

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - SOUTH CAROLINA**

### **South Carolina Electric & Gas Company v. Whitfield**

**United States District Court, D. South Carolina, Columbia Division - July 26, 2018 - F.Supp.3d - 2018 WL 3587055**

Electric and gas company brought § 1983 action against commissioners of the South Carolina Public Service Commission, in their official capacities, alleging that company's rights under the Due Process Clause of the Fourteenth Amendment, the Bill of Attainder Clause, and the Takings Clause of the Fifth and Fourteenth Amendments were violated when the South Carolina General Assembly passed an Act and Resolution, modifying the process for establishing and appealing utility rates.

Legislators intervened as defendants. Commissioners and legislators moved to dismiss.

The District Court held that:

- Company failed to allege that any commissioners, acting under color of state law, violated company's constitutional rights, and without individual allegations against individual commissioners, court could not infer that any actions by commissioners violated company's constitutional rights;
- Commissioners and legislators failed to carry their burden of establishing that there existed a plain, speedy, and efficient remedy at the state level, and thus, the Johnson Act did not apply to deprive the federal court of jurisdiction;
- Abstention under the *Younger*, *Burford*, or *Pullman* doctrines was not appropriate; and
- Exception to Eleventh Amendment immunity for suits seeking prospective injunctive and/or declaratory relief and challenging the constitutionality of a state official's action, was inapplicable, and thus, commissioners and legislators were immune from suit.