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PUBLIC UTILITIES - COLORADO

Danks v. Colorado Public Utilities Commission

Supreme Court of Colorado - June 13, 2022 - P.3d - 2022 WL 2112965 - 2022 CO 26

Owner of property near proposed pipelines for gas-gathering system, which collected and delivered raw gas from wells on private property to processing facilities, sought review of decision of Public Utilities Commission (PUC) denying in part owner's exceptions to administrative law judge's (ALJ) decision and determining that, with respect to operations upstream from processing facility, gas-gathering system was not "public utility" subject to regulation by PUC or statutory requirement that utility obtain certificate of public convenience and necessity (CPCN) before constructing new facility.

The District Court affirmed. Owner appealed.

The Supreme Court held that:

- PUC regularly pursued its authority;
- PUC reached just and reasonable decision;
- Substantial evidence supported PUC's decision; and
- PUC reasonably determined that no evidentiary hearing was necessary.

District court's order affirming decision of Public Utilities Commission (PUC) that, with respect to operations upstream from processing facility, gas-gathering system delivering raw gas from private wells to processing facilities was not "public utility" requiring certificate of public convenience and necessity (CPCN) was "final judgment" reviewable by Supreme Court, although PUC's decision purported to dismiss some allegations of owner of property near system's proposed pipelines without prejudice; PUC addressed owner's substantive claims, concluded that system was not public utility, and made clear that if PUC would find issue with downstream operations, then owner would be free to pursue claims relating to distinct operations in future proceedings, and district court affirmed rulings.

Public Utilities Commission (PUC) regularly pursued its authority in deciding that, with respect to operations upstream from processing facility, gas-gathering system delivering raw gas from private wells to facility using pipelines was not "public utility" subject to regulation by PUC or statutory requirement that utility obtain certificate of public convenience and necessity (CPCN) before constructing new facility; PUC looked to text of statute providing definition of "public utility," noted that Supreme Court had previously emphasized the phrase "for the purpose of supplying the public" when analyzing whether entity was public utility, and concluded that system did not meet definition as operator did not market raw gas that it gathered in its system.

Substantial evidence supported Public Utilities Commission's (PUC) decision that, with respect to operations upstream from processing facility, gas-gathering system delivering raw gas from private wells to facility using pipelines was not operated for purposes of supplying the public, such that it was not "public utility" subject to regulation by PUC or statutory requirement that utility obtain certificate of public convenience and necessity (CPCN) before constructing new facility; property

owner who commenced administrative proceeding alleged in complaint that system's operator did not market the raw gas it owned, and ALJ found that operator did not market or sell any of the raw gas in its gathering system.

Public Utilities Commission (PUC) reasonably determined that no evidentiary hearing was necessary before deciding jurisdictional issues and dismissing property owner's complaint on the basis that, with respect to operations upstream from processing facility, gas-gathering system delivering raw gas from private wells to facility using pipelines was not "public utility" subject to regulation by PUC or statutory requirement that utility obtain certificate of public convenience and necessity (CPCN) before constructing new facility; PUC looked to civil procedure rules for guidance, under civil procedure rules, PUC could determine jurisdictional issues without evidentiary hearing if it accepted all complaint's assertions of fact as true, and PUC accepted owner's factual allegations as true.

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