

The Burger Court Opinion Writing Database

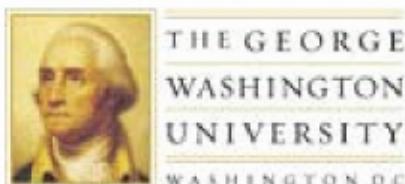
FPC v. Memphis Light, Gas & Water Division

411 U.S. 458 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



CHAMBERS OF
THE CHIEF JUSTICE

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

May 3, 1973

Re: No. 72-486 - FPC v. Memphis Light, Gas and Water Division
No. 72-488 - Texas Gas Transmission Corp. v. Memphis
Light, Gas and Water Division

Dear Bill:

Please join me.

Regards,

WFB

Mr. Justice Douglas

Copies to the Conference

111-6

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W.D.
Place for me
M

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

3rd DRAFT

4-23

SUPREME COURT OF THE UNITED STATES

Nos. 72-486 AND 72-488

Rehearing denied

Federal Power Commission,
Petitioner,
72-486 v.
Memphis Light, Gas and
Water Division, et al.
Texas Gas Transmission
Corporation, Petitioner,
72-488 v.
Memphis Light, Gas and
Water Division, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[April —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

We granted certiorari in these cases to determine whether § 441 of the Tax Reform Act of 1969, 26 U. S. C. § 167 (l), circumscribes the authority of the Federal Power Commission under the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, to permit a regulated utility to change its method of computing depreciation for rate-making purposes from "flow-through" to "normalization" with respect to property acquired prior to 1970 as well as "replacement" property.

Since the resolution of this issue depends largely on the background and history of § 441 and the Commission's regulatory powers, a brief review is in order at the outset. Section 167 of the Internal Revenue Code authorized taxpayers, including regulated utilities, to use accelerated or liberalized depreciation in calculating their

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 25, 1973

Nos. 72-486 and 72-488 -- FPC v. Memphis Light,
Gas & Water Division

Dear Bill:

Please join me in your opinion for the Court.

Sincerely yours,



Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1973

Nos. 72-486 & 72-488 - FPC v. Memphis
Light, Gas & Water Division

Dear Bill,

I am glad to join your opinion for the
Court in these cases.

Sincerely yours,

P.S.
P.S.

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 25, 1973

Re: No. 72-486 & No. 72-488 - FPC v. Memphis
Light, Gas and Water Division

Dear Bill:

Please join me in your opinion in this
case.

Sincerely,



Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 72-486 and 72-488 - FPC v. Memphis, etc.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1973

Re: No. 72-486 - FPC v. Memphis Light, Gas and Water Division
No. 72-488 - Texas Gas Transmission Corporation v. Memphis
Light, Gas and Water Division

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Douglas

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1973

Re: No. 72-486 Federal Power Commission
v. Memphis Light
No. 72-488 Texas Gas v. Memphis Light

Dear Chief:

I have just received a further telephone call from my former law firm which confirms, after additional checking there, that there is no conflict of interest involving clients.

Accordingly, I now feel free to participate, and wish to be recorded as reversing the judgment of the Court of Appeals for the District of Columbia.

Sincerely,



The Chief Justice

cc: The Conference



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1973

Re: No. 72-486 and 72-488 FPC v.
Memphis Light, Gas and Water

Dear Bill:

Please join me.

Sincerely,

W. Douglas

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 26, 1973

Re: No. 72-486 - FPC v. Memphis Light, Gas and Water

Dear Bill:

Please join me.

Sincerely,

WW

Mr. Justice Douglas

Copies to the Conference