

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Florida Power Corp. and Tampa Electric Co., U.S. District Court, M.D. Florida, 1971 Trade Cases ¶73,637, (Aug. 19, 1971)

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United States v. Florida Power Corp. and Tampa Electric Co.

1971 Trade Cases ¶73,637. U.S. District Court, M.D. Florida, Tampa Division. Civil No. 68-297-T. Entered August 19, 1971. Case No. 2007, Antitrust Division, Department of Justice.

Sherman Act

Customers and Territories—Electric Bulk Power—Consent Decree.—Two Florida utilities were prohibited by a consent decree from entering into or adhering to any agreement or understanding with each other or any other person to limit, allocate, restrict, divide or assign, or to impose or attempt to impose any limitations or restrictions respecting the persons to whom, or the markets or territories in which, electric bulk power for resale may be sold. The firms were required to cancel, within 90 days of entry of the decree, any provision in any existing contract to which either of them is a party which is inconsistent with any provision of the decree.

For plaintiff: Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Joseph J. Saunders, Bernard M. Hollander and Wallace E. Brand, Attys., Dept. of Justice.

For defendants: W. Reece Smith, Jr., of Carlton, Fields, Ward, Etmmmanuel, Smith & Cutler, Tampa, Fla. and John Germany, of Holland & Knight, Tampa, Fla.

Final Judgment

TJOFLAT, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 8, 1968, and its amended complaint on January 10, 1969, defendants having appeared by their counsel, and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," (15 U. S. C. Sec. 1), commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendant(s)" means Florida Power Corporation or Tampa Electric Company and each of them.

(B) "Person" means any individual, partnership, firm, association, private corporation, state or municipal corporation or subdivision thereof, electric cooperative corporation or other business or legal entity engaged or proposed to be engaged in the generation and (transmission, of electric power at wholesale for resale and/

or the distribution of electric power at retail; provided, however, that “person” shall not include owners, lessors, operators or managers of rental property, such as, trailer parks, apartment houses, shopping centers or office buildings, who remeter and charge for electric power distributed to their tenants.

(C) “Bulk power supply for resale” means any, some or all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any person for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendants shall also apply to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Allocation of Territories*]

A. Each defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, continuing, maintaining, renewing, enforcing or claiming any rights under any contract, agreement, understanding, joint plan or joint program with the other defendant or any other person to limit, allocate, restrict, divide or assign, or to impose or attempt to impose any limitations or restrictions respecting, the persons to whom, or the markets or territories in which, either defendant or any other person may hereafter sell electric bulk power supply for resale.

(B) Nothing herein shall be construed as enjoining or restraining defendants, from engaging jointly in lawful attempts to petition any federal or state governmental body (other than “persons” as defined herein) respecting any aspect of either defendant’s business, including without limitation, sale of electric bulk power supply for resale.

V

[*Contract Cancellation*]

(A) Within 90 days from the date of entry of this Final Judgment, defendants shall take all necessary action to cancel each provision of every contract between the defendants and between or among each of the defendants and other persons, which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Within 90 days from the date of entry of this Final Judgment, defendant shall send to each person presently engaged in the generation and transmission and sale of electric bulk power supply for resale or in the distribution of electric power at retail in the State of Florida a copy of this Final Judgment, and shall, at the same time, advise each such other person affected by the provisions of paragraph V(A) that it is free to sell electric bulk power supply for resale to such persons and in such areas as it may freely choose.

(C) Within 120 days from the date of entry of this Final Judgment, defendant shall file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of compliance with Subsections (A) and (B) of this Section V.

VI

[*Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request by the Attorney General or

the Assistant Attorney General in charge of the Antitrust Division given to defendant at its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of defendant to all contracts, agreements, correspondence, memoranda, and other business records and documents in the possession or control of defendant relating to any of the matters contained in this Final Judgment;

(R) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters; and

(C) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports relating to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at anytime for such further orders and directions as may be necessary or appropriate for the constuction or carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.