SUPREME COURT OF THE UNITED STATES

Federal Power Commission v. Texaco Inc.

417 U.S. 380 (1974) · No. No. 72-1490 · Decided June 10, 1974

SUMMARY

The Supreme Court considered the validity of Federal Power Commission Order No. 428, which established a blanket certificate procedure and indirect regulation of rates charged by small natural-gas producers. The Court held that indirect regulation was permissible under the Natural Gas Act, but that the order could not stand because it was ambiguous and failed clearly to ensure compliance with the statutory just-and-reasonable-rate requirement. The Court remanded the cases for further proceedings and emphasized that prevailing market prices could not serve as the exclusive measure of just and reasonable rates.

CASE DETAILS

COURT	Supreme Court of the United States
WRITING FOR THE COURT	Justice White
JURISDICTION	Federal
DECIDED	June 10, 1974
DOCKET	No. 72-1490
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	The Federal Power Commission and an intervenor petitioned for certiorari from a judgment of the United States Court of Appeals for the District of Columbia Circuit setting aside FPC Order No. 428, which established a blanket certificate and indirect rate-regulation procedure for small natural-gas producers.
STANDARD OF REVIEW	The Commission's orders were subject to judicial review for statutory authority, substantial evidence, rationality, and compliance with the requirement that rates be just and reasonable. The Court also required the agency to disclose the basis of its order and clearly indicate that it exercised the discretion granted by Congress.
PRECEDENTIAL VALUE	U.S. Supreme Court precedent
PARTIES	Federal Power Commission, Estate of Mrs. James R. Dougherty v. Texaco Inc., Phillips Petroleum Co., Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Interstate Natural Gas Association of

America, Public Service Commission of the State of New York, Forgotson

TOPICS

judicial review of agency action · administrative law · statutory interpretation · rulemaking · legislative intent

PRACTICE AREAS

administrative law · natural gas regulation · public utility regulation · statutory interpretation · judicial review of agency action

QUESTIONS PRESENTED

1. Whether the Natural Gas Act permits the Federal Power Commission to regulate small-producer natural-gas rates indirectly through review of the purchased-gas costs of pipelines and large producers.
2. Whether the Natural Gas Act permits the Commission to exempt small-producer rates from the statutory requirement that all rates be just and reasonable.
3. Whether Order No. 428 adequately established and disclosed a mechanism for ensuring that small-producer rates would be just and reasonable.
4. Whether prevailing market prices may serve as the exclusive measure of just and reasonable rates under the Natural Gas Act.

HOLDINGS

1. The Natural Gas Act does not require the Commission to fix small-producer rates through orders directly addressed to the producers and does not prohibit indirect regulation through review of pipeline and large-producer purchased-gas costs.
2. The Commission may not exempt small-producer rates from the Natural Gas Act's requirement that all rates be just and reasonable.
3. Order No. 428 could not stand in its existing form because it was too ambiguous to demonstrate that the Commission would ensure just and reasonable rates and failed to provide the clarity required for judicial review.
4. The prevailing market price cannot be the exclusive or final measure of just and reasonable rates under the Natural Gas Act, although market price may be considered together with other relevant factors.

KEY QUOTATIONS

> *"The Act directs that all producer rates be just and reasonable but it does not specify the means by which that regulatory prescription is to be attained."* (417 U.S. at 387-388)

> *"Sections 4 and 5 of the Act require that all gas rates be just and reasonable; and the Court held in Phillips that this very prescription applies to the rates of all gas producers."* (417 U.S. at 394)

> *“But these generalities do not supply the requisite clarity to the order or convince us that it should be sustained.”* (417 U.S. at 397)

> *“It does require, however, the conclusion that Congress rejected the identity between the "true" and the "actual" market price.”* (417 U.S. at 399)

> *“We do, however, make clear that under the present Act the Commission is free to engage in indirect regulation of small producers by reviewing pipeline costs of purchased gas, providing that it insures that the rates paid by pipelines, and ultimately borne by the consumer, are just and reasonable.”* (417 U.S. at 401)

FACTUAL BACKGROUND

The Federal Power Commission issued Order No. 428 creating a nationwide blanket-certificate procedure for small natural-gas producers and relieving them of most filing requirements. The order allowed small producers to charge prices exceeding Commission-set ceilings for large producers, while relying on review of pipeline and large-producer purchased-gas costs as a form of indirect regulation. The order stated that rates would be reviewed using market comparisons and other relevant considerations, but did not expressly incorporate the statutory just-and-reasonable standard or clearly explain how that standard would be enforced.

PROCEDURAL HISTORY

The FPC issued Order No. 428 after notice-and-comment proceedings. The D.C. Circuit, with one judge dissenting, set the order aside, concluding that it authorized impermissible deregulation and failed to ensure just and reasonable rates. The Supreme Court held that indirect regulation was permissible in principle but that Order No. 428 was ambiguous and failed to comply adequately with the Natural Gas Act; it vacated the judgment and remanded to the court of appeals with instructions to remand to the Commission.

DISPOSITION

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vacated_and_remanded
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REMAND INSTRUCTIONS

The judgment of the D.C. Circuit was vacated, and the cases were remanded to that court with instructions to remand them to the Federal Power Commission for further proceedings consistent with the opinion. The Commission was required to clarify how Order No. 428 would ensure just and reasonable rates and to give appropriate attention to the standards governing review of purchased-gas costs.

CASES CITED

- Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954)
- Wisconsin v. FPC, 373 U.S. 294, 309 (1963)
- FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585-586 (1942)
- FPC v. Hope Natural Gas Co., 320 U.S. 591, 601-603 (1944)
- Colorado Interstate Gas Co. v. FPC, 324 U.S. 581 (1945)

- Permian Basin Area Rate Cases, 390 U.S. 747, 767, 769, 772, 776-777, 792-797, 826-827 (1968)
- Illinois Gas Co. v. Public Service Co., 314 U.S. 498, 506 (1942)
- Piedmont & Northern R. Co. v. Commission, 286 U.S. 299 (1932)
- Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 193-194 (1941)
- National Broadcasting Co. v. United States, 319 U.S. 190 (1943)
- American Trucking Assns. v. United States, 344 U.S. 298, 311 (1953)
- Los Angeles Gas Co. v. Railroad Commission, 289 U.S. 287, 304 (1933)
- San Diego Land & Town Co. v. Jasper, 189 U.S. 439, 446 (1903)
- Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378 (1959)
- FPC v. Sunray DX Oil Co., 391 U.S. 9, 25-26 (1968)
- FPC v. Hope Natural Gas Co., 320 U.S. 591, 601-602 (1944)
- FPC v. Louisiana Power & Light Co., 406 U.S. 621 (1972)
- Burlington Truck Lines v. United States, 371 U.S. 156, 167-169 (1962)
- Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 197 (1941)
- SEC v. Chenery Corp., 332 U.S. 194, 196 (1947)
- Southern Louisiana Area Rate Cases, 428 F.2d 407, 441 (5th Cir. 1970), cert. denied sub nom. Associated Gas Distributors v. Austral Oil Co., 400 U.S. 950 (1970)
- FPC v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956)
- United Gas Co. v. Mobile Gas Corp., 350 U.S. 332 (1956)
- FPC v. Hunt, 376 U.S. 515, 527 (1964)