

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 00-1056**

**September Term, 2000**

**[This Judgment Was Vacated By Order of 3/23/01]**

Filed On: February 23, 2001 [577745]

LBU Joint Venture,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

East Tennessee Group and

Citizen Gas Utility District,

Intervenors

On Petition for Review of Orders of the  
Federal Energy Regulatory Commission

Before: EDWARDS, *Chief Judge*, GINSBURG and TATEL, *Circuit Judges*.

## **J U D G M E N T**

Petitioner LBU Joint Venture's petition for review of Federal Energy Regulatory Commission orders 88 FERC ¶61,035 (July 6, 1999) and 89 FERC ¶ 61,311 (Dec. 22, 1999) was considered on the record and on the briefs and arguments of counsel. The issues have been accorded full consideration by the Court and occasion no need for a published opinion. *See* D.C. CIR. RULE 36(b). It is

**ORDERED** and **ADJUDGED** that LBU's petition for review be dismissed without prejudice. Petitioner asserts that the Commission acted arbitrarily and capriciously in concluding that issuance of a blanket certificate to provide natural gas storage services under Section 284.224 of its regulations does not convey eminent domain rights under Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h). But as the Commission argues, and as petitioner conceded at oral argument, this issue is not ripe for review. Petitioner sought eminent domain rights to prevent attempted state law condemnation of its natural gas storage field, and to condemn capacity on a pipeline transporting gas to and from its field. At present, however, no state law condemnation action is imminent or pending against petitioner's facility, and petitioner has not attempted to acquire capacity on the relevant pipeline. If at some future date petitioner's claim should ripen, it can file a complaint with the Commission and, if the complaint is rejected, seek judicial review within 60

days of that order. *See* 15 U.S.C. § 717r(b) (petitions for review of a Commission order under the Natural Gas Act must be filed “within sixty days after the order of the Commission upon the application for rehearing”); *Baltimore Gas & Elec. Co. v. ICC*, 672 F.2d 146, 149 (D.C. Cir. 1982) (“A time limitation on petitions for judicial review, it should be apparent, can run only against challenges ripe for review.”).

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. CIR. RULE 41(a)(1).

**FOR THE COURT:**  
Mark J. Langer, Clerk