gas industry and therefore subject in no way to the jurisdiction of the Commission. Thus, it appears that the decision raises two points of interest since (1) it appears to establish a new precedent for determining the meaning of words used in acts of Congress, and (2) it renders an administrative agency to which Congress has given certain responsibilities for the purpose of accomplishing a specified purpose impotent to perform its assigned duties.

At no place in the Natural Gas Act does it specifically define undeveloped gas leases as a part of "production and gathering" of natural gas. The courts have ruled that there is a distinct difference between a lease and production.[13] Oil and gas field terminology distinctly differentiates between leases and production.[14] Important gas and oil producing states control the drilling of oil

8. *Ibid.*
9. 52 STAT. 824, 15 U.S.C. § 717e (a) (1938); Hope Natural Gas Co. v. Federal Power Comm'n, *supra.*
10. 52 STAT. 824, 15 U.S.C. § 717e (1938).
11. *Id.* at § 717f (b).
12. Interstate Natural Gas Co. v. Federal Power Comm'n, *supra;* Federal Power Comm'n v. Hope Natural Gas Co., *supra.*
13. Gas Ridge v. Suburban Agricultural Properties, 150 F.2d 363 (5th Cir. 1945) (lease effective so long as oil or gas was produced in paying quantities and terminated when that failed); Cox v. Miller (Tex. Civ. App. 1944), 184 S.W.2d 323, 325, 327 (lease effective for five years or so long thereafter as gas was used from the land, but in absence of pipe line facilities and thus an available market no gas was produced as a matter of law within the provision).
14. Interstate Natural Gas Co. v. Federal Power Comm'n, *supra;* Gas Ridge v. Suburban Agricultural Properties, *supra.*

and gas wells, and the production of oil and gas, for conservation purposes, but permit free trading in leases.[15] The case referred to in the opinion in the instant case as being a precedent for ruling that an undeveloped lease is a part of "production and gathering" appears not to be directly in point since that opinion merely stated that the phrase "production and gathering" comprehended the producing properties and gathering facilities of a natural gas company.[16] Since an undeveloped lease is not a producing property nor a gathering facility it is not directly covered in the opinion. Prior to the instant case it would seem to be beyond dispute that an undeveloped gas lease was neither a producing property nor a gathering facility. It seems clear that, in arriving at the conclusion that the "clear and natural" meaning of the terms "production and gathering" included undeveloped gas leases was arrived at by giving great weight to debates in Congress.[17] Thus, debates in Congress are used to determine the meaning of words used in acts of Congress contrary to the well established rule of law.[18]

Not only does the opinion apparently overrule the above previously well established rule of law *sub silentio*, but it seems that the Court can no longer be depended upon to broadly interpret an Act of Congress so that the administrative agency designated by the act shall have such powers as are essential to the accomplishment of the expressed purpose of Congress.[19] In the instant case, the defendant had listed the undeveloped gas leases in question as part of its used and usable properties. Sufficient gas reserves are an important element in qualifying for the required certificate.[20] The reserves in question may have been the deciding factor in the Commission's decision to grant the certificate. It appears that these reserves were therefore dedicated to the public use in accordance with the application for the certificate. The Commission also made allowance for lease rentals on these reserves in approving the schedule of rates.[21] Depriving the Commission of power to regulate the transfer of dedicated gas reserves permits an approved distributor to realize a profit out of the gas in these dedicated reserves without regard to the rate schedule approved by the Commission.[22] The distributor can also

15. Henderson Co. v. Thompson, 300 U.S. 258 (1937); Public Utilities Comm'n v. Landon, 249 U.S. 236 (1919).

16. Colorado Interstate Gas Co. v. Federal Power Comm'n, *supra*.

17. See footnotes in report of instant case.

18. *See* Federal Trade Comm'n v. Raladam Co., 283 U.S. 643, 650 (1931) (while the general rule precludes the use of these [Congressional] debates to explain the meaning of words of the statutes, they may be considered as reflecting light upon its general purposes and the evils which it sought to remedy).

19. *See* Natural Gas Pipe Line Co. v. Federal Power Comm'n, *supra;* United States v. Kelly, 55 F.2d 67, 70 (5th Cir. 1932); Moffatt Tunnell Improvement District v. Denver & S.L. Ry., 45 F.2d 715, 723 (10th Cir. 1930), *cert. denied* 283 U.S. 837 (1931).

20. 52 STAT. 824, 15 U.S.C. § 717f (b) (3) (1938); 15 U.S.C. § 717f (c), as amended, 56 STAT. 83 (1942).

21. Docket No. G-217, F.P.C. Docket G-200 and G-207 decided Sept. 23, 1942.

22. In the instant case the gas company has transferred gas reserves which it has used in obtaining an approval of rates to a subsidiary corporation which will, or has

abandon facilities at will and without regard to prior approval of the Commission.[23] Thus the consuming public is left a prey to exploitation at the hands of the interstate distributors of natural gas in spite of the expressed intention of Congress to prevent that exploitation, and the designated administrative agency is rendered powerless to perform its assigned duties.

The power to cure the defect thus made apparent seems to rest with Congress.

ADMIRALTY—MAINTENANCE AND CURE

Libelant, a member of the Merchant Marine, was injured while overleave and returning to his ship. After being treated in various hospitals he was discharged as completely disabled. He was totally and permanently blind, and from time to time would require some medical care to ease attacks of headaches and epileptic convulsions. Petitioner contended that he was entitled to maintenance and cure as long as he was disabled, which in this case would be for life. The Court of Appeals awarded him maintenance and cure for a six month period after he was discharged from the hospital. *Held,* on certiorari, he was not entitled to a lump sum payment, but the court intimated that he could recover in future suits for any disbursements for further medical treatments found necessary. *Farrell v. United States,* 69 Sup. Ct. 707 (1949) (four Justices dissenting).

The duty of the owner of a vessel to provide maintenance [1] and cure [2] for seamen injured or becoming ill while in the service of the ship has been recognized by most maritime nations as an implied part of the contract of employment.[3] To saddle the owner with the expense of maintenance and cure the seaman need only show that the injury or illness was incurred while in the service of the ship,[4] even though the effects thereof do not become evident

contracted to, sell its production for fifteen years through an intrastate distributor which would be outside the jurisdiction of the Commission. Under this decision there remains nothing to prevent defendant from doing the same thing with any or all of its reserves which lie entirely within any given state.

23. If defendant can dispose of its reserves of gas at will as permitted under this decision it can render itself void of any natural gas to send through its pipeline facilities. If it has no gas, and cannot buy gas for its interstate distributing system at a rate approved by the Commission, then its pipe lines are abandoned in fact without the Commission's approval.

1. "Maintenance is food and lodging at the expense of the ship." The Bouker No. 2, 241 Fed. 831, 835 (2d Cir. 1917).

2. "Cure is used in its original meaning of taking charge of, or care of the disabled seaman, and not in that of a positive cure which may be impossible." The Atlantic, 2 Fed. Cas. No. 620, at 131 (C.C.S.D.N.Y. 1849).

3. The Atlantic, *supra* at 130; THE LAWS OF OLERON Art. VI, VII, 30 Fed. Cas. 1174; THE LAWS OF WISBURY, Art. XVIII, XIX, 30 Fed. Cas. 1191; THE LAWS OF THE HANSE TOWNS, Art. XXXIX, XLV, 30 Fed. Cas. 1200; THE MARINE ORDINANCES OF LOUIS XIV, Title Fourth, Art. XI, 30 Fed. Cas. 1209.

4. Aguilar v. Standard Oil Co., 318 U.S. 724 (1943); Harden v. Gordon, 11 Fed. Cas. 480, No. 6,047 (C.D.D. Me. 1823); Cordes v. Weyerhaeuer S.S. Co., 75 F. Supp. 537 (N.D. Cal. 1946).