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EMINENT DOMAIN - PENNSYLVANIA

Tennessee Gas Pipeline Company, LLC v. Permanent Easement for 7.053 Acres

United States Court of Appeals, Third Circuit - July 23, 2019 - F.3d - 2019 WL 3296581

Natural gas company filed condemnation action under Natural Gas Act (NGA) against landowner to obtain easements over owner's land in order to construct natural gas pipelines.

The United States District Court for the Middle District of Pennsylvania granted gas company's motion for summary judgment as to compensation in part and certified its order for interlocutory appeal.

The Court of Appeals held that:

- NGA's reference to state "practice and procedure" that federal courts should conform to in conducting eminent domain proceedings under NGA requires conformity in procedural matters only;
- Gap existed in federal law with regard to compensation owed to landowners when their land was taken by a private entity under NGA;
- Nationally uniform rule regarding compensation owed to landowners when their land was taken by a private entity under NGA was not necessary;
- Incorporating state law on just compensation as the federal rule for determining compensation owed to landowners when their land was taken by a private entity under NGA would not have frustrated NGA's goals; and
- Fashioning a uniform federal common law to determine just compensation under NGA would have risked upsetting the parties' commercial expectations based upon the already well-developed state property regimes.

The Natural Gas Act's (NGA) reference to state "practice and procedure" that federal courts should conform to in conducting eminent domain proceedings under NGA does not mean that it incorporates state law for the substantive determination of compensation; although some courts have concluded otherwise, this language requires conformity in procedural matters only.

A gap existed in federal law with regard to just compensation for taking of private property by a private entity under Natural Gas Act (NGA), and thus court would apply *Kimbell Foods*, 99 S.Ct. 1448, standard to determine whether to fashion a uniform national rule to fill in such gap or to incorporate state law as the federal standard; Supreme Court cases governing the determination of just compensation only applied in eminent domain actions brought by federal government, not by private entities, and NGA only provided that state procedural rules should apply in determining just compensation, but did not address what substantive law was applicable.

A nationally uniform rule regarding just compensation for taking of private property by a private entity under Natural Gas Act (NGA) was not necessary, thus weighing in favor of incorporating state law as the federal standard for compensation, rather than fashioning a uniform national rule to fill in

gap in NGA regarding compensation; NGA condemnation proceedings were between private parties to which United States was not a party, resulting in weak federal interest, property rights were traditionally an area of state concern, a federal standard would risk muddying elaborate state property rules, NGA contemplated state participation, and federal rules of civil procedure provided a sufficient amount of uniformity in condemnation actions.

Incorporating state law on just compensation for taking of private property as the federal rule for determining compensation owed to landowners for takings by private entities under Natural Gas Act (NGA) would not have frustrated NGA's goals, thus weighing in favor of using state law rather than fashioning a uniform national rule to fill in gap in NGA regarding compensation; only effect of adopting state law was that condemnors might be required to pay more under certain state laws, but purpose of NGA was to regulate transportation of natural gas and the sale thereof and to protect interests of the public, not to protect natural gas companies from additional costs that varying state laws might have imposed.

Fashioning a uniform federal common law to determine just compensation for taking of private property by a private entity under Natural Gas Act (NGA) would have risked upsetting parties' commercial expectations based upon already well-developed state property regimes, thus weighing in favor of incorporating state law as the federal standard for compensation, rather than fashioning a federal rule to fill in gap in NGA regarding compensation; although there already existed an established body of federal law on the issue of just compensation in general, putting parties on notice of the potential application of federal law, property rights were traditionally defined by state law, and a new federal rule would have merely superimposed another layer of property rights.