

The Burger Court Opinion Writing Database

FERC v. Pennzoil Producing Co.
439 U.S. 508 (1979)

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

January 11, 1979

No. 77-648 - FERC v. Pennzoil

Dear Byron:

I join.

Regards,

W. B.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 3, 1979

RE: No. 77-648 Federal Energy Regulatory Commission
v. Pennzoil Producing Company, et al.

Dear Byron:

I agree fully with your Memorandum in the above
and will be happy to join it as the opinion for the
Court.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 3, 1979

Re: No. 77-648, FERC v. Pennzoil Producing Co.

Dear Byron,

I did not participate in the consideration or decision of this case, and should appreciate that fact being noted at the foot of the Court's opinion.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

BRW
Planned by
Planned by

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

From: Mr. Justice White

Circulated: 3 JAN 1973

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-648

Federal Energy Regulatory Commission, Petitioner,
v.
Pennzoil Producing Company
et al.

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

[January —, 1979]

Memorandum of MR. JUSTICE WHITE.

The major issue in this case involves the authority of the Federal Energy Regulatory Commission, petitioner herein, to grant or refuse to grant individual producers special relief from applicable area and nationwide rates set by the Commission for the sale of natural gas. The Court of Appeals for the Fifth Circuit set aside what it considered to have been the decision of the Commission that under the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, it did not have authority to grant exceptional relief which would allow producers to pass through to interstate customers increased royalty costs based upon the intrastate price of natural gas. A secondary issue involves a question of abandonment under § 7(b) of the Act, 15 U. S. C. § 717f (b), and an application of our decision last Term in *California v. Southland Royalty Co.*, 436 U. S. 519 (1978), reversing 543 F. 2d 1134 (CA5 1976).

I

Respondent United Gas Pipeline Company (United) purchases for resale in the interstate market natural gas produced by respondents Pennzoil Oil Producing Company and Shell Oil Company (Producers) from the Gibson field in southern Louisiana. Producers' prices are subject to Commission reg-

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

From: Mr. Justice White

Circulated:

Recirculated: 5 JAN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-648

Federal Energy Regulatory Commission, Petitioner,

v.

Pennzoil Producing Company
et al.

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

[January —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The major issue in this case involves the authority of the Federal Energy Regulatory Commission, petitioner herein, to grant or refuse to grant individual producers special relief from applicable area and nationwide rates set by the Commission for the sale of natural gas. The Court of Appeals for the Fifth Circuit set aside what it considered to have been the decision of the Commission that under the Natural Gas Act, 15 U. S. C. § 717 *et seq.*, it did not have authority to grant exceptional relief which would allow producers to pass through to interstate customers increased royalty costs based upon the intrastate price of natural gas. A secondary issue involves a question of abandonment under § 7 (b) of the Act, 15 U. S. C. § 717f (b), and an application of our decision last Term in *California v. Southland Royalty Co.*, 436 U. S. 519 (1978), reversing 543 F. 2d 1134 (CA5 1976).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1979

MEMORANDUM TO THE CONFERENCE

Case Held for No. 77-648
Federal Energy Regulatory Commission v. Pennzoil

The only case held is a petition for rehearing in No. 76-1694, Mobil Oil Corp. v. Lightcap, et al. The issue is whether the Kansas Supreme Court was in error in holding that a provision in a gas lease requiring the producer (Mobil) to pay royalties on the basis of the "market value" of the gas refers to the price of gas in the unregulated, intrastate, market. Mobil's primary argument is that FERC has jurisdiction over royalty rates, a contention rejected in Mobil Oil Corp. v. FPC, 149 U.S. App. D. C. 310, 463 F. 2d 256 (1971), cert. denied, 406 U.S. 976 (1972). In Pennzoil, FERC acknowledged, for purposes of that case only, that it did not have jurisdiction over royalty rates.

FERC supported the petition for rehearing on the ground that if FERC prevailed in Pennzoil in its assertion that it did not have "authority" to permit pass-through of producer royalties based on the unregulated market value of gas, then producers paying such royalties might be put in an "untenable

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1979

Re: No. 77-648 - Federal Energy Regulatory
Commission v. Pennzoil Producing Co.

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

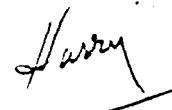
January 4, 1979

Re: No. 77-648 : FERC v. Pennzoil Producing Co.

Dear Byron:

I go along.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 3, 1979

No. 77-648 Federal Energy v. Pennzoil

Dear Byron:

Please show at the end of the next draft of your memorandum that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 8, 1979

Re: No. 77-648 FERC v. Pennzoil Producing Co.

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1978

Re: 77-648 - Federal Energy Regulatory
Comm. v. Pennzoil Producing Co.

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference