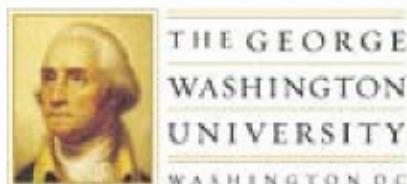


# The Burger Court Opinion Writing Database

*Arkansas Louisiana Gas Co. v. Hall*  
453 U.S. 571 (1981)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

December 29 1980

RE: 78-1789 - Arkansas Louisiana Gas Co. v. Hall  
79-1896 - Arkansas Louisiana Gas Co. v. Hall

MEMORANDUM TO THE CONFERENCE:

After further review of these two cases, I conclude that I will vote to deny on 79-1896 and stay with my deny on 78-1789.

W.B.  
Regards



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 17, 1981

RE: 78-1789 - Arkansas Louisiana Gas Co. v. Hall

Dear Thurgood:

I join.

Regards,

Justice Marshall

Copies to the Conference

(2)   
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1981

RE: No. 78-1789 Arkansas Louisiana Gas Co. v. Hall

Dear Thurgood:

I agree.

Sincerely,

*Brennan*

Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 27, 1981

Re: 78-1789, Arkansas Louisiana  
Gas Co. v. Hall

Dear Thurgood,

Please add the following at the  
foot of your opinion for the Court in this  
case:

Justice Stewart took no part  
in the consideration or  
decision of this case.

Sincerely yours,

P.S.

Justice Marshall

Copies to the Conference

1

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 28, 1981

Re: 78-1789 - Arkansas Louisiana Gas Co.  
v. Frank J. Hall

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Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

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26 MAY 1981

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1789

Arkansas Louisiana Gas  
Company, Petitioner, | On Writ of Certiorari to the  
v. | Supreme Court of Louisiana.  
Frank J. Hall et al.

[June — , 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

The "filed rate doctrine" prohibits a federally regulated seller of natural gas from charging rates higher than those filed with the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, 52 Stat. 821, 15 U. S. C. § 717 *et seq.* The question before us is whether that doctrine forbids a state court to calculate damages in a breach of contract action based on an assumption that had a higher rate been filed, the Commission would have approved it.

I

Respondents are producers of natural gas, and petitioner Arkansas Louisiana Gas Company (Arkla) is a customer who buys their gas. In 1952, respondents<sup>1</sup> and Arkla entered into a contract under which respondents agreed to sell Arkla natural gas from the Sligo Gas Field in Louisiana. The contract contained a fixed price schedule and a "favored nations clause." The favored nations clause provided that if Arkla purchased Sligo Field natural gas from another party at a rate higher than the one it was paying respondents, then respondents would be entitled to a higher price for their sales

<sup>1</sup> Respondents include both original parties to the contract and successors in interest to parties to the contract.

STYLISTIC CHANGES THROUGHOUT.

+ See p. 13

2 JUN 1981

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1789

Arkansas Louisiana Gas  
Company, Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Louisiana.  
Frank J. Hall et al.

[June — , 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

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<sup>1</sup> Respondents include both original parties to the contract and successors in interest to parties to the contract.

STYLISTIC CHANGES THROUGHOUT.

80 JUN 1981

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 78-1789**

Arkansas Louisiana Gas Company, Petitioner, *v.* Frank J. Hall et al. } On Writ of Certiorari to the Supreme Court of Louisiana.

[June —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

The “filed rate doctrine” prohibits a federally regulated seller of natural gas from charging rates higher than those filed with the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, 52 Stat. 821, 15 U. S. C. § 717 *et seq.* The question before us is whether that doctrine forbids a state court to calculate damages in a breach of contract action based on an assumption that had a higher rate been filed, the Commission would have approved it.

**I**

Respondents are producers of natural gas, and petitioner Arkansas Louisiana Gas Company (Arkla) is a customer who buys their gas. In 1952, respondents<sup>1</sup> and Arkla entered into a contract under which respondents agreed to sell Arkla natural gas from the Sligo Gas Field in Louisiana. The contract contained a fixed price schedule and a “favored nations clause.” The favored nations clause provided that if Arkla purchased Sligo Field natural gas from another party at a rate higher than the one it was paying respondents, then respondents would be entitled to a higher price for their sales

<sup>1</sup> Respondents include both original parties to the contract and successors in interest to parties to the contract.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 30, 1981

MEMORANDUM TO THE CONFERENCE

Case Held For No. 78-1789 - Arkansas Louisiana  
Gas Co. v. Hall

There is one case, No. 79-1896, held for Arkansas Louisiana Gas. Both cases have the same name, and the held case arises from the same litigation as does the decided case. The trial court originally declined to award damages for the period 1961-1972 because it considered such an award barred by the "filed rate doctrine." Following the Louisiana Supreme Court's judgment (which we are vacating in pertinent part in No. 78-1789), the case was remanded to the trial court for a fresh calculation of damages. In keeping with the Louisiana Supreme Court's decision, the trial court recalculated damages based on the assumption that the Federal Power Commission (now the Federal Energy Regulatory Commission) would have approved respondents' rate increase filing. The intermediate court of appeals affirmed and the state supreme court refused to hear an appeal.

In No. 78-1789 we are holding that the award of damages in this case cannot be based on an assumption that the Commission would have approved respondents' filing. The award of damages actually made by the trial court was based on that assumption and obviously cannot stand. I will therefore vote to GRANT, VACATE, AND REMAND in light of No. 78-1789.

Sincerely,

*J.M.*

T.M.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1981

Re: No. 78-1789 - Arkansas Louisiana Gas Co. v. Hall

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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LIBRARY OF CONGRESS

April 27, 1981

No. 78-1789 Arkansas Louisiana Gas Co. v. Hall

Dear Chief:

As indicated at Conference, I was not at rest in this confusing case.

Despite the force of the "filed rate" doctrine, justice in this case is so strongly on the side of respondents I would like to be persuaded by what John intends to write.

Accordingly, I will await what he writes, hoping to be able to affirm.

Sincerely,

The Chief Justice

LFP/lab

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 27, 1981

78-1789 Arkansas-Louisiana Gas v. Hall

Dear Thurgood:

In accordance with my tentative vote in this case,  
I will await the dissent that I understand John will write.

Sincerely,



Mr. Justice Marshall

1fp/ss

cc: The Conference

The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

06/30/81

FIRST DRAFT

From: Mr. Justice Powell

Circulated: JUN 30 1981

Recirculated:

78-1789 Arkansas-Louisiana Gas Co. v. Hall, et al.

JUSTICE POWELL, dissenting.

I agree with much of JUSTICE STEVENS' dissenting opinion and would affirm the judgment of the Supreme Court of Louisiana. Respondents are entitled to the relief they seek based on Louisiana state contract law.

By virtue of the "most favored nation" clause in its contract with respondents, petitioner was obligated to pay respondents the higher rate it paid a comparable supplier. Petitioner did not comply with this provision, but the Court today holds that respondents nevertheless may not recover damages because they failed to file with the Commission the increased rate. It is said that the "filed rate doctrine" requires such a filing.

I would agree with the Court if it were clear that respondents were neglectful or otherwise at fault in not filing and seeking Commission approval of the higher rate. But the Louisiana courts found that petitioner was responsible for respondents' failure to file. Petitioner

## Stylistic Changes Throughout

7-1-81

## 1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1789

To: The Chief Justice

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated JUL 1 1981

Arkansas Louisiana Gas  
Company, Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Louisiana.  
Frank J. Hall et al.

[June —, 1981]

JUSTICE POWELL, dissenting.

I agree with much of JUSTICE STEVENS' dissenting opinion and would affirm the judgment of the Supreme Court of Louisiana. Respondents are entitled to the relief they seek based on Louisiana state contract law.

By virtue of the "most favored nation" clause in its contract with respondents, petitioner was obligated to pay respondents the higher rate it paid a comparable supplier. Petitioner did not comply with this provision, but the Court today holds that respondents nevertheless may not recover damages because they failed to file with the Commission the increased rate. It is said that the "filed rate doctrine" requires such a filing.

I would agree with the Court if it were clear that respondents were neglectful or otherwise at fault in not filing and seeking Commission approval of the higher rate. But the Louisiana courts found that petitioner was responsible for respondents' failure to file. Petitioner did not disclose that it was paying higher rates to another producer from the same field under comparable conditions. The Louisiana Court of Appeals expressly found that respondents' failure to comply with the filed rate doctrine was caused primarily by the "uncooperative and evasive" conduct of petitioner's officials. See 359 So. 2d 255, 264 (1978). Petitioner knew the facts, and the Louisiana Supreme Court held that petitioner had a state-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 29, 1981

Re: No. 78-1789 Arkansas Louisiana Gas Co. v. Hall

Dear John:

Please join me in your dissenting opinion.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 27, 1981

Re: 78-1789 - Arkansas Louisiana Gas  
v. Hall

Dear Thurgood:

As soon as I can get to it, I will circulate  
a dissent.

Respectfully,



Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stevens

Distributed: JUN 29 '81

Recirculated: \_\_\_\_\_

78-1789 - Arkansas Louisiana Gas Co. v. Hall

JUSTICE STEVENS, dissenting.

From 1961 through 1975, petitioner Arkansas Louisiana Gas Co. (Arkla) acquired natural gas from two different sources in the Sligo Gas Field in Louisiana. By the terms of a contract that was entirely consistent with the federal policies reflected in the Natural Gas Act, 52 Stat. 821, 15 U.S.C. § 717 et seq., Arkla was obligated to pay both sources of supply the same price.<sup>1</sup> In fact, however, unbeknown to respondents, and in violation of their contract, Arkla paid them a substantially lower price than it paid to the United States, its other source for Sligo Field gas. No one, not even Arkla, suggests that there is any legitimate justification for the discrimination.

<sup>1</sup> This obligation was created by the "favored nations clause" in the natural gas sales contract between Arkla and respondents. The clause is quoted ante, at 2, n. 2.

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

From: Mr. Justice Stevens

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

Recirculated: 6/1 '81

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1789

Arkansas Louisiana Gas Company, Petitioner, v. Frank J. Hall et al. | On Writ of Certiorari to the Supreme Court of Louisiana,

[June —, 1981]

JUSTICE STEVENS, with whom JUSTICE REHNQUIST joins, dissenting.

From 1961 through 1975, petitioner Arkansas Louisiana Gas Co. (Arkla) acquired natural gas from two different sources in the Sligo Gas Field in Louisiana. By the terms of a contract that was entirely consistent with the federal policies reflected in the Natural Gas Act, 52 Stat. 821, 15 U. S. C. § 717 *et seq.*, Arkla was obligated to pay both sources of supply the same price.<sup>1</sup> In fact, however, unbeknown to respondents, and in violation of their contract, Arkla paid them a substantially lower price than it paid to the United States, its other source for Sligo Field gas. No one, not even Arkla, suggests that there is any legitimate justification for the discrimination.

Despite the fact that Arkla breached its contract, and despite the fact that no federal policy is threatened by allowing the Louisiana courts to redress that breach, the Court today denies respondents the benefit of their lawful bargain. Surely, if the price paid to the United States was just and reasonable, the same price paid to private sellers of gas taken from the same field at the same time and delivered to the same customer also would be just and reasonable. The stat-

<sup>1</sup> This obligation was created by the "favored nations clause" in the natural gas sales contract between Arkla and respondents. The clause is quoted *ante*, at 2, n. 2.