

The Burger Court Opinion Writing Database

Metropolitan Edison Co. v. People Against Nuclear Energy

460 U.S. 766 (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

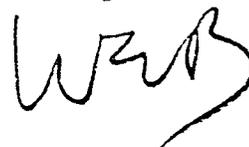
March 31, 1983

RE: No. 81-2399) - Metro Co. v. People Against Nuclear
Energy
No. 82-358) - U.S. Nuclear Regulatory Commission v.
People Against Nuclear Energy

Dear Bill:

I join your second draft.

Regards,



Justice Rehnquist

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

CHAMBERS OF
THE CHIEF JUSTICE

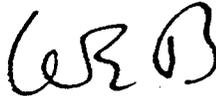
May 11, 1983

Re: (81-2399 - Metropolitan Edison Company v. PANE
(
(82-358 - NRC v. PANE)

Dear Bill:

I join your April 28 proposed change.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 24, 1983

Re: No. 81-2399--Metropolitan Edison Co. v. PANE

Dear Bill:

Your opinion captures my own views in this case very well. I would, however, suggest adding two footnotes to express some qualifications that I think are already implicit in the opinion, but which should perhaps be made explicit in order to avoid the possibility of misunderstanding.

First, would it possible for you to add something along the following lines as a footnote off the citation to Prosser on p. 7:

In drawing this analogy, we do not mean to suggest that any cause-effect relationship too attenuated (or too probabilistic) to merit damages in a tort suit would also be too attenuated to merit notice in an environmental impact statement. Quite the contrary. In the context of both tort law and NEPA, however, courts must look to underlying policies or legislative intent in order to draw a manageable line between those causal chains which may require judicial intervention and those which do not.

In making this suggestion, I have in mind, for example,

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purely physical causal chains (smokestack emissions in Ohio to acid rain in Maine to dead fish in Maine lakes to starvation of fish-eating birds, etc.), which might be too "attenuated" to merit damages, but which would nevertheless come within the core concerns of NEPA.

Second, could you add something along the following lines as a footnote to the last sentence of the middle paragraph of p. 8 (ending "beyond the reach of NEPA.")

In this respect the psychological injury arising out of a perception of risk is quite different from, for example, the psychological injury arising out of the direct impact upon the senses of an immediate change in the physical environment. See Chelsea Neighborhood Ass'ns v. United States Postal Service, 516 F.2d 378, 388 (CA2 1975).

Language to this effect would go a long way towards firming up your statement on p. 4 that "effects on human health can be cognizable under NEPA, and ... human health may include psychological health."

Sincerely,


WJB, Jr.

Justice Rehnquist

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Metropolitan Edison Co. v. PANE

No. 81-2399

JUSTICE BRENNAN, concurring.

I join the opinion of the Court. There can be no doubt that psychological injuries are cognizable under NEPA. See ante, at 4. As the Court points out, however, the particular psychological injury alleged in this case did not arise, for example, out of the direct sensory impact of a change in the physical environment, cf. Chelsea Neighborhood Associations v. United States Postal Service, 516 F.2d 378, 388 (CA2 1975), but out of a perception of risk. Ante, at 8. In light of the history and policies underlying NEPA, I agree with the Court that this crucial distinction "lengthens the causal chain beyond the reach" of the statute. Ibid.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1983

Re: No. 81-2399 --
Metropolitan
Edison Co. v. Pane

Dear Bill,

I agree.

Sincerely,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-2399 AND 82-358

METROPOLITAN EDISON COMPANY, ET AL.,
PETITIONERS

81-2399

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

UNITED STATES NUCLEAR REGULATORY COMMIS-
SION, ET AL., PETITIONERS

82-358

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

[April —, 1983]

JUSTICE BRENNAN, concurring.

I join the opinion of the Court. There can be no doubt that psychological injuries are cognizable under NEPA. See *ante*, at 4. As the Court points out, however, the particular psychological injury alleged in this case did not arise, for example, out of the direct sensory impact of a change in the physical environment, cf. *Chelsea Neighborhood Associations v. United States Postal Service*, 516 F. 2d 378, 388 (CA2 1975), but out of a perception of risk. *Ante*, at 8. In light of the history and policies underlying NEPA, I agree with the Court that this crucial distinction "lengthens the causal chain beyond the reach" of the statute. *Ibid*.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 28, 1983

Re: 81-2399 and 82-358 -

Metropolitan Edison Co. v.
People Against Nuclear Energy

United States Nuclear Regulatory Comm'n v.
People Against Nuclear Energy

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 11, 1983

Re: Nos. 81-2399 and 82-358-Metropolitan Edison Co. v.
People Against Nuclear Energy and U.S. Nuclear
Regulatory Commission v. People Against Nuclear
Energy

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1983

Re: No. 81-2399) - Metropolitan Edison Company
v. People Against Nuclear Energy
No. 82-358) - United States Nuclear Regulatory Comm'n
v. People Against Nuclear Energy

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 23, 1983

81-2399 Metropolitan Edison v. People Against Nuclear Energy
82-358 United States Nuclear Regulatory Commission v.
People Against Nuclear Energy

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

81-2399

March 31, 1983

MEMORANDUM TO THE CONFERENCE:

In view of our Three Mile Island cases (81-2399 and 82-358), the enclosed article from the Wall Street Journal will be of interest.

L.F.P.

L.F.P., Jr.

SS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

MAR 23 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-2399 AND 82-358

METROPOLITAN EDISON COMPANY, ET AL.,
PETITIONERS

81-2399

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

UNITED STATES NUCLEAR REGULATORY COMMIS-
SION, ET AL., PETITIONERS

82-358

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

[March —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

The issue in these cases is whether petitioner Nuclear Regulatory Commission (NRC) complied with the National Environmental Policy Act, 42 U. S. C. §4321 *et seq.* (NEPA), when it decided to permit petitioner Metropolitan Edison Co. to resume operation of the Three Mile Island Unit 1 nuclear power plant (TMI-1). The Court of Appeals for the District of Columbia Circuit held that the NRC improperly failed to consider whether the risk of an accident at TMI-1 might cause harm to the psychological health and community well-being of residents of the surrounding area. 678 F. 2d 222 (ADC 1982). We reverse.

Metropolitan owns two nuclear power plants at Three Mile Island near Harrisburg, Pennsylvania. Both of these plants were licensed by the NRC after extensive proceedings,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 25, 1983

Re: No. 81-2399 Metropolitan Edison Co. v. PANE

Dear Bill:

Thank you for the suggestions contained in your letter of March 24th. I think I can largely accommodate your first suggestion, but, finding myself in something less than my usual generous mood, I would prefer to leave the opinion as it is insofar as your second suggestion is concerned.

With respect to the reference to proximate cause and to Prosser on page 7, I would be happy to put in a footnote making clear that causation under tort law and causation in NEPA cases are not bound in lockstep. But I think the full text of the footnote which you suggest would have a ratchet effect, suggesting that what is "proximate cause" in torts would always be "proximate cause" for NEPA, although the converse would not be the case. I see no need to take this kind of a position here, and would suggest the following:

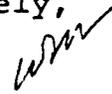
"In drawing this analogy, we do not mean to suggest that any cause-effect relation too attenuated to merit damages in a tort suit would also be too attenuated to merit notice in an environmental impact statement, nor do we mean to suggest the converse. In the context of both tort law and NEPA, courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal change which may make an actor responsible for an effect, and those which do not.

With respect to your second suggestion, I don't think I agree with all of Judge Feinberg's opinion in Chelsea Neighborhood Associations v. United States Postal Service, 516 F.2d 378, 388 (CA 2 1975). He apparently thought it would be necessary for the Postal Service in that case to

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consider the psychological harm, not to the group of people challenging the NEPA statement, but to hypothetical future occupants of the apartments which were to be built. I am sufficiently uncertain of the correctness of this statement so that I prefer to leave that matter to future adjudication. In our case the parties all agreed that "psychological health" was cognizable under NEPA, and I don't doubt that they are right. But since we need say no more than that to decide this case, I would prefer to leave pages 4 and 8 as they are.

Sincerely,



Justice Brennan

cc: The Conference

STYLISATIC CHANGES THROUGHOUT

PO 4,7-8

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-2399 AND 82-358

METROPOLITAN EDISON COMPANY, ET AL.,
PETITIONERS

81-2399

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

UNITED STATES NUCLEAR REGULATORY COMMIS-
SION, ET AL., PETITIONERS

82-358

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

[March —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

The issue in these cases is whether petitioner Nuclear Reg-
ulatory Commission (NRC) complied with the National Envi-
ronmental Policy Act, 42 U. S. C. §4321 *et seq.* (NEPA),
when it decided to permit petitioner Metropolitan Edison Co.
to resume operation of the Three Mile Island Unit 1 nuclear
power plant (TMI-1). The Court of Appeals for the District
of Columbia Circuit held that the NRC improperly failed to
consider whether the risk of an accident at TMI-1 might
cause harm to the psychological health and community well-
being of residents of the surrounding area. 678 F. 2d 222
(CADC 1982). We reverse.

Metropolitan owns two nuclear power plants at Three Mile
Island near Harrisburg, Pennsylvania. Both of these plants
were licensed by the NRC after extensive proceedings,

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STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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3rd
~~2nd~~ DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-2399 AND 82-358

METROPOLITAN EDISON COMPANY, ET AL.,
PETITIONERS

81-2399

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

UNITED STATES NUCLEAR REGULATORY COMMIS-
SION, ET AL., PETITIONERS

82-358

v.

PEOPLE AGAINST NUCLEAR ENERGY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

[April —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

The issue in these cases is whether petitioner Nuclear Reg-
ulatory Commission (NRC) complied with the National Envi-
ronmental Policy Act, 42 U. S. C. §4321 *et seq.* (NEPA),
when it decided to permit petitioner Metropolitan Edison Co.
to resume operation of the Three Mile Island Unit 1 nuclear
power plant (TMI-1). The Court of Appeals for the District
of Columbia Circuit held that the NRC improperly failed to
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cause harm to the psychological health and community well-
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(CADC 1982). We reverse.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 28, 1983

MEMORANDUM TO THE CONFERENCE

Re: Nos. 81-2399 & 82-358, Metropolitan Edison Co. v. PANE,
NRC v. PANE

I have decided to make a small change in the first sentence of this opinion. The sentence will now read: "The issue in these cases is whether petitioner Nuclear Regulatory Commission (NRC) complied with the National Environmental Policy Act, 42 U.S.C. §4321 et seq. (NEPA), when it considered whether to permit petitioner Metropolitan Edison Co. to resume operation of the Three Mile Island Unit 1 nuclear power plant (TMI-1)." The italicized language is substituted for "decided."

Sincerely,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 24, 1983

No. 81-2399 Metropolitan Edison Company v.
People Against Nuclear Energy
No. 82-358 U. S. Nuclear Regulatory Comm'n.
v. People Against Nuclear Energy

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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