

The Burger Court Opinion Writing Database

Energy Reserves Group, Inc. v. Kansas Power & Light Co.

459 U.S. 400 (1983)

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 29, 1982

Re: No. 81-1370, Energy Reserves Group, Inc. v.
Kansas Power & Light Co.

Dear Harry:

I have had some problems with Part II-C and Part III. On Part III I think my concerns have receded but I tend to agree with Lewis and Bill on Part II-C.

I therefore join except as to Part II-C.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

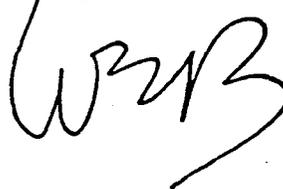
January 14, 1983

RE: 81-1370 - Energy Reserves Group v. Kansas Power & Light
Co.

Dear Lewis:

I join your concurring opinion.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

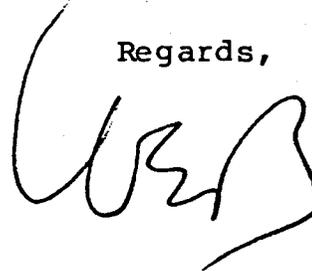
January 14, 1983

MEMORANDUM TO THE CONFERENCE:

RE: 81-1370 - Energy Reserves Group., Inc. v. Kansas
Power and Light Co.

Justice Blackmun has requested that the opinion in this case not be announced on Tuesday.

Regards,



Copies to the Conference

cc: Mr. Stevas
Mr. Goldstraw

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 21, 1982

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'82 DEC 22 A10:13

RE: No. 81-1370 Energy Reserves v. Kansas Power &
Light Co.

Dear Harry:

I agree.

Sincerely,



Justice Blackmun

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Supreme Court of the United States

Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 02 1980 10:12

Re: 81-1370 -

Energy Reserves Group, Inc. v.
The Kansas Power and Light Company

Dear Harry,

I agree.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1982

Re: No. 81-1370 - Energy Reserves Group v.
The Kansas Power and Light Company

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1370

ENERGY RESERVES GROUP, INC., APPELLANT *v.*
 THE KANSAS POWER AND LIGHT COMPANY

ON APPEAL FROM THE SUPREME COURT OF KANSAS

[December —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the regulation by the State of Kansas of the price of natural gas sold at wellhead in the intrastate market. It presents a federal Contract Clause issue and a statutory issue.

I

On Sept. 27, 1975, The Kansas Power & Light Company (KPL), a public utility and appellee here, entered into two intrastate natural gas supply contracts with Clinton Oil Company, the predecessor-in-interest of appellant Energy Reserves Group, Inc. (ERG). Under the first contract, KPL agrees to purchase gas directly at the wellhead on the Spivey-Grabs Field in Kingman and Harper Counties in southern Kansas. The second contract obligates KPL to purchase from the same field residue gas, that is, gas remaining after certain recovery and processing steps are completed. The original contract price was \$1.50 per thousand cubic feet (Mcf) of gas. The contracts continue in effect for the life of the field or for the life of the processing plants associated with the field.

A

Each contract contains two clauses known generically as indefinite price escalators. The first is a governmental price escalator clause; this provides that if any governmental au-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1982

Re: No. 81-1370 - ERG v. Kansas Power & Light Co.

Dear John:

Thanks for your letter of today.

I shall be happy to use your suggested revision of the first sentence of part IIB. Would the following revision of the first sentence of part IIC be acceptable to you:

"To the extent, if any, the Kansas Act impaired ERG's contractual interests, the Kansas Act rests on, and is prompted by, significant and legitimate state interests."

Sincerely,



Justice Stevens

cc: The Conference

STYLISTIC CHANGES

pp. 1, 11, 15

RECEIVED
SUPREME COURT U.S.
JUSTICE

'82 DEC 35 P1:33

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1370

**ENERGY RESERVES GROUP, INC., APPELLANT v.
THE KANSAS POWER AND LIGHT COMPANY**

ON APPEAL FROM THE SUPREME COURT OF KANSAS

[January —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.*

This case concerns the regulation by the State of Kansas of the price of natural gas sold at wellhead in the intrastate market. It presents a federal Contract Clause issue and a statutory issue.

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*THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST do not join in Part II-C of this opinion.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 17, 1983

Re: No. 81-1370 - ERG v. Kansas Power and Light Co.

Dear Lewis:

Thank you for bringing in a copy of your separate concurrence in this case. If the concurrence remains, I shall append the following footnote at the end of the opinion:

"The point espoused by the concurring opinion has been made before, but to no avail. See O'Shea v. Littleton, 414 U.S. 488, 504 (1974) (opinion concurring in part). It is interesting to note that the three concurring Justices took exactly the opposite position in Littleton by joining the Court's entire opinion there, despite the fact that the first prong of that opinion was dispositive of the case. That, too, was an 'even if' analysis. See id., at 499. It seems that, in the view of those Justices, what was proper there is improper here."

I would prefer not to add this footnote, and it will go in only if the three of you persist in the separate concurrence. I must have my little fun. Will you let me know?

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALLCHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 21, 1982

'82 DEC 22 AIO:14

81-1370 Energy Reserve Group, Inc. v. KP&L Co.

Dear Harry:

Please join me in the judgment and all of your opinion except Part II-C. The first sentence in Part II-B states that:

"Our constitutional inquiry need go no further than the threshold determination whether the Kansas Act has impaired substantially ERG's contractual rights". P. 11.

Your conclusion in Part II-B, as I read it, is that there was no impairment of ERG's reasonable expectations by the Kansas Act. I agree with this.

Part C, however, commences with the following sentence:

"Even if the Kansas Act did impair substantially ERG's contractual interests, the Kansas Act would pass muster under the Contract Clause because it rests on, and is prompted by, significant and legitimate state interests."

It therefore seems to me that though concededly unnecessary, Part II-C does "go further". I may not disagree with what you have written, although some of the language possibly could be viewed as some retreat from United States Trust Company and Allied Structural Steel Co. But, I would prefer not to make an unnecessary holding.

For me, this is a far easier Contract Clause case than any we have had recently because of the pervasive regulation of the rates and services of utilities.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1983

81-1370 Energy Reserves v. Kansas Power & Light

Dear Harry:

In view of the changes made in your recirculation of January 4, I may think it advisable to explain why I do not join Part II-C.

I will try to get to this promptly.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

RECEIVED
CHAMBERS OF THE
CHIEF JUSTICE

OK

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 14, 1983

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81-1370 Energy Reserves Group v. Kansas Power & Light Co.

Dear Chief and Bill:

Here is a draft of my concurring opinion.

I would like to know whether you wish me to include your names. If I could hear from you today, this could come down next week unless Harry thinks otherwise.

Sincerely,

L. F. P.

Lewis -
include me in
wms

The Chief Justice
Justice Rehnquist

LFP/vde

Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: JAN 14 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1370

ENERGY RESERVES GROUP, INC., APPELLANT *v.*
 THE KANSAS POWER AND LIGHT COMPANY

ON APPEAL FROM THE SUPREME COURT OF KANSAS

[January —, 1983]

JUSTICE POWELL, concurring.

I concur in the judgment and all of the Court's opinion except Part II-C. The Court concludes in Part II-B that there has been no substantial impairment of ERG's contractual rights. The closing sentence states that "ERG's reasonable expectations have not been impaired by the Kansas Act." *Ante*, at 15. This conclusion is dispositive, and it is unnecessary for the Court to address the question of whether, if there were an impairment of contractual rights, it would constitute a violation of the Contract Clause. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234, 245 (1978).

The Court concludes in Part II-C that even if ERG's "contractual interests" were impaired, the Act furthers "significant and legitimate state interests" and is a valid exercise of the state's police power. *Ante*, at 15-18. I do not necessarily disagree with this conclusion, particularly in the context of the pervasive regulation of public utilities. I decline to join Part II-C, however, because our discussion of the issue in Part II-B disposes of this case.

Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

JAN 17 1983

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1370

ENERGY RESERVES GROUP, INC., APPELLANT *v.*
 THE KANSAS POWER AND LIGHT COMPANY

ON APPEAL FROM THE SUPREME COURT OF KANSAS

[January —, 1983]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, concurring.

I concur in the judgment and all of the Court's opinion except Part II-C. The Court concludes in Part II-B that there has been no substantial impairment of ERG's contractual rights. The closing sentence states that "ERG's reasonable expectations have not been impaired by the Kansas Act." *Ante*, at 15. This conclusion is dispositive, and it is unnecessary for the Court to address the question of whether, if there were an impairment of contractual rights, it would constitute a violation of the Contract Clause. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234, 245 (1978).

The Court concludes in Part II-C that even if ERG's "contractual interests" were impaired, the Act furthers "significant and legitimate state interests" and is a valid exercise of the state's police power. *Ante*, at 15-18. I do not necessarily disagree with this conclusion, particularly in the context of the pervasive regulation of public utilities. I decline to join Part II-C, however, because our discussion of the issue in Part II-B disposes of this case.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 17, 1983

81-1370 Energy Reserve v. Kansas Power & Light

Dear Harry:

I will retain my concurring opinion.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

83 JAN 18 1983

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 23, 1982

Re: No. 81-1370 Energy Reserves Group, Inc. v.
The Kansas Power & Light Co.

Dear Harry:

For pretty much the same reasons that Lewis gives in his letter of December 21st, I, too, join all but Part II-C of your opinion.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1982

Re: 81-1370 - Energy Reserves Group v. The
Kansas Power and Light Co.

Dear Harry:

Unlike Lewis, I am not satisfied that parts II-B and II-C provide adequate independent grounds for rejecting the Contract Clause claim. I believe they complement one another. I do agree, however, that there is tension between the language in the two sentences he quotes in his letter. Perhaps you could make all of us happy by making two revisions.

On page 11, possibly revise the first sentence of part B to read:

"The threshold determination is whether the Kansas Act has impaired substantially ERG's contractual rights."

On page 15, possibly revise the first sentence of part C to read:

"The Kansas Act's impairment of ERG's contractual interests rests on, and is prompted by, significant and legitimate state interests."

Any comparable changes would satisfy me. I am afraid Lewis' position would exempt all price control legislation from Contract Clause scrutiny, and I am not sure we should go that far.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1982

Re: 81-1370 - Energy Reserves Group v. The
Kansas Power and Light Co.

Dear Harry:

Yes.

Please join me. Happy new year!

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 17, 1983

Re: 81-1370 - ERG v. Kansas Power & Light

Dear Harry:

7
✓
My disagreement with the separate writing in this case rests on a somewhat different analysis than the comment that you make in your proposed additional footnote. In my judgment, the opinion which you have written actually rests decision on a narrower ground than the position that Lewis espouses because he, in effect, argues that the first part of your opinion is sufficient to dispose of the entire case, whereas I am persuaded that the two parts buttress one another and leave open the possibility that neither would be sufficient by itself. In other words, although the concurrence purports to adopt a narrower ground, I think in fact it is substantially broader than the one that the opinion adopts.

In all events, for whatever it may be worth, I would prefer that you not add the additional footnote to the Court's opinion. I think it is really unnecessary and tends to detract somewhat from what is otherwise a fine opinion resting on its own analysis.

Respectfully,



Justice Blackmun

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'82 DEC 22 A10:12

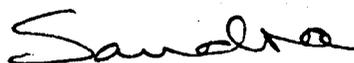
December 20, 1982

Re: No. 81-1370 Energy Reserves Group v. The
Kansas Power and Light Company

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference