SUPREME COURT OF UNITED STATES

Catherine Jackson

Vs.

Metropolitan Edison Company

No. 73—5845.

Argued Oct. 15, 1974.

Decided Dec. 23, 1974.

Mr. Justice REHNQUIST delivered the opinion of the Court.

Respondent Metropolitan Edison Co. is a privately owned and operated Pennsylvania corporation which holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission empowering it to deliver electricity to a service area which includes the city of York, Pa. As a condition of holding its certificate, it is subject to extensive regulation by the Commission. Under a provision of its general tariff filed with the Commission, it has the right to discontinue service to any customer on reasonable notice of nonpayment of bills.

Petitioner Catherine Jackson is a resident of York, who has received electricity in the past from respondent. Until September 1970, petitioner received electric service to her home in York under an account with respondent in her own name. When her account was terminated because of asserted delinquency in payments due for service, a new account with respondent was opened in the name of one James Dodson, another occupant of the residence, and service to the residence was resumed. There is a dispute as to whether payments due under the Dodson account for services provided during this period were ever made. In August 1971, Dodson left the residence. Service continued thereafter but concededly no payments were made. Petitioner states that no bills were received during this period.

On October 6, 1971, employees of Metropolitan came to the residence and inquired as to Dodson's present address. Petitioner stated that it was unknown to her. On the following day, another employee visited the residence and informed petitioner that the meter had been tampered with so as not to register amounts used. She disclaimed knowledge of this and requested that the service account for her home be shifted from Dodson's name to that of the Robert Jackson, later identified as her 12-year-old son. Four days later on October 11, 1971, without further notice to petitioner, Metropolitan employees disconnected her service.

Petitioner then filed suit against Metropolitan in the United States District Court for the Middle District of Pennsylvania under the Civil Rights Act of 1871, 42 U.S.C. § 1983, seeking damages for

the termination and an injunction requiring Metropolitan to continue providing power to her residence until she had been afforded notice, a hearing, and an opportunity to pay any amounts found due. She urged that under state law she had an entitlement to reasonably continuous electrical service to her home2 and that Metropolitan's termination of her service for alleged nonpayment, action allowed by a provision of its general tariff filed with the Commission, constituted 'state action' depriving her of property in violation of the Fourteenth Amendment's guarantee of due process of law.

The District Court granted Metropolitan's motion to dismiss petitioner's complaint on the ground that the termination did not constitute state action and hence was not subject to judicial scrutiny under the Fourteenth Amendment.4 On appeal, the United States Court of Appeals for the Third Circuit affirmed, also finding an absence of state action.5 We granted certiorari to review this judgment.

The Due Process Clause of the Fourteenth Amendment provides: '(N)or shall any State deprive any person of life, liberty, or property, without due process of law.' In 1883, this Court in the Civil Rights Cases[1883] USSC 182; , 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, affirmed the essential dichotomy set forth in that Amendment between deprivation by the State, subject to scrutiny under its provisions, and private conduct, 'however discriminatory or wrongful,' against which the Fourteenth Amendment offers no shield. Shelley v. Kraemer, [1948] USSC 104; 335 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

We have reiterated that distinction on more than one occasion since then. See, e.g., Evans v. Abney, [1970] USSC 16; 396 U.S. 435, 445[1970] USSC 16; , 90 S.Ct. 628, 633[1970] USSC 16; , 24 L.Ed.2d 634 (1970); Moose Lodge No. 107 v. Irvis[1972] USSC 134; , 407 U.S. 163, 171—179[1972] USSC 134; , 92 S.Ct. 1965, 1970—[1972] USSC 134; 1974, 32 L.Ed.2d 627 (1972). While the principle that private action is immune from the restrictions of the Fourteenth Amendment is well established and easily stated, the question whether particular conduct is 'private,' on the one hand, or 'state action,' on the other, frequently admits of no easy answer. Burton v. Wilmington Parking Authority, [1961] USSC 58; 365 U.S. 715, 723[1961] USSC 58; , 81 S.Ct. 856, 860[1961] USSC 58; , 6 L.Ed.2d 45 (1961); Moose Lodge No. 107 v. Irvis, supra, 407 U.S. at 172, 92 S.Ct. at 1971.

Here the action complained of was taken by a utility company which is privately owned and operated, but which in many particulars of its business is subject to extensive state regulation. The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment.7 407 U.S., at 176 177, 92 S.Ct., at 1973. Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so. Public Utilities Comm'n v. Pollak, [1952] USSC 69; 343 U.S. 451, 462[1952] USSC 69; , 72 S.Ct. 813, 820[1952] USSC 69; , 96 L.Ed. 1068 (1952). It may well be that acts of a heavily regulated utility with at least something of a governmentally protected monopoly will more readily be found to be 'state' acts than will the acts of an entity lacking these characteristics. But the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. Moose Lodge No. 107, supra, 407 U.S. at 176, 92 S.Ct. at 1973. The true nature of the State's involvement may not be immediately obvious, and detailed inquiry may be required in order to

determine whether the test is met. Burton v. Wilmington Parking Authority, supra.

Petitioner advances a series of contentions which, in her view, lead to the conclusion that this case should fall on the Burton side of the line drawn in the Civil Rights Cases, supra, rather than on the Moose Lodge side of that line. We find none of them persuasive.

Petitioner first argues that 'state action' is present because of the monopoly status allegedly conferred upon Metropolitan by the State of Pennsylvania. As a factual matter, it may well be doubted that the State ever granted or guaranteed Metropolitan a monopoly.8 But assuming that it had, this fact is not determinative in considering whether Metropolitan's termination of service to petitioner was 'state action' for purposes of the Fourteenth Amendment. In Pollak, supra, where the Court dealt with the activities of the District of Columbia Transit Co., a congressionally established monopoly, we expressly disclaimed reliance on the monopoly status of the transit authority. 343 U.S., at 462, 72 S.Ct., at 820. Similarly, although certain monopoly aspects were presented in Moose Lodge No. 107, supra, we found that the Lodge's action was not subject to the provisions of the Fourteenth Amendment. In each of those cases, there was insufficient relationship between the challenged actions of the entities involved and their monopoly status. There is no indication of any greater connection here.

Petitioner next urges that state action is present because respondent provides an essential public service required to be supplied on a reasonably continuous basis by Pa.Stat.Ann., Tit. 66, § 1171 (1959), and hence performs a 'public function.' We have, of course, found state action present in the exercise by a private entity of powers traditionally exclusively reserved to the State. See, e.g., Nixon v. Condon, [1932] USSC 83; 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984 (1932) (election); Terry v. Adams, [1953] USSC 90; 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953) (election); Marsh v. Alabama, [1946] USSC 7; 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946) (company town); Evans v. Newton, [1966] USSC 2; 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966) (municipal park). If we were dealing with the exercise by Metropolitan of some power delegated to it by the State which is traditionally associated with sovereignty, such as eminent domain, our case would be quite a different one. But while the Pennsylvania statute imposes an obligation to furnish service on regulated utilities, it imposes no such obligation on the State. The Pennsylvania courts have rejected the contention that the furnishing of utility services is either a state function or a municipal duty. Girard Life Insurance Co. v. City of Philadelphia, 88 Pa. 393 (1879); Baily v. Philadelphia, 184 Pa. 594, 39 A. 494 (1898).

Perhaps in recognition of the fact that the supplying of utility service is not traditionally the exclusive prerogative of the State, petitioner invites the expansion of the doctrine of this limited line of cases into a broad principle that all businesses 'affected with the public interest' are state actors in all their actions.

We decline the invitation for reasons stated long ago in Nebbia v. New York, [1934] USSC 56; 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934), in the course of rejecting a substantive due process attack on state legislation:

'It is clear that there is no closed class or category of businesses affected with a public interest . . .. The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good. In several of the decisions of this court wherein the expressions 'affected with a public interest,' and 'clothed with a public use,'

have been brought forward as the criteria . . . it has been admitted that they are not susceptible of definition and form an unsatisfactory test . . ..' Id., at 536, 54 S.Ct. at 515.

See, e.g., Tyson & Brother v. Banton, [1927] USSC 65; 273 U.S. 418, 451[1927] USSC 65; , 47 S.Ct. 426, 435[1927] USSC 65; , 71 L.Ed. 718 (1927) (Stone, J., dissenting).

Doctors, optometrists, lawyers, Metropolitan, and Nebbia's upstate New York grocery selling a quart of milk are all in regulated businesses, providing arguably essential goods and services, 'affected with a public interest.' We do not believe that such a status converts their every action, absent more, into that of the State.

We also reject the notion that Metropolitan's termination is state action because the State 'has specifically authorized and approved' the termination practice. In the instant case, Metropolitan filed with the Public Utility Commission a general tariff—a provision of which states Metropolitan's right to terminate service for nonpayment.10 This provision has appeared in Metropolitan's previously filed tariffs for many years and has never been the subject of a hearing or other scrutiny by the Commission.11 Although the Commission did hold hearings on portions of Metropolitan's general tariff relating to a general rate increase, it never even considered the reinsertion of this provision in the newly filed general tariff.12 The provision became effective 60 days after filing when not disapproved by the Commission.

As a threshold matter, it is less than clear under state law that Metropolitan was even required to file this provision as part of its tariff or that the Commission would have had the power to disapprove it.14 The District Court observed that the sole connection of the Commission with this regulation was Metropolitan's simple notice filing with the Commission and the lack of any Commission action to prohibit it.

The case most heavily relied on by petitioner is Public Utilities Comm'n v. Pollak, supra. There the Court dealt with the contention that Capital Transit's installation of a piped music system on its buses violated the First Amendment rights of the bus riders. It is not entirely clear whether the Court alternatively held that Capital Transit's action was action of the 'State' for First Amendment purposes, or whether it merely assumed, arguendo, that it was and went on to resolve the First Amendment question adversely to the bus riders.16 In either event, the nature of the state involvement there was quite different than it is here. The District of Columbia Public Utilities Commission, on its own motion, commenced an investigation of the effects of the piped music, and after a full hearing concluded not only that Capital Transit's practices were 'not inconsistent with public convenience, comfort, and safety,' 81 P.U.R. (N.S.) 122, 126 (1950), but also that the practice 'in fact, through the creation of better will among passengers, . . . tends to improve the conditions under which the public ride.' Ibid. Here, on the other hand, there was no such imprimatur placed on the practice of Metropolitan about which petitioner complains. The nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without any approval from a regulatory body. Approval by a state utility commission of such a request from a regulated utility, where the commission has not put its own weight on the side of the proposed practice by ordering it, does not transmute a practice initiated by the utility and approved

by the commission into 'state action.' At most, the Commission's failure to overturn this practice amounted to no more than a determination that a Pennsylvania utility was authorized to employ such a practice if it so desired. Respondent's exercise of the choice allowed by state law where the initiative comes from it and not from the State,17 does not make its action in doing so 'state action' for purposes of the Fourteenth Amendment.

We also find absent in the instant case the symbiotic relationship presented in Burton v. Wilmington Parking Authority, [1961] USSC 58; 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961). There where a private lessee, who practiced racial discrimination, leased space for a restaurant from a state parking authority in a publicly owned building, the Court held that the State had so far insinuated itself into a position of interdependence with the restaurant that it was a joint participant in the enterprise. Id., at 725, 81 S.Ct. at 861. We cautioned, however, that while 'a multitude of relationships might appear to some to fall within the Amendment's embrace,' differences in circumstances beget differences in law, limiting the actual holding to lessees of public property. Id., at 726, 81 S.Ct. at 862.

Metropolitan is a privately owned corporation, and it does not lease its facilities from the State of Pennsylvania. It alone is responsible for the provision of power to its customers. In common with all corporations of the State it pays taxes to the State, and it is subject to a form of extensive regulation by the State in a way that most other business enterprises are not. But this was likewise true of the appellant club in Moose Lodge No. 107 v. Irvis, supra, where we said:

'However detailed this type of regulation may be in some particulars, it cannot be said to in any way foster or encourage racial discrimination. Nor can it be said to make the State in any realistic sense a partner or even a joint venturer in the club's enterprise.' 407 U.S., at 176—177, 92 S.Ct. at 1973.

All of petitioner's arguments taken together show no more than that Metropolitan was a heavily regulated, privately owned utility, enjoying at least a partial monopoly in the providing of electrical service within its territory, and that it elected to terminate service to petitioner in a manner which the Pennsylvania Public Utility Commission found permissible under state law. Under our decision this is not sufficient to connect the State of Pennsylvania with respondent's action so as to make the latter's conduct attributable to the State for purposes of the Fourteenth Amendment.

We conclude that the State of Pennsylvania is not sufficiently connected with respondent's action in terminating petitioner's service so as to make respondent's conduct in so doing attributable to the State for purposes of the Fourteenth Amendment. We therefore have no occasion to decide whether petitioner's claim to continued service was 'property' for purposes of that Amendment, or whether 'due process of law' would require a State taking similar action to accord petitioner the procedural rights for which she contends. The judgment of the Court of Appeals for the Third Circuit is therefore

Affirmed.

Mr. Justice DOUGLAS, dissenting.

I reach the opposite conclusion from that reached by the majority on the state-action issue.

The injury alleged took place when respondent discontinued its service to this householder without

notice or opportunity to remedy or contest her alleged default, even though its tariff provided that respondent might 'discontinue its service on reasonable notice.'1 May a State allow a utility—which in this case has no competitor—to exploit its monopoly in violation of its own tariff? May a utility have complete immunity under federal law when the State allows it regulatory agency to become the prisoner of the utility or, by a listless attitude of no concern, to permit the utility to use its monopoly power in a lawless way?

In Burton v. Wilmington Parking Authority, [1961] USSC 58; 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961), we said: 'Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.' Id., at 722, 81 S.Ct. at 860. A particularized inquiry into the circumstances of each case is necessary in order to determine whether a given factual situation falls within 'the variety of individual-state relationships which the (Fourteenth) Amendment was designed to embrace.' Ibid. As our subsequent discussion in Burton made clear, the dispositive question in any state-action case is not whether any single fact or relationship presents a sufficient degree of state involvement, but rather whether the aggregate of all relevant factors compels a finding of state responsibility.2 Id., at 722—726, 81 S.Ct. at 860—862. See generally Moose Lodge No. 107 v. Irvis[1972] USSC 134; , 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972).

It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling.

It is said that the mere fact of respondent's monopoly status, assuming arguendo that that status is state conferred or state protected,3 'is not determinative in considering whether Metropolitan's termination of service to petitioner was 'state action' for purposes of the Fourteenth Amendment.' Ante, at 351—352. Even so, a state-protected monopoly status is highly relevant in assessing the aggregate weight of a private entity's ties to the State.

It is said that the fact that respondent's services are 'affected with a public interest' is not determinative. I agree that doctors, lawyers, and grocers are not transformed into state actors simply because they provide arguably essential goods and services and are regulated by the State. In the present case, however, respondent is not just one person among many; it is the only public utility furnishing electric power to the city. When power is denied a householder, the home, under modern conditions, is likely to become unlivable.

Respondent's procedures for termination of service may never have been subjected to the same degree of state scrutiny and approval, whether explicit or implicit, that was present in Public Utilities Comm'n v. Pollak, [1952] USSC 69; 343 U.S. 451, 72 S.Ct. 813, 96 L.Ed. 1068 (1952). Yet in the present case the State is heavily involved in respondent's termination procedures, getting into the approved tariff a requirement of 'reasonable notice.' Pennsylvania has undertaken to regulate numerous aspects of respondent's operations in some detail,5 a 'hands-off' attitude of permissiveness or neutrality toward the operations in this case is at war with the state agency's functions of supervision over respondent's conduct in the area of servicing householders, particularly where (as here) the State would presumably lend its weight and authority to facilitate the enforcement of

respondent's published procedures. Cf. Adickes v. S. H. Kress & Co., [1970] USSC 123; 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Reitman v. Mulkey, [1967] USSC 139; 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); Railway Employes' Dept. v. Hanson, [1956] USSC 81; 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956); Shelley v. Kraemer, [1948] USSC 63; 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

In the aggregate, these factors depict a monopolist providing essential public services as a licensee of the State and within a framework of extensive state supervision and control. The particular regulations at issue, promulgated by the monopolist, were authorized by state law and were made enforceable by the weight and authority of the State. Moreover, the State retains the power of oversight to review and amend the regulations if the public interest so requires. Respondent's actions are sufficiently intertwined with those of the State, and its termination-of-service provisions are sufficiently buttressed by state law to warrant a holding that respondent's actions in terminating this householder's service were 'state action' for the purpose of giving federal jurisdiction over respondent under 42 U.S.C. § 1983. Though the Court pays lip service to the need for assessing the totality of the State's involvement in this enterprise, ante, at 358, its underlying analysis is fundamentally sequential rather than cumulative. In that perspective, what the Court does today is to make a significant departure from our previous treatment of state-action issues.

Mr. Justice Brandeis in Liggett Co. v. Lee, [1933] USSC 54; 288 U.S. 517, 53 S.Ct. 481, 77 L.Ed. 929 (1933), in speaking of the competition among the States to ease the opportunities and methods of incorporation, said: 'The race was one not of diligence but of laxity.' Id., at 559, 53 S.Ct. at 494 (dissenting opinion). One has only to peruse the 84-part Utility Corporations Report by the Federal Trade Commission (under the direction of its able counsel the late Robert E. Healy) to realize that state regulation of utilities has largely made state commissions prisoners of the utilities. See especially S. Doc. No. 92, 70th Cong., 1st Sess., pt. 73—A (1936); and see id., pt. 72—A, p. 880. In this connection it should be noted that successful attempts by public utilities to exclude themselves from the antitrust laws have been based on the assertion that their monopoly activity constitutes 'state action.' See Washington Gas Light Co. v. Virginia Electric & Power Co., [1970] USCA4 581; 438 F.2d 248, 250—252 (CA4 1971); Gas Light Co. of Columbus v. Georgia Power Co., [1971] USCA5 438; 440 F.2d 1135, 1138—1140 (CA5 1971).

By like token the tariff prescribing termination-of-service procedures was possible only because of 'state action.' And it would be compatible only with administrative abdication of authority to equate 'administrative silence with abandonment of administrative duty.' Washington Gas Light Co. v. Virginia Electric & Power Co., supra, 438 F.2d at 252.

Section 1983 was designed to give citizens a federal forum6 for civil rights complaints wherever, by direct or indirect actions, a State, acting 'in cahoots' with a private group or through neglect or listless oversight, allows a private group to perpetrate an injury. The theory is that in those cozy situations, local politics and the pressure of economic overlords on subservient state agencies make recovery in state courts unlikely. I realize we are in an area where we witness a great retreat from the exercise of federal jurisdiction which the Congress has conferred on federal courts. The sentiment here is that state courts are as hospitable as federal courts to federal claims. That may well be true, in some instances. But it is for the Senate and the House to make that decision. We should not tolerate an erosion of the policy Congress expressed in drafting § 1983.

Section 1983 addresses itself to grievances inflicted 'under color of any statute, ordinance, (or)

regulation . . . of any State . . ..' The regulatory regime imposed by Pennsylvania on respondent utility seems to fit this statute like a glove. Electrical service, being a necessity of life under the circumstances of this case, is an entitlement which under our decisions may not be taken without the requirements of procedural due process. Fuentes v. Shevin, [1972] USSC 190; 407 U.S. 67, 80[1972] USSC 190; , 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972); Goldberg v. Kelly, [1970] USSC 68; 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); Palmer v. Columbia Gas of Ohio, Inc., [1973] USCA6 393; 479 F.2d 153 (CA6 1973).

Mr. Justice BRENNAN, dissenting.

I do not think that a controversy existed between petitioner and respondent entitling petitioner to be heard in this action. Under Pennsylvania law respondent's duty under Pa.Stat.Ann., Tit. 66, § 1171 (1959), to provide service was limited by § 25 of the General Rules and Regulations, the Electric Service Tariff, on file with the Pennsylvania Public Utility Commission, to provision of such service only to 'customers,' defined as '(a)ny person(s) . . . lawfully receiving service from (the) Company.' Petitioner, as the Court notes, ceased being a 'customer' in September 1970 when her account was terminated for nonpayment of bills. That termination was pursuant to Rule 15 of the tariff quoted by the Court in n. 1. From September 1970 to September 1971, respondent's 'customer' was James Dodson; and his delinquency in payment for service during that period, not petitioner's delinquency before September 1970, was the occasion for the termination of service on October 11, 1971. An effort by petitioner at that time to have service continued f she paid $30 on account or her delinquent 1970 bill failed when respondent rejected the offer and shut off the service. In these circumstances petitioner had no basis in my view for the claimed entitlement under § 1171 quoted by the Court in n. 2, and therefore no controversy existed between petitioner and respondent which could be the subject of her action. I would therefore intimate no view upon the correctness of the holdings below whether the termination of service on October 11, 1971, constituted state action but would vacate the judgment of the Court of Appeals with direction that the case be remanded to the District Court with instruction to enter a new judgment dismissing the complaint. See Golden v. Zwickler, [1969] USSC 48; 394 U.S. 103, 109—110[1969] USSC 48; , 89 S.Ct. 956, 960—961[1969] USSC 48; , 22 L.Ed.2d 113 (1969).

Mr. Justice MARSHALL, dissenting.

I agree with my Brother BRENNAN that this case is a very poor vehicle for resolving the difficult and important questions presented today. The confusing sequence of events leading to the challenged termination makes it unclear whether petitioner has a property right under state law to the service she was receiving from the respondent company. Because these complexities would seriously hamper resolution of the merits of the case, I would dismiss the writ as improvidently granted. Since the Court has disposed of the case by finding no state action, however, I think it appropriate to register my dissent on that point.

* The Metropolitan Edison Co. provides an essential public service to the people of York, Pa. It is the only entity public or private, that is authorized to supply electric service to most of the community. As a part of its charter to the company, the State imposes extensive regulations, and it cooperates with the company in myriad ways. Additionally, the State has granted its approval to the company's mode of service termination—the very conduct that is challenged here. Taking these factors together, I have no difficulty finding state action in this case. As the Court concluded in Burton v. Wilmington Parking Authority, [1961] USSC 58; 365 U.S. 715, 725[1961] USSC 58; , 81

S.Ct. 856, 862[1961] USSC 58; , 6 L.Ed.2d 45 (1961), the State has sufficiently 'insinuated itself into a position of interdependence with (the company) that it must be recognized as a joint participant in the challenged activity.'

Our state-action cases have repeatedly relied on several factors clearly presented by this case: a state-sanctioned monopoly; an extensive pattern of cooperation between the 'private' entity and the State; and a service uniquely public in nature. Today the Court takes a major step in repudiating this line of authority and adopts a stance that is bound to lead to mischief when applied to problems beyond the narrow sphere of due process objections to utility terminations.

A.

When the State confers a monopoly on a group or organization, this Court has held that the organization assumes many of the obligations of the State. Railway Employes' Dept. v. Hanson, [1956] USSC 81; 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956). Even when the Court has not found state action based solely on the State's conferral of a monopoly, it has suggested that the monopoly factor weighs heavily in determining whether constitutional obligations can be imposed on formally private entities. See Steele v. Louisville & Nashville R. Co., [1944] USSC 136; 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944). Indeed, in Moose Lodge No. 107 v. Irvis[1972] USSC 134; , 407 U.S. 163, 177[1972] USSC 134; , 92 S.Ct. 1965, 1973, 32 L.Ed.2d 627 (1972), the Court was careful to point out that the Pennsylvania liquor-licensing scheme 'falls far short of conferring upon club licensees a monopoly in the dispensing of liquor in any given municipality or in the State as a whole.'

The majority distinguishes this line of cases with a cryptic assertion that public utility companies are 'natural monopolies.' Ante, at 351—352, n. 8. The theory behind the distinction appears to be that since the State's purpose in regulating a natural monopoly is not to aid the company but to prevent its charging monopoly prices, the State's involvement is somehow less significant for state-action purposes. I cannot agree that so much should turn on so narrow a distinction. Initially, it is far from obvious that an electric company would not be subject to competition if the market were unimpeded by governmental restrictions. Certainly the 'start-up' costs of initiating electric service are substantial, but the rewards available in a relatively inelastic market might well be sufficient under the right circumstances to attract competitive investment. Instead, the State has chosen to forbid the high profit margins that might invite private competition or increase pressure for state ownership and operation of electric power facilities.

The difficulty inherent in this kind of economic analysis counsels against excusing natural monopolies from the reach of state-action principles. To invite inquiry into whether a particular state-sanctioned monopoly might have survived without the State's express approval grounds the analysis in hopeless speculation. Worse, this approach ignores important implications of the State's policy of utilizing private monopolies to provide electric service. Encompassed within this policy is the State's determination not to permit governmental competition with the selected private company, but to cooperate with and regulate the company in a multitude of ways to ensure that the company's service will be the functional equivalent of service provided by the State.1

B

The pattern of cooperation between Metropolitan Edison and the State has led to significant state involvement in virtually every phase of the company's business. The majority, however, accepts the

relevance of the State's regulatory scheme only to the extent that it demonstrates state support for the challenged termination procedure. Moreover, after concluding that the State in this case had not approved the company's termination procedures, the majority suggests that even state authorization and approval would not be sufficient: the State would apparently have to order the termination practice in question to satisfy the majority's state-action test, see ante, at 357.

I disagree with the majority's position on three separate grounds. First, the suggestion that the State would have to 'put its own weight on the side of the proposed practice by ordering it' seems to me to mark a sharp departure from our previous state-action cases. From The Civil Rights Cases[1883] USSC 182; , 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883), to Moose Lodge, supra, we have consistently indicated that state authorization and approval of 'private' conduct would support a finding of state action.

Second, I question the wisdom of giving such short shrift to the extensive interaction between the company and the State, and focusing solely on the extent of state support for the particular activity under challenge. In cases where the State's only significant involvement is through financial support or limited regulation of the private entity, it may be well to inquire whether the State's involvement suggests state approval of the objectionable conduct. See Powe v. Miles, 407 F.2d 73, 81 (CA2 1968); Grossner v. Trustees of Columbia University, 287 F.Supp. 535, 547—548 (SDNY 1968). But where the State has so thoroughly insinuated itself into the operations of the enterprise, it should not be fatal if the State has not affirmatively sanctioned the particular practice in question.

Finally, it seems to me in any event that the State has given its approval to Metropolitan Edison's termination procedures. The State Utility Commission approved a tariff provision under which the company reserved the right to discontinue its service on reasonable notice for nonpayment of bills.

The majority attempts to make something of the fact that the tariff provision was not challenged in the most recent Utility Commission hearings, and that it had apparently not been challenged before. But the provision had been included in a tariff required to be filed and approved by the State pursuant to statute. That it was not seriously questioned before approval does not mean that it was not approved. It suggests, instead, that the Commission was satisfied to permit the company to proceed in the termination area as it had done in the past. The majority's test puts potential plaintiffs in a difficult position: if the Commission approves the tariff without argument or a hearing, the State has not sufficiently demonstrated its approval and support for the company's practices. If, on the other hand, the State challenges the tariff provision on the ground, for example, that the 'reasonable notice' does not meet the standards of fairness that it expects of the utility, then the State has not put its weight behind the termination procedure employed by the company, and again there is no state action. Apparently, authorization and approval would require the kind of hearing that was held in Pollak, where the Public Utilities Commission expressly stated that the bus company's installation of radios in buses and streetcars was not inconsistent with the public convenience, safety, and necessity. I am afraid that the majority has in effect restricted Pollak to its facts if it has not discarded it altogether.

C

The fact that the Metropolitan Edison Co. supplies an essential public service that is in many communities supplied by the government weighs more heavily for me than for the majority. The Court concedes that state action might be present if the activity in question were 'traditionally

associated with sovereignty,' but it then undercuts that point by suggesting that a particular service is not a public function if the State in question has not required that it be governmentally operated. This reads the 'public function' argument too narrowly. The whole point of the 'public function' cases is to look behind the State's decision to provide public services through private parties. See Evans v. Newton, [1966] USSC 2; 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966); Terry v. Adams, [1953] USSC 90; 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953); Marsh v. Alabama, [1946] USSC 7; 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946). In my view, utility service is traditionally identified with the State through universal public regulation or ownership to a degree sufficient to render it a 'public function.' I agree with the majority that it requires more than a finding that a particular business is 'affected with the public interest' before constitutional burdens can be imposed on that business. But when the activity in question is of such public importance that the State invariably either provides the service itself or permits private companies to act as state surrogates in providing it, much more is involved than just a matter of public interest. In those cases, the State has determined that if private companies wish to enter the field, they will have to surrender many of the prerogatives normally associated with private enterprise and behave in many ways like a governmental body. And when the State's regulatory scheme has gone that far, it seems entirely consistent to impose on the public utility the constitutional burdens normally reserved for the State.

Private parties performing functions affecting the public interest can often make a persuasive claim to be free of the constitutional requirements applicable to governmental institutions because of the value of preserving a private sector in which the opportunity for individual choice is maximized. See Evans v. Newton, supra, 382 U.S., at 298, 86 S.Ct., at 487; H. Friendly, The Dartmouth College Case and the Public-Private Penumbra (1969). Maintaining the private status of parochial schools, cited by the majority, advances just this value. In the due process area, a similar value of diversity may often be furthered by allowing various private institutions the flexibility to select procedures that fit their particular needs. See Wahba v. New York University, [1974] USCA2 117; 492 F.2d 96, 102 (CA2), cert. denied, 419 U.S. 874, 95 S.Ct. 135, 42 L.Ed.2d 113 (1974). But it is hard to imagine any such interests that are furthered by protecting privately owned public utility companies from meeting the constitutional standards that would apply if the companies were state owned. The values of pluralism and diversity are simply not relevant when the private company is the only electric company in town.

II

The majority's conclusion that there is no state action in this case is likely guided in part by its reluctance to impose on a utility company burdens that might ultimately hurt consumers more than they would help them. Elaborate hearings prior to termination might be quite expensive, and for a responsible company there might be relatively few cases in which such hearings would do any good. The solution to this problem, however, is to require only abbreviated pretermination procedures for all utility companies, not to free the 'private' companies to behave however they see fit. At least on occasion, utility companies have failed to demonstrate much sensitivity to the extreme importance of the service they render, and in some cities, the percentage of error in service termination is disturbingly high. See Palmer v. Columbia Gas Co. of Ohio, Inc., 342 F.Supp. 241, 243 (ND Ohio 1972), aff'd[1973] USCA6 393; , 479 F.2d 153 (CA6 1973); Bronson v. Consolidated Edison Co., 350 F.Supp. 443, 448 (SDNY 1972).4 Accordingly, I think that at the minimum, due process would require advance notice of a proposed termination with a clear indication that a responsible company official can readily be contacted to consider any claim of error.

III

What is perhaps most troubling about the Court's opinion is that it would appear to apply to a broad range of claimed constitutional violations by the company. The Court has not adopted the notion, accepted elsewhere, that different standards should apply to state action analysis when different constitutional claims are presented. See Adickes v. S. H. Kress & Co., [1970] USSC 123; 398 U.S. 144, 190 191[1970] USSC 123; , 90 S.Ct. 1598, 1620—[1970] USSC 123; 1621, 26 L.Ed.2d 142 (1970) (Brennan, J., concurring and dissenting); Grafton v. Brooklyn Law School, [1973] USCA2 349; 478 F.2d 1137, 1142 (CA2 1973). Thus, the majority's analysis would seemingly apply as well to a company that refused to extend service to Negroes, welfare recipients, or any other group that the company preferred, for its own reasons, not to serve. I cannot believe that this Court would hold that the State's involvement with the utility company was not sufficient to impose upon the company an obligation to meet the constitutional mandate of nondiscrimination. Yet nothing in the analysis of the majority opinion suggests otherwise.

I dissent.