Federal judge denies request to move part of coalbed methane suit to state court

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ABINGDON, Va. --
In his first order in the sprawling class action lawsuits that accuse natural gas companies of stealing resources out from under coalfield landowners, U.S. District Judge James P. Jonesdenied the company's request to let the Virginia Supreme Court decide one suit's central question: whether the company is entitled to deduct the various costs of doing business from royalty payments to landowners.

The order alone might mean millions of dollars to Southwest Virginia landowners, their attorney said.

The class action, one of five pending against two of the state's most powerful natural gas companies, involves plaintiffs who voluntarily leased their gas to EQT Production Co. for one-eighth of the profits. For 20 years, the company has subtracted from those one-eighths royalties a portion of what it costs to transport the gas downstream, where it is collected, cleaned and compressed. Those costs showed up on payment stubs as general, unspecified deductions that were not explicitly allowed for by their leases.

Don Barrett, a Mississippi-based attorney who leads the entourage of lawyers representing the landowners, estimates that for every $1,000 owed to his clients, $250 to $350 was deducted for post-production costs.

In courtrooms across the country, there are basically two schools of thought on post-production deductions, though the issue remains unsettled by Virginia courts.

The plaintiffs argue the "first marketable product rule" – that the production company has an implied duty to turn the gas into a marketable commodity, thus the landowner should not shoulder the cost.

On the other side of the debate, EQT says the sale price minus the cost of getting it there equals the value of the gas when it was sucked out of the coal seams, so the amount owed to the landowner.

Both parties argued those points, along with many others, last fall before Magistrate Judge Pamela Meade Sargent. In January, she issued a 34-page opinion that on most points, including the issue of post-production costs, sided with the plaintiffs.

In her opinion, Sargent wrote that she believed Virginia courts would follow the "first marketable product rule," as other states have done, that holds the company "solely responsible for all costs making the gas produced from the well marketable unless … the parties specifically agree otherwise." In other words, unless the post-production deductions are clearly defined in the lease agreement, the company is not entitled to take them.

Barrett said that opinion alone – even without their other allegations that EQT sold to their affiliates at below-market prices, inflated the post-production deductions and underreported the amount of gas produced – could mean "millions and millions and millions of dollars" for their clients. Last year, EQTsettled a similar class action for $25 million. It, too, involved cost deductions from royalty payments.

EQT responded to Sargent's opinion with a fervent rejection, arguing that the company should not have to bear all of the costs of transporting the gas from the wellhead many miles downstream to the point of sale. The landowners should be compensated at the price the gas is worth at the wellhead, they argue, not what it's worth once the company has paid to enhance it.

EQT filed a motion that the question be answered not by a federal judge who seemed to be leaning in an unfriendly direction, but by the Supreme Court of Virginia.

In cases of weighty issues of state law, federal courts can certify specific questions to the Supreme Court if it is "determinative" in the pending case and has not yet been addressed by state courts.

The plaintiffs filed in opposition to EQT's request for certification – railing that the company simply didn't like the judge's decision and wanted a different audience. While post-production costs are an important point, they argued, it is not "determinative" in the suit, which would continue on even if the court ruled against them on the issue.

U.S. District Judge James P. Jones, in his first order in the pending natural gas litigation, denied the motion for "judicial economy and efficiency."

"Federal courts must routinely predict state law," he wrote, "and certifying the present question [to the Virginia

Supreme Court] would add unnecessary expense and delay the case."

Barrett described the order as a major victory for his clients. When he discusses the pending litigation, he cites Bible passages, namely Exodus 20:15.

"Thou shalt not steal," he said Monday, and that's precisely what they allege EQT did when subtracting unspecified costs from royalty payment.

A spokesman for EQT did not return a message left Monday afternoon.

Both sides await Jones' opinion on the remaining claims.

Barrett said they won't know the exact size and scope of the class action until the court compels EQT to turn over facts and documents as the class actions make their way to jury trials.

"EQT is going to have to honestly account to the court, and to the people of Southwest Virginia, for every dollar they have taken," he said.

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