

UNITED STATES COURT OF APPEALS

DEC 1 1999

TENTH CIRCUIT

PATRICK FISHER
Clerk

K N GAS SUPPLY SERVICES, INC.,

Plaintiff-Appellant,

v.

AMERICAN PRODUCTION
PARTNERSHIP-V, LTD., and NINIAN
OIL FINANCE CORPORATION,

Defendants-Appellees.

No. 98-1110
(D.C. No. 95-B-291)
(District of Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge; and **PORFILIO** and **KELLY**, Circuit Judges.

K N Gas Supply Services (KNGSS) appeals the district court's grant of summary judgment in favor of American Production Partnership-V, Ltd. (American) in a contract dispute between the two companies. KNGSS and American are parties to a gas supply contract which obligates KNGSS to purchase an annual minimum quantity of gas at a fixed price from American. In the district court, KNGSS sought a declaratory judgment

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

that a series of orders, known as the Order 636 Series, by the Federal Regulatory Commission (FERC) had either rendered the “cost of service” provision in the gas supply contract ambiguous, or had “triggered” the cost of service provision. Either determination would have allowed KNGSS to pass the regulation related costs back to American.

After an extensive review of the history of the regulation of the natural gas industry, the district court found that the FERC Order 636 Series had not rendered ambiguous or “triggered” the cost of service provision. *K N Gas Supply Services, Inc. v. American Production Partnership-V, Ltd.*, 994 F.Supp. 1283 (D. Colo. 1998). The district court therefore granted summary judgment to American. On appeal, KNGSS presents to us substantially the same arguments it made to the district court. After reviewing de novo the record and carefully considering the parties’ briefs, we find the district court’s opinion thoroughly and correctly addressed each of KNGSS’s arguments. We therefore adopt the reasoning of the district court and **AFFIRM** its decision to grant summary judgment.

ENTERED FOR THE COURT

John C. Porfilio
Senior Circuit Judge