

Integration Through Law

Europe and the American Federal Experience

A Series under the General Editorship of
Mauro Cappelletti · Monica Seccombe · Joseph Weiler

Volume 5

The Legal Integration of Energy Markets

by
Terence Daintith and Stephen F. Williams



1987

Walter de Gruyter · Berlin · New York

Table of Contents

General Editors' Foreword	V
Authors' Preface	IX
Acknowledgements	X
List of Tables	XIV
Table of Cases	XV
Table of Constitutional and Treaty Provisions	XX
Table of Legislative Provisions	XXII
List of Abbreviations	XXV

Chapter One: Introduction

I. Energy Resources as an Integration Problem	1
A. The Local Sense of Possession	1
B. Definition of Property Rights in Energy-Resources	3
C. Energy as a Vital Element in a Unified Market	4
II. Background Facts and Issues	6
A. Degrees of Self-Sufficiency in Energy-Related Natural Resources ...	6
B. Different Structures for the Energy Supply Industry in Europe and the United States	8
III. Complexity and Explicitness in Legal Frameworks	15
IV. Geographical Aspects of Federal and Community Jurisdiction	18
Appendix to Chapter I	24

Chapter Two: State Interventions in Energy Markets

I. Introduction	29
II. Redistributive Interventions	31
A. Direct Export Restrictions	33
1. In the United States	33
2. In the European Community	35
B. The State as Market Participant	44
1. In the United States	45
(a) The Basic Doctrine	45
(b) Possible Rationales	48
(c) Possible Bases for Not Applying the Doctrine to Energy Resource Development	53
2. In the European Community	56
C. Taxation of Energy Sources	64
1. In the United States	64
(a) Introduction	64
(b) Discrimination: The Concept of "Exporting" a Tax	68
(c) "Fair Relation" to Services Provided by the Taxing State ...	73

(d) Multiple Taxation of Interstate Commerce: The "Substantial Nexus" and "Fair Apportionment" Tests	74
(e) Conclusion	77
2. In the European Community	77
III. Corrections of Market Failures (or Offsets to Inadequate Specification of Property Rights)	85
A. In the United States	85
1. "Common Pool" Problems	85
(a) Oil and Gas: Well-Spacing, Allowables and Market-Demand Prorationing	85
(b) Water: The Non-Ownership of Unappropriated Waters	90
2. Monopsony Relation Between Selling as Producer and Buying Pipeline (Coupled with Common Pool Problems)	92
3. Bilateral Monopoly Relation Between Pipeline as Seller and Distribution Firm as Buyer	94
B. In the European Communities	95

Chapter Three: Centralised Energy Policy

I. The United States	99
A. Federal Regulation of Wellhead Prices of Natural Gas	101
1. Origins	101
2. Purposes of Continued Regulation of Independents' Wellhead Prices	103
3. Consequences and Implications for the Federal Allocation of Powers	104
4. Sequels	108
(a) Passing of the Mid-1970's Natural Gas Crisis	108
(b) Effect of National Action on State Power to Correct Market Failures	109
B. Federal Intervention in Crude Oil Markets	113
1. The First Era: 1913-1973	114
(a) Tax Advantages	114
(b) Federal Enforcement of Market Demand Prorationing	114
(c) Import Quotas	115
2. The Second Era: 1973 to Indefinite Future	116
(a) 1973-1980: Price Controls and Entitlements (EPAA/EPCA)	116
(i) The Mechanics of the EPAA/EPCA Regime	117
(ii) Appraisal of the EPAA/EPCA Policy	122
(b) 1980 to the Indefinite Future	124
II. The European Communities	126
A. The Euratom Regime	126
B. The ECSC Regime for Coal	131
C. The EEC Regime for Oil and Gas Supplies	135

Chapter Four: Conclusions

I. Methods and Degrees of Integration of Energy Markets	143
II. Key Factors for Legal Integration in Energy Markets	145
A. The State as Resource-Owner and Entrepreneur	145
B. The Exercise of the Control Function	147

Table of Contents

XIII

C. The Community's Weakness in Central Governance Capacity	152
D. United States Strength in Central Governance Capacity	153
III. The Future Style of Community Action in the Energy Sector	155
References	159
Index	165
Index of Enterprises	174
Index of Authors and Names	175