

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

FILED
2/27

UNITED STATES OF AMERICA)
)
 Plaintiff,) Civil No: C 81-0109-L
)
 v.)
) Filed: February 26, 1981
)
 KENTUCKY UTILITIES COMPANY,)
)
 Defendant.)
)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action for equitable relief against the defendant and alleges the following:

I

JURISDICTION AND VENUE

1. This complaint is filed, and this action is instituted, under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the continuing violation by the defendant of Section 2 of the Sherman Act, 15 U.S.C. § 2.

2. The defendant transacts business and is found within this district.

II

THE DEFENDANT

3. Kentucky Utilities Company [hereinafter "KU"] is made a defendant in this action. KU is a corporation organized and existing under the laws of the Commonwealth of Kentucky, with offices at One Quality Street, Lexington, Kentucky 40507. KU is engaged in the business of generating, purchasing, transmitting,

distributing and selling electric power and energy (hereinafter "electric power"). In 1979 KU and its wholly-owned subsidiary, the Old Dominion Power Company, reported assets of approximately \$946 million, revenues of approximately \$330 million and net income of approximately \$31 million.

III

TRADE AND COMMERCE

4. The electric power industry consists of three functional levels: generation, transmission, and distribution of electric power. Generation is the act of transforming heat, moving water, or other forms of energy into electric power. Transmission is the act of transporting electric power from generating plants through electric transmission facilities to points from which it is distributed. Distribution is the delivery of electric power from such points to ultimate consumers. Many large electric utilities, such as KU, perform all three functions. Other electric utilities, however, operate at only one or two levels.

5. KU operates an integrated electric power system, consisting of generation, transmission and distribution facilities, in portions of central, southeastern and western Kentucky. As of 1979, KU operated generating plants with a total capacity of about 2200 megawatts (hereinafter "mw"). KU also purchased 2,656,130,000 kilowatt hours of energy from other sources. KU owns and operates approximately 3700 miles of transmission lines.

6. KU sells electric power at wholesale (for resale) to eleven municipal distribution system customers in Kentucky, to Berea College, which distributes electric energy to retail customers in and around the City of Berea, Kentucky, and to one rural electric cooperative. In 1979, KU reported revenues of \$43,020,000 from its sales of electric power at wholesale.

7. KU owns and controls the only electric transmission facilities connected to its eleven municipal wholesale customers and to Berea College [hereinafter "captive wholesale customers"]. It would be economically impractical to construct alternative electric transmission facilities to connect with any of the captive wholesale customers. KU has monopoly power in the transmission of electric power to each and all of the captive wholesale customers.

8. KU is the only supplier of electric power to eleven of the captive wholesale customers. It supplies substantially all the requirements of the City of Paris, Kentucky, the other captive wholesale customer. The sale of electric power to each and all of the captive wholesale customers constitutes a market.

9. KU sells power at retail in approximately 160 municipalities pursuant to distribution franchises issued by the municipalities. When a distribution franchise expires, the municipality may renew the franchise, may award that franchise to another electric utility company for a term of years, or may establish and operate its own electric distribution system. KU owns and controls the only electric transmission facilities connected to many of these municipal retail customers.

10. The Southeastern Power Administration (hereinafter "SEPA") was created by the Secretary of Interior in 1950 to market power from federal hydroelectric projects under Section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825. Effective October 1, 1977, SEPA was transferred to the Department of Energy as a "separate and distinct organizational entity" within the Department, pursuant to § 302(a) of the Department of Energy Organization Act, 42 U.S.C. § 7152(a)(1)(A). SEPA is headquartered in Elberton, Georgia.

11. SEPA sells wholesale electric power generated at federal hydroelectric projects in Tennessee and Kentucky to customers in Kentucky and five other states. SEPA owns no electric transmission facilities. SEPA power must be transmitted over transmission facilities owned by electric utilities in areas in which SEPA desires to market power.

12. KU and its subsidiary are engaged in, and their activities affect, interstate commerce. They distribute power to retail customers in several different states. KU sells and buys wholesale electric power to and from electric utilities located in several different states, and the power exchanged among them crosses state lines. In addition, the alleged violations of law hereinafter described have prevented and are preventing the flow of electric power in interstate commerce.

IV

VIOLATIONS ALLEGED

13. Defendant KU, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, has attempted to monopolize and has monopolized trade and commerce in the transmission of electric power and in the sale of electric power at wholesale to each and all of the captive wholesale customers.

14. Pursuant to and in furtherance of the aforesaid attempt to monopolize and monopolization, defendant KU has, among other things:

(a) sought to prevent the captive wholesale customers from obtaining access to wholesale electric power from suppliers other than KU and sought to prevent competing suppliers from gaining access to the captive wholesale customers;

(b) refused to transmit, or refused to transmit except upon anticompetitive conditions, SEPA wholesale electric power to eight of the captive wholesale customers; and

(c) sought an agreement with SEPA to allocate wholesale electric power sales and customers.

15. The aforesaid acts have had, and will have the following effects, among others:

(a) defendant KU has been able to preserve its monopoly in the sale of electric power at wholesale to each and all of the captive wholesale customers;

(b) competition in the sale of electric power at wholesale to the captive wholesale customers has been substantially lessened or eliminated;

(c) the captive wholesale customers have been deprived of free and open competition in the sale to them of electric power at wholesale; and

(d) trade and commerce in the sale and transmission of electric power has been restrained.

PRAYER

WHEREFORE, plaintiff prays:

1. That defendant KU's refusal to transmit electric power, or its refusal to transmit electric power except on anticompetitive conditions, to captive wholesale customers be adjudged to be in violation of Section 2 of the Sherman Act;

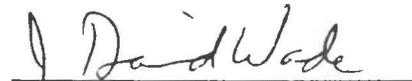
2. That defendant KU be permanently enjoined from refusing to transmit electric power, and from refusing to transmit electric power except on anticompetitive conditions, over its transmission facilities from any electric power supplier to any wholesale power customer;

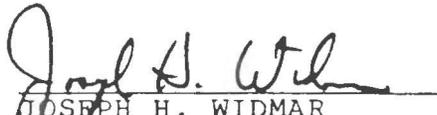
3. That defendant KU be required to file with the Federal Energy Regulatory Commission, under §§ 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and e, a tariff or tariffs pursuant to which KU will transmit electric power in accord with ¶ 2 above;

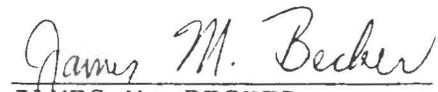
4. That the plaintiff have such other and further relief as the Court may deem just and proper; and

5. That the plaintiff recover the costs of this action.


SANFORD M. BITVACK
Assistant Attorney General


J. DAVID WADE


JOSEPH H. WIDMAR


JAMES M. BECKER


DONALD A. KAPLAN

Attorneys,
Department of Justice
Washington, D.C. 20530
(202) 724-7921
(202) 724-6410


ROBERT FABRIKANT

Attorneys,
Department of Justice

JOHN H. SMITH
United States Attorney
Western District of Kentucky
Room 211, U.S. Post Office and Courthouse
Louisville, Kentucky 40202
(502) 582-5911

By: _____
Assistant United States Attorney

Dated: _____