UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Middle South Energy, Inc. v. Arkansas Public Service Commission

772 F.2d 404 (8th Cir. 1985) · Decided August 23, 1985

SUMMARY

The Eighth Circuit affirmed an injunction barring the Arkansas Public Service Commission from continuing proceedings that could invalidate contracts relating to the Grand Gulf Nuclear Electric Generating Station. The court considered federal-question jurisdiction, ripeness, preemption under the Federal Power Act, and dormant Commerce Clause principles. It concluded that the threatened state proceedings would impermissibly burden interstate commerce and upheld the district court's relief.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	John R. Gibson
JURISDICTION	Federal
DECIDED	August 23, 1985
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a permanent injunction entered by the United States District Court for the Eastern District of Arkansas enjoining the Arkansas Public Service Commission from continuing proceedings concerning contracts related to the Grand Gulf Nuclear Electric Station.
STANDARD OF REVIEW	The court reviewed the district court's jurisdictional, ripeness, constitutional, abstention, exhaustion, and equitable-relief determinations; the opinion applies abuse-of-discretion review to the district court's decision whether to abstain and the scope of injunctive relief.
PARTIES	Arkansas Public Service Commission, Attorney General of Arkansas, Ratepayers Fight Back v. Middle South Energy, Inc., Arkansas Power and Light Company

QUESTIONS PRESENTED

1. Whether the federal district court had subject-matter jurisdiction over MSE's action seeking to enjoin an Arkansas administrative proceeding on federal preemption and Commerce Clause grounds.

2. Whether MSE's challenge was ripe even though the APSC had issued only a show-cause order and had not yet declared the contracts void.
3. Whether the Federal Power Act preempted the APSC's threatened action concerning interstate wholesale power agreements.
4. Whether the APSC's threatened action impermissibly burdened interstate commerce by functioning as economic protectionism.
5. Whether abstention under Burford, Younger, or Pullman, or exhaustion of state administrative remedies, required the federal court to refrain from exercising jurisdiction.
6. Whether the district court properly granted and appropriately limited permanent injunctive relief.

HOLDINGS

1. A federal district court has subject-matter jurisdiction over an action seeking affirmative injunctive relief against a state administrative proceeding when the complaint directly presents a federal preemption or Commerce Clause question, even if the federal issue could also arise as a defense in the state proceeding.
2. A challenge to a state agency's authority to conduct an ongoing proceeding is ripe even before the agency reaches a final substantive determination, when the threatened proceeding is concrete and its continuation threatens immediate injury.
3. The APSC's threatened attempt to declare void contracts integral to interstate wholesale power sales and the Grand Gulf project was preempted, or otherwise foreclosed, to the extent it conflicted with the federal regulation of interstate wholesale electricity.
4. A state utility commission may not use its regulatory authority to cancel or substantially reduce a utility's participation in an interstate power project in order to protect in-state customers from the costs of power while shifting those costs to customers in other states.
5. The Public Utility Holding Company Act's provisions preserving or recognizing state regulatory authority did not unmistakably authorize the APSC to burden interstate commerce in a manner otherwise prohibited by the dormant Commerce Clause.
6. Abstention under Burford, Younger, or Pullman and exhaustion of state administrative remedies were not required because the federal action challenged the state's authority to conduct proceedings allegedly foreclosed by federal law and the Constitution, and exhaustion would cause the very injury MSE sought to avoid.

KEY QUOTATIONS

> *"The "crucial inquiry," therefore, is whether the APSC's action "is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that"* (at 416)

FACTUAL BACKGROUND

Middle South Energy, Inc., a subsidiary of Middle South Utilities, financed and constructed the Grand Gulf Nuclear Electric Station in Mississippi for an integrated, multistate electric system. Agreements among MSE and the system's operating companies allocated responsibility for purchasing Grand Gulf power and paying project costs, and those agreements supported billions of dollars in financing. After the Federal Energy Regulatory Commission rejected an allocation giving Arkansas Power and Light no share of the project and assigned AP&L 36 percent of Unit No. 1's capacity, the Arkansas Public Service Commission began proceedings seeking to determine whether AP&L's Grand Gulf agreements violated Arkansas law and should be declared void ab initio. The Eighth Circuit concluded that the threatened proceedings would burden interstate commerce by shifting the costs of interstate power transactions from Arkansas customers to customers in other states.

PROCEDURAL HISTORY

The Arkansas Public Service Commission issued a show-cause order requiring Arkansas Power and Light Company to explain why contracts concerning its obligations to purchase power from or pay construction and operating costs of the Grand Gulf project should not be declared void ab initio under Arkansas law. After the APSC denied a motion to dismiss for lack of jurisdiction, Middle South Energy sued in federal district court for injunctive relief, and Arkansas Power and Light intervened as a plaintiff. The district court held that the proceedings were preempted by the Federal Power Act and permanently enjoined them. The APSC, the Arkansas Attorney General, and Ratepayers Fight Back appealed.

DISPOSITION

affirmed