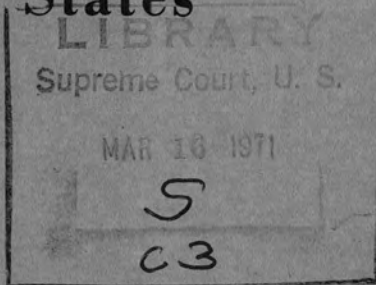


# Supreme Court of the United States

OCTOBER TERM, 1970



In the Matter of:

Docket No. 464

----- X  
GAINESVILLE UTILITIES DEPARTMENT, :  
ET AL., :  
 :  
Petitioners, :  
 :  
vs. :  
 :  
FLORIDA POWER CORPORATION, :  
 :  
Respondent. :  
----- X

RECEIVED  
SUPREME COURT, U.S.  
MARSHAL'S OFFICE  
MAR 16 3 02 PM '71

Duplication or copying of this transcript by photographic, electrostatic or other facsimile means is prohibited under the order form agreement.

Place Washington, D. C.

Date February 24, 1971

**ALDERSON REPORTING COMPANY, INC.**

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

	<u>ARGUMENT OF:</u>	<u>P A G E</u>
1		
2	George Spiegel, Esq., on behalf of Petitioners	2
3		
4	Richard W. Emory, Esq., on behalf of Respondent	15
5	<u>REBUTTAL</u>	
6	George Spiegel, Esq.	42
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

\* \* \* \* \*

benham 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

-----

	)	
GAINESVILLE UTILITIES DEPARTMENT,	)	
ET AL.,	)	
	)	
Petitioners	)	
	)	
vs	)	No. 464
	)	
FLORIDA POWER CORPORATION,	)	
	)	
Respondent	)	
	)	

-----

The above-entitled matter came on for argument at  
1:17 o'clock p.m. on Wednesday, February 24, 1971

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

- GEORGE SPIEGEL, ESQ.  
2600 Virginia Avenue, N.W.  
Washington, D. C. 20037  
On behalf of Petitioners
  
- RICHARD W. EMORY, ESQ.  
2 Hopkins Place  
Baltimore, Maryland 21201  
On behalf of Respondent

P R O C E E D I N G S

1  
2 MR. CHIEF JUSTICE BURGER: We will hear arguments  
3 next in 464: Gainesville Utilities against Florida Power  
4 Corporation.

5 Counsel, may I inquire: is it contemplated that  
6 464 and 460 will be interchangably argued in both sets of  
7 arguments or are you going to enter them completely separately?

8 MR. SPIEGEL: Well, procedurally they are com-  
9 pletely separate.

10 MR. CHIEF JUSTICE BURGER: Yes; I realize that.

11 MR. SPIEGEL: But, in terms of the subject  
12 matter they are the same.

13 MR. CHIEF JUSTICE BURGER: My question is,  
14 specifically: in the next hour are we going to concern our-  
15 selves with 464?

16 MR. SPIEGEL: Yes.

17 MR. CHIEF JUSTICE BURGER: Very well. You may  
18 proceed whenever you are ready, Mr. Spiegel.

19 ORAL ARGUMENT BY GEORGE SPIEGEL, ESQ.

20 ON BEHALF OF PETITIONERS

21 MR. SPIEGEL. Mr. Chief Justice and may it please  
22 the Court:

23 The City of Gainesville, Florida operates an  
24 isolated electric system serving some 60,000 people in Alachua  
25 County, Florida. It is a rapidly growing system with a demand



1 doubling every five years and a concomitant necessity to  
2 continue to build additional generating facilities.

3 There is, in Florida, and there was at the time  
4 in 1965, an interconnected system of five utilities, all of  
5 whom are interconnected with each other; were selling power  
6 back and forth between each other and generally applying to  
7 each other mutual assistance. And their operations in general  
8 were guided by an operating committee and their interconnec-  
9 tions were founded upon bilateral agreements.

10 The City of Gainesville desired to interconnect  
11 with this grid or this pool, but it was not able to negotiate  
12 an agreement with either of its closest neighbors: Florida  
13 Power and Light Company and Florida Power Corporation and --

14 Q Excuse me. Was the city ever a customer,  
15 a direct customer of any of these five utilities?

16 A No, Your Honor.

17 Q It's always been a municipally-operated --

18 A Yes. During World War II there was an  
19 emergency interconnection with Florida Power Corporation but  
20 this was severed shortly after the war.

21 The Commission, after extensive hearings, under  
22 Section 202(b) of the Federal Power Act, ordered the inter-  
23 connection and fixed the terms and conditions for the sale of  
24 energy across that interconnection and for the responsibilities  
25 which Gainesville would have to assume by way of providing

1 generating capacity reserves to the interconnected system and  
2 in general, the Commission fixed the same pro rata terms and  
3 obligations on Gainesville as would exist among members of the  
4 pool.

5 Appeal was taken -- a petition for review was  
6 taken to the Fifth Circuit Court of Appeals by Florida Power  
7 Corporation --

8 Q Mr. Spiegel, would you say that broadly,  
9 all the significant conditions for Gainesville are the same as  
10 they are between and among the other members of the grid?

11 A Yes, sir. There are some minor differences  
12 in certain individual bilateral contracts. In general they are  
13 the same, but the Commission does require that Gainesville  
14 abide by the operating criteria of the Florida Operating Com-  
15 mittee precisely the same as other systems.

16 Three issues were presented in the Court of  
17 Appeals; the fourth issue being whether the Commission had  
18 authority to order the interconnection and the court upheld the  
19 Commission on that. The second issue was whether the Commis-  
20 sion should be required to condition the interconnection upon  
21 the making of a territorial agreement between the parties. The  
22 Commission had declined to do so and the court had upheld the  
23 Commission on that issue.

24 The only question on which the -- the third  
25 question and only question on which the court reversed, was as

1 to a single aspect of the compensation arrangement. There is  
2 no disagreement as to what the price should be when the  
3 economy energy flows through the system, between the systems.  
4 There is no dispute as to what -- again, no serious question  
5 as to what the rate should be when they arrange firm trans-  
6 actions, short-term transactions.

7 It is agreed that Gainesville shall pay all of the  
8 costs of making the interconnection, but the court took the  
9 position that because Gainesville was small and because it  
10 considered that Gainesville was receiving the larger part of  
11 the benefits that there must be some other charge of some sort.  
12 And it wasn't sufficient to accept the Commission's principle,  
13 its rule that when interconnected systems operate together it  
14 is the duty that each one carry its proportionate utility  
15 responsibility and that is -- and if it discharges that pro-  
16 portionate responsibility it has provided its basic cost  
17 burden.

18 Now, what the Commission is sayins is this: that  
19 when a group of utilities are interconnected, each one brings  
20 some load to the interconnected system and that load, say 100  
21 megawatts, is a burden on the interconnected system. There-  
22 fore, it must also bring some generating capacity to offset the  
23 load which it brings and it must bring generating capacity,  
24 not just equal to its load, but it must be something greater.  
25 It must bring a reserve capacity so that in the event of

1 failure of the generator there will be other generating  
2 capacity available to the system.

3 Now, what the Commission here is saying is that  
4 if Gainesville brings that capacity to the interconnection,  
5 that extra capacity, that reserve capacity to the interconnec-  
6 tion, which it would be required to do under the operating  
7 criteria of the Florida pool, as each system under the Florida  
8 pool is required to do and it would meet its basic responsi-  
9 bility for not burdening the pool.

10 Q Wouldn't Gainesville have to pay for any  
11 power that it actually used?

12 A Oh, yes; yes. When the energy flows there  
13 are payments and likewise, when --

14 Q And there is no question about the  
15 adequacy of that rate as a rate for payment for that power?

16 A No question. No; there isn't. I don't  
17 think there is any serious question on that.

18 Q So you really do, under this Federal  
19 Power Commission order you would do more than just bring  
20 generating, make your generating capacity available to the  
21 system?

22 A That's right.

23 Q You would be paying for power if the flow  
24 in your direction was greater than the flow in the other  
25 direction?



1           A       That is correct and vice versa. In other  
2 words, this is a mutual arrangement. In other words, we  
3 agree to back up Florida Power Corporation and through Florida  
4 Power Corporation, supply emergency energy to any system that  
5 needs it and likewise there would be payments from Florida  
6 Power Corporation .

7           Q       Is there any way of -- what is the  
8 practical situation. Let's assume that your system was using  
9 all the power you had within the system. Let's assume one of  
10 your generators went out, and your system was using all the  
11 power that you then had.

12          A       Right.

13          Q       And then say there was a need for power  
14 in the larger system.

15          A       Under those circumstances we could not supply  
16 it nor would we be required to supply it.

17          Q       You just wouldn't give it to them because  
18 there is a way of -- what would do, cut the switch or what?

19          A       Well, the switch can be opened.

20          Q       Is that what you would do?

21          A       If I understand your example, you are  
22 assuming that Gainesville has a load in excess of 50 megawatts.

23          Q       Yes.

24          A       Even though it has 100 megawatts of  
25 capacity, only 50 megawatts is than operating.

1 Q Yes.

2 A The other 50 megawatts has been definitely  
3 forced --

4 Q Yes.

5 A And the power company would ask us for  
6 power in an emergency in their situation. We could not supply  
7 it.

8 Q I take it that would be true the other  
9 way, too?

10 A That would be true the other way.

11 Q If you suddenly needed power, which you  
12 apparently need some connections to take care of the emergen-  
13 cies -- if there was an emergency in the Gainesville system.

14 A Right.

15 Q And you suddenly needed power.

16 A Right.

17 Q And the larger system was then overloaded  
18 itself.

19 A Like Consolidated Edison in New York.

20 Q Yes. They could not furnish you the  
21 power?

22 A That's right.

23 Q They have no obligation constantly to be  
24 on standby status to furnish you emergency power?

25 A That is my understanding; that is the

1 service for which we requested; that was the service that we  
2 would order --

3 Q Which?

4 A That the seller's system, the helping  
5 system doesn't help the other system --

6 Q Unless it's in a position to do it?

7 A Unless it's in a position to do it. Now,  
8 this is fundamental --

9 Q Isn't there quite a difference between  
10 the litigants in this case on that issue?

11 A There is, and the court, I think this is  
12 one of the basic areas the court made where I think it tried  
13 to understand the electrical arrangements but misunderstood  
14 them.

15 Q Would you concede that if Florida Power  
16 were under an obligation to maintain a capacity which, under  
17 any circumstances -- so that under any circumstances it could  
18 furnish your emergency needs for power, that it may be that  
19 you should do something more than pay for power?

20 A Oh, yes. If they are obligating themselves  
21 to have 50,000 kilowatts constantly available on call for us,  
22 which they have to give to us in preference to their own cus-  
23 tomers, and even irrespective of whether they have to unload  
24 their own customers, then we have a fixed standby obligation.  
25 I doubt they would be willing to sell that service at \$3.08

1 per kilowatt --

2 Q Yes, and you wouldn't expect to buy it for  
3 that? Would you?

4 A It's an animal that I don't understand  
5 in terms of the electrical situation.

6 Q Well, you're saying that --

7 A If they are obligating themselves on a  
8 firm basis to have the generation and have the transmission  
9 then it's obligation that runs in the order of \$20 or \$30 a  
10 kilowatt, yes.

11 Q Wouldn't it be cheaper for you to build  
12 your own?

13 A It would be cheaper for us to --

14 Q How about that?

15 A The thing that needs to be emphasized here  
16 is that the switch and the control of the operations is in  
17 the hands, first of all, in the dispatchers of the system and  
18 they, under an operation committee of the two parties, and  
19 they are in a position to decide when and under what circum-  
20 stances the switch is to be opened and by whom.

21 Now, the basic obligation as it exists in the  
22 agreements which are a matter of record in this case between  
23 the various companies, all say the same thing. They say that  
24 when you receive a call for an emergency you shall give it to  
25 them if you can do so without jeopardizing your own service.



1 Q So you are saying --

2 A And they further provide in the body of  
3 the contract that if at any time the operations of the other  
4 body, the power it's drawing, jeopardizes your service you  
5 have a right to open the switch, and the Commission's order,  
6 when it orders emergency service here, must be read within  
7 the context of that.

8 Q Well, you are saying Gainesville's right  
9 for emergency power is only when the power isn't being used  
10 in the other system?

11 A That's right. And that's the standard  
12 throughout the industry by which systems interconnect. Now,  
13 that doesn't mean that this thing -- that the kind of emer-  
14 gency assistance available is not an important thing. It's an  
15 important thing because what happens is every system pools its  
16 reserves. It's like a co-insurance arrangement; so that the  
17 Gainesville reserves, plus the Orlando reserves, plus the  
18 Jacksonville reserves are available to anybody in the group  
19 that needs it.

20 Q But isn't it based on the assumption and  
21 practical experience that the same disaster is not going to  
22 strike all the members of the pool at the same time and in  
23 the same degree?

24 A That's right.

25 Q Now, the probabilities are that the

1 reserve capacity will be sufficient and the system under most  
2 cases -- in other words they will have a -- they will make  
3 calculations, probability of loss calculations for a total  
4 system and they will conclude that we have achieved a stand-  
5 ard so that load will not exceed available capacity more than  
6 one day in ten years.

7 It's those kinds of possibilities.

8 Q Does the sole question here relate to  
9 compensation?

10 A The whole question relates to compensa-  
11 tion.

12 Q For the power that they get?

13 A Not for the power that is given, but for  
14 the fact that the power is available. In other words --

15 Q This is power they can get compensation  
16 for; isn't it?

17 A They get the compensation when the power  
18 flows.

19 Q That's right, but isn't that the issue  
20 here, whether it's too much or too little?

21 A No; the issue here is whether Florida  
22 Power Corporation should be compensated when the power is not  
23 flowing because under their theory --

24 Q I suppose it still gets back to the  
25 question of whether compensation is too much or too little;

1 doesn't it?

2 A Yes.

3 Q I thought it did.

4 A Overall -- overall, yes.

5 Q And that's what the Commission has passed  
6 on?

7 A That's what the Commission has passed on.

8 Q That's what the court set aside?

9 A That's what the court set aside. The  
10 court, in effect, prohibits the Federal Power Commission from  
11 utilizing this rule of proportionate utility responsibility.  
12 It says that this is inadequate based upon its understanding --  
13 the court's understanding, it seems to me, of how electrical  
14 systems operate.

15 And it seems to me a clear example of a policy  
16 fact determination which has been placed in the hands of the  
17 experts, the Federal Power Commission and should be allowed to  
18 stand as long as there is warrant in the record; as long as the  
19 Commission's reasoning is adequate and as long as there is  
20 substantial support in the evidence.

21 Q Now, I suppose there are a great many  
22 pool agreements, multilateral and bilateral, throughout the  
23 industry in the country.

24 A Yes, there are.

25 Q Does this record show, or do you happen to

1 know whether there are other arrangements of this kind imposed  
2 by Commission orders?

3 A There have been very little in the way of  
4 Commission orders, and this is a practically a case of first  
5 impressions, of this type of interconnection.

6 Now, there is testimony by the experts of the  
7 staff who have examined a multitude of interconnection arrange-  
8 ments and pooling arrangements throughout the country and  
9 they say, in effect, and they testify, in effect, that the  
10 kind of standby chart that's here being recognized, is con-  
11 trary to the general practices in the country.

12 Now, the court, you see, reasons that a firm  
13 obligation has been placed upon Florida Power Corporation,  
14 even though the Commission states specifically that we have  
15 provided no firm obligation, no firm service. And so, pro-  
16 ceeding from that erroneous position is concludes that costs,  
17 fixed costs are being placed upon Florida Power Corporation  
18 which the Commission says are not.

19 And proceeding further, the court then tries to  
20 decide or does decide that in its group there can be no  
21 reciprocity of benefits between the system as the Fifth Cir-  
22 cuit Court system views it, a big system can never receive  
23 benefits from a small system and all the benefits go the other  
24 way.

25 But, here again is an area that was discovered in



1 the evidence and is covered by findings of the Commission  
2 where the Commission determined otherwise that there are bene-  
3 fits flowing both ways, even though one system is smaller than  
4 the other. There are power transactions that can be made;  
5 there is the availability of the reserve capacity which  
6 Gainesville will have and actually the court assumed -- the  
7 Commission indicates that these benefits can be very substan-  
8 tial.

9 Well, here again the court, without, I believe,  
10 reviewing all the evidence before the Commission, has sub-  
11 stituted its view on the facts, for the findings which the  
12 Commission has made.

13 Now, I think the case is as simple as that. It  
14 simply is an area in which the Commission had a permissible  
15 range of choices, where it has developed a practice and a  
16 policy which is of importance in this case and could well be  
17 of importance in other cases. And the court is saying that  
18 it's beyond their authority; that the Commission is in error  
19 on the facts.

20 I would like to reserve my remaining time.

21 MR. CHIEF JUSTICE BURGER: Very well, Mr.  
22 Spiegel.

23 Mr. Emory.

24 ORAL ARGUMENT BY RICHARD W. EMORY, ESQ.

25 ON BEHALF OF RESPONDENT

1 MR. EMORY: Mr. Chief Justice and may it please  
2 the Court:

3 First I'd like to state that this case doesn't  
4 involve whether there should or should not be a connection  
5 because Florida Power Corporation has been offering to inter-  
6 connect voluntarily ever since this case began. And I filed  
7 in our brief, Exhibit 40, which is the interconnection agree-  
8 ment which we offered.

9 We're opposed to a forced connection or a connec-  
10 tion ordered by the Commission which we feel doesn't meet the  
11 statutory standards of necessary and appropriate in the public  
12 interest and not an undue burden on our system.

13 Q How does the Commission order differ  
14 significantly, in your view, if it does, with the arrangements  
15 you have with the other members of the pool?

16 A Your Honor, these arrangements with other  
17 members of the pool are based on mutuality or reciprocity of  
18 service benefits. We have two other arrangements with other  
19 systems where there are special payments provided for. We  
20 have an arrangement with Gulf Power Company where Florida  
21 Power Corporation is paying Gulf \$5.80 a kilowatt per year and  
22 we are only asking for \$3.08 here. It all depends on whether  
23 the arrangement or interconnection has mutual service benefits.  
24 If it doesn't have mutual service benefits there should be  
25 something to offset that lack of mutuality and --

1                   Q           You say that Florida Power doesn't have  
2 any benefit out of this?

3                   A           We can't see where we would get anything  
4 out of this interconnection. In fact, we think that we would  
5 be seriously criticized if we even considered spending the  
6 million-and-a-half dollars that Gainesville proposed to spend  
7 on the interconnection.

8                   The Florida Public Service Commission would  
9 criticize us for wasting our money and the consumers would  
10 criticize us for wasting our money. And that gets down to  
11 understanding what this interconnection does.

12                  Q           Well, what's the million-and-a-half for;  
13 what are you ---

14                  A           That is the cost of -- Gainesville  
15 estimated the cost of the interconnection to our system would  
16 be a million-and-a-half dollars. The Federal Power Commission  
17 found \$3 million, but there isn't anything in the record to  
18 support this \$3 million. We don't care what it costs; we  
19 don't think that we would be justified in spending any money on  
20 it because all it is to our system is a burden.

21                  Q           Well, I had an impression, and I want you  
22 to correct it if it's wrong, but Gainesville was to pay that.

23                  A           They are to pay that and they say that  
24 that will be a burden, but they won't pay it because they are  
25 ordered to; they will pay it because they want to, because they

1 are not subject to the Federal Power Commission. This order  
2 has no real effect upon them. They are outside the jurisdic-  
3 tion of the Federal Power Commission, so --

4 Q Can't it be made a condition of the inter-  
5 connection order; isn't that this posture --

6 A Well, if they pay for it; yes, but suppose  
7 they don't want to do it?

8 Q Well, then they don't get the interconnec-  
9 tion --

10 A So if they build it it will be because  
11 they want to. That's my point.

12 Q But I'm not sure I follow what it is you  
13 complain about in that situation.

14 A We complain that we - our system is going  
15 to be required to subsidize and support their system and give  
16 them substantial financial benefit that their own witness  
17 estimated would be worth \$520,000 a year to their system and  
18 we pay the whole cost of standby service for both systems.

19 Now, our customers, and this is important to  
20 understand what standby is; all large power systems have to  
21 have an overcapacity to take care of emergencies. That's  
22 obvious. It's just like having a fire department in a city;  
23 you've got to have a certain amount of overcapacity and you've  
24 got to be able to get that overcapacity to any part of the  
25 system wherever you have a power shortage.



1                    Now, we have a \$65 million transmission line  
2 going half the length of Florida. This system serves the West  
3 Coast of Florida, about from St. Petersburg up to the Georgia  
4 line and inland to central Florida. We have a \$65 million  
5 transmission line that costs us \$13 million a year to own and  
6 maintain and operate.

7                    Now, there is no time to open or close switches.  
8 These emergencies happen like that. If the power isn't  
9 supplied within 1/120th of a second you're going to have a  
10 brown-out or a black-out.

11                    Q            MR. Emory, but you don't have to build or  
12 maintain because of this connection, any more capacity than  
13 you've already got.

14                    A            No, we don't; not for this one customer,  
15 and this is why we're --

16                    Q            But this one customer is not going to  
17 figure any obligation in you to build any more capacity.

18                    A            Not this one customer; that's right. Our  
19 transmission system can take care of Gainesville without any  
20 additional capacity, but what about the next customer? Now,  
21 we've got a lot of municipal systems in Florida. We're serving  
22 12 at wholesale. We're serving nine; suppose they all want  
23 free standby?

24                    Now, our customers, we figure --

25                    Q            Well, when you run out of capacity, then

1 out of capacity; then nobody connects with you?

2 A Oh, it isn't that simple, Your Honor. We  
3 have to provide capacity.

4 Q Oh, sure you do, for your customers.

5 A And for anybody with whom we are inter-  
6 connected.

7 Q But you don't need to make the intercon-  
8 nection.

9 A Well, if the Federal Power Commission  
10 wanted us to, we do.

11 Q Well, you're not suggesting they are going  
12 to order you to make a connection and force you to build at  
13 your expense, more capacity?

14 A No; the statute does restrict them against  
15 ordering us to do anything that would be require an addition  
16 to our system, but let's look at it from the point of view of  
17 our customers. We figure that there is built into our system  
18 a cost of \$3.20 a kilowatt or standby in our transmission line.  
19 Every customer on our system in his rates, has that built into  
20 his rates as one element of cost.

21 Now --

22 Q When you speak of customers, are you  
23 speaking of large or --

24 A Retail customers, wholesale customers;  
25 everybody.

1 Q Well, then, is that an average cost by  
2 numbers, or are you talking now about the householder?

3 A Well, I haven't broken this down for how  
4 much power any one person should use. This is based on our  
5 load. We have a load of 1500 megawatts. We figure this is  
6 what it would cost on a total load basis and we have to re-  
7 cover that money somewhere. We haven't broken it down per  
8 individual customer.

9 But, take one of the cities that we are serving  
10 wholesale. They buy power from us. In their rate is built  
11 in the cost of our transmission system and our standby  
12 capability and they pay for it. Now, Gainesville wants it for  
13 nothing. we think --

14 Q They just want to pay for power?

15 A Well, that's right, but we pay for the  
16 power if we buy it from them, but what is going to happen and  
17 you've got to understand: this interconnection inevitably,  
18 unavoidably, will result in our protecting them in all hours of  
19 the day and night against any outage on their system.

20 Q Well, only as long as you have got some  
21 power to spare.

22 A No; we cannot operate our system in a way  
23 that wouldn't protect them, except for opening the switch,  
24 which the Federal Power Commission says you can't do. We have  
25 to have a --

1                   Q       Well, let's just assume that one of your  
2 big generators goes down; that your reserve capacity that you  
3 are maintaining to guard against failure. This is how you  
4 maintain it; isn't it?

5                   A       That's right.

6                   Q       Let's assume you have a failure and you  
7 have to use your generating -- your reserve generating capacity  
8 to satisfy your normal load. Now, are you suggesting that  
9 in that situation there is no way you could keep from furnish-  
10 ing Gainesville power if it also had an emergency?

11                  A       It's conceivable in some great crisis if  
12 we have enough loss of generation we might have to cut off a  
13 everybody, a lot of people. We might have to cut off some  
14 of our own customers --

15                  Q       You can cut them off?

16                  A       Oh, yes; we can cut them off, but in any  
17 normal operation we have to protect against loss of 400 or 500  
18 megawatts and we have to have that spinning; that has to be  
19 in operation all the time. It has to be available within  
20 1/120th of a second.

21                  Q       Sure, but that's true whether you're con-  
22 nected with Gainesville or not.

23                  A       That's right. But, how --

24                  Q       Well, how can the connection with  
25 Gainesville add to your burden, laying aside whether it confers

1 any benefit on that?

2 A It does not add to our burden; we cannot  
3 deny that, but what we say anybody and everybody who connects  
4 to our transmission system ought to pay its fair share of the  
5 cost. I mean they shouldn't get a free ride.

6 Q How many people are in the pool with you  
7 now: the bilateral and multilateral contract pool?

8 A Well, the only ones that I know are the  
9 Florida Power and Light, Tampa Electric, Orlando and Jackson-  
10 ville.

11 Q Now, refresh my recollection on your  
12 standby arrangements with them.

13 A We do not have any similar standby arrange-  
14 ment with them because we have what we envisage mutuality of  
15 service arrangements. I mean, if we lose a couple of hundred  
16 megawatts they can supply it to us; the same way if they lose  
17 a couple of hundred megawatts we can supply it to them.

18 Q Well, are you telling us the probability  
19 it is much greater that it would be a one way street with  
20 Gainesville than it is with the others?

21 A We say it would be a complete one-way  
22 street here, whereas with the others it's an mutual street;  
23 it's a two-way street.

24 Q What about Justice White's question to you;  
25 what if one of your big generators burns out or one of your big



1 plants get hit by lightening or what not?

2 A Well, we've had those things happen and  
3 so far as I know we have been able to take care of all of them  
4 that I know about.

5 Q Well, if you did need them, as Justice  
6 White suggested, you could, under this order, call on  
7 Gainesville for its reserve power; could you not?

8 A Gainesville couldn't supply enough to see;  
9 I mean it wouldn't really do us any good. The most that they  
10 can supply in instanstaneous power if they had everything  
11 running and they admit that they would run everything,  
12 would be about 10 megawatts and for a system that needs 400 or  
13 500, with 10 we can't see.

14 Now, furthermore, in our planning and operation  
15 of our system we -- and this is why they mean nothing to us --  
16 we include 30 or 40 megawatts as a margin of error in planning  
17 our system and in the operation of our system. We couldn't  
18 change our method of operation because of Gainesville because  
19 they can't supply enough to provide any mutuality to this  
20 interconnection; any reciprocity to this interconnection.

21 Q Well, Mr. Emory, what is the relationship  
22 between Florida Power and Florida Power and Light?

23 A None whatsoever, except they have a  
24 number of interconnection agreements.

25 Q No interlocking directorates or anything

1 of this kind?

2 A No; there is --

3 Q But you have an interconnection with them?

4 A We have several.

5 Q Right.

6 Q Where does the Florida Power Company  
7 operate? What's its area?

8 A It's area is from St. Petersburg, roughly,  
9 north up to Pensacola, up the West Coast of Florida and  
10 through central Florida.

11 Q Down to Miami under --

12 A No; that's Florida Power and Light in  
13 Miami. It's only --

14 Q That's Florida Power and Light?

15 A Yes. Florida Power is --

16 Q You say "your system." What is your system?

17 A The system is from St. Petersburg north  
18 up the West Coast of Florida.

19 Q Who generates the power?

20 A We generate the power.

21 Q Florida Power.

22 A Florida Power --

23 Q Where?

24 A They generate -- they have got about eight  
25 generator stations.

1 Q Where?

2 A The largest one is Crystal River; they  
3 have got one outside of St. Petersburg; one just north of  
4 Tampa --

5 Q All in Florida?

6 A All in Florida. And they are interconnec-  
7 ted with Gulf and --

8 Q Now --

9 A With Georgia on the Georgia line.

10 Q The sum total of this is, isn't it, that  
11 the Gainesville Power Company wants to buy power from your  
12 company?

13 A No, Your Honor; they don't want to buy  
14 power.

15 Q They don't. They want you to give it to  
16 them?

17 A They want us to give them free standby;  
18 that's what they want --

19 Q Free standby, but do they get power?

20 A They might -- we don't know. They insist  
21 they do not want any firm purchase of power, but here's what  
22 free standby does to them: they are carrying a reserve and  
23 generation when this case was tried, of about 112 percent of  
24 their largest unit. If they make this connection, by the mere  
25 fact they make the connection we will protect them at every

1 hour of the day and night --

2 Q I understand your protection, but do they  
3 get power from you?

4 A It depends on whether they have any  
5 outages?

6 Q But do they get power, any power, under  
7 any circumstances?

8 A Any time they had a loss of generation or  
9 didn't generate enough power for --

10 Q Now, the problem here that the Power  
11 Commission had to consider was how much they pay you for it;  
12 wasn't it?

13 A That's right.

14 Q And that's the issue?

15 A That's right.

16 Q That's the only issue?

17 A That's the only issue.

18 Q And they didn't -- this Commission didn't  
19 hold that they would get that power for nothing?

20 A They just said that --

21 Q Now, wait a minute. They pay a certain  
22 amount for the power that's used; and do they pay any less than  
23 anybody else pays for power? You want them to pay more than  
24 the normal rate for power in order to compensate you for what  
25 you say is a --

1                   A           We're not asking for a higher charge for  
2 power; we're asking them to bear a fair share of the cost of  
3 our standby for the amount of the standby that they are going  
4 to use. We say that this standby, or our built-in-excess  
5 capacity which is going to protect both systems, costs us \$3.20  
6 per kilowatt per year. If you pay your fair share of the cost  
7 of that, based on the demands that you're putting on the ex-  
8 cess capacity on our system and the demands that we're putting  
9 on --

10                   Q           Didn't you say as to your other customers  
11 that as to the share of that three twelve standby is included  
12 in the rate that they now pay?

13                   A           That's right.

14                   Q           Well, now, why isn't it included in the  
15 rate that Gainesville would pay?

16                   A           Because there is no provision for it.  
17 That's what we're --

18                   Q           Well, if you charge -- are charging  
19 Gainesville for the power they purchase, that they actually get  
20 from you the same rate as others are paying with this built-in  
21 312, or whatever it is, why isn't it also included in what  
22 Gainesville pays?

23                   A           Because the other people not only pay for  
24 the power that they get, based on --

25                   Q           Well, they pay you a rate for the power and



1 rthat rate includes a provision for this.

2 A That's right.

3 Q Now, the rate that you would be charging  
4 Gainesville would be exactly the same rate?

5 A No, it isn't; it does not include any  
6 provision for standby. That's our whole point. It doesn't.  
7 It only includes where -- when they take power they pay 5  
8 cents per kilowatt plus a low energy charge -- actually they  
9 get it cheaper, because they get it at our cost plus 10 percent.  
10 They get what we call interchange --

11 Q They get it at your cost which includes --

12 A Plus 10 percent.

13 Q -- the normal ratemaking calculation of  
14 what your cost is; right?

15 A That will compensate us for when they are  
16 taking power across the interconnection but it will not com-  
17 pensate us for maintaining this large transmission --

18 Q Which you would maintain anyway?

19 A That's right, but if they want to use it  
20 why shouldn't they pay for it?

21 Q Why should they pay for anything more than  
22 the power they actually use when you are going to have to  
23 maintain this standby capacity anyway?

24 A Well, Your Honor, it's this situation: if  
25 you go to an airline and they have an empty seat do you contend

1 that you should take a free ride?

2 Q No, but all I should pay is what the other  
3 passengers are paying.

4 A That's all we're asking. We're asking them  
5 to pay exactly what our customers pay.

6 Q No; all I have to pay is for my ride; I  
7 don't have to pay the airlines for when the airplane is empty  
8 and sitting in overhaul somewhere.

9 Q Are you analogizing this, Mr. Emory, to  
10 an option. The standby order that is here is an option that  
11 must be fulfilled on demand and you say that option is, in and  
12 of itself, worth something?

13 A That's right. It's more than option; we  
14 say it's an absolute firm obligation that we can't escape.

15 Q Well, an option -- I'm presuming it's a  
16 firm obligation --

17 A It's a firm obligation and once you make  
18 that connection and close the switch and open the switch --  
19 kept closed we're going to be standing there with this standby.

20 Q Well, tell me, I might have missed it:  
21 have you any other customer who would be in the exact same  
22 position as Gainesville?

23 A We have one that I know of. This case --  
24 it's not in the record -- is paying the standby. Now --

25 Q My whole point -- what seems to worry me

1 at least a little bit, is: assuming for the next five years  
2 Gainesville never needs to close the switch and they would  
3 still be paying like insurance; wouldn't they?

4 A Well, it's like insurance in a sense,  
5 Your Honor; that's right. But the switch is closed. The  
6 Federal Power Commission ordered the switch kept closed and  
7 unless the switch is kept closed this arrangement is no good  
8 for them. It's only good to them because it is closed, and  
9 if they have any generating outage or generating deficiency  
10 they will be automatically protected.

11 If they weren't going to close the switch they  
12 shouldn't pay for standby. I would agree with that. But, when  
13 they close the switch, keep the switch closed and impose upon  
14 us the burden of protecting them we think they ought to pay  
15 their fair share.

16 Now, if what we ask isn't a fair share, we're  
17 perfectly willing to listen to what's reasonable, but the  
18 Federal Power Commission just evaded the issue.

19 Q Well, as it now stands -- it's not  
20 necessarily material -- but, if they pay for the connection  
21 you don't put out anything in dollars and cents until they draw  
22 some electricity; right?

23 A No; I don't agree with that. We're paying  
24 about \$13 a year for our backbone transmission network --

25 Q Would you have to increase that?

1 A No; we would be paying that anyway.

2 Q Yes; that's what I meant. So you wouldn't  
3 have any increase?

4 A We won't increase it. But we say we  
5 should --

6 Q What you're asking Gainesville is to join  
7 the others in the subsidizing?

8 A We're asking that we not be required to  
9 subsidize them. Because, if we provide them with free standby  
10 we think that's exactly what we're doing.

11 Now, there is a case I'd like to refer to that's  
12 not in this brief: Colorado Interstate Gas Company versus  
13 Federal Power Commission, 324 US 581 and at page 15 and it's a  
14 concurring opinion by Mr. Justice Jackson. And this case in-  
15 volved gas rates, natural gas rates and whether industrial  
16 customers should get a lower rate than from municipal customers  
17 on this same theory that they were adding to the cost. In  
18 other words, it wasn't going to cost any more to serve them,  
19 therefore they should get a cheap incremental rate.

20 And Mr. Justice Jackson said: "I do not think it  
21 can be accepted as a principle of public regulation that in-  
22 dustrial gas may have a free ride because the pipeline and the  
23 compressor have to operate anyway, any more than we can say  
24 that a big customer should have a free ride for his coal because  
25 the train runs anyway.

1                    Now, we feel that that fits this case exactly.  
2 We're going to provide standby that will protect both of these  
3 systems. We can't avoid it; it's an inevitable consequence  
4 of this interconnection.

5                    Q            You estimate the cost to be --

6                    A            That's right.

7                    Q            How much do you estimate your customers  
8 contribute toward that \$13 million?

9                    A            Well, presumably they contribute all of  
10 it. What we're talking about is an average yield. Of course  
11 we're talking about charging them \$154,000.

12                   Q            Charging Gainesville?

13                   A            That's all we're talking about.

14                   Q            But what's mean; the others would get --

15                   A            If you could find \$154,000 in our rate  
16 structure our customers would be entitled to \$154,000 rate  
17 reduction; theoretically.

18                   Q            I understood you to say that whenever this  
19 company gets any power from you, the Commission has required  
20 them to pay the cost plus 10 percent?

21                   A            That's right.

22                   Q            And that's what you are complaining about?

23                   A            No; actually we propose to --

24                   Q            Well, it's the cost you're complaining  
25 about; isn't it?



1 A We're --

2 Q And they have to pay your cost plus 10

3 percent?

4 A No, we're not complaining about that,

5 Your Honor.

6 Q Aren't you complaining about the price

7 they pay you?

8 A No. Actually that price was recommended by

9 us to the Commission and the Commission took our proposal on

10 that. We're complaining that they don't pay for --

11 Q That they don't pay for the cost plus 10

12 percent?

13 A No; we are complaining that they are not

14 paying anything for the free standby --

15 Q Well, let's forget those words now.

16 A Yes.

17 Q When you sell power, has the Commission

18 given you a rate of cost plus 10 percent?

19 A In this interchange arrangement.

20 Q In this rate, and that's what you get from

21 them?

22 A Yes, sir.

23 Q Every particle of power they use.

24 A That's right.

25 Q And the fight is: you say cost plus 10

1 percent for a public utility is not enough?

2 A It's not compensatory if we've got to  
3 maintain the firehouse, the fire station 24 hours a day, 365  
4 days out of the year to protect their system and our system.  
5 If that was all that --

6 Q If you get less than 10 percent profit  
7 can't you complain to them that you're not getting the price  
8 they pay?

9 A Well, Your Honor, our cost is not limited  
10 to the cost of the power that we deliver to them. Our cost  
11 is the cost of maintaining this transmission --

12 Q You mean the power company -- taking in  
13 the Commission making themselves power for less than cost  
14 plus 10 percent?

15 A Well, we're not complaining about the  
16 charge --

17 Q Well, you're complaining about what you  
18 get.

19 A We're complaining that there is no pro-  
20 vision in here to provide for standby. Now, the Commission  
21 has allowed the Federal Government standby. They've allowed  
22 the Southeastern Power Administration \$2.75 a kilowatt --

23 Q What I gather, Mr. Emory, is that at a  
24 particular year Gainesville didn't take whatever these units  
25 of power are, you wouldn't be getting anything, cost plus 10

1 percent at all. And what you want in that year, even though  
2 you don't get a dime otherwise, you want to get \$154,000 from  
3 Gainesville to help defray the cost of the standby; is that  
4 it?

5 A That's right. And it's as simple as that.  
6 Now, the Chairman of the Federal Commission, in  
7 testifying before Congress in 1967, on the -- what is known as  
8 Title III of the Federal Power Act, which was never passed, was  
9 asked by Senator Monroney, and this is about standby:

10 "SENATOR MONRONEY: 'I mean at the time he is not  
11 selling it -- the "it" being power -- 'at the time he is not  
12 selling it, does not receive remuneration for the extra stand-  
13 by capability he has.

14 "MR. WHITE:" (Mr. White being Chairman of the  
15 Federal Power Commission) "'he might be paid for the capability;  
16 yes. In other words, in order to protect a system you contract  
17 with your neighbor who says: 'under these circumstances I will  
18 provide you the necessary energy. If the worst ever comes to  
19 pass you have to pay for that right for his commitment to you  
20 to meet your needs when you need help, either by making a  
21 money payment or by making the same electrical service avail-  
22 able to him.

23 'So, the answer is: yes, you are paid for that  
24 and frankly, it is good business from both points of view."

25 "SENATOR MONRONEY: 'In other words you are

1 paying for the standby capability even though it is not used?"

2 "MR. WHITE: (Chairman of the Federal Power Com-  
3 mission) 'Yes.'"

4 "SENATOR MONRONEY: 'You would have that for  
5 maybe two or three years and maybe never need the power but  
6 for only a day or two.'"

7 "MR. WHITE: 'That is correct and under the  
8 isolated system they have to have standby power available  
9 unless they want their customers to go without service in the  
10 event of a disturbance.'"

11 Q Now, Mr. Emory, going back to the Florida  
12 Power and Light, where you have an interconnection: you are  
13 performing standby service for them and they for you?

14 A That's right.

15 Q And so what each one pays to the other is  
16 a mutuality of service, so to speak?

17 A That is correct.

18 Q There isn't a dime that flows across?

19 A No need to.

20 Q Well, then, so far as Gainesville is con-  
21 cerned, isn't it the same thing only in a much lesser degree?

22 A No, because in Gainesville's case there is  
23 nothing really that can flow across. They can't provide enough  
24 of this standby capacity to -- even for us even to take into  
25 consideration --

1 Q I repeat my question: isn't the difference  
2 one between the 10 megawatts, or whatever it is, and a much  
3 large figure?

4 A And hundreds.

5 Q But again, isn't it a matter of just  
6 degree between Gainesville on one hand and Florida P and L on  
7 the other?

8 A It is a matter of degree, except that the  
9 degree is so small that it becomes --

10 Q What I gather, Mr. Emory, is that if  
11 Gainesville could provide 200 or 300 of these units you  
12 wouldn't be here; would you?

13 A Oh, no.

14 Q All right. Now, where is the breakoff  
15 point? 50, 75, 100? Where?

16 A Your Honor, it's hard to know because  
17 those agreements are all pretty complicated; they are all  
18 negotiated; they all involve a lot of factors. And there has  
19 certainly got to be --

20 Q Well, let me put it this way: have you  
21 any agreements under a couple hundred with anyone who can pro-  
22 vide only something less than a couple hundred?

23 A Of instantaneous. Yes, with Orlando, but  
24 we're buying 100 megawatts from them of -- regularly, I think.

25 Q One hundred is as much as they can provide?



1                   A       Well, that's a firm purchase. On their  
2 -- I don't think they can provide -- it would depend on what  
3 they would have operating and I would have to do some  
4 arithmetic. They -- I don't know whether they could provide  
5 40 or 50 megawatts of standby; I'm not sure: instantaneously.

6                   Q       They pay no more than --

7                   A       No.

8                   Q       To ask a very unimportant question: if  
9 Gainesville pays this money and cuts in on the line, will that  
10 drop that cost to the consumer of Federal Power? I know  
11 that's an unimportant point.

12                  A       Well, it would save our customers \$154,000  
13 a year.

14                  Q       Well, go --

15                  A       We could go into our earnings --

16                  Q       Well, would it actually mean that the rates  
17 would be dropped?

18                  A       Well, if you could find --

19                  Q       Well, I asked would Federal Power drop  
20 their rates?

21                  A       Well, this probably wouldn't affect  
22 Federal Power rates; it would affect our domestic or intra-  
23 state rates. It would be one factor --

24                  Q       Well, when did the electricity rates drop  
25 in Florida last?

1 A They have been dropping regularly?

2 Q Regularly. Oh, I didn't know it was --

3 Q How much does there have to be in

4 Gainesville to completely shut down. What would be the

5 demand on your standby? If they can provide only 10 is the

6 maximum need from 10 or what?

7 A Well, what they say they want is 50

8 megawatts, which is the size of their largest unit and their

9 actual testimony is: we need and want emergency backup service

10 in the amount of our largest, which is 50 megawatts.

11 Q You have a complaint if you had a hundred

12 Gainesvilles wanting standby, I take it it is your position

13 is that you would be locked in, wouldn't you?

14 A If we had two or three.

15 Q Mr. Emory, if I follow your argument,

16 you're saying that this order imposes on you a disproportionate

17 burden in the way that, for illustration, a mutual defense

18 pact between the United States and Jamaica or Guatemala. It's

19 all one way; is that your point?

20 A That's right.

21 Q They can't ever help you but you are bound

22 to stand by 24 hours a day, 365 days a year to help them if

23 they need it.

24 Q Who gave the Commission the cost of your

25 operations?

1                   A        We had two -- an engineering witness made  
2 this estimate.

3                   Q        Your company?

4                   A        No; no; he was an independent -- well, he  
5 was an -- a consultant.

6                   Q        They adopted it?

7                   A        No; they just ignored it.

8                   Q        Well, I thought you said they -- or you  
9 asked them to get 10 percent plus cost --

10                  A        Well, based on the power they sell on the  
11 standby; they didn't.

12                  Q        On the power that this company buys.

13                  A        Well, on that they just took our offer;  
14 they didn't --

15                  Q        Well, you didn't leave out of that, did  
16 you, the cost of operation, the cost of whatever that is, your  
17 standby or stopby or --

18                  A        Well, we have no standby charge in that,  
19 Your Honor.

20                  Q        What was the evidence on the reasonable  
21 value of the standby: \$154,000?

22                  A        \$154,000.

23                  MR. CHIEF JUSTICE BURGER: Thank you, Mr. Emory.  
24 Mr. Spiegel you have ten minutes.

25                  REBUTTAL ARGUMENT BY GEORGE SPIEGEL, ESQ.

1 ON BEHALF OF PETITIONERS

2 MR. SPIEGEL: It's hard for me to believe that  
3 we're talking about the same case. There is an interconnection  
4 ordered here of 60 megawatts, and when you evaluate the  
5 resources on each side of that interconnection the likelihood  
6 that Gainesville can supply 60,000 kilowatts to the Florida  
7 Power Corporation when Florida Power Corporation needs it, is  
8 hardly as great as that Florida Power Corporation can supply it  
9 to Gainesville.

10 I think it's clear on the record here --

11 Q Mr. Spiegel let me ask you a --

12 A -- Gainesville has a reserve right now of  
13 60 megawatts and the Commission found in the course of the  
14 years it would have a reserve running in the amount of 40  
15 percent of its peak. So, that's 50, 60 to 70 megawatts.

16 So, we have power on our side of the system. And  
17 secondly, the Commission found that our units, though smaller,  
18 but because they are smaller, are more reliable; our average  
19 rate is much less. They have these big units; they are proud  
20 of the big units. Consolidated Edison is proud of its big  
21 units, but the big units have --

22 Q I understand its demand on you for the  
23 backup or perhaps more for the backup than it would be from  
24 you of them; is that it?

25 A Yes, Your Honor. In other words, any

1 system tied to Consolidated Edison up and down the West Coast  
2 here -- East Coast, small system, is not receiving help from  
3 Edison, rather it's being drawn down.

4 And actually a report issued only two days ago  
5 by the Federal Power Commission, indicates a very serious  
6 reserve shortage in Florida for both Florida Power Corporation  
7 and Florida Power and Light. Now, this report shows and as  
8 of this summer they expect that Florida Power Corporation will  
9 have something on the order of a 5 percent reserve --

10 Q Well, why aren't you asking for standby  
11 charges?

12 A Well, that's the point. The point is that  
13 we are dedicating per kilowatt more transmission; actually it's  
14 \$3 million worth on their basis, than they have dedicating to  
15 us. So, if they want to charge us \$3.08 I suppose we should  
16 be charging them \$4.50 and --

17 Q Oh, you would come out pretty well that  
18 way.

19 A Well, if we're going to make it bilateral,  
20 if we are both going to charge for everything we do for each  
21 other; but you have to recognize that what you are dealing with  
22 is a pool. You're not just dealing with two companies and  
23 when you've got a pool operation everybody contributes to that  
24 pool; but everybody works together in that pool and when some-  
25 body has a problem, as we point out in the brief: in January



1 of '69 the Florida Power and Light lost a big unit down in  
2 Southern Florida, the City of Jacksonville and the City of  
3 Orlando had to cut loads in order to keep the systems alive.

4 Q Incidentally, I gather you brought this  
5 all but before the Commission; didn't you?

6 A We brought that out before the Commission.

7 Q This very issue.

8 A This very issue the Commission has studied  
9 and --

10 Q Anything said here that hasn't been said  
11 before the Commission?

12 A I don't think so, Your Honor.

13 Q Mr. Spiegel, do you know whether Gaines-  
14 ville has any standby arrangements with private industrial  
15 customers who maintain their own generating plants?

16 A No; we do not.

17 Q That's a common practice, though, in  
18 the industry; is it not?

19 A There is a form of service of that type.

20 Q Did the power companies charge for that  
21 standby service?

22 A I believe there are rates that have such  
23 charges. That's true. I have, in many negotiations, always  
24 opposed such charges in any interconnection arrangement between  
25 utilities both of whom have their own generating resources.

1                   The basic position that we always have taken and  
2 in many negotiations and in many contracts is that if we  
3 supply our proportionate share of the reserve and make it  
4 available to the other side on an equalized basis we are  
5 making our contribution by our investment costs in the facili-  
6 ties themselves.

7                   Q           That's all that was in the context with the  
8 parties who are reaching this by agreement, because the  
9 parties themselves, receive a mutuality of benefits; isn't  
10 that true?

11                  A           Yes, or the parties are concerned that we  
12 might make a complaint to the Federal Power Commission.

13                  Now, in other words, the Federal Power Commission  
14 here has decided this important question.

15                  Q           And I think it was you who said this is  
16 the first interconnection of this kind.

17                  A           This is the first full interconnection  
18 decision by the Federal Power Commission between two genera-  
19 ting facilities.

20                  Q           Now, is the Gainesville Company privately  
21 owned?

22                  A           No; it's a municipally owned operation.  
23 Now, this big --

24                  Q           Always?

25                  A           Always.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Was it always?

A Always.

Now, this business about the size, the comparative size between the Florida Power Corp. and Gainesville is no different than the comparative size between Orlando and Florida Power and Light and still there were no standby arrangements in that arrangement and in the subsequent contracts.

MR. JUSTICE BURGER: Thank you, Mr. Spiegel, Mr. Emory. The case is submitted.

(Whereupon, at 2:05 o'clock p.m. the argument in the above-entitled matter was concluded)