IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND et al.

Plaintiffs,

v.

STATE OF LOUISIANA

Defendant.

BRIEF OF
COLUMBIA GAS TRANSMISSION CORPORATION
CONSOLIDATED GAS SUPPLY CORPORATION, EL PASO NATURAL GAS COMPANY,FLORIDA GAS TRANSMISSION COMPANY, MICHIGAN WISCONSIN PIPE LINE COMPANY, NATURAL GAS PIPELINE COMPANY OF AMERICA, NORTHERN NATURAL GAS COMPANY, SEA ROBIN PIPELINE COMPANY, SOUTHERN NATURAL GAS COMPANY, TENNESSEE GAS PIPELINE COMPANY A DIVISION OF TENNECO INC., TEXAS EASTERN TRANSMISSION CORPORATION, TRANSCONTINENTAL GAS PIPE LINE CORPORATION, TRUNKLINE GAS COMPANY and UNITED GAS PIPE LINE COMPANY
AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE COMPLAINT

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BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE COMPLAINT

INTEREST OF AMICI CURIAE

Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Florida Gas Transmission Company, Michigan Wisconsin Pipe Line Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company and United Gas Pipe Line Company (hereinafter "the pipeline companies"), support the motion of the eight plaintiff states for leave to file their complaint invoking the original jurisdiction of this Court in order to challenge the constitutionality of the Louisiana First Use Tax on Natural Gas, La. R.S. 47-1301-1307 (hereinafter "First Use Tax").[1]

The pipeline companies are all natural gas companies as defined in Section 2 of the Natural Gas Act, 15 U.S.C. 717 *et seq.*, and are regulated by the Federal Energy Regulatory Commission (hereinafter "FERC"). The pipeline companies acquire natural gas produced offshore from the Outer Continental Shelf (a federal domain defined and delineated in the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.),* and transport the gas or have it transported in interstate commerce into or through the State of Louisiana, all under certificates of public convience and necessity issued by FERC and under rate schedules or tariffs approved by FERC.

The volume of gas subject to the First Use Tax is so great that it is estimated that, if sustained, the tax will generate revenues aggregating some $250 million a year for the State of Louisiana, all at the expense of the pipeline companies and the ultimate consumers served by them.

Because the pipeline companies are the owners of offshore gas when the various events described as "uses" in the Louisiana statute occur, the immediate incidence of the tax is upon them; it is they who are legally responsible for paying the Tax, and complying with the reporting requirements of the statute, La. R.S. 47;1305. Accordingly, the pipeline companies, as the

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[1]This brief is filed with the consent of the eight plaintiff states and the defendant State of Louisiana.

direct taxpayers of the First Use Tax, have an immediate economic interest in the outcome of this action.

They also have a proprietary interest as owners of the natural gas that is subject to the tax, and a proprietary interest in the taxes that they will be obligated to pay to the State of Louisiana.

The pipeline companies represent additional and broader interests than the plaintiff states, and certain aspects of the First Use Tax impinge only upon their interests.[2] Also, the pipeline companies realistically can be said to represent industry wide and even nationwide interests that are not adequately represented by the plaintiff states, and are thus in a unique position to show the economic impact of the First Use Tax.

ARGUMENT

The purpose of this brief is two-fold: (i) to support the motion of the plaintiff states for leave to file their complaint, and to urge the Court to accept jurisdiction over the merits of this controversy; and (ii) to notify all parties that, because of their vital economic interest in the outcome of this action, the pipeline companies will seek leave to intervene as plaintiffs if jurisdiction is accepted by the Court.

A. The Court Should Accept Jurisdiction of This Case

The structure and operation of the First Use Tax, the

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[2]For example, the "nullification clause" contained in the Louisiana statute (La. R.S. 47:1303C), which seeks to abrogate pre-existing contractual relationships, "is aimed only at a narrow class of persons, the pipeline companies". Brief of Plaintiffs in Support of Motion for Leave to File Complaint, at 34.

severe impact it could have on the national economy and the national energy policy (either alone or, even worse, in conjunction with similar taxes that could be imposed by other states through which the natural gas must pass on its interstate journey to the ultimate consumer), and the overriding constitutional issues raised by Louisiana's attempted imposition of the tax, have been set forth in considerable detail in the briefs already filed in this action.

As there shown, the First Use Tax is violative of the Commerce Clause (Article I, Section 8 of the United States Constitution), the Impairment of Contracts Clause (Article I, Section 10, Clause 1), the Equal Protection Clause (Amendment XIV), the Import-Export Clause (Article I, Section 10, Clause 2) and the Supremacy Clause (Article VI). The argument that the First Use Tax violates the Supremacy Clause is based on the contention that it is in conflict with and repugnant to various Acts of Congress, including the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*) and the Natural Gas Policy Act of 1978 (Pub. L. No. 95-621 [1978]).[3]

To those showings, the pipeline companies would only add that the central and dispositive constitutional questions raised by this case, and the overriding economic and political impact of Louisiana's attempted imposition of the First Use Tax, make it all the more

[3]The pipeline companies themselves have made essentially the same allegations in *Edwards* v. *Transcontinental Gas Pipe Line Corporation*, No. 216,867, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, a pending declaratory judgment proceeding initiated by the Governor and other officials of the State of Louisiana, against various pipeline companies and gas producers, seeking a declaration of constitutionality and validity with respect to the First Use Tax.

desirable that this Court accept jurisdiction, so that the merits of this controversy might be resolved as expeditiously as possible. Accordingly, the pipeline companies urge the Court to grant the plaintiffs' motion for leave to file their complaint and to accept original jurisdiction of this matter.

B. If Jurisdiction is Accepted by the Court, The Pipeline Companies Will Seek Leave to Intervene as Plaintiffs

In the event that the Court accepts jurisdiction of this case, the pipeline companies, because of their demonstrated distinct interest in the case, will file a petition to intervene as of right, as plaintiffs.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Court should grant plaintiffs' motion for leave to file complaint, and should assume jurisdiction of this matter.

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CERTIFICATE OF SERVICE

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