

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,

W. H. R.

Mr. Justice Rehnquist

Copies to the Conference

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REPRODUCED FROM THE COLLECTION

IN THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

No. 73-5845

Circulate: 12-17

Recirculate:

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 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."¹ 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

¹ 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."

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U. S. SUPREME COURT

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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: Mr. [illegible]

No. 73-5845

Circular [illegible]

12-18

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 DOUGLAS, dissenting.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 26, 1974

Wait for the
dissent

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 ex-
pressed at conference.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
U.S. SUPREME COURT

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

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" 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-

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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,



Mr. Justice Rehnquist

Copies to the Conference

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✓
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

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OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

154-4

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

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 Ap-
peals for the Third Circuit.

[December —, 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

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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

✓

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

lfp/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. 20543

November 27, 1974

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 73-5845 Jackson v. Metropolitan
Edison Company

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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U.S. DEPT. OF COMMERCE

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,
v.
Metropolitan Edison
Company.

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

[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.¹

¹ 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.

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

✓
STYLISTIC CHANGES and
Changes 4, 12

2nd DRAFT From: Rehnquist, J.

Circulated: 11-25-74
SUPREME COURT OF THE UNITED STATES
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.,
Petitioner,
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