

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,

URB

*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,

W.B. Brennan
Oct 11

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

fu

CHAMBERS OF
THE CHIEF JUSTICE

March 6, 1972

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,

WRB

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

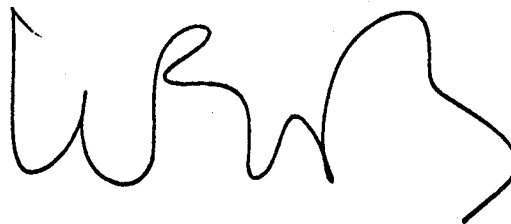
June 5, 1972

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

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OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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
William O. Douglas

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 --

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

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parties, and Congress the entire spring to resolve the problem
in time to meet the summer crisis.

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To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

1st 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

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.



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[illegible]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

"Noirculats": 2-28

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

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."

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(b) two argued in November, and
(c) five argued in December.

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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.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

FEDERAL POWER COMMISSION *v.* LOUISIANA
POWER & LIGHT CO.; andUNITED 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 ensuring 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."

Unclear
this morning
never heard

W. H. Hoff
2/29/72

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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

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U.S. DEPARTMENT OF COMMERCE

B
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*Please file me
my*

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

5-16-72

Nos. 71-1016 AND 71-1040

Recirculated:

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 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

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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: _____

SUPREME COURT OF THE UNITED STATES

Circulated: 5-22-72

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

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See 20, 23, 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

From: Brennan, J.

Supplemented: _____
Recirculated: 6/1/72
SUPREME COURT OF THE UNITED STATES

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

JS

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

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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.
✓

Mr. Justice Brennan

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13
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

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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

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SECTION OF ADVANCE LITIGATION

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. [unclear]
J. H.

30
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS 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

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U.S. SUPREME COURT

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

*AC 71
Mr. Brennan*

CO
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,
B. J.

Mr. Justice Brennan

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U.S. DEPT. OF JUSTICE