UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Walker Operating Corporation v. Federal Energy Regulatory Commission

874 F.2d 1320 (10th Cir. 1989) · No. Nos. 85-2683, 85-2698, 86-1195 to 86-1201, 86-1204, 86-1205, and 86-1206 to 86-1208 · Decided May 24, 1989

SUMMARY

The Tenth Circuit reviewed Federal Energy Regulatory Commission orders finding that certain oil well operators diverted natural gas dedicated to interstate commerce and sold it above the statutory maximum price. The court held that FERC had jurisdiction to determine the scope of the dedicated gas reserves and the effect of state pricing determinations, that its factual findings were supported by substantial evidence, and that its legal conclusions were reasonable. The court affirmed the Commission's orders and rejected the petitioners' abstention arguments.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Tacha, Circuit Judge; Logan, Circuit Judge; Anderson, Senior District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	May 24, 1989
DOCKET	Nos. 85-2683, 85-2698, 86-1195 to 86-1201, 86-1204, 86-1205, and 86-1206 to 86-1208
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitions for review of two Federal Energy Regulatory Commission orders finding that oil-well operators diverted natural gas dedicated to interstate commerce and sold it above the applicable statutory price ceiling.

STANDARD OF REVIEW	FERC's jurisdictional decision was reviewed for whether it had an adequate basis in law. Factual findings were reviewed under the substantial-evidence standard. Legal conclusions were freely reviewable but would be affirmed when reasonable, with some deference given to the agency's informed judgment on matters within its expertise. The agency's reasoning was reviewed under the arbitrary-and-capricious standard, including whether it articulated a rational connection between the facts found and the decision made.
PRECEDENTIAL VALUE	Published precedential federal appellate opinion
PARTIES	Walker Operating Corporation, et al. v. Federal Energy Regulatory Commission

TOPICS

judicial review of agency action · administrative law · federalism · oil and gas · standard of review

PRACTICE AREAS

administrative law · energy law · oil and gas law · federal courts · appellate procedure

QUESTIONS PRESENTED

1. Whether FERC had jurisdiction to determine whether the petitioners' gas was dedicated to interstate commerce and whether the petitioners' state pricing determinations applied to that gas.
2. Whether FERC was required to abstain or defer to Texas authorities under Burford-type abstention principles.
3. Whether FERC's factual findings were supported by substantial evidence.
4. Whether FERC's conclusions concerning the Texas-law definition of casinghead gas and the scope of the petitioners' section 103 well determinations were reasonable.
5. Whether FERC's show-cause order provided adequate notice of the theory pursued in the administrative hearing.

HOLDINGS

1. FERC had jurisdiction to determine whether the petitioners diverted natural gas dedicated to interstate commerce and sold it above the applicable statutory ceiling price, even though resolving those issues required examination of Texas law and state regulatory determinations.
2. FERC was not required to abstain or defer to Texas authorities.
3. FERC's findings, including its finding that the petitioners produced gas from above the gas-oil contact, were supported by substantial evidence.
4. It was reasonable for FERC to determine that gas produced above the gas-oil contact was not casinghead gas and therefore was gas dedicated to interstate commerce.

5. The petitioners' section 103 well determinations applied only to casinghead gas produced from their oil proration units and did not remove dedicated gas produced from Dorchester's preexisting gas proration units from FERC's jurisdiction.
6. The show-cause order provided adequate notice because its broad language encompassed FERC's eventual use of the gas-oil-contact theory.

KEY QUOTATIONS

> *"We hold that FERC had jurisdiction to issue those orders, that FERC's findings of fact were based upon substantial evidence, that its conclusions of law were reasonable, and that there are no procedural grounds for overturning the orders. We affirm."* (¶ 1)

> *"The federal regulatory scheme leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas or for state regulations which would indirectly achieve the same result."* (¶ 18)

> *"We hold that it was reasonable in this case for FERC to have used a gas-oil contact in determining whether dedicated gas was being sold."* (¶ 54)

> *"FERC had jurisdiction to consider those matters examined by it in the adjudicatory hearing. FERC's findings of fact are based on substantial evidence, and its conclusions of law are reasonable. We find no procedural grounds for overturning the orders. FERC's orders are therefore AFFIRMED."* (¶ 86)

FACTUAL BACKGROUND

The Texas Panhandle Field contains overlapping oil and gas proration units, often held and operated by different parties under split leasehold interests. Dorchester held gas reserves subject to a federal certificate of public convenience and necessity, while the petitioners operated oil wells on acreage overlapping Dorchester's gas proration units. FERC found that the petitioners produced gas from above the gas-oil contact, meaning the gas was not casinghead gas but was instead dedicated to interstate commerce, and that the petitioners sold it above the applicable Natural Gas Policy Act ceiling price.

PROCEDURAL HISTORY

FERC's enforcement staff investigated natural-gas sales by oil-well operators in the Texas Panhandle Field. After a show-cause order and administrative hearing, the administrative law judge found thirty-five operators in violation of the Natural Gas Act or Natural Gas Policy Act; FERC affirmed the recommended decision and later denied motions for stay and rehearing. The operators and other petitioners sought review in the Tenth Circuit under the Natural Gas Act and Natural Gas Policy Act.

DISPOSITION

affirmed

CASES CITED

- Missouri ex rel. Barrett v. Kansas Natural Gas Co., 265 U.S. 298 (1924)

- Northern Natural Gas Co. v. State Corp. Comm'n, 372 U.S. 84 (1963)
- Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954)
- Colorado Interstate Gas Co. v. Federal Power Comm'n, 324 U.S. 581 (1945)
- FERC v. Martin Exploration Management Co., 486 U.S. 204 (1988)
- Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Bd., 474 U.S. 409 (1986)
- National Ass'n of Regulatory Utility Comm'rs v. FERC, 823 F.2d 1377 (10th Cir. 1987)
- Burford v. Sun Oil Co., 319 U.S. 315 (1943)
- Dorchester Gas Producing Co. v. Harlow Corp., 743 S.W.2d 243 (Tex. Ct. App. 1987)
- California v. Southland Royalty Co., 436 U.S. 519 (1978)
- United Gas Pipe Line Co. v. McCombs, 442 U.S. 529 (1979)
- Dorchester Gas Producing Co. v. FERC, 571 F.2d 823 (5th Cir. 1978)
- Richardson v. Perales, 402 U.S. 389 (1971)
- Consolidated Edison Co. v. NLRB, 305 U.S. 197 (1938)
- NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292 (1939)
- Consolo v. Federal Maritime Comm'n, 383 U.S. 607 (1966)
- Pennzoil Co. v. FERC, 789 F.2d 1128 (5th Cir. 1986)
- SEC v. Chenery Corp., 318 U.S. 80 (1943)
- Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971)
- Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983)
