

The Burger Court Opinion Writing Database

*Nantahala Power & Light Co. v.
Thornburg*
476 U.S. 953 (1986)

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

June 4, 1986

85-568 - Nantahala Power & Light v. Ut. Commn. of NC

Dear Sandra:

I join.

Regards,

A handwritten signature in cursive, appearing to read 'WJ', written in black ink.

Justice O'Connor

Copies to the Conference

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

by

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1986

No: 85-568

Nantahala Power and Light Co.
et al. v. Utilities Commission
of North Carolina

Dear Sandra,

I agree.

Sincerely,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1986

85-568 - Nantahala Power and Light Company
v. Utilities Comm'n of North Carolina

Dear Sandra,

I agree, and thanks for spelling it all
out so well.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1986

Re: No. 85-568 - Nantahala Power and Light Co. v.
Utilities Commission of N. Car.

Dear Sandra:

Please join me.

Sincerely,

T.M.

T.M.

Justice O'Connor

cc: The Conference



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

June 9, 1986

Re: No. 85-568, Nantahala Power and Light Company
v. Utilities Commission of North Carolina

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1986

85-568 Nantahala Power v. Utilities Commission

Dear Sandra:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Justice O'Connor

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1986

Re: No. 85-568 Nantahala Power and Light Co. v. Utilities
Commission of North Carolina

Dear Sandra,

Please join me.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 16, 1986

Re: 85-568 - Nantahala Power & Light Co.
v. Utility Commission of North Carolina

Dear Chief:

After reading the briefs in this case, I became aware of a disqualifying circumstance and therefore will not participate in the case.

Respectfully,



The Chief Justice

Copies to the Conference

APR 16 1986

100-20543

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1986

Re: 85-568 - Nantahala Power v. Utilities
Commission

Dear Sandra:

Like Lewis, I took no part in the consideration or decision of this case and therefore would be grateful if you would add an appropriate note covering me as well.

Respectfully,



Justice O'Connor

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: MAY 29 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-568

NANTAHALA POWER AND LIGHT COMPANY, ET AL.,
APPELLANTS *v.* UTILITIES COMMISSION
OF NORTH CAROLINA ET AL.

ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Nantahala Power & Light Company (Nantahala) and Tapoco, Inc. (Tapoco) are both wholly owned subsidiaries of the Aluminum Company of America (Alcoa). Tapoco and Nantahala each own hydroelectric power plants on the Little Tennessee River. Almost all of the power that they produce goes to the Tennessee Valley Authority (TVA). In exchange for allowing TVA to pour into its grid the variable quantity of power produced by Tapoco's and Nantahala's facilities, Tapoco and Nantahala jointly receive a fixed supply of low-cost "entitlement power" from the TVA. In addition, Nantahala buys a variable amount of high-cost "purchased power" from the TVA grid. Tapoco sells all its power to Alcoa; Nantahala serves public customers.

For the purposes of calculating the rate to be charged Nantahala's retail customers, all of whom are in North Carolina, appellee Utilities Commission of North Carolina (NCUC) chose an allocation of entitlement and purchased power between Tapoco and Nantahala that differs from the allocation of entitlement power between Tapoco and Nantahala adopted by the Federal Energy Regulatory Commission (FERC) in a wholesale ratemaking proceeding. The North Carolina Supreme Court upheld NCUC's allocation. We noted probable jurisdiction to decide whether this allocation may stand in light of FERC's ruling. — U. S. —

Stylistic Changes Throughout

pp. 16-18 Rewritten

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: **JUN 15 1986** _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-568

**NANTAHALA POWER AND LIGHT COMPANY, ET AL.,
APPELLANTS v. LACY H. THORNBURG, ATTORNEY
GENERAL OF NORTH CAROLINA, ET AL.**

ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

[June 17, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Nantahala Power & Light Company (Nantahala) and Tapoco, Inc. (Tapoco) are both wholly owned subsidiaries of the Aluminum Company of America (Alcoa). Tapoco and Nantahala each own hydroelectric power plants on the Little Tennessee River. Almost all of the power that they produce goes to the Tennessee Valley Authority (TVA). In exchange for allowing TVA to pour into its grid the variable quantity of power produced by Tapoco's and Nantahala's facilities, Tapoco and Nantahala jointly receive a fixed supply of low-cost "entitlement power" from the TVA. In addition, Nantahala buys a variable amount of high-cost "purchased power" from the TVA grid. Tapoco sells all its power to Alcoa; Nantahala serves public customers.

For the purposes of calculating the rate to be charged Nantahala's retail customers, all of whom are in North Carolina, the Utilities Commission of North Carolina (NCUC) chose an allocation of entitlement and purchased power between Tapoco and Nantahala that differs from the allocation of entitlement power between Tapoco and Nantahala adopted by the Federal Energy Regulatory Commission (FERC) in a wholesale ratemaking proceeding. The North Carolina Supreme Court upheld NCUC's allocation. We noted probable jurisdiction to decide whether NCUC's allocation may stand in light of FERC's ruling. 474 U. S. — (1985). We

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

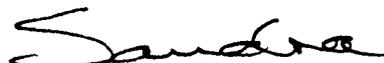
June 13, 1986

No. 85-568 Nantahala Power and Light Co.
v. Thornburg, Attorney General of N.C.

MEMORANDUM TO THE CONFERENCE

After consultation with Frank Lorson and review of the record in this case, the caption has been changed to reflect that the Attorney General of North Carolina is the named respondent. The North Carolina Utilities Commission appeared in this Court only as amicus.

Sincerely,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1986

85-1165, Nantahala Power & Light Co. et al. v. Thornburg et al.
(Nantahala II)
(Hold memo for 85-568, Nantahala Power & Light Co. et
al. v. Thornburg et al. (Nantahala I)).

MEMORANDUM TO THE CONFERENCE

SJR
This case, like Nantahala I, involves Nantahala's retail rates as set by the North Carolina Utilities Commission (NCUC). Here, as in Nantahala I, the North Carolina Supreme Court upheld NCUC's decision despite claims by appellants that NCUC's decision violated the Supremacy and Commerce Clauses of the Federal Constitution. Here the rates at issue were in effect between August 1981 and November 1983 (inclusive), while in Nantahala I the rates at issue were those in effect between June 1977 and July 1981. Both cases appear to be proper appeals.

Both sides agree that the legal issues presented here are identical to those in Nantahala I, although the rates at issue were in effect at different times. In light of this Court's reversal of the North Carolina Supreme Court's judgment in Nantahala I, I will vote at Conference to vacate the judgment in this case and remand the case for consideration in light of the decision in No. 85-568, Nantahala I.

Sandra

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1986

85-1307, Nantahala Power & Light Co. et al. v. Thornburg et al.
(Nantahala III)

(Hold memo for 85-568, Nantahala Power & Light Co. et v.
Thornburg, et al. (Nantahala I).)

MEMORANDUM TO THE CONFERENCE

This case, like Nantahala I, involves Nantahala's retail rates as set by the North Carolina Utilities Commission (NCUC).

In Nantahala I, the Tennessee Valley Authority (TVA), appellant Nantahala, and appellant Tapoco, Inc. entered into the New Fontana Agreement (NFA). The NFA allowed TVA to operate some of Nantahala's and Tapoco's plants, and to keep the variable amount of power generated therefrom in exchange for providing Nantahala and Tapoco jointly with a fixed supply of low-cost, "entitlement" power. Nantahala also contracted with TVA to allow it to buy high-cost "purchased power" from TVA. Nantahala and Tapoco entered into the 1971 Apportionment Agreement (AA), which governed the distribution of power between Tapoco and Nantahala. The effect of FERC's treatment of the NFA and the AA upon retail ratemaking proceedings by NCUC was the issue in Nantahala I. NCUC, ignoring FERC's decision on how the entitlement power should reasonably be allocated, "rolled in" Tapoco's and Nantahala's costs as if the two companies were a single entity. The North Carolina Supreme Court upheld NCUC's decision. This Court reversed.

The NFA and AA expired on December 31, 1982. Under the new arrangement, Nantahala retains control of, and the power produced by, its plants. Tapoco continues to exchange power with TVA in much the same manner as under the NFA. App. to Juris. Statement 20a-24a. The option for Nantahala to obtain high-cost "purchased power" was essentially continued in the form of an "Interconnection Agreement" between Nantahala and TVA. This collection of new agreements is known as the "Fontana III" agreements. It is the Fontana III agreements that are at issue in Nantahala III.

NCUC decided that, in light of the Fontana III agreements, the roll-in methodology was no longer appropriate. NCUC adopted essentially the costing method proposed by Nantahala.

gvr
Bob