The Supreme Court’s 7-2 ruling in *Oneok v. Learjet* is a solid win for states, consumer protection, and the Ninth Circuit. The Court held the Natural Gas Act does not preempt state-law antitrust lawsuits alleging price manipulation that affect both federally regulated wholesale natural-gas prices and nonfederally regulated retail natural-gas prices.

Historically, federal regulation of the natural-gas industry has been divided into three segments: production, interstate gas pipelines (wholesale), and local gas distribution (retail). The federal Natural Gas Act regulates only the second segment—the interstate shipment of gas including rate setting—states regulate the other segments. Since deregulation in the 1970s, pipeline wholesalers have sold natural gas at market rate based on price indices of voluntarily reported data of natural gas sales. In 2003 the indices were found to be inaccurate because natural-gas traders had been reporting false data.

A group of retail natural gas purchasers sued the pipelines claiming they violated state antitrust law by manipulating the natural-gas indices. The district court concluded that the Natural Gas Act preempted the claims because the price manipulation affected not only nonfederally regulated retail rates but also federally regulated wholesale rates. The Ninth Circuit disagreed, and the Supreme Court (surprisingly) agreed with the Ninth Circuit.

According to the majority, in an opinion written by Justice Breyer, the important consideration in determining whether the antitrust laws were preempted was “the target at which the state law aims.” If a state law is aimed at a subject a state may regulate then it isn’t preempted. For example, in *Northwest Central Pipeline Corp. v. State Corporation Commission of Kansas*, the Court held that the Natural Gas Act did not preempt a state regulation concerning the timing of gas production even though the regulation might affect wholesale prices because it was aimed primarily at “protect[ing] producers’ . . . rights—a matter firmly on the States’ side of that dividing line.” The Court reasoned the claims in this case aren’t preempted because they are directed at practices affecting retail prices—which are also “firmly on the States’ side of that dividing line.”

By:
Wednesday, April 22, 2015 at 01:08 PM

Tags:
*National Gas Act* | *Supreme Court* | *Energy* | *Pipelines*