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EMINENT DOMAIN - OHIO

Sunoco Pipeline L.P. v. Teter

Court of Appeals of Ohio, Seventh District, Harrison County - September 29, 2016 - N.E.3d - 2016 WL 5719301 - 2016 -Ohio- 7073

Pipeline company filed petition for appropriation and complaint for condemnation of land for the purposes of running pipeline that would transport pure propane and butane.

The Court of Common Pleas granted petition and complaint. Landowner appealed.

The Court of Appeals held that:

- Pure propane and pure butane are “petroleum,” for purposes of statute governing appropriation of land;
- Evidence supported finding of public use;
- Landowner failed to overcome presumption of necessity; and
- Landowner waived constitutional challenges that were not raised in the trial court.

Pure propane and pure butane are “petroleum,” for purposes of statute governing appropriation of land by common carriers, when they are derived from splitting raw material or wet gas into its component parts.

Evidence supported finding of public use supporting common carrier pipeline company’s exercise of its statutory authority to appropriate land for the purpose of running pipeline to transport pure propane and butane; production would be stifled without pipeline infrastructure, transportation of propane and butane provided economic benefit to Ohio and some of the necessities of life, pipeline took Ohio product to market, and pipeline was open for public use.

Presumption of necessity for common carrier pipeline company’s appropriation of land for the purpose of running pipeline to transport pure propane and butane was not overcome by landowner’s assertions that trucks or railroad could be used to transport product, that a cracker plant could be built next to fractionation plans, or that pipeline could be reconfigured to bypass landowner’s land; testimony indicated the pipeline was the most efficient option to move the propane and butane.

Landowner waived constitutional vagueness challenge to authorizing statute in proceedings on pipeline company’s petition to appropriate land for the purposes of running pipeline that would transport pure propane and butane; arguments presented to the trial court concerned the definition of the word “petroleum” and whether it included pure propane and pure butane, and landowner never argued to the trial court that company’s interpretation would render the statute unconstitutionally void for vagueness, though such argument was apparent and could have been asserted.

Landowner challenging pipeline company’s petition to appropriate land for the purposes of running pipeline that would transport pure propane and butane waived argument that statute creating a rebuttable presumption of necessity was unconstitutional, where landowner failed to raise the claim

in the trial court.