SUPREME COURT OF TEXAS

Brazos Electric Power Cooperative, Inc. v. Texas Commission on Environmental Quality and Richard A. Hyde, Executive Director of the Texas Commission on Environmental Quality

576 S.W.3d 374 (Tex. 2019) · No. 17-1003 · Decided May 3, 2019

SUMMARY

The Supreme Court of Texas held that Texas Tax Code section 11.31 requires the Texas Commission on Environmental Quality to issue a positive use determination for heat recovery steam generators identified on the statutory pollution-control property list, assuming the applicant otherwise complies with the statute. The Court concluded that the Legislature had withdrawn the Executive Director's discretion to determine whether such listed property qualifies as pollution-control property, although discretion remained regarding the proportion of property eligible for exemption. The Court reversed the court of appeals' judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Debra H. Lehrmann
JURISDICTION	Texas
DECIDED	May 3, 2019
DOCKET	17-1003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a court of appeals judgment affirming a Travis County district court judgment affirming the Texas Commission on Environmental Quality's negative use determinations denying ad valorem tax exemptions for heat recovery steam generators.
STANDARD OF REVIEW	The Commission's decision was reviewed for abuse of discretion because the proceeding was not a contested case subject to the Administrative Procedure Act's substantial-evidence standard and the governing statutes did not specify a review standard. The statutory-interpretation issue was reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Texas

PARTIES	Brazos Electric Power Cooperative, Inc. v. Texas Commission on Environmental Quality, Richard A. Hyde, Executive Director of the Texas Commission on Environmental Quality

TOPICS

property tax · administrative law · judicial review of agency action · statutory interpretation · tax

PRACTICE AREAS

property tax · administrative law · environmental law · statutory interpretation

QUESTIONS PRESENTED

1. Whether Texas Tax Code section 11.31 requires a positive use determination for heat recovery steam generators included on the statutory k-list of pollution-control property.
2. Whether the Commission abused its discretion by issuing negative use determinations for Brazos Electric's compliant heat recovery steam generator applications.

HOLDINGS

1. Section 11.31 mandates that the Executive Director determine that a heat recovery steam generator is at least partly pollution-control property because HRSGs are included on the k-list. As long as HRSGs remain on that list and the application otherwise complies with the statute, the Commission may not issue a negative use determination for the application.
2. The Commission abused its discretion by issuing negative use determinations for Brazos Electric's HRSG applications.

KEY QUOTATIONS

> *"The plain meaning of Section 11.31 is clear: property that qualifies in whole or in part as pollution control property is entitled to a tax exemption, and HRSGs qualify, at least in part, as pollution control property."* (576 S.W.3d at 379)

> *"The Legislature chose to include HRSGs on the k-list, and the Commission has yet to exercise its Subsection (l) authority to remove them. Accordingly, as long as HRSGs remain on the k-list, the agency has no discretion to issue a negative use determination for compliant HRSG applications."* (576 S.W.3d at 385)

FACTUAL BACKGROUND

Brazos Electric used heat recovery steam generators in combined-cycle power plants, where the generators captured waste heat to produce additional electricity and reduce pollutants per unit of electricity. Brazos Electric submitted exemption applications for facilities in Johnson and Jack Counties, identifying environmental regulations the generators were installed to meet or exceed and submitting cost-analysis calculations that produced positive pollution-control percentages. The Executive Director nevertheless issued negative use determinations, concluding that the generators were used solely for production, and the Commission affirmed after further proceedings.

PROCEDURAL HISTORY

Brazos Electric applied for pollution-control-property exemptions for heat recovery steam generators at facilities in Johnson and Jack Counties. The Executive Director issued negative use determinations, and the Commission affirmed them after administrative appeals. The Travis County district court affirmed the Commission, and the Eighth Court of Appeals affirmed the district court. The Supreme Court of Texas granted review, reversed the court of appeals, and remanded to the Commission.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Remanded to the Texas Commission on Environmental Quality for further proceedings consistent with the opinion.

CASES CITED

- Freestone Power Generation, LLC v. Tex. Comm'n on Envtl. Quality, 564 S.W.3d 1, 8, 15 (Tex. App.—Austin 2017), aff'd, 2019 Tex. LEXIS 489
- United States v. Espinosa, 327 F. App'x 848, 850 (11th Cir. 2009)
- Swilley v. McCain, 374 S.W.2d 871, 875 (Tex. 1964)
- Perez v. State, 495 S.W.3d 374, 391-92 (Tex. App.—Houston [14th Dist.] 2016, no pet.)
- Chase Home Fin., L.L.C. v. Cal W. Reconveyance Corp., 309 S.W.3d 619, 630 (Tex. App.—Houston [14th Dist.] 2010, no pet.)
- Tex. Comm'n on Envtl. Quality v. City of Waco, 413 S.W.3d 409, 423-25 (Tex. 2013)
- Iliff v. Iliff, 339 S.W.3d 74, 78 (Tex. 2011)
- Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n, 518 S.W.3d 318, 325 (Tex. 2017)
- Sw. Royalties, Inc. v. Hegar, 500 S.W.3d 400, 404-05 (Tex. 2016)
- Combs v. Roark Amusement & Vending, L.P., 422 S.W.3d 632, 635, 637 (Tex. 2013)
- Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433, 437 (Tex. 2009)
- Tex. Lottery Comm'n v. First State Bank of DeQueen, 325 S.W.3d 628, 635 (Tex. 2010)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 438-39 (Tex. 2011)
- TIC Energy & Chem., Inc. v. Martin, 498 S.W.3d 68, 74 (Tex. 2016)
- Tex. Dep't of Transp. v. Needham, 82 S.W.3d 314, 318 (Tex. 2002)
- In re Allcat Serv., L.P., 356 S.W.3d 455, 468 (Tex. 2011) (orig. proceeding)
- N. Alamo Water Supply Corp. v. Willacy Cnty. Appraisal Dist., 804 S.W.2d 894, 899 (Tex. 1991)
- Combs v. Health Servs. Corp., 401 S.W.3d 623, 627 n.8 (Tex. 2013)

- TracFone Wireless, Inc. v. Comm'n on State Emergency Commc'ns, 397 S.W.3d 173, 182 (Tex. 2013)
- Marsh USA Inc. v. Cook, 354 S.W.3d 764, 775 (Tex. 2011)
- Tex. Catastrophe Prop. Ins. Ass'n v. Council of Co-Owners of Saida II Towers Condo. Ass'n, 706 S.W.2d 644, 645 (Tex. 1986), abrogated on other grounds by Dubai Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000)
- Dubai Petroleum Co. v. Kazi, 12 S.W.3d 71 (Tex. 2000)