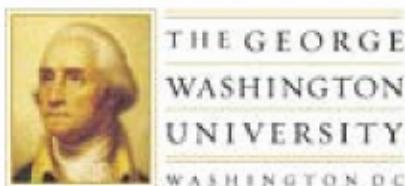


The Burger Court Opinion Writing Database

Mobil Oil Corp. v. FPC
417 U.S. 283 (1974)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1974

Re: No. 73-437 - Mobil Oil Corp. v. FPC
No. 73-457 - PSC of New York v. FPC
No. 73-464 - Municipal Distributors Group v. FPC

MEMORANDUM TO THE CONFERENCE:

I have not completed my study of these cases and as you know, the Solicitor General's brief on behalf of the Power Commission has not yet been received. There was no request for additional time but my recollection is that we had decided to fix one hour for all three cases on the assumption that there would be a request made for additional time. At present there will be three ten-minute arguments for one side and it seems to me these cases are of sufficient complexity and diversity that we would do well to advise the parties that we have enlarged their time to 45 minutes. Absent dissent, I will have the Clerk advise the parties to that effect by late tomorrow afternoon.

Regards,

WCR

cc: Mr. Rodak

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1974

Re: (73-437 - Mobil Oil Corp. v. FPC
(73-457 - PSC of New York v. FPC
(73-464 - Municipal Distributors Group v. FPC

SUPPLEMENTAL MEMORANDUM TO THE CONFERENCE:

Mike Rodak has called to my attention the fact that my earlier memo today was in error. There will be two 15-minute arguments for the petitioners; the respondents are dividing their time 25 and 5 minutes.

This does not change the fact that I think we have enough difficulty with the case to warrant enlarging the time. However, I will await your reactions, having in mind that we should not wait until Friday to resolve this issue as the Clerk must advise the parties tomorrow afternoon.

Regards,

WJ

Dear Chief
I have no objection to
giving each side 15 minutes
at our suggested time

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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1974

Re: Nos. 73-437) - Mobil Oil Corp. v. FPC
73-457) - Public Service Comm'n of N.Y. v. FPC
73-464) - Municipal Distributors Group v. FPC

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

RECEIVED

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

FEB 13 4 05 PM '74
February 13, 1974
CHAMBERS OF THE
CHIEF JUSTICE

Dear Chief:

RE: 73-437 MOBIL OIL CORP. V. FEDERAL POWER COMMISSION

The Motion by Shell Oil asks me to disqualify myself in this and in the related cases because of an alleged statement I made at Oxford, Mississippi. The alleged statement is not accurate but a grave misstatement (and misconception) of what I did say.

I was standing to questions from students and spoke from no manuscript. They asked about the "energy" crisis. I covered two points in my replies.

First. Beginning back in the 1920's conservation interests helped promote controlled production of oil in this country--the pro rata system the courts approved. This was to stabilize prices. This meant a controlled supply so that cut-throat prices would not prevail. That pro rata system was followed by embargoes on oil from abroad. As domestic use increased, supplies ran low; and imports were at last relaxed; but then came the Arab-Israeli war and the Arab embargo. This was a thumb nail sketch.

In no way were oil companies charged with creating the energy crisis or in manipulating affairs for their own ends. The controlled supply was governmental action (at state and federal

February 13, 1974

-2-

levels) not oil company action, though I assume they did approve of the policy as prices mount.

Second. Since World War II, only one per cent of all R & D funds on energy supplied by the federal government was devoted to solar energy and not much more to hydrogen fusion. Those allocations (which determine priorities) were made by the Bureau of the Budget with whom a business council of 65 sat as consultants. I explained that there were many advisory committees to agencies in Washington, D. C.--at least 3200. They are the ones Senator Metcalf of Montana long inveighed against. He indeed headed the drive to have the Federal Advisory Committee Act (86 Stat 770) passed. Whether oil was represented in the council of 65, I do not know. I did not even imply that oil interests were represented there.

I said that studies showed that there was a close alignment between oil, gas, coal, and uranium interests, the four being often linked together through affiliates or subsidiaries. That was said not to condemn oil or any other interest but to illustrate that it was natural for existing investments to seek protection, for after all no one owned the sun or the hydrogen atom that could produce hydrogen fusion or the wind which some New Englanders are promoting as a substitute for oil.

February 13, 1974

-3-

Nothing derogatory to any owner of any fuel was said or intended. The thrust of my remarks was that in light of the Arab blackmail, it was time for us to get on with solar energy, hydrogen fusion, the new energy wind mills, and the geo-thermal supplies.

I did say whimsically that Lincoln's phrase "of the people, by the people, for the people" was being displaced by "of the corporation, by the corporation, for the corporation" but that was not aimed at oil but to the whole structure of our society greatly conditioned by decisions in the 1880's that a corporation was a "person" within the meaning of the Fourteenth Amendment.

I never accused the oil industry of any wrong doing. It was state and federal actions that created a low supply and they denied funds for solar energy and hydrogen fusion.

The only reason for me to disqualify myself in those cases is that (a) I have had a Shell credit card for years; (b) my credit standing with Shell is high; (c) I am, if anything, prejudiced in favor of Shell because out west it is the one company that has turned handsprings to serve the Douglas family well.

W. O. Douglas
William O. Douglas

The Chief Justice

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 31, 1974

Dear Bill:

In 73-437, Mobil Oil Corp. v. Federal Power Commission, and the two companion cases please join me in your opinion for the Court.

W.D.
William O. Douglas

Mr. Justice Brennan

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-437, 73-457, AND 73-464

Mobil Oil Corporation, Petitioner, 73-437 <i>v.</i> Federal Power Commission.	On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.
Public Service Commission of the State of New York, Petitioner, 73-457 <i>v.</i> Federal Power Commission.	
Municipal Distributors Group, Petitioner, 73-464 <i>v.</i> Federal Power Commission.	

[June --, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We review here the affirmance by the Court of Appeals for the Fifth Circuit of a 1971 order of the Federal Power Commission¹ that established an area rate structure for interstate sales² of natural gas produced in the Southern

¹ Opinion 598, 46 F. P. C. 86 (1971), together with the Commission's order correcting certain errors and denying rehearing as to all other issues, Opinion 598-A, 46 F. P. C. 633 (1971).

² As in *Permian Basin Area Rate Cases*, 390 U. S. 747, 754 n. 2 (1968), sales within the Commission's jurisdiction will, for convenience, be termed "jurisdictional" or "interstate" sales. See n. 17, *infra*.

MEMORANDUM TO THE CONFERENCE

CASES HELD FOR NO. 73-437, 73-457 & 73-464, Mobil Oil Corporation, et al. v. Federal Power Commission

No. 73-438, Mobil Oil Corp. v. Federal Power Commission

The Fifth Circuit affirmed an FPC order that established an area structure for the "Other Southwest Area." Many provisions are counterparts of the Southern Louisiana order involved in No. 73-437, including: (1) separate maximum rate ceilings for three "vintages" of gas, (2) automatic, periodic escalations for each vintage, (3) a formula for the "forgiveness" of refunds owed by area producers, (4) "moratoria" on rate increases, and (5) no allowances for royalty agreements that exceed those contemplated by the area rates. The order does not have provisions for contingent escalations.

The Court of Appeals, although affirming, held (as in Southern Louisiana) that the Commission would have "authority" to "alter or modify" the flowing gas rate, refund liability, and moratoria either prospectively or retroactively. The Court of Appeals held that its Southern Louisiana decision controlled this one. Similarly, I think our decision in Southern Louisiana controls our disposition of this one. I would therefore Deny. Incidentally, this opinion was written after the Commission announced its intention to set uniform rates for the nation as a whole via rulemaking. This prompted the Court of Appeals to make a comment which is equally pertinent to our role. It is:

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

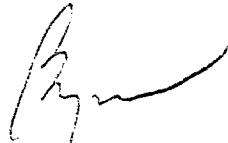
June 4, 1974

Re: Nos. 73-437, 73-457 & 73-464 - Mobil Oil
Corp. v. FPC

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 10, 1974

Re: No. 73-437 -- Mobil Oil Corp. v. FPC
No. 73-457 -- PSC of New York v. FPC
No. 73-464 -- Municipal Distributors Group v. FPC

Dear Chief:

I have no objection to giving each side 45 minutes
as you suggest.

Sincerely,



T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 3, 1974

Re: No. 73-437, Mobil Oil Corp. v. Fed. Power Com.
No. 73-457, PSC of New York v. FPC
No. 73-464, Municipal Distributors Group v. FPC

Dear Bill:

Please join me.

Sincerely,

T. M.
T. M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

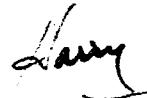
June 3, 1974

Dear Bill:

Re: No. 73-437 - Mobil Oil Corp. v. FPC
No. 73-457 - PSC v. FPC
No. 73-464 - Municipal Distributors Group v. FPC

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1974

Re: No. 73-437, No. 73-457, No. 73-464 - Mobil Oil
v. FPC, et al.

Dear Bill:

Please join me in the opinion for the Court you have prepared in these cases.

Sincerely,

WW

Mr. Justice Brennan

Copies to the Conference