

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Otter Tail Power Co., U.S. District Court, D. Minnesota, 1972 Trade Cases ¶73,791, (Nov. 10, 1971)

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United States v. Otter Tail Power Co.

1972 Trade Cases ¶73,791. U.S. District Court, D. Minnesota, Sixth Division. Civil Action No. 6-69-139. Dated November 10, 1971. Case No. 2065, Antitrust Division, Department of Justice.

Sherman Act

Monopoly—Electric Power—Refusal to Deal—Harassment—Allocation of Markets and Customers.—A supplier of electric power, found to have attempted to monopolize and to have monopolized the retail distribution of electric power in cities and towns located in its service area, was prohibited from: (1) refusing to sell electric power at wholesale to municipalities; (2) refusing to wheel (transmit) electric power over its lines from other sources of supply to municipalities; (3) instituting litigation to frustrate the establishment of municipal electric power systems; (4) entering or enforcing contracts prohibiting the wheeling of power to municipalities; (5) allocating markets, territories or customers. Rates would be compensatory and approvable by the FPC.

Amended judgment in [1971 Trade Cases ¶ 73,692](#).

For plaintiff: Robert G. Renner, Minneapolis, Minn., Kenneth C. Anderson, Keith I. Clearwaters, Herbert D. Miller, Jr., and William L. Jaeger, Washington, D. C. **For defendant:** Cyrus A. Field, of Field, Arvesen, Donoho & Lundeen, Fergus Falls, Minn.

Amended Judgment

DEVITT, D. J.: This case having come on to be heard, trial having been had and the Court having considered the evidence and briefs, and having issued a Memorandum and Order dated September 9, 1971, and the Court having issued an Order Amending the Judgment as herein provided, it is hereby

Ordered, Adjudged, and Decreed that:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of the action and the parties hereto under Section 4 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. 4), commonly known as the Sherman Act.

II.

[*Monopoly*]

Defendant has attempted to monopolize and has monopolized interstate trade and commerce in the retail distribution of electric power in cities and towns located in its service area, in violation of [Section 2 of the Sherman Act](#).

III.

[*Applicability*]

The provisions of this Judgment applicable to the Defendant shall also apply to each of its officers, directors, agents and employees and to each of its subsidiaries, successors and assigns, and all persons, firms and

corporations acting in its behalf or under its direction and control, and to all other persons in active concert or participation with any of them who receive actual notice of this Judgment by personal service or otherwise.

IV.

[*Supply and Establishment of Power Systems*]

Defendant is enjoined and restrained from:

- (A) Refusing to sell electric power at wholesale to existing or proposed municipal electric power systems in cities and towns located in any area serviced by Defendant;
- (B) Refusing to wheel (transmit) electric power over its transmission lines from other electric power suppliers to existing or proposed municipal electric power systems in cities and towns located in any area serviced by Defendant;
- (C) Instituting, supporting or engaging in litigation, directly or indirectly, against cities and towns, and officials thereof, which have voted to establish municipal electric power systems, for the purpose of delaying, preventing, or interfering with establishment of a municipal electric power system;
- (D) Entering into, enforcing or claiming any rights under any contract, agreement or understanding which prohibits the use of Otter Tail's transmission lines to wheel (transmit) electric power from other electric power suppliers to existing or proposed municipal electric power systems;
- (E) Entering into, enforcing, or claiming any rights under any contract, agreement or understanding which limits, allocates, restricts, divides or assigns the customers to whom, or the markets or territories in which, defendant or any other electric power supplier may sell electric power.

V.

[*Rates*]

The Defendant shall not be compelled by the Judgment in this case to furnish wholesale electric service or wheeling service to a municipality except at rates which are compensatory and under terms and conditions which are filed with and subject to approval by the Federal Power Commission.

VI.

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this 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 Judgment; and
- (B) 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.

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

No information obtained by the means provided in this Section VI shall be divulged by any representatives 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 Judgment, or as otherwise required by law.

VII.

[*Jurisdiction Retained*]

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