SUPREME COURT OF UNITED STATES

Panhandle Eastern Pipe Line Co.

Vs.

Public Service Commission of Indiana et al.

No. 69.

Argued Nov. 14—17, 1947.

Decided Dec. 15, 1947.

Appeal from the Supreme Court of the State of Indiana.

Mr. John S. L. Yost, of New York City, for appellant.

Mr. Karl J. Stipher, of Indianapolis, Ind., for appellee, Public Service Commission of Indiana.

Mr. William P. Evans, of Indianapolis, Ind., for appellees, Indiana Gas & Water Co. et al.

Mr. Justice RUTLEDGE, delivered the opinion of the Court.

Broadly the question is whether Indiana has power to regulate sales of natural gas made by an interstate pipe-line carrier direct to industrial consumers in Indiana. More narrowly we are asked to decide whether the commerce clause, Const. Art. I, § 8, by its own force forbids the appellee, Public Service Commission, to require appellant to file tariffs, rules and regulations, annual reports, etc., as steps in a comprehensive plan of regulation preliminary to possible exercise of jurisdiction over rates and service in such sales.1

Panhandle Eastern transports natural gas from Texas and Kansas fields into and across intervening states, including Indiana, to Ohio and Michigan. In Indiana it furnishes gas to local public utility distributing companies and municipalities. These in turn supply the needs of over 112,000 residential, commercial and industrial consumers.

Since 1942 appellant also has sold gas in large amounts direct to Anchor-Hocking Glass Corporation for industrial consumption.2 Shortly before beginning this service appellant had informed a number of its customers, local distributing companies in Indiana, that it intended to render service directly to large industrial consumers wherever possible.3 Pursuant to that policy, since these proceedings began direct service has been extended to another big industrial user.4

In 1944 the Commission initiated hearings relative to direct service by Panhandle Eastern to Indiana consumers. It concluded that 'the distribution in Indiana by Panhandle of natural gas direct to consumers is subject to regulation by this Commission under the laws of this state,' notwithstanding any alleged contrary effect of the commerce clause upon appellant's direct sales to industrial sers. Accordingly it issued its order of November 21, 1945, for the filing of tariffs, etc., as has been stated.

Early in 1946 Panhandle Eastern brought this suit in a state court to set aside and enjoin enforcement of the order. While the cause was pending the Commission issued a supplemental order declining appellant's offer to submit the specified tariffs, reports, etc., 'as information only,' and reasserting its full regulatory power as conferred by the Indiana statutes.5 63 P.U.R., N.S., 309.

The trial court vacated the orders and enjoined the Commission from enforcing them. It accepted appellant's view of the effect of the commerce clause on its operations. The Supreme Court of Indiana reversed that judgment and denied the relief appellant sought. 71 N.E.2d 117. It held first that the Commission's orders amounted to an unequivocal assertion of power to regulate rates and service on appellant's direct industrial sales and thus presented squarely the question of the Commission's jurisdiction over such sales as affected by the commerce clause. The court did not flatly hold that the sales are in interstate rather than intrastate commerce. But, taking them to be of the former kind, it held them nevertheless subject to the state's power of regulation under the doctrine of Cooley v. Board of Wardens, [1851] USSC 1; 12 How. 299, 13 L.Ed. 996. The court further held that appellant, in making these sales, is a public utility within the meaning and application of the state's regulatory statutes, Burns Ind.Stat.Ann. § 54-105 and Ind. Acts 1945, c. 53, p. 110. It is this decision we have to review pursuant to § 237 of the Judicial Code, 28 U.S.C. 344(a), 28 U.S.C.A. § 344(a).6

The effect of the state statutes, whether permitting the filing of the tariffs, etc., as information unrelated to further regulation or requiring the filing as initial and integral steps in the regulatory scheme, and thus as presenting at the threshold of the scheme's application the question of the state's power to go further with it, is primarily a question of construction for the state courts to determine. In view of the Commission's position, as construed by the state supreme court, we cannot say that the only thing presently involved is the state's power to require the filing of information without reference to its further use for controlling these sales. Cf. Arkansas Louisiana Gas Co. v. Department of Public Utilities, [1938] USSC 90; 304 U.S. 61, 58 S.Ct. 770, 82 L.Ed. 1149. Here the orders constituted 'an unequivocal assertion of power' to regulate rates and service. Indeed they involve something more than a mere threat to apply the regulatory plan in its later phases. They represent the actual application of that plan in its initial stage. In such a situation appellant was not required to await a further regulatory order before contesting the Commission's jurisdiction. Cf. Public Utilities Comm. of Ohio v. United Fuel Gas Co., [1943] USSC 36; 317 U.S. 456, 63 S.Ct. 369, 87 L.Ed. 396.

This does not mean that we now express opinion concerning the validity of any further order which the Commission may enter. No such order is before us. It does mean that we are required to decide whether the sales in question lie within the scope of the state's power to regulate rates and service, so that some further order in those respects may or may not be entered.

Nor do we question that these sales are interstate transactions. The contrary suggestion left open in the state supreme court's treatment rests upon the view that gas transported interstate takes on the character of a commodity which has come to rest or broken bulk when it leaves the main transmission line and, under reduced pressure, enters branch lines or laterals irrevocably on its way to final distribution or consumption. Those merely mechanical considerations are no longer effective, if ever they were exclusively, to determine for regulatory purposes the interstate or intrastate character of the continuous movement and resulting sales we have here.7

Thus gas furnished to local utilities for resale is supplied unquestionably, both as to transportation and as to sale, in interstate commerce. Yet it is subjected to practically identical changes in pressure with the gas sold by appellant directly for industrial use.8 Neither Practical common sense nor constitutional sense would tolerate holding that reduction in pressure makes the industrial sales to Anchor-Hocking wholly intrastate for purposes of local regulation while deliveries at similar pressures to utility companies remain exclusively interstate. Variations in main pressure are not the criterion of the states' regulatory powers under the commerce clause. Cf. Interstate Natural Gas Co. v. Federal Power Comm., [1947] USSC 97; 331 U.S. 682, 689[1947] USSC 97; , 67 S.Ct. 1482, 1486. The sales here were clearly in interstate commerce.

The controlling issues therefore are two: (1) Has Congress, by enacting the Natural Gas Act, 52 Stat. 821, 15 U.S.C. § 717, 15 U.S.C.A. § 717 et seq., in effect forbidden the states to regulate such

sales as tho e appellant makes directly to industrial consumers; (2) if not, are those sales of such a nature, as related to the Cooley formula, that the commerce clause of its own force forbids the states to act.

We think there can be no doubt of the answer to be given to each of these questions, namely, that the states are competent to regulate the sales. The two questions may best be considered in the background of the legislative history of the Natural Gas Act and of the judicial history leading to its enactment in 1938.

Prior to that time this Court in a series of decisions had dealt with various situations arising from state efforts to regulate the sale of imported natural gas. The story has been adequately told9 and we do not stop to review it again or attempt reconciliation of all the decisions or their groundings. Suffice it to say that by 1938 the Court had delineated broadly between the area of permissible state control and that in which the states could not intrude. The former included interstate direct sales to local consumers, as exemplified in Pennsylvania Gas Co. v. Public Service Comm., [1920] USSC 48; 252 U.S. 23, 40 S.Ct. 279, 64 L.Ed. 434; the latter, service interstate to local distributing companies for resale, as held in State of Missouri v. Kansas Natural Gas Co., [1924] USSC 126; 265 U.S. 298, 44 S.Ct. 544, 68 L.Ed. 1027, reinforced by Public Utilities Comm. of Rhode Island v. Attleboro Steam and Electric Co., [1927] USSC 19; 273 U.S. 83, 47 S.Ct. 294, 71 L.Ed. 549.

Shortly then, as the decisions stood in 1938, the states could regulate sales direct to consumers, even though made by an interstate pipe-line carrier. This was true of sales not only for domestic and commercial uses but also for industrial consumption, at any rate whenever the interstate carrier engaged in distribution for all of these uses.10 On the other hand, sales for resale, usually to local distributing companies, were beyond the reach of state power, regardless of the character of ultimate use. This fact not only prevented the states from regulating those sales but also seriously handicapped them in making effective regulation of sales within their authority.11

This impotence of the states to act in relation to sales for resale by interstate carriers brought about the demand for federal regulation and Congress' response in the Natural Gas Act. To reach those sales and prevent the hiatus in regulation their immunity caused, the Act declared in § 1(b): 'The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.'

This section determines the Act's coverage and does so in the light of the situation existing at the time. Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.

The omission of any reference to other sales, that is, to direct sales for consumptive use, in the affirmative declaration of coverage was not inadvertent. It was deliberate. For Congress made sure its intent could not be mistaken by adding the explicit prohibition that the Act 'shall not apply to any other * * * sale * * *.' (Emphasis added.) Those words plainly mean that the Act shall not apply to any sales other than sales 'for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.' Direct sales for consumptive use of whatever sort were excluded.

The line of the statute was thus clear and complete. It cut sharply and cleanly between sales for resale and direct sales for consumptive uses. No exceptions were made in either category for particular uses, quantities or otherwise. And the line drawn was that one at which the decisions had arrived in distributing regulatory power before the Act was passed.12

Moreover, this unusual legislative precision was not employed with any view to relieving or exempting any segment of the industry from regulation. The Act, though extending federal regulation, had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce i in the gap created by the prior decisions.13 The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way. This appears not merely from the situation which led to its adoption and the legislative history, including the committee reports in Congress cited above, but most plainly from the history of § 1(b) in respect to the changes which took place in reaching its final form.14

It would be an exceedingly incongruous result if a statute so motivated, designed and shaped to bring about more effective regulation, and particularly more effective state regulation, were construed in the teeth of those objects, and the import of its wording as well, to cut down regulatory power and to do so in a manner making the states less capable of regulation than before the statute's adoption. Yet this, in effect, is what appellant asks us to do. For the essence of its position, apart from standing directly on the commerce clause, is that Congress by enacting the Natural Gas Act has 'occupied the field,' i.e., the entire field open to federal regulation, and thus has relieved its direct industrial sales of any subordination to state control.

The exact opposite is the fact. Congress, it is true, occupied a field. But it was meticulous to take in only territory which this Court had held the states could not reach.15 That area did not include direct consumer sales, whether for industrial or other uses. Those sales had been regulated by the

states and the regulation had been repeatedly sustained. In no instance reaching this Court had it been stricken down.16

It is true that no case came here involving state regulation of direct industrial sales wholly apart from sales for other uses. In the cases sustaining state power, whether to regulate or to tax, the company making the industrial sales was selling also to domestic and commercial users.17 But there was no suggestion, certainly no decision, that a different result would follow if only direct industrial sales were being made. Neither the prior judicial line nor the statutory line was drawn between kinds of use or on the relation between sales for different uses. Both lines were drawn between sales for use, of whatever kind, and sales for resale. Cf. Colorado Interstate Gas Co. v. Federal Power Comm., [1945] USSC 68; 324 U.S. 581, 595, 596[1945] USSC 68; , 65 S.Ct. 829, 836[1945] USSC 68; , 89 L.Ed. 1206.

The Natural Gas Act created an articulate legislative program based on a clear recognition of the respective responsibilities of the federal and state regulatory agencies. It does not contemplate ineffective regulation at either level. We have emphasized repeatedly that Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority. Public Utilities Comm. of Ohio v. United Fuel Gas Co., [1943] USSC 36; 317 U.S. 456, 467[1943] USSC 36; , 63 S.Ct. 369, 375[1943] USSC 36; , 87 L.Ed. 396; Federal Power Comm. v. Hope Natural Gas Co., [1944] USSC 2; 320 U.S. 591, 609, 610[1944] USSC 2; , 64 S.Ct. 281, 291[1944] USSC 2; , 88 L.Ed. 333; Interstate Natural Gas Co. v. Federal Power Comm., [1947] USSC 97; 331 U.S. 682, 690, 67 S.Ct. 1487. And, as was pointed out in Federal Power Comm. v. Hope Natural Gas Co., supra, 320 U.A. at page 610, 64 S.Ct. at page 291, 'the primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies.' The scheme was one of co-operative action18 between federal and state agencies. It could accomplish neither that protective aim nor the comprehensive and effective dual regulation Congress had in mind, if those companies could divert at will all or the cream of heir business to unregulated industrial uses.19

The Natural Gas Act therefore was not merely ineffective to exclude the sales now in question from state control. Rather both its policy and its terms confirm that control. More than 'silence' of Congress is involved. The declaration, though not identical in terms with the one made by the McCarran Act, 59 Stat. 33, 15 U.S.C. § 1011, 15 U.S.C.A. § 1011 et seq., concerning continued state regulation of the insurance business, is in effect equally clear, in view of the Act's historical setting, legislative history and objects, to show intention for the states to continue with regulation where Congress has not expressly taken over. Cf. Prudential Ins. Co. v. Benjamin, [1946] USSC 103; 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342, 164 A.L.R. 476. Congress has undoubted power to define the distribution of power over interstate commerce. Southern Pacific Co. v. State of Arizona, [1945] USSC 125; 325 U.S. 761, 769[1945] USSC 125; , 65 S.Ct. 1515, 1520, 89 L.Ed. 1915, and authorities cited; cf. Prudential Ins. Co. v. Benjamin, supra. Here the power has been exercised in a manner wholly inconsistent with exclusion of state authority over the sales in

question.

Congress' action moreover was an unequivocal recognition of the vital interests of the states and their people, consumers and industry alike, in the regulation of rates and service. Indiana's interest in appellant's direct sales is obvious. That interest is certainly not less than the interest of California and her people in their protection against the evil effects of wholly unregulated sale of insurance interstate. Robertson v. People of State of California, [1946] USSC 114; 328 U.S. 440, 66 S.Ct. 1160, 90 L.Ed. 1366. Not only would industrial consumers in most instances go without protection as to rates and service other than that supplied by competition from other fuels,20 but the state's regulatory system would be crippled and the efforts of the Indiana Commission seriously hampered in protecting the interests of other classes of users equally if not more important.21

As against these vital local interests, becoming more important with every passing year in the steady transition from use of more primitive fuels to natural gas and fuel oils, appellant seeks to set up its own interest in complete freedom from regulation and, if any is to be imposed, a supposed national interest in uniform regulation. The national interest, considered apart from its own, is largely illusory on this record. For itself, the company asserts that state regulation of prices and service will amount to a power of blocking the commerce or impeding its free flow.

There are two answers. One is experience. Insofar as this phase of the natural gas industry has been subjected to state regulation to date, those effects have not been shown to occur. The other answer, in case that experience should vary, is the power of Congress to correct abuses in regulation if and when they appear. State power to regulate interstate commerce, wherever it exists, is not the power to destroy it, unless Congress has expressly so provided.22 It is the power to require that it be done on terms reasonably related to the necessity for protecting the local interests on which the power rests.

Appellant also envisages conflicting regulations by the commissions of the various states its main pipe line serves, particularly in relation to curtailment of service when weather conditions or others require it, and fears conflict also between the state commissions and the Federal Power Commission. It assigns these possibilities in support of its view that national uniform regulation alone is appropriate to its operations. There is no evidence thus far of substantial conflict in either respect23 and we do not see that the probability of serious conflict is so strong as to outweigh the vital local interests to which we have referred requiring regulation by the states. Moreover, if such conflict should develop, the matter of interrupting service is one largely related, as appellees say, to transportation and thus within the jurisdiction of the Federal Power Commission to control, in accommodation of any conflicting interests among various states.24

These considerations all would lead to the conclusion that the states are not made powerless to regulate the sales in question by any supposed necessity for uniform national regulation but that on

the contrary the matter is of such high local import as to justify their control, even if Congress had remained wholly silent and given no indication of its intent that state regulation should be effective. But in this case, in addition to those considerations taken independently, the policy which we think Congress has clearly delineated for permitting and supporting state regulation removes any necessity for determining the effect of the commerce clause independently of action by Congress and taken as operative in its silence.

The attractive gap which appellant has envisioned in the co rdinate schemes of regulation is a mirage. The judgment of the Supreme Court of Indiana is affirmed.

Affirmed.

Mr. Justice JACKSON concurs in the result.

Mr. Justice MURPHY took no part in the consideration or decision of this case.