

# The Burger Court Opinion Writing Database

## *American Paper Institute, Inc. v. American Electric Power Service Corp.*

461 U.S. 402 (1983)

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



6

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

CHAMBERS OF  
THE CHIEF JUSTICE

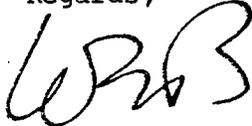
May 11, 1983

Re: (82-34 - American Paper Institute, Inc. v. American Electric  
( Power Service Corp.  
(  
(82-226 - FERC v. American Electric Power Service Corp.

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 28, 1983

Re: No. 82-34 & 82-226

American Paper Institute, Inc.  
v. American Electric Power

FERC v. American Electric Power

Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 3, 1983

Re: 82-34 and 82-226 -

American Paper Institute, Inc.  
v. American Electric Power Service Corp.  
FERC v. American Electric Power Service Corp.

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Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

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PP. 11, 21

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

Circulated: **APR 27 1983**

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-34 AND 82-226

AMERICAN PAPER INSTITUTE, INC., PETITIONER  
82-34 v.  
AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

FEDERAL ENERGY REGULATORY COMMISSION,  
PETITIONER  
82-226 v.  
AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

This case concerns two rules promulgated by the Federal Energy Regulatory Commission (FERC) pursuant to § 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U. S. C. § 824a-3 (Supp. V). The first rule requires electric utilities to purchase electric energy from cogenerators and small power producers at a rate equal to the purchasing utility's full avoided cost, *i. e.*, the cost the utility would have incurred had it generated the electricity itself or purchased the electricity from another source. The second rule requires utilities to make such interconnections with cogenerators and small power producers as are necessary to effect purchases or sales of electricity authorized by PURPA. The Court of Appeals held that FERC had not adequately ex-

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STYLISTIC CHANGES THROUGHOUT.

and P. 15

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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Recirculated: **APR 29 1983**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-34 AND 82-226

AMERICAN PAPER INSTITUTE, INC., PETITIONER  
82-34

*v.*

AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

FEDERAL ENERGY REGULATORY COMMISSION,  
PETITIONER

82-226

*v.*

AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1983]

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STYLISTIC CHANGES THROUGHOUT.

P. 8

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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Recirculated: MAY 10 1983

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-34 AND 82-226

AMERICAN PAPER INSTITUTE, INC., PETITIONER  
82-34 *v.*  
AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

FEDERAL ENERGY REGULATORY COMMISSION,  
PETITIONER  
82-226 *v.*  
AMERICAN ELECTRIC POWER SERVICE  
CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

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1

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 3, 1983

Re: No. 82-34) - American Paper Institute, Inc. v. American  
Electric Power Service Corp.  
No. 82-226) - FERC v. Amer. Electric Power Service Corp.

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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October 14, 1982

82-34 American Paper Institute v. American Electric Power

MEMORANDUM TO THE CONFERENCE:

This refers to our discussion last Friday as to disqualification where one owns stock in a company that is a member of a trade association where only the trade association is a party.

This question has been answered by the Advisory Committee on Judicial Activities. I enclose a copy of its Opinion No. 49 dated June 9, 1977. This was reaffirmed in Opinion No. 62 in 1979.

Although these opinions refer to provisions of the Code of Judicial Conduct, the federal statute, 28 U.S.C. §455, tracks the Code in the relevant language.

The petitioner in this case, American Paper Institute, is said to have 164 members. Our family and trusts own stock in one of the listed members. Two other companies in which we have an interest have "affiliates" or subsidiaries listed among the members of the petitioner. I personally represented the two parent corporations and would remain out if their subsidiaries were parties without regard to stock interest.

I have not heretofore recused simply because of interest in a member of a trade association where only the association is the party. I suppose there are situations where the case is of such considerable importance to an entire industry that arguably its outcome could have some effect even on one's ownership of a small fractional interest in a company's listed and publicly traded shares.

I think the ruling of the Advisory Committee is correct, as it is unlikely there was any intent to extend "recusal" this far. A judge's ownership in a mutual or "common investment fund" presents a stronger case for recusal, and it is expressly excepted in Canon 3C(3)(c).

L.F.P., Jr.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 11, 1983

82-34 American Paper Institute v. American  
Electric Power Service Corp.  
82-226 FERC v. American Electric Power Service Corp.

Dear Chief:

It now appears necessary for me to remain out of the above cases.

Petitioner's brief, filed December 2 and that I looked at this morning for the first time, is signed by counsel for several companies, including a company in which Jo and a trust for her benefit hold stock.

When we considered certiorari on these cases, I mentioned at Conference the fact that among the 164 members of the American Paper Institute (a trade association) were a couple of former clients in which we also held stock. There are opinions of the Ethics Committee to the effect that this would not require disqualification. See my letter to the Conference of October 14. Although I passed at the Conference, I then thought I was free to participate.

The counsel whose name now appears on the brief for petitioner was not listed as counsel on the petition for certiorari.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 29, 1983

Re: No. 82-34 American Paper Institute v. American  
Electric Power  
No. 82-226 FERC v. American Electric Power

Dear Thurgood:

Please join me.

Sincerely,

WWM

Justice Marshall

cc: The Conference

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CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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

April 28, 1983

Re: 82-34 and 82-226 - American Paper  
Inst. v. American Electric Power Svs. Co.

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

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Keep in File ✓

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 14, 1982

No. 82-34 American Paper Institute v. American  
Electric Power Service Corp.  
No. 82-226 FERC v. American Electric Power  
Service Corp.

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Dear Chief,

Based on Lewis' memo of October 14 and the opinion of the Advisory Committee on Judicial Activities concerning stock ownership in a member of a trade association when only the trade association is a party, I plan to participate in the referenced cases. You may disregard my previous expression of recusal.

Sincerely,

*Sandra*

The Chief Justice

cc: Justice Powell  
Alexander L. Stevas

6

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 29, 1983

No. 82-34 American Paper Institute, Inc.  
v. American Electric  
No. 82-226 FERC v. American Electric

Dear Thurgood,

Please join me.

Sincerely,

*Sandra*

Justice Marshall

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