

Filed August 13, 1961

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GAINESVILLE UTILITIES DEPARTMENT
and CITY OF GAINESVILLE, FLORIDA
Plaintiffs

v.

68-305-CIV-5
CIVIL ACTION NO. _____

FLORIDA POWER CORPORATION and
FLORIDA POWER AND LIGHT COMPANY
Defendants

COMPLAINT

Plaintiffs, by their attorneys, bring this civil action against the above-named defendants for the recovery of damages suffered by them in their business and property as a result of defendants' violations of the antitrust laws of the United States and, demanding a trial by jury, complain and allege as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and the jurisdiction of this Court is invoked under the provisions of Section 4 of the Clayton Act (15 U.S. C. § 15) to recover damages from the defendants based upon violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2).

2. Each of the defendants maintains an office, transacts business, and is found within the Middle District of Florida and is within the jurisdiction of this Court for the purpose of service of process. Many of the unlawful acts done in violation of the antitrust laws as hereinafter alleged have been performed within the Middle District of Florida.

3. The defendants' acts alleged in this complaint were authorized, ordered or done by the officers, directors, agents, employees or representatives of each defendant while they were actively engaged in the management, direction or control of its affairs.

II

THE PARTIES

4. Plaintiff City of Gainesville is a municipal corporation of the State of Florida with its main business offices in Gainesville, Florida. Through plaintiff Gainesville Utilities Department, which also has its main business offices in Gainesville, Florida, the city has since 1912, and is now, engaged in the generation, transmission, distribution and sale of electric power at retail in Alachua County, Florida, both within and without its city limits.

5. Florida Power Corporation, a Florida Corporation with its principal offices in St. Petersburg, Florida, is named a defendant herein. Florida Power is an electric company engaged in the generation, transmission, distribution and sale of electric power at wholesale and retail in a territory comprising some 20,600 square miles in 32 counties from the Florida Panhandle through the west and central sections of Florida, through the suburbs of Orlando and south into Highlands County. Florida Power is the second largest electric-utility system in Florida.

6. Florida Power and Light Company, a Florida corporation with its principal offices in Miami, Florida, is named a defendant herein. FP&L is an electric company engaged in the generation, purchase, transmission, distribution, and sale of electric power in the Miami metropolitan area and the eastern and southern counties of Florida. It is the largest electric-utility system in Florida.

III

NATURE OF TRADE AND COMMERCE

7. Defendants Florida Power Corporation and Florida Power and Light Company are interconnected with each other and with Tampa Electric Company, Orlando Utilities Commission, and the City of Jacksonville. These five electrical systems comprise the Florida Pool. Defendants and the other members of the Florida Pool are interconnected with Gulf Power Company in Florida and are interconnected with and are members of, the Interconnected Systems Group, consisting of electric utilities operating in the general area of central United States, from Canada to the Gulf of Mexico, and southeastern United States.

8. All members of the Interconnected Systems Group operate three-phase systems, continuously in parallel at a frequency of 60 cycles per second, and most of them utilize Tie-Line Bias, an automatic control that enables each system to assist all other systems in supplying electric loads at times of shortages of generation and in maintaining the 60-cycle frequency. Defendants' systems and all the systems with which they are directly and indirectly interconnected operate synchronously and respond together to changes in load and frequency, each making a contribution to meeting additional loads anywhere in the interconnected network. Electric energy flows freely into, out of, and throughout each of the interconnected systems, and this flow is not controlled save to maintain the net inflow or net outflow of each system in accordance with its agreed schedule. Consequently, there are times when energy from Georgia and other southeastern states flows into both defendants' systems through the facilities of Alabama Power Company in Alabama, of Georgia Power Company in Georgia, of Gulf Power Company in Florida, and of defendant Florida Power Corporation, and there are times when energy follows a reverse pattern and flows to Alabama and Georgia from the systems of both defendants.

9. Plaintiff City of Gainesville owns and operates, through plaintiff Gainesville Utilities Department, one of several isolated municipal electric utilities located in the State of Florida. Although some of the municipal utilities in Florida buy their supplies of electric energy from the electric companies at wholesale, the Gainesville system remains an isolated one, generating all its own electricity. Because of its isolation from other electric-utility systems, the Gainesville utility is compelled to assume the expense of maintaining not only enough generation capacity to meet its peak-load requirements but also substantial additional generation for back-up or reserve purposes.

10. Interconnection by a single electric-utility system with another major system or with an electric-power pool offers at least six important advantages

(a) It greatly reduces the amount of back-up or reserve generation that must be maintained as a safeguard against breakdown or failure of equipment. As an isolated system, the Gainesville municipal utility must constantly strive to keep its reserve generation at a capacity nearly equal to the system's largest generating unit. On the other hand, a utility with ample interconnection and exchange arrangements with other utilities is frequently able to get along safely with reserve generation that amounts to less than 10% of its normal power requirements.

(b) By eliminating isolated system's need of keeping in reserve generating capacity equal to the largest generating unit, interconnection enables the system to install larger and more economical generators than it would be able to build on an isolated basis.

(c) Interconnection enables the interconnected utilities to save money by the economy exchange of energy. At any given time the combination

of generators which will be operated on the two systems will be the most economical from the point of view of fuel and other operating costs.

Generally the two utilities will share the savings equally.

(d) It enables the companies to coordinate the construction and placing into operation of big new generators so that the various parties can utilize the excess of another party's new generation and postpone the construction of its own generation.

(e) It makes available to a connected company transmission services that enable it to purchase low-cost bulk power from other systems connected elsewhere on the lines of the interconnecting utility.

(f) It increases the possibility of joint construction and operation of massive generating projects, including nuclear projects, that would be beyond the capabilities of each interconnected system acting alone and yet offer substantial economies and other public benefits such as reduced air pollution.

11. In Florida, state and federal administrative regulation touches fewer of the operations of electric-power companies than such regulation does in the rest of the United States. As in most states, electric-power systems in Florida remain free to negotiate their own arrangements for, and therefore compete in, (1) the construction of generating facilities, (2) the purchase and sale of bulk power, (3) the procurement and sale of long-range transmission services, and (4) the purchase and sale of wholesale power. As is also true in most of the states, Florida electric-utility systems can compete in attracting new industrial or commercial enterprises to their areas of service. In addition, however, the Public Utility Law of Florida (Ch. 366 F.S.A.) gives the Florida Public Utility Commission no authority to assign electric utilities exclusive service areas, so that

they remain free to compete at retail in the extension of their service areas. The Commission does accept, for filing and approval, territorial agreements between and among electric companies, but the only effect of approval is to relieve each contracting utility of its responsibility, as a public-service corporation, to render service at the demand of consumers outside its agreed territory.

IV

OFFENSES CHARGED

12. Beginning in or before 1964 and continuing up to and including the date of the filing of the complaint, defendants have engaged in continuing unlawful combinations and conspiracies unreasonably to restrain and to monopolize interstate trade and commerce in electric power in violation of Section 1 and 2 of the Sherman Act.

13. The combinations and conspiracies consisted of a continuing agreement, understanding, and concert between the defendants, the substantial terms of which are:

(a) To establish exclusive service territories for each of the defendants within which it would be free from competition for wholesale customers;

(b) To compel the establishment of exclusive service territories, for the sale of electric energy at wholesale to distributing utilities, with like freedom from competition, for all electric companies in the State of Florida; and

(c) To boycott and refuse to deal with the plaintiffs through an interconnection and to deny backup service, except on the basis of terms that would assign exclusive service territories to defendants and to the plaintiffs.

14. Beginning at least as early as 1964, and continuing up to and including the date of the filing of this complaint, defendant Florida Power Corporation engaged in a continuing attempt to monopolize interstate trade and commerce in electric power in violation of Section 2 of the Sherman Act by refusing to deal with plaintiffs through an interconnection except on the basis of terms that would assign exclusive service territories to plaintiffs and Florida Power.

15. Beginning at least as early as 1964, and continuing up to and including the date of the filing of this complaint, defendant Florida Power and Light Company engaged in a continuing attempt to monopolize interstate trade and commerce in electric power in violation of Section 2 of the Sherman Act by refusing to deal with plaintiffs through an interconnection except on the basis of terms that would assign exclusive service territories to plaintiffs and FP&L.

V

INJURY TO PLAINTIFFS

16. The unlawful conduct above described has impaired the ability of plaintiffs to compete effectively for business within, and in the area surrounding, the City of Gainesville and has frustrated the development of a truly integrated and coordinated electric-power system for Florida, as is called for by the Federal Power Act (16 U. S. C. §§ 791 et seq.) and the Public Utility Holding Company Act (15 U. S. C. §§ 79 et seq.), by excluding Gainesville and other municipal electric utilities from interconnections with the Florida power grid.

17. As a direct and proximate result of the unlawful conduct hereinbefore alleged, plaintiffs have incurred and continue to incur excessive costs and expenses they otherwise would not have had, have lost sales they otherwise would have made, and have sustained and continue to sustain loss in the value of their business. Plaintiffs have not fully ascertained the dollar

amount of said damages but believe them to total in excess of \$4 million. When the amount of damages has been more fully ascertained, after completion of discovery in this action, plaintiffs will ask leave to amend this complaint by inserting said amount herein.

WHEREFORE, plaintiffs pray:

- (1) That plaintiffs recover from the defendants their damages, pursuant to and on the basis provided by Section 4 of the Clayton Act.
- (2) That plaintiffs be awarded their reasonable attorneys' fees and costs as provided by Section 4 of the Clayton Act.

Plaintiffs demand trial by jury.

GAINESVILLE UTILITIES DEPARTMENT
and CITY OF GAINESVILLE, FLORIDA

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By Osee R. Fagan per W.R.
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By George Spiegel
George Spiegel
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Washington, D. C. 20037

DATED: August 13, 1968.

APPENDIX D

Letter from Alan J. Roth to J.A. Bouknight, requesting
workpapers, September 22, 1981.

Letter from J.A. Bouknight to Alan J. Roth, refusing workpapers,
September 25, 1981.

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September 22, 1981

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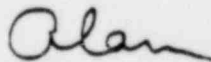
HAND DELIVERY

Re: Florida Power & Light Company
(St. Lucie Plant, Unit No. 2),
NRC Docket No. 50-389A

Dear Lon:

This will confirm our request of September 17 to Peter Flynn and September 18 to Doug Green for the workpapers for Attachment C to the September 14, 1981 "Memorandum of Florida Power & Light Company on Matters Relating To August 17 and 18, 1981, Conference of Counsel."

Sincerely,



Alan J. Roth

Attorney for Florida Cities

cc: Herb Dym, Esq.
Doug Green, Esq.
Peter Flynn, Esq.

8
RECEIVED

SEP 28 1981

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September 25, 1981

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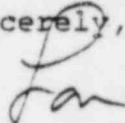
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Alan J. Roth, Esquire
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Dear Alan:

This responds to your letter of September 22, 1981. As Doug Green advised you last week, we believe that FPL is not required to produce the materials requested in your letter. The materials were prepared in anticipation of litigation, and, moreover, it is our position that your discovery which you seek is not reasonably calculated to lead to the discovery of admissible evidence.

Sincerely,



J. A. Bouknight, Jr.

JAB:lkf

cc: Herbert Dym, Esquire

Florida Cities: 9/28/81

BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bolch, Chairman
Michael A. Duggan
Robert M. Lazo
Ivan W. Smith, Alternate

FLORIDA POWER & LIGHT COMPANY

(St. Lucie Plant, Unit No. 2)

Docket No. 50-389A

September 28, 1981

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served upon the following persons by hand delivery (*) or by deposit in the U.S. Mail, first class, postage prepaid this 28th day of September, 1981.

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By Alan J. Roth

September 28, 1981

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