

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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LAURA A. BRIGGS
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ROCKIES EXPRESS PIPELINE LLC,)
a Delaware Limited Liability Company,)
)
Plaintiff,)

v.) Cause No. 1:08-cv-

THE COUNTY OF FRANKLIN, INDIANA,)
BOARD OF COUNTY COMMISSIONERS)
OF FRANKLIN COUNTY, INDIANA, AND)
FRANKLIN COUNTY AREA BOARD OF)
ZONING APPEALS,)
)

1: 08-cv- 11 61 -RLY -JMS

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff Rockies Express Pipeline LLC, by and through its
counsel, and for its Complaint states and alleges as follows:

1. Plaintiff Rockies Express Pipeline LLC (“REX”) seeks declaratory
judgment and injunctive relief prohibiting Defendants' regulation of and interference with
REX’s construction of an interstate natural gas pipeline through Franklin County,
Indiana.

2. REX is a Delaware Limited Liability Company, with its principal place of
business in Houston, Texas, and is authorized to do business in various states, including
the State of Indiana.

3. REX is in the business of constructing natural gas pipelines and piping,
transporting and marketing natural gas in interstate commerce for the purpose of
supplying the public with natural gas and is, therefore, a natural gas company as defined
in the Natural Gas Act, 15 U.S.C. §§ 717 *et seq.*

4. REX also is the holder of a Certificate of Public Convenience and Necessity (the “FERC Certificate”) issued by the Federal Energy Regulatory Commission (“FERC”) pursuant to Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, for the construction and operation of an approximately 638-mile natural gas pipeline in Missouri, Illinois, Indiana and Ohio and known as the Rockies Express East Pipeline Project (“REX EAST”).

5. Defendant Franklin County, Indiana, is a body politic and corporate and political subdivision of the State of Indiana. Defendants Board of County Commissioners of Franklin County, Indiana (“Commissioners”) and Franklin County Area Board of Zoning Appeals (“BZA”) are bodies created and organized by Franklin County pursuant to Indiana law.

6. On or about February 19, 2008, REX applied for a Special Exception from the requirements of the Area Zoning Code of Franklin County, Indiana, 1988 (“Zoning Code”) pertaining to major gas and oil transmission lines in Section 80.25 (E) (63) for REX EAST.

7. REX applied for the Special Exception prior to REX’s receipt of the FERC Certificate, which was issued on May 30, 2008. As a holder of a FERC Certificate, the REX EAST project is exempt from the requirements of the Zoning Code as a public utility installation pursuant to Section 80.45 (I) and Section 80.47 (133).

8. On or about April 9, 2008, the BZA denied REX’s application for the Special Exception for REX EAST. Defendants have refused to issue REX an Improvement Location Permit, have failed to recognize REX as a public utility

installation exempt from the requirements of the Zoning Code pursuant to Sections 80.45 (I) and Section 80.47 (133), and failed to issue other necessary permits and approvals.

9. The denial of the Special Exception and refusal to issue other permits and approvals required for the construction of REX EAST is preempted by the NGA, the Natural Gas Pipeline Safety Act (the "NGPSA"), 49 U.S.C. §60101, and other federal laws and regulations. The denial of the Special Exception required for the construction of REX EAST violates the Supremacy Clause as well as the Commerce Clause of the United States Constitution, Article VI, clause 2 and Article 1, § 8, clause 3, respectively.

10. For these reasons, REX seeks the following relief: (1) a declaratory judgment pursuant to 28 U.S.C. §2201 that the requirements of the Zoning Code are preempted by federal law; (2) a preliminary and permanent injunction against the enforcement by Defendants of the Zoning Code with regard to the construction of REX EAST; and (3) such temporary injunctive relief as may be required to prevent interference by Defendants with activities related to the construction of REX EAST.

JURISDICTION AND VENUE

11. The Court has jurisdiction pursuant to 28 U.S.C. § 2201, 28 U.S.C. § 2202, 28 U.S.C. §§ 1331, 28 U.S.C. § 1337, and 15 U.S.C. § 717u.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims asserted herein occurred in this District, and pursuant to 28 U.S.C. § 1391(c) because Defendants are subject to the jurisdiction of this Court.

FACTS

13. The Natural Gas Act, 15 U.S.C. § 717a, declares that "...the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." By virtue of the Natural Gas Act, Congress has conferred upon FERC exclusive jurisdiction over the transportation and/or sale of natural gas for resale in interstate commerce. The Natural Gas Act forms a comprehensive and exclusive national regulatory scheme for natural gas transported and/or sold for resale in interstate commerce and for the facilities associated with such transactions.

14. The NGPSA authorizes the federal Department of Transportation ("DOT") to promulgate and enforce a comprehensive set of safety standards for interstate natural gas pipeline transportation and interstate natural gas transportation pipeline facilities. The NGPSA standards apply to the "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance" of interstate natural gas pipeline facilities. 49 U.S.C. § 60102(a)(2)(B). The NGPSA expressly declares that "a State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation" and thereby signifies Congressional intent to vest the DOT with exclusive jurisdiction over safety standards related to the construction and operation of interstate natural gas transportation pipelines and facilities.

15. FERC has issued REX a Certificate under section 7 of the Natural Gas Act, 15 U.S.C. §717f, to construct REX EAST.

16. REX is a "natural-gas company" within the meaning of §2(6) of the Natural Gas Act, 15 U.S.C. §717a(6), and REX, REX EAST, and the interstate natural gas pipeline industry generally are subject to regulation by FERC pursuant to the Natural Gas Act and 18 C.F.R. Chapter I.

17. REX EAST will cross Indiana, including Franklin County, Indiana.

18. REX EAST will be constructed under the jurisdiction of FERC and the DOT.

19. REX has acquired substantially all of the Right-of-Way Servitudes required for construction and operation of REX EAST in Franklin County, Indiana.

20. Activities associated with construction of REX EAST began upon FERC's issuance of the Certificate to REX.

21. As part of the FERC approval process, REX is required to work in cooperation with local and state permitting authorities. Pursuant to such requirement, REX has sought all permits required in connection with the construction and operation of REX EAST.

22. On or about February 19, 2008, REX made application with Franklin County, Indiana, for a Special Exception from the requirements of the Zoning Code.

23. On or about April 9, 2008, the BZA denied REX's application for a Special Exception. Defendants have refused to provide an Improvement Location Permit and other required permits and approvals for REX EAST. Defendants have failed and refused to recognize REX EAST as a public utility installation exempt from the requirements of the Zoning Code.

24. By asserting their power and authority over REX EAST through the denial of the Special Exception, the failure to recognize REX EAST as an exempt public utility installation, and the withholding of other necessary permits, Defendants are imposing safety regulations upon the construction or operation of facilities which fall under the exclusive jurisdiction of FERC and the DOT. Defendants have thus interfered with, and unless enjoined by the Court, will continue to interfere with REX's preparation for and construction of REX EAST, thereby causing REX and the public to suffer irreparable injury, damage, and loss for which REX and the public have no adequate remedy at law.

25. Defendants' denial of the Special Exception, failure to recognize REX EAST as an exempt public utility installation, and failure to provide other permits and approvals has created an actual controversy between REX and Defendants ripe for decision by this Court, such that this Court has jurisdiction pursuant to 28 U.S.C. § 2201 to declare the rights and other legal relations of the parties. Defendants have acted in violation of the laws and Constitution of the United States by asserting jurisdiction over REX EAST through the denial of the Special Exception and other permit applications.

REQUEST FOR DECLARATORY RELIEF

26. REX hereby restates and realleges the allegations set forth in paragraphs 1 through 25 above as if fully set forth herein.

27. Defendants' denial of the Special Exception and assertion of jurisdiction and authority over REX EAST is in direct conflict with and is preempted by the NGA, the NGPSA, and by FERC and DOT regulations adopted thereunder, through which Congress has occupied the field to the exclusion of state regulation.

28. Defendants' denial of the Special Exception and assertion of jurisdiction and authority over REX EAST acts as an obstacle to the realization of Congressional objectives as set forth in the NGA, NGPSA, and FERC and DOT regulations adopted thereunder, in violation of the Supremacy Clause of the United States Constitution and, further, constitutes an illegal attempt to regulate facilities used for the transportation of natural gas in interstate commerce and to unduly burden interstate commerce, all in violation of the Commerce Clause of the United States Constitution.

29. Plaintiff is entitled to an order declaring that Defendants' denial of the Special Exception and assertion of jurisdiction and authority over REX EAST is preempted by federal law and that the conditions are void and unenforceable.

REQUEST FOR INJUNCTIVE RELIEF

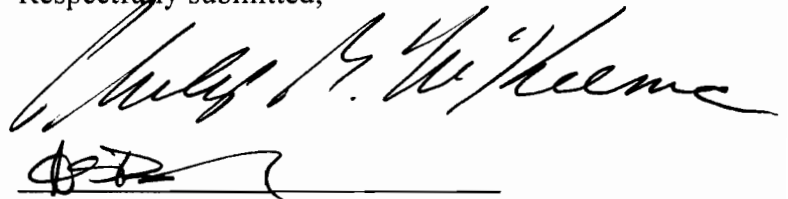
30. REX hereby restates and realleges the allegations set forth in paragraphs 1 through 29 above as if fully set forth herein.

31. REX will suffer irreparable harm if Defendants are not enjoined from enforcing the requirements of the Zoning Code in that REX's construction and operation of REX EAST will be delayed and/or otherwise unreasonably burdened. The public will also suffer irreparable harm as construction and operation of REX EAST is for a public and necessary purpose. Defendants will not suffer any harm if they are so enjoined. REX is highly likely to succeed on the merits in demonstrating that Defendants' interference with the construction of REX EAST, including enforcement of the Zoning Code, is preempted by federal law and the United States Constitution.

WHEREFORE, Rockies Express Pipeline LLC prays for the following relief and judgment:

- A. An order declaring that Defendants were, and are, without authority to impose the requirements of the Zoning Code and assert jurisdiction over REX EAST because such actions are preempted by federal law;
- B. An order declaring that the requirements of the Zoning Code are void and unenforceable as to REX;
- C. A temporary, preliminary and permanent injunction enjoining Defendants from enforcing the requirements of the Zoning Code against REX; and
- D. Any such other and further relief this Court deems equitable and just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

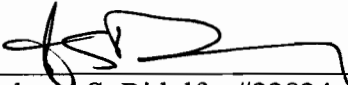
I hereby certify that on this 31st of August, 2008, a copy of the foregoing pleading was sent by United States mail, postage prepaid and via electronic mail to the following parties:

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