UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Western Refining Southwest, Inc. v. Federal Energy Regulatory Commission

636 F.3d 719 (5th Cir. 2011) · No. No. 09-60947 · Decided March 24, 2011

SUMMARY

The Fifth Circuit affirmed FERC's dismissal of Western Refining's complaint concerning a capacity lease agreement for an oil pipeline. The court held that FERC lacked jurisdiction under the Interstate Commerce Act because Enterprise was acting as a lessor rather than a common carrier vis-à-vis Western. The court also held that FERC was not required to conduct an evidentiary hearing on the jurisdictional issues.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jennifer Walker Elrod; DeMOSS; BENAVIDES; ELROD
JURISDICTION	Federal
DECIDED	March 24, 2011
DOCKET	No. 09-60947
DISPOSITION	affirmed
PROCEDURAL POSTURE	Western petitioned for review of the Federal Energy Regulatory Commission's order dismissing its complaint for lack of jurisdiction under the Interstate Commerce Act and denying rehearing.
STANDARD OF REVIEW	The court applied Chevron's two-step framework to FERC's interpretation of its statutory jurisdiction. Because the Interstate Commerce Act unambiguously resolved the issue, the court applied the statute's plain meaning and did not proceed to Chevron step two. The court also held that an evidentiary hearing was unnecessary absent a genuine issue of material fact that could not be resolved on the written record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Western Refining Southwest, Inc., Western Refining Pipeline Company v. Federal Energy Regulatory Commission, United States of America

TOPICS

judicial review of agency action · administrative law · statutory interpretation · chevron deference · ripeness

PRACTICE AREAS

administrative law · energy regulation · statutory interpretation · appellate procedure · contracts

QUESTIONS PRESENTED

1. Whether Western's dispute with Enterprise over a capacity lease agreement fell within FERC's jurisdiction over common carriers engaged in the transportation of oil by pipeline under the Interstate Commerce Act.
2. Whether the appeal was ripe despite ongoing state-court proceedings involving the parties.
3. Whether the Interstate Commerce Act required FERC to conduct an evidentiary hearing before dismissing Western's complaint.
4. Whether FERC could resolve factual issues bearing on subject-matter jurisdiction in the context of deciding a motion to dismiss.

HOLDINGS

1. The appeal was ripe because the scope of FERC's statutory jurisdiction was fit for judicial decision and Western would suffer hardship if review were withheld.
2. The Interstate Commerce Act's relevant provisions apply only to common carriers engaged in the transportation of oil, and Enterprise was not acting as a common carrier vis-a-vis Western. FERC therefore lacked jurisdiction over Western's contractual dispute with Enterprise.
3. Because the Interstate Commerce Act unambiguously resolved the jurisdictional question, the court was required to apply Congress's expressed intent and had no need to proceed to Chevron step two.
4. The Interstate Commerce Act did not require FERC to conduct an evidentiary hearing before dismissing Western's complaint because no genuine issue of material fact required resolution beyond the written record.
5. FERC could resolve factual issues relating to its subject-matter jurisdiction before adjudicating the merits, including in the context of deciding a motion to dismiss.

KEY QUOTATIONS

> *"In sum, we hold that the plain language of the statute unambiguously states that the Act's relevant provisions only apply to common carriers, and Enterprise does not meet the statutory definition of common carrier vis-a-vis Western."* (636 F.3d at 727)

> *"For the foregoing reasons, we AFFIRM the Commission's order dismissing Western's claims."* (636 F.3d at 728)

FACTUAL BACKGROUND

Western leased capacity on Enterprise's oil pipeline between Midland, Texas, and Hobbs, New Mexico, under an agreement requiring monthly rental payments and designating Western as the common carrier for the leased capacity. After Western failed to provide planned transportation activity for a month, Enterprise used the leased capacity, reversed the line's flow, and moved Western's line fill into an Enterprise storage tank. Western sought to withdraw additional crude oil from the system and continued paying the monthly rental fee, then filed a FERC complaint alleging violations of the Interstate Commerce Act.

PROCEDURAL HISTORY

Western filed a complaint with FERC alleging that Enterprise Crude Pipeline acted unjustly and unreasonably by reversing a pipeline's flow, using leased capacity, diverting Western's crude oil, and continuing to collect lease payments. FERC dismissed the complaint, concluding that the dispute concerned a private capacity-lease contract rather than oil transportation within FERC's jurisdiction, and denied rehearing. The Fifth Circuit held the appeal ripe, affirmed FERC's jurisdictional determination, and affirmed dismissal without a hearing.

DISPOSITION

affirmed

CASES CITED

- Abbott Labs. v. Gardner, 387 U.S. 136, 149, 156 (1967)
- Cal. State ex rel. Water Res. Control Bd. v. Fed. Energy Regulatory Comm'n, 966 F.2d 1541, 1562 (9th Cir. 1992)
- Middle S. Energy, Inc. v. Ark. Pub. Serv. Comm'n, 772 F.2d 404, 410 (8th Cir. 1985)
- Pub. Serv. Co. of N.H. v. Patch, 167 F.3d 15, 23-24 (1st Cir. 1998)
- Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984)
- El Paso Elec. Co. v. Fed. Energy Regulatory Comm'n, 201 F.3d 667, 669-70 (5th Cir. 2000)
- Pac. Gas & Elec. Co. v. Fed. Energy Regulatory Comm'n, 106 F.3d 1190, 1196 (5th Cir. 1997)
- Tex. Office of Pub. Util. Counsel v. Fed. Commc'ns Comm'n, 265 F.3d 313, 320 (5th Cir. 2001)
- La. Envtl. Action Network v. U.S. Envtl. Prot. Agency, 382 F.3d 575, 581-82 (5th Cir. 2004)
- Ass'n of Oil Pipe Lines v. Fed. Energy Regulatory Comm'n, 83 F.3d 1424, 1440 (D.C. Cir. 1996)
- Kerr-McGee Oil & Gas Corp. v. U.S. Dep't of Interior, 554 F.3d 1082, 1084 (5th Cir. 2009)
- Phillips Pipe Line Co. v. Diamond Shamrock Ref. & Mktg. Co., 50 F.3d 864, 867-69 (10th Cir. 1995)
- Louisville & N.R. Co. v. United States, 282 U.S. 740, 749 (1931)
- Fl. E. Coast Ry. Co. v. City of W. Palm Beach, 266 F.3d 1324, 1333, 1335 (11th Cir. 2001)
- Med. Ctr. Pharmacy v. Mukasey, 536 F.3d 383, 392 (5th Cir. 2008)
- Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 654 (1990)
- Cajun Elec. Power Coop., Inc. v. FERC, 28 F.3d 173, 177 (D.C. Cir. 1994)
- Dillon v. Rogers, 596 F.3d 260, 271 (5th Cir. 2010)
- Wetmore v. Rymer, 169 U.S. 115, 120-21 (1898)

- Chatham Condo. Ass'ns v. Century Vill., Inc., 597 F.2d 1002, 1012 (5th Cir. 1979)
- Frontier Pipeline Co. v. Fed. Energy Regulatory Comm'n, 452 F.3d 774, 776 (D.C. Cir. 2006)
- Ark. La. Gas Co. v. Hall, 7 F.E.R.C. ¶ 61,175, 61,322-23, 1979 WL 167678 (1979)

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