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EMINENT DOMAIN - NEW YORK

National Fuel Gas Supply Corporation v. Schueckler

Court of Appeals of New York - June 25, 2020 - N.E.3d - 2020 WL 3453939 - 2020 N.Y. Slip Op. 03563

Natural gas company brought action to acquire, by eminent domain, temporary construction easements and a permanent easement over respondent's property in order to facilitate construction and operation of natural gas pipeline.

The Supreme Court granted petition. Property owner appealed. The Supreme Court, Appellate Division, reversed and dismissed petition. Gas company appealed.

The Court of Appeals held that:

- Federal Energy Regulatory Commission's (FERC) issuance of certificate of public convenience and necessity to natural gas company satisfied Eminent Domain Procedure Law (EDPL) exemption, and
- Conditions in FERC's certificate of public convenience did not preclude company from pursuing eminent domain before all pre-construction conditions were fulfilled.

Federal Energy Regulatory Commission's (FERC) issuance of certificate of public convenience and necessity to natural gas company to build natural gas pipeline satisfied provision of Eminent Domain Procedure Law (EDPL) exempting a condemnor from certain procedures required prior to initiating condemnation proceedings if it received approval from an agency after submitting factors similar to those required by EDPL; company submitted materials to FERC concerning the public benefit, use, and need for proposed pipeline, FERC considered the public use, benefit or purpose to be served, approximate location of project, and general effect of project on environment and residents, FERC considered positions of numerous stakeholders, and FERC concluded that an environmental impact statement was not required.

Conditions in Federal Energy Regulatory Commission's (FERC) certificate of public convenience and necessity issued to natural gas company to build pipeline, including obtaining a water quality certificate and other pre-construction conditions that might have affected the ultimate completion of the project, did not preclude company from pursuing eminent domain under Eminent Domain Procedure Law (EDPL) before all pre-construction conditions were fulfilled; such conditions were not preconditions to the validity of the certificate itself and FERC could have conditioned company's eminent domain authority on completion of some act or obligation, but did not do so.