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EMINENT DOMAIN - NEW YORK

National Fuel Gas Supply Corporation v. Schueckler

Supreme Court, Appellate Division, Fourth Department, New York - November 9, 2018 - N.Y.S.3d - 2018 WL 5875456 - 2018 N.Y. Slip Op. 07550

After Federal Energy Regulatory Commission (FERC) granted natural gas company's application for certificate of public convenience and necessity to construct and operate natural gas pipeline, company brought condemnation petition pursuant to Eminent Domain Procedure Law (EDPL) to acquire easements over landowners' real property, alleging that FERC certificate exempted company from EDPL's normal public hearing and findings requirements.

Landowners answered, alleging that New York State Department of Environmental Conservation had denied company's application for Clean Water Act (CWA) water quality certification (WQC) and that company therefore no longer held valid and operative FERC certificate. The Supreme Court, Allegany County, granted company's petition in its entirety. Landowners appealed.

The Supreme Court, Appellate Division, held that company did not hold qualifying federal permit for purposes of statute exempting holder of such permit from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption.

Natural gas company, which sought to acquire by eminent domain easements for construction of natural gas pipeline, did not hold qualifying federal permit for purposes of New York statute exempting holder of federal permit authorizing construction of public project from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption, even though Federal Energy Regulatory Commission (FERC) had granted company Natural Gas Act (NGA) certificate of public convenience and necessity, since certificate was subject to various conditions, including company's obtention of Clean Water Act water quality certification (WQC), but New York State Department of Environmental Conservation denied company's WQC application, thus invalidating company's FERC certificate.