

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,

Plaintiff,

v.

TOWN OF LIMA and DAVID KYLE,
in his official capacity as Town Board Chair,

Defendants.

MEMORANDUM

13-cv-187-bbc

Plaintiff Enbridge Energy has filed a motion for a preliminary injunction in which it seeks an order requiring defendants Town of Lima and David Kyle to allow plaintiff use of the town's roads while it inspects oil pipelines that plaintiff owns. Plaintiff relies on 28 U.S.C. § 1331 as a basis for jurisdiction, which applies when the plaintiff's claims arise under federal law.

In an order dated March 18, 2013, I noted that the first argument plaintiff raises in its brief in support of its motion for a preliminary injunction is that defendants "do not have authority" under *state* law to impose the conditions that they have. Plt.'s Br., dkt. #4, at 8-11. This argument raised two questions that I asked plaintiff to address in a supplemental brief: (1) whether this court has authority to decide the state law issues raised in plaintiff's motion for a preliminary injunction; and (2) whether the court should abstain from deciding plaintiff's federal constitutional claims, so that a state court could resolve the

state law issue, in accordance with Railroad Commission v. Pullman Co., 312 U.S. 496 (1941).

Having reviewed plaintiff's supplemental brief, I am persuaded that abstention is not appropriate because the only federal claim plaintiff is raising in its motion for a preliminary injunction is whether defendants' application of state law is preempted by federal law. Charles Alan Wright et al., 17A Federal Practice & Procedure § 4242 (3d ed.) (“[A]bstention should not be ordered on Pullman grounds” in case in which “the claim is not that the state law violates the federal constitution but only that it is contrary to a federal law that, under the Supremacy Clause, must control.”). With respect to the argument in plaintiff's motion that defendants' conduct is invalid under state law, plaintiff has disavowed any reliance on state law in its supplemental brief, so I will disregard that argument in deciding the motion for a preliminary injunction.

Entered this 25th day of March, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge