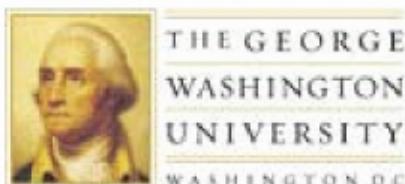


The Burger Court Opinion Writing Database

Gulf States Utilities Co. v. FPC
411 U.S. 747 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



M
Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
THE CHIEF JUSTICE

December 14, 1972

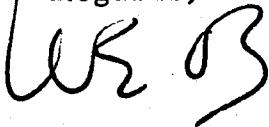
Re: No. 71-1178 - Gulf States Utilities Co. v. FPC

Dear Bill:

I voted tentatively to affirm this case but further study over last weekend persuades me that judicial intervention into the purposes of financing is not authorized, at least on the basis set out by the Court of Appeals.

I suggest you take responsibility for assigning this case.

Regards,

A handwritten signature consisting of the letters 'W' and 'B' joined together.

Mr. Justice Douglas

Copies to the Conference

2
Not
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 13, 1973

Re: No. 71-1178 - Gulf State Utilities Co. v. FPC

MEMORANDUM TO THE CONFERENCE:

I have found this a very difficult case from the beginning and that is why I asked Bill Douglas to take over. I am still having problems that cannot be resolved this week.

Regards,

WESB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1973

Re: No. 71-1178 - Gulf States Utilities Co. v. FPC

Dear Harry:

I find this a most difficult case as I suspect you did
but I will join you.

Regards,

WB

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 21, 1972

MEMORANDUM TO THE CONFERENCE:

After talking with Justice Blackmun
I have assigned No. 71-1178 - Gulf States
Utilities v. FPC to him.

W. O. D.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 29, 1973

Dear Harry:

Please join me in No. 71-1178 -
Gulf States Utilities v. Federal Power
Commission.

W. O. D.

Mr. Justice Blackmun

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1973

RE: No. 71-1178 Gulf States Utilities v.
Federal Power Commission

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

37
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 29, 1973

71-1178, Gulf States Utilities Company
v. FPC

Dear Lewis,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

B
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 3, 1973

Re: No. 71-1178 - Gulf States Utilities Co. v.
Federal Power Commission

Dear Harry:

Please join me in your memorandum for
this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 29, 1973

Re: No. 71-1178 - Gulf States Utilities v. FPC

Dear Harry:

I agree with your Memorandum
and would join it as an Opinion.

Sincerely,


T.M.

Mr. Justice Blackmun

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 27, 1973

Re: No. 71-1178 - Gulf States Utilities Co. v. Federal Power Commission, et al.

Dear Lewis:

I have struggled with this case and, for the moment at least, am adhering to my vote to affirm. An opinion to this effect has been prepared and is now with the printer and should be circulated soon.

This, for me, is a close case and, as I have written it, I am not sure that it is really very important. And I am not at all certain that my opinion will command a court.

I am personally deeply grateful to you for your confidence in permitting me to see the dissenting opinion you prepared some time ago. It is a good and a strong opinion and may well express the correct point of view. I have tried not to take advantage of the fact that I saw your opinion before my own was prepared.

Sincerely,



*I agree with your memorandum and will
have it set as an opinion*

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 3/28/73

1st DRAFT

Dec 1973

SUPREME COURT OF THE UNITED STATES

No. 71-1178

Gulf States Utilities Company, Petitioner,
v.
Federal Power Commission et al. } On Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit.

[April —, 1973]

MR. JUSTICE BLACKMUN, memorandum.

This case presents the question whether, when a public utility applies to the Federal Power Commission for authority to issue a security, as the utility is required to do under § 204 of the Federal Power Act, 16 U. S. C. § 824c,¹ the Commission, in passing upon the applica-

¹ § 824c. Issuance of securities; assumption of liabilities; filing duplicate reports with Securities and Exchange Commission.

(a) No public utility shall issue any security . . . unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue The Commission shall make such order only if it finds that such issue . . . (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. . . .

(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 15, 1972

No. 71-1178 Gulf States Utilities v. FPC

Dear Chief:

This refers to your note of December 14 in which you advised that you are no longer with the majority.

When there were only three of us for "reversal," Potter - as the senior - asked me to prepare a dissenting opinion. I will assume that you wish me to continue with this assignment, unless you advise to the contrary.

Sincerely,

Lewis

Mr. Chief Justice

cc: The Conference

January 18, 1973

Re: No. 71-1178 Gulf States v. FPC

Dear Harry:

As you may remember, Potter asked me to write the dissent in the above case. For the first time since I came on the Court, I have written a dissent before seeing the majority opinion.

As you have expressed doubt as to which way this case should be decided, I am tempted to inquire whether you would like to see my draft opinion. If it does not persuade you, at least this would give you a clear shot at me before you circulate an opinion.

I will gladly bring you a copy of what I have written if you would like to see it.

Sincerely,

Mr. Justice Blackmun

LFP, Jr.:pls

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1178

Gulf States Utilities Company, Petitioner,
v.
Federal Power Commission
et al. } On Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit.

[February —, 1973]

MR. JUSTICE POWELL, dissenting.

This case raises the question whether the Federal Power Commission (the "Commission") must consider possible anticompetitive effect on a public utility's application under § 204 of the Federal Power Act, 16 U. S. C. § 824c, for authority to issue a security. Section 204 provides in relevant part that the Commission shall authorize the issuance of a security:

"only if it finds that such issue or assumption (a) is for some *lawful object*, within the corporate purposes of the applicant and compatible with the *public interest*, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes." (Emphasis supplied) 16 U. S. C. § 824c.

Rejecting the Commission's own structuring of its responsibilities and repudiating its uniform administrative interpretation for more than a third of a century, the Court today finds implicit in § 204's use of the phrase "the public interest" a duty on the part of the Commission, when acting upon a financing application, to consider any possible anticompetitive effect that may be

CM
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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-1178

Circulated MAR 28 1973

Gulf States Utilities Company, Petitioner,
v.
Federal Power Commission et al.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

Recirculated:

[April —, 1973]

MR. JUSTICE POWELL, dissenting.

This case raises the question whether the Federal Power Commission (the "Commission") must consider possible anticompetitive effect on a public utility's application under § 204 of the Federal Power Act, 16 U. S. C. § 824c, for authority to issue a security. Section 204 provides in relevant part that the Commission shall authorize the issuance of a security:

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3

P. 1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1178

Gulf States Utilities Company, Petitioner,
v.
Federal Power Commission et al. } On Writ of Certiorari to the
United States Court of Appeals for the District
of Columbia Circuit.

[April —, 1973]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, dissenting.

This case raises the question whether the Federal Power Commission (the "Commission") must consider possible anticompetitive effect on a public utility's application under § 204 of the Federal Power Act, 16 U. S. C. § 824c, for authority to issue a security. Section 204 provides in relevant part that the Commission shall authorize the issuance of a security:

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To: The Chief Justice
Mr. Justice D
Mr. Justice B
Mr. Justice S
Mr. Justice W
Mr. Justice M
Mr. Justice B
Mr. Justice Re

From: Powell, J.

Circulated:

Recirculated:

MAR 30 1973

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-1178

Circulated:

Gulf States Utilities Company, Petitioner,
v.
Federal Power Commission et al.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

Recirculated: APR 2

1973

[April —, 1973]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

This case raises the question whether the Federal Power Commission (the "Commission") must consider possible anticompetitive effect on a public utility's application under § 204 of the Federal Power Act, 16 U. S. C. § 824c, for authority to issue a security. Section 204 provides in relevant part that the Commission shall authorize the issuance of a security:

"only if it finds that such issue or assumption (a) is for some *lawful object*, within the corporate purposes of the applicant and compatible with the *public interest*, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes." (Emphasis supplied) 16 U. S. C. § 824c.

Rejecting the Commission's own structuring of its responsibilities and repudiating its uniform administrative interpretation for more than a third of a century, the Court today finds implicit in § 204's use of the phrase "the public interest" a duty on the part of the Commission, when acting upon a financing application, to consider any possible anticompetitive effect that may be

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1973

Re: No. 71-1178 - Gulf States v. FPC

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,

SW

Mr. Justice Powell

Copies to the Conference