

# The Burger Court Opinion Writing Database

*Federal Power Commission v. Louisiana Power and Light Co.*

406 U.S. 621 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

February 19, 1972

Re: No. 71-1016 - FPC v. Louisiana Power & Light Co.  
No. 71-1040 -

MEMORANDUM TO THE CONFERENCE:

The Clerk has learned from principal counsel that the parties can meet a briefing schedule for argument in the April sitting if cert is granted.

\*

I suggest we cast a final vote on the petition Tuesday/as we robe and the Clerk can issue a special Order on Wednesday.

Regards,

BB

\*At noon

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 3, 1972

Nos. 71-1016 -- Federal Power Commission v. Louisiana Power and Light Co.  
71-1040 -- United Gas Pipe Line Co. v. Louisiana Power and Light Co.

MEMORANDUM TO THE CONFERENCE:

After again reconsidering the above cases, I conclude to join Brennan, White and Rehnquist, J.J.J., to grant and expedite with a truncated briefing schedule. This is on the same basis as Bill Brennan's description of the grant provided to the Clerk last week.

Regards,

WB

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 6, 1972

*file*

Dear Lewis:

Re: Nos. 71-1016 - Federal Power Commission v.  
Louisiana Power and Light Co.  
71-1040 - United Gas Pipe Line Co. v.  
Louisiana Power and Light Co.

I have your memorandum of March 4.

My Conference Notes show you "out" on the vote as to  
Humble filing an Amicus Brief. On today's Order List we will  
show you taking no part in the Cert. vote.

I assume you will be able to check when the briefs are  
filed to determine if Humble or Standard has an interest in  
these cases on the merits.

Regards,

*W.B.*

Mr. Justice Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 5, 1972

Re: No. 71-1016 - FPC v. Louisiana Power & Light Co.  
No. 71-1040 - United Gas Pipe Line Co. v. Louisiana  
Power & Light Co.

Dear Bill:

Please join me in the above.

Regards,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 28, 1972

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-1016) Federal Power Commission  
) v. Louisiana Power & Light  
No. 71-1040) United Gas Pipe Line  
) v. Louisiana Power & Light

My objection to the grant of the writs in the natural gas cases is due to the lateness of the season. We will not hear them before April 21 and they must be decided "before summer."

This is almost March first and there have been no circulations in --

- (a) three cases argued in October
- (b) two argued in November, and
- (c) five argued in December

The ones we propose to grant are much more complicated than any of the above. How we can get out opinions before July is a mystery. It would be more prudent for us to deny the petitions now, giving the government, the agencies, the parties, and Congress the entire spring to resolve the problem in time to meet the summer crisis.

I will be filing this memo with the Order List if the grants are announced today.

W.W.  
William O. Douglas

W.W. Douglas  
2/28/72

No. 71-1016  
Federal Power Commission

v.  
Louisiana Power & Light Co.

No. 71-1040  
United Gas Pipe Line Co.

v.  
Louisiana Power & Light Co.

On Petitions for Writs of  
Certiorari to the United States  
Court of Appeals for the  
Fifth Circuit

Recirculated

February 28, 1972

Mr. Justice Douglas, dissenting.

I dissent from a grant of certiorari in these cases.

My objection relates to the lateness of the season.

We will not hear them before April 21 and they must be decided  
"before summer."

This is almost March first and there have been no  
circulations in --

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in time to meet the summer crisis.

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Stanford, California 94305-6000



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1st DRAFT

SUPREME COURT OF THE UNITED STATES

FEDERAL POWER COMMISSION v. LOUISIANA  
POWER & LIGHT CO. Recirc

UNITED GAS PIPE LINE CO. v. LOUISIANA  
POWER & LIGHT CO.; and

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 71-1016 and 71-1040. Decided February 28, 1972

MR. JUSTICE DOUGLAS, dissenting.

I dissent from a grant of certiorari in these cases.

My objection relates to the lateness of the season. We will not hear them before April 21 and they must be decided "before summer."

This is almost March 1 and there have been no circulations in—

- (a) three cases argued in October
- (b) two argued in November, and
- (c) five argued in December.

Moreover, majority opinions circulated in November, December, and January (totalling five in number) still await separate opinions.

I mention these matters not in a critical way but only to emphasize that the digestive process after argument is often slow.

The ones we propose to grant are much more complicated than any of the above. How we can get out opinions before July is a mystery. With all respect, it would be more prudent for us to deny the petitions now, giving the Government, the agencies, the parties, and Congress the entire spring to resolve the problem in time to meet the summer crisis.

THE CINNAMON  
ON WAR, REVOLUTION AND PEACE  
Stanford, California 94305-6010.

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

FEDERAL POWER COMMISSION *v.* LOUISIANA  
POWER & LIGHT CO.

UNITED GAS PIPE LINE CO. v. LOUISIANA  
POWER & LIGHT CO.; and

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 71-1016 and 71-1040. Decided February 28, 1972

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The ones we propose to grant are much more complicated than any of the above. How we can get out opinions before July is a mystery. With all respect, it would be more prudent for us to deny the petitions now, giving the Government, the agencies, the parties, and Congress the entire spring to resolve the problem in time to meet the summer crisis.

*Cancelled  
3-3-72*

3rd DRAFT

*Rec'd  
7-29-72*

SUPREME COURT OF THE UNITED STATES

FEDERAL POWER COMMISSION *v.* LOUISIANA  
POWER & LIGHT CO.; and

UNITED GAS PIPE LINE CO. *v.* LOUISIANA  
POWER & LIGHT CO.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 71-1016 and 71-1040

MR. JUSTICE DOUGLAS, dissenting.

I dissent from a grant of certiorari in these cases.

My objection relates to the lateness of the season. We will not hear them before April 21 and they must be decided "before summer." \*

\*The urgency for prompt decision was stated in the brief of the Solicitor General:

"The potential consequences of the court of appeals' exclusion of direct industrial sales from the Commission's curtailment jurisdiction, and the resulting impact on distributors and home and other consumers have been discussed and need not be repeated. The urgency of the situation is such, however, that it is highly desirable that these cases be heard on the merits this spring.

"The summer months are critical to the natural gas industry, since it is during this period that storage facilities throughout the country are filled to assure that the ensuing winter's peak-load requirements will be met. If the pipelines will not be in a position this summer to curtail or interrupt deliveries to all their customers, including their direct sales customers, in accordance with their curtailment plans on file with the Commission, the impact on the resale customers of these pipelines will be severe. Exemption of direct industrial sales from curtailment plans will expose resale customers to a wholly unreasonable curtailment burden and could result in critical shortages to some pipelines and distributors. Moreover, if the cases are not heard until next Term, the fall and early winter months may pass without clarification of the Commission's curtailment jurisdiction, thus further jeopardizing a rational allocation of limited natural gas supplies during the 1972-1973 winter."

*Uncertain  
this winter  
will be*

*W.W. [initials]  
7-29-72*

3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 26, 1972

Dear Bill:

In No. 71-1016, FPC v. La. Power & Light, and No. 71-1040, United Gas v. La. Power & Light, you have written a fine opinion.

Please join me in it.

W. O. D.

Mr. Justice Brennan

cc: Conference

3  
Please give me  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From:

## SUPREME COURT OF THE UNITED STATES

5-16.7 v

Recirculated:

Nos. 71-1016 AND 71-1040

Federal Power Commission,  
Petitioner,  
71-1016 v.  
Louisiana Power & Light  
Company et al. } On Writs of Certiorari to  
United Gas Pipe Line Com- the United States Court  
pany et al., Petitioners, of Appeals for the Fifth  
71-1040 v. Circuit.  
Louisiana Power & Light Co.  
et al.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In April 1971 the Federal Power Commission (FPC) promulgated its Order 431 requiring every pipeline to report to the Commission if it would be unable to deliver all contracted-for volumes during periods of peak demand and would therefore be forced to curtail at least some of its customers. A pipeline anticipating the necessity for curtailment was required to file a revised tariff to control deliveries to *all* customers—industrial “direct sales” customers, purchasing gas for their own consumption, and “resale” customers, purchasing gas for distribution to ultimate consumers.

The principal question in this case is whether the proviso to § 1 (b) of the Natural Gas Act, 15 U. S. C. § 717, prohibits FPC from applying its Order 431 to

*Supreme Court*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Brennan, J.

2nd DRAFT

Circulated: \_\_\_\_\_

Recirculated: *S. 107 32*

## SUPREME COURT OF THE UNITED STATES

Nos. 71-1016 AND 71-1040

Federal Power Commission, Petitioner, 71-1016 <i>v.</i> Louisiana Power & Light Company et al.	On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.
United Gas Pipe Line Com- pany et al., Petitioners, 71-1040 <i>v.</i> Louisiana Power & Light Co. et al.	

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In April 1971 the Federal Power Commission (FPC) promulgated its Order 431 requiring every jurisdictional pipeline to report to FPC whether curtailment of its deliveries to customers would be necessary because of inadequate supply of natural gas. A pipeline anticipating the necessity for curtailment was required to file a revised tariff to control deliveries to *all* customers—industrial “direct sales” customers, purchasing gas for their own consumption, and “resale” customers, purchasing gas for distribution to ultimate consumers.

The principal question in this case is whether the proviso to § 1 (b) of the Natural Gas Act, 15 U. S. C. § 717, prohibits FPC from applying its Order 431 to

20, 22, 24, 26

See

10  
Journal  
20, 22, 24, 26

The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

Com: Brennan, J.

## SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: 6/1/72

Nos. 71-1016 AND 71-1040

Federal Power Commission,  
Petitioner,  
71-1016 *v.*  
Louisiana Power & Light  
Company et al.  
United Gas Pipe Line Com-  
pany et al., Petitioners,  
71-1040 *v.*  
Louisiana Power & Light Co.  
et al.

On Writs of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In April 1971 the Federal Power Commission (FPC) promulgated its Order 431 requiring every jurisdictional pipeline to report to FPC whether curtailment of its deliveries to customers would be necessary because of inadequate supply of natural gas. A pipeline anticipating the necessity for curtailment was required to file a revised tariff to control deliveries to *all* customers—industrial “direct sales” customers, purchasing gas for their own consumption, and “resale” customers, purchasing gas for distribution to ultimate consumers.

The principal question in this case is whether the proviso to § 1 (b) of the Natural Gas Act, 15 U. S. C. § 717, prohibits FPC from applying its Order 431 to

*24*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 24, 1972

71-1016 - FPC v. La. Power & Light

71-1040 - United Gas v. La. Power

Dear Chief,

I have concluded that I should disqualify myself from participating in the decision of these cases. Andy has a beneficial interest in one of the corporations affected. While this interest would probably not be considered a "substantial" one, so as to disqualify me under the federal statute or under the present canons of judicial ethics, it would be enough to disqualify me under the standards of judicial conduct formulated by the American Bar Association committee of which I am a member.

Sincerely yours,

*P.S.*

The Chief Justice

Copies to the Conference

⑥  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 30, 1972

Nos. 71-1016 and 71-1040 --  
FPC v. Louisiana Power & Light

Dear Bill,

Confirming our telephone conversation of yesterday, I should appreciate your adding the following at the foot of your opinion for the Court in this case:

"MR. JUSTICE STEWART took no part in the decision of this case."

Sincerely yours,

P.S.  
1.

Mr. Justice Brennan

Copies to the Conference

(3)   
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 29, 1972

Re: Nos. 71-1016 & 71-1040 - FPC  
v. Louisiana Power & Light Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 26, 1972

Re: Nos. 71-1016 and 71-1040 - FPC v.  
Louisiana Power & Light Co., etc.

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: Conference

March 4, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1016 -- FPC v. Louisiana Power & Light Co.  
No. 71-1040 -- United Gas Pipe Line Co. v. Louisiana  
Power & Light Co.

In view of the Chief Justice's note circulated late Friday, it appears that certiorari in these cases is granted. It seems to me that if these cases are to be granted, the motions to expedite should also be granted. I so vote.

Sincerely,

Harry A. Blackmun

cc: The Conference

W. J. R.  
3

C  
Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 2, 1972

Re: No. 71-1016 - FPC v. Louisiana Power and  
Light Co.  
No. 71-1040 - United Gas Pipe Line Co. v.  
Louisiana Power and Light Co.

Dear Bill:

Please join me in your proposed opinion. This  
obviously was a substantial piece of work.

Sincerely,

*H.A.B.*

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1972

Re: 71-1016 FPC v. Louisiana Power & Light  
71-1040 United Gas Pipe Line Company v.  
Louisiana Power & Light

Dear Bill:

On your next draft you may wish to add that I am not  
participating in this case.

Sincerely,

Lewis

Mr. Justice Brennan

OC 71  
Mr. Bren

5  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 31, 1972

Re: Nos. 71-1016 and 71-1040 - FPC v. Louisiana  
Power & Light and United Gas Pipe Line v.  
Louisiana Power & Light

Dear Bill:

Your opinion has made a believer out of me, and penitently  
I ask that I be allowed to join.

Sincerely,

Mr. Justice Brennan

Copies to the Court