

19-1039 PENNEAST PIPELINE CO., LLC V. NEW JERSEY

DECISION BELOW: 938 F.3d 96

LOWER COURT CASE NUMBER: 19-1191, 19-1232

QUESTION PRESENTED:

The Natural Gas Act authorizes a private gas company to exercise the federal government's power of eminent domain to secure necessary rights-of-way for the construction of an interstate pipeline if FERC grants the company a certificate of public convenience and necessity for the project. 15 U.S.C. §717f(h). This Court has long recognized that the federal eminent domain power may be exercised against state-owned property. *See, e.g., Kohl v. United States*, 91 U.S. 367 (1875). Consistent with that rule, for the better part of a century, certificate holders have invoked §717f(h) to secure rights-of-way across private- and state- owned property alike. Yet the decision below, issued without the benefit of the federal government's views, deemed this long-settled understanding mistaken and held that the federal eminent domain power in §717f(h) cannot be exercised by certificate holders as to property in which a state has an interest. In reaching that conclusion, the Third Circuit conceded that its decision "may disrupt how the natural gas industry, which has used the NGA to construct interstate pipelines over State-owned land for the past eighty years, operates:" App.30. FERC has since confirmed that the Third Circuit's interpretation of §717f(h) is mistaken, but that the court's prediction about the dire consequences is correct.

The question presented is:

Whether the NGA delegates to FERC certificate holders the authority to exercise the federal government's eminent domain power to condemn land in which a state claims an interest.

ORDER OF FEBRUARY 3, 2021:

IN ADDITION TO THE QUESTION PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: DID THE COURT OF APPEALS PROPERLY EXERCISE JURISDICTION OVER THIS CASE? THE CASE WILL BE SET FOR ARGUMENT IN THE APRIL 2021 ARGUMENT SESSION.

CERT. GRANTED 2/3/2021