

# The Burger Court Opinion Writing Database

*Jackson v. Metropolitan Edison Co.*  
419 U.S. 345 (1974)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

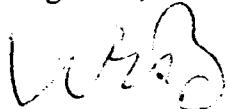
December 3, 1974

Re: 73-5845 - Jackson v. Metropolitan Edison Co.

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES. <sup>1871.</sup> Douglas; J.

No. 73-5845

Circulate: 12-11

**Recirculate:**

Catherine Jackson, etc.,  
Petitioner,  
v.  
Metropolitan Edison  
Company. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[December —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

I reach the opposite conclusion from that reached by the majority on the state action issue.

The injury alleged took place when respondent discontinued its service to this householder without notice or opportunity to remedy or contest her alleged default, even though its tariff provided that respondent might "discontinue its service on reasonable notice."<sup>1</sup> May a State allow a utility—which in this case has no competitor—to exploit its monopoly in violation of its own tariff? May a utility have complete immunity under federal law when the State allows its regulatory agency to become the prisoner of the utility or, by a listless attitude of no concern, to permit the utility to use its monopoly power in a lawless way?

In *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961), we said: "Only by sifting facts and weighing

<sup>1</sup> Rule 15 of the tariff provides in part:

"Company reserves the right to discontinue its service on reasonable notice and to remove its equipment in case of nonpayment of bill or violation of the Pennsylvania Public Utility Commission's or Company's Rules and Regulations; or, without notice, for abuse, fraud, or tampering with the connections, meters or other equipment of Company. Failure by Company to exercise this right shall not be deemed a waiver thereof."

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

*p.5*  
3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

From: [Redacted]

No. 73-5845

*12-18*  
Circulated

Catherine Jackson, etc.,  
Petitioner,  
v.  
Metropolitan Edison  
Company. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[December —, 1974]

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 26, 1974

Want to see  
you!

RE: No. 73-5845 Jackson v. Metropolitan Edison Co.

Dear Bill:

I contemplate writing a dissent in the above in due course. I may conclude that we ought dismiss as improvidently granted, which was the view I expressed at conference.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES Brennan, J.

No. 73-5845

Circulated: 12-10-74

Recirculated: \_\_\_\_\_

Catherine Jackson, etc.,

Petitioner,

v.

Metropolitan Edison  
Company.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Third Circuit.

[December --, 1974]

MR. JUSTICE BRENNAN, dissenting.

I do not think that a controversy existed between petitioner and respondent entitling petitioner to be heard in this action. Under Pennsylvania law respondent's duty under 66 Pa. Stat. § 1171 to provide service was limited by § 25 of the General Rules and Regulations, the Electric Service Tariff, on file with the Pennsylvania Public Utility Commission, to provision of such service only to "customers" [REDACTED] defined as "any person . . . lawfully receiving service from the Company." Petitioner, as the Court notes, ceased being a "customer" or "consumer" in September 1970 when her account was terminated for nonpayment of bills. That termination was proper pursuant to Rule 15 of the Tariff quoted by the Court in n. 1. From September 1970 to September 1971, respondent's "customer" was James Dodson and his delinquency in payment for service during that period, not petitioner's delinquency before September 1970, was the occasion for the termination of service on October 6, 1971. An effort by petitioner at that time to have service continued if she paid \$30 on account of her delinquent 1970 bill failed when respondent rejected the offer and shut off the service. In these circumstances petitioner had no basis in my view for the claimed entitlement under 66 Pa. Stat. § 1171 quoted by the Court in n. 2, and there-

Oct 74  
Wm. Douglas

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 26, 1974

No. 73-5845, Jackson v.  
Metropolitan Edison Co.

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

*RS.*  
\_\_\_\_

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 11, 1974

Re: No. 73-5845 - Jackson v. Metropolitan Edison

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

Toc: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

## Ist DRAFT

From: Marshall, J.

Circulated: DEC 19 1974

No. 73-5845

Recirculated:

Catherine Jackson, etc.,  
Petitioner,  
v.  
Metropolitan Edison  
Company. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[December 1, 1974]

MR. JUSTICE MARSHALL, dissenting.

I agree with my Brother BRENNAN that this case is a very poor vehicle for resolving the difficult and important questions presented today. The confusing sequence of events leading to the challenged termination make it unclear whether petitioner has a property right under state law to the service she was receiving from the respondent company. Because these complexities would seriously hamper resolution of the merits of the case, I would dismiss the writ as improvidently granted. Since the Court has disposed of the case by finding no state action, however, I think it appropriate to register my dissent on that point.

I

The Metropolitan Edison Company provides an essential public service to the people of York, Pennsylvania. It is the only entity, public or private, that is authorized to supply electric service to most of the community. As a part of its charter to the company, the State imposes extensive regulations, and it cooperates with the company in myriad ways. Additionally, the State has granted its approval to the company's mode of service termination—the very conduct that is challenged here. Taking these factors together, I have no difficulty finding state

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 27, 1974

Re: No. 73-5845 - Jackson v. Metropolitan Edison Co.

Dear Bill:

Please join me.

Sincerely,

*Harry*

Mr. Justice Rehnquist

cc: The Conference

October 25, 1974

No. 73-5845 Jackson v. Metropolitan  
Edison Co.

Dear Chief:

In doing some "homework" on the argued cases, it has just occurred to me that I may have a problem of possible recusal in the above case.

I own no securities in any electric or telephone utility, but I do own stock in Commonwealth Natural Gas Corporation. The latter is a Virginia company engaged primarily in the intrastate pipeline transportation of natural gas. It owns, however, the Portsmouth Gas Company which serves the retail market in that city. Commonwealth also owns a bottled gas company. I assume that both of these subsidiaries would cut off service when customers fail to pay their bills.

Whether this sort of remote and indirect interest justifies recusal is a new question for me. I would welcome your views, and also I may confer with Potter Stewart (who served on the committee which revised the Code of Judicial Ethics) and other Justices.

As I mentioned at the Conference today, I have a longstanding commitment to visit Stanford (Palo Alto) this coming weekend. Jo and I leave early Saturday morning, we spend Sunday and Monday at Stanford Law School, and go on up to Portland to visit our daughter Molly. I will only remain in Portland for one day, and fly back on Wednesday.

Sincerely,

The Chief Justice

lfp/ss

November 26, 1974

No. 73-5845 Jackson v. Metropolitan Edison

Dear Bill:

Give me a ring about the above case at your convenience.

What would you think of substituting something along the lines of the enclosed rider for the last sentence beginning at the bottom of page 11, and going through the first five lines at the top of page 12.

Sincerely,

Mr. Justice Rehnquist

1fp/ss  
Enc.

November 27, 1974

No. 73-5845 Jackson v. Metropolitan  
Edison Company

Dear Chief:

This refers to my earlier letter, in which I suggested the possibility of recusing myself in the above case.

I have since talked to Potter, in view of his having served on the Committee which wrote the new Code of Judicial Conduct. Potter sees no reason for me to consider recusal under the circumstances outlined in my letter to you.

In view of our previous discussions, I understand that this also is your view. Accordingly, I have concluded to remain in this case.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 27, 1974

No. 73-5845 Jackson v. Metropolitan  
Edison Company

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

## 1st DRAFT

From: Rehnquist, J.

## SUPREME COURT OF THE UNITED STATES

Circulated: 11-25-74

No. 73-5845 Recirculated: \_\_\_\_\_

Catherine Jackson, etc.,  
Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Metropolitan Edison } peals for the Third Circuit.  
Company.

[November —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Metropolitan Edison Company is a privately owned and operated Pennsylvania corporation which holds a certificate of public convenience issued by the Pennsylvania Public Utilities Commission empowering it to deliver electricity to a service area which includes the city of York, Pennsylvania. As a condition of holding its certificate, it is subject to extensive regulation by the Commission. Under a provision of its general tariff filed with the Commission, it has the right to discontinue service to any customer on reasonable notice of nonpayment of bills.<sup>1</sup>

<sup>1</sup> Metropolitan Edison Company Electrical Tariff, Electrical Pa. P. U. C. No. 41, Rule 15. This portion of Metropolitan's general tariff, filed with the Utility Commission under the notice filing requirement of 66 Pa. Stat. § 1142 (since the general tariff involved a rate increase) provides in pertinent part:

"Rule 15. Cause for discontinuance of service. Company reserves the right to discontinue its service on reasonable notice and to remove its equipment in the case of nonpayment of bill. . . ."

Its filed tariff also gives it the right to terminate service for fraud or for tampering with a meter but Metropolitan did not seek to assert these grounds below.

STYLISTIC CHANGES and  
Changes 4/12

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

2nd DRAFT From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11-25-74  
Recirculated: 11-29

No. 73-5845

Catherine Jackson, etc.,  
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— Changes 2,3,6

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

3rd DRAFT

From: Rehnquist, J.

**SUPREME COURT OF THE UNITED STATES**

circulated:

11-25-74

No. 73-5845

Recirculated:

12-11

Catherine Jackson, etc.,

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