

SUPREME COURT OF TEXAS

Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC

381 S.W.3d 465 (Tex. 2012) · Decided August 17, 2012

SUMMARY

Justice Wainwright, joined by Justice Johnson, concurs in the denial of rehearing while addressing the scope of the Court’s holding concerning common-carrier status for carbon dioxide pipelines. The concurrence discusses whether transporting gas only for a corporate parent or affiliate satisfies the public-use requirement for eminent domain under Texas law. It urges a narrower and more defined understanding of “affiliate,” based on ownership or operational control, to protect property rights and preserve corporate separateness.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Wainwright; Justice Johnson
JURISDICTION	Texas
DECIDED	August 17, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Denbury Green filed a second motion for rehearing challenging the breadth of the Court's use of the term "affiliate" in its common-carrier and public-use analysis. Justice Wainwright concurred in the denial of rehearing but wrote separately to address the scope of the Court's holding.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; the concurrence is persuasive as to its separate reasoning, while the Court's joined majority holding is precedential.
PARTIES	Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC

TOPICS

[eminent domain](#)[minerals](#)[statutory interpretation](#)[constitutional law](#)[corporate law](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a carbon dioxide pipeline may qualify as a common carrier with eminent-domain authority merely by declaring itself a common carrier on a government form.
2. Whether transporting carbon dioxide only for a corporate parent or affiliate fails the public-use requirement for common-carrier status.
3. Whether the term "affiliate" should be construed broadly without requiring a defined ownership interest, operational control, or other limiting relationship.

HOLDINGS

1. A carbon dioxide pipeline seeking common-carrier status and the power of eminent domain must demonstrate that it transports carbon dioxide to or for the public for hire; merely checking a box on a government form is insufficient.
2. The Court's opinion held that a pipeline does not serve a public use if it transports gas only for a corporate parent or affiliate; Justice Wainwright agreed with the principle but would limit the term "affiliate" to relationships involving some defined ownership interest, operational control, or both.

KEY QUOTATIONS

"The Court holds that to be a "common carrier" carbon dioxide pipeline, and endowed by the Natural Resources Code with the power to exercise eminent domain for public use, it must do more than check a box on a government form." (at 466)

"Affiliate" is not a term used or defined in Chapter 111 of the Natural Resources Code, the chapter governing this case." (at 467)

"Chapter 111, as well as gas-services statutes and the Commission's regulations, generally predicate "affiliate" status either on some degree of operational control or some defined percentage of ownership interest in the other entity, or both." (at 468)

FACTUAL BACKGROUND

Denbury Green Pipeline-Texas, LLC, a wholly owned subsidiary within the Denbury corporate structure, sought common-carrier status for a carbon dioxide pipeline. Under Texas law, common-carrier status can confer eminent-domain authority when the pipeline transports carbon dioxide to or for the public for hire. The concurrence focused on whether Denbury's affiliated-entity relationships should categorically prevent the pipeline from satisfying the public-use requirement.

PROCEDURAL HISTORY

The Supreme Court of Texas had previously issued an opinion addressing whether Denbury Green qualified as a common carrier entitled to exercise eminent domain. On second rehearing, Denbury challenged language in footnote 23 concerning whether transporting carbon dioxide for a corporate affiliate constitutes a public use. The

Court denied the second motion for rehearing; Justice Wainwright, joined by Justice Johnson, concurred while urging a narrower treatment of the term "affiliate."

DISPOSITION

other

CASES CITED

- Severance v. Patterson, 370 S.W.3d 705 (Tex. 2012)
- Eggemeyer v. Eggemeyer, 554 S.W.2d 137, 140 (Tex. 1977)
- Upjohn Co. v. United States, 449 U.S. 383, 386 (1981)

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