

Supreme Court of the United States

OCTOBER TERM, 1970

Supreme Court, U. S.

MAR 16 1971

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In the Matter of:

Docket No. 469

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FEDERAL POWER COMMISSION,

Petitioner

vs.

FLORIDA POWER CORPORATION

Respondents
----- X

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Place Washington, D. C.

Date February 24, 1971

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C O N T E N T S

ARGUMENT OF:

P A G E

Gordon Gooch, General Counsel on
behalf of Petitioners

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Richard W. Emory, Esq., on
behalf of Respondents

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REBUTTAL:

Gordon Gooch, Esq.

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* * * * *

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

FEDERAL POWER COMMISSION,

Petitioner

vs

FLORIDA POWER CORPORATION,

Respondents

No. 469

The above-entitled matter came on for argument at
2:05 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:

GORDON GOOCH, General Counsel
Federal Power Commission
Washington, D. C. 20526
On behalf of Petitioners

RICHARD W. EMORY, ESQ.
Baltimore, Maryland
On behalf of Respondent.

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will now move to
469: Federal Power against Florida Power Corporation.

Mr. Gooch, you may proceed whenever you are ready.

ORAL ARGUMENT BY GORDON GOOCH, GENERAL COUNSEL

ON BEHALF OF PETITIONERS

MR. GOOCH: Mr. Chief Justice and may it please
the Court:

This, of course, is the same case as 464. The
Federal Power Commission has appealed the judgment of the Fifth
Circuit which circumscribed the discretion committed to the
Commission in rate-making in connection with interconnections
under the Federal Power.

The Federal Power Commission is charged by
Congress with the responsibility of seeing to it that all
citizens of the United States have a reliable and adequate
supply of power in this country and with due deference to en-
vironment.

In this particular case the Commission was called
upon by the City of Gainesville, a municipal-owned, but entirely
self-sufficient generating system, to hold a hearing to deter-
mine whether or not an interconnection should be ordered with a
larger investor-owned utility, the Florida Power Corporation.
And if so, at what rate.

After extensive hearings before the Commission

1 that were held not only in Washington but in Florida, the
2 Commission considered the type of evidence that Mr. Emory has
3 recited here; it considered the type of evidence that Mr.
4 Spiegel has recited here and in addition, had the staffkicks
5 placed in the record by those in the Bureau of Power at the
6 Federal Power Commission who are charged with the responsibility
7 of looking over these problems nationwide.

8 After the Examiner's decision the Commission
9 considered the case on its merits and concluded the following:
10 It concluded first that an interconnection was in the public
11 interest; that it placed no undue burden at all on Florida
12 Power or the system that Florida was connected with; that it
13 would not require Florida Power to increase any facilities.

14 The Commission determined that the service to
15 Florida Power's customers would not be impaired at all. The
16 Commission assigned 100 percent of the cost of the interconnec-
17 tion to the City of Gainesville and the Commission set --

18 Q By that you mean the transmission lines
19 and whatever facilities go with that?

20 A Yes, sir.

21 And assign a rate to be charged for the actual
22 energy transferred across the interconnection.

23 Now, what the Commission did in its order was to
24 place Gainesville in the same position that it would have
25 been if the five other utilities in the Florida operating group

1 had admitted it to its informal membership, with one signifi-
2 cant exception: the Commission imposed on the City of
3 Gainesville as a condition for the interconnection, that it
4 maintain an installed reserve capacity, something that none of
5 the other members of the Florida operating committee are re-
6 quired to do.

7 Now, much argument is made here ---

8 Q Mr. Gooch, that is maintain what kind of
9 a reserve capacity?

10 A The installed reserve capacity is required
11 to maintain 115 percent of its peak in installed generating
12 capacity.

13 Q Installed?

14 A Yes, sir.

15 Q Did that involve their making any other
16 investment --

17 A Yes, sir.

18 Q -- to increase their --

19 A Yes, sir.

20 Q Does the record show whether they would
21 have done that absent this interconnection?

22 A Sir, the record, as closed in '65 had
23 projections all the way through 1979 and in the projections it
24 showed by staff witnesses the projected additional generation
25 that would be required. The Federal Power Commission, though,

1 made it possible for Gainesville to purchase that power rather
2 than install it if it was in their economic benefits to do so.

3 Now, as through the year, roughly 1970, but
4 based on the projections of '65, with the addition of the two
5 15 megawatt gas turbines, the City of Gainesville would have
6 adequate installed capacities to meet the 115 percent obligation
7 imposed on them by the Federal Power Commission. But, as
8 their load grows they have the burden of maintaining the installed
9 reserve.

10 Q How many megawatts was the installed
11 reserve?

12 A Well, as of the projection in the record
13 the City of Gainesville at the present time would have 138
14 megawatts of installed. They had anticipated peak of about 102
15 in the year 1970, according to the record that was back in '65
16 in the projections.

17 Q How long did it take to conduct the
18 hearings?

19 A Sir, it went on from '65 and it didn't
20 clear the Commission, the final opinion of the hearings until
21 January of '69.

22 Q How long, how many volumes of evidence?

23 A I would say when they are condensed it's
24 about 13 in transcript form, sir. We have had three witnesses
25 from the City of Gainesville in my recollection, including the

1 witness from the Clay County Cooperative and witnesses from
2 Florida Power; we had three staff witnesses, all subject to
3 cross-examination before the Examiner.

4 Now, the main point that I would like to make is
5 that I cannot, for the life of me, see how anyone can read the
6 order of the Federal Power Commission as requiring firm service
7 to be rendered by Florida Power to the City of Gainesville.
8 I cannot see in any way how that order could be so construed.
9 The order is set and clearly says that it is a nonfirm power;
10 the order clearly says that the emergency service is subject to
11 the control of the dispatchers and the order clearly says that
12 the operation of the interconnection would be left to a com-
13 mittee which the Commission ordered between the City of
14 Gainesville and the Florida Power Corporation.

15 Q Well, are you saying that this is not
16 firm in the sense that it's only on a capacity available basis?

17 A I am saying, sir, that the Florida Power
18 Corporation is not required by the order of the Federal Power
19 Commission to maintain 50 megawatts or 60 megawatts of capa-
20 bility at the Archer Substation at all times and under all cir-
21 cumstances for the benefit of the City of Gainesville. They
22 are only ordered to make that power available if as, and when
23 it is available, to the Florida Power and its interconnected
24 system.

25 Q In other words, as I understand what you

1 are saying as: they are not required to keep a standby?

2 A That's right, sir.

3 The second point I would like to make ---

4 Q What happens if one of the Florida Power's
5 other connections has a need for Florida Power's standby power
6 and is using it, then Gainesville comes along and needs some
7 and they can't get it; can they?

8 A That's right, sir.

9 Q And you say that they have the right to
10 refuse it or to open the switch?

11 A I am saying, sir, that the matter can be
12 handled in one of several ways: (1) that the Florida Power has
13 the right to open the switch. I am saying also that Florida
14 Powerhas the right to tell the City of Gainesville to shed
15 load.

16 Q And if the City of Gainesville is already
17 using it -- say the City of Gainesville has an outage and it
18 is using Florida Power's reserve -- that is using it and then
19 some other connection of Florida Power's system needs some?

20 A May I change --

21 Q It also has the same need that Gainesville
22 has.

23 A Yes, sir. Well, let me --

24 Q And that Florida Power can't provide them
25 both.

1 A Let me answer it this way, sir: if it is
2 a firm customer of Florida Power -- in other words if it is
3 a question of impairing the ability --

4 Q Yes, well, but I am talking about just one
5 of their --

6 A Another standby?

7 Q Another system.

8 A Like the City of Orlando, which is com-
9 parable in size to the City of Gainesville.

10 Q Yes.

11 A It's if, as and when available to both
12 systems. And I would assume that the dispatchers then would
13 have to get together and decide who is going to shed load and
14 how they are going to lay it off among themselves.

15 Q As I understand it --

16 Q Mr. Gooch, I have a problem: when there is
17 a sudden breakdown of the generator in Gainesville, does the
18 committee meet?

19 A No, sir; the purpose of the committee is
20 to set up the operating procedures as to how the interconnection
21 will be set up; what sort of relays will be put in there; what
22 sort of -- how the system will be operated. It is true --

23 Q As of right now, assuming that the order
24 of the Federal Power Commission is put into effect --

25 A Yes, sir.

1 Q And next year Gainesville has a breakdown.

2 A Yes, sir.

3 Q Do they get it or don't they?

4 A That depends on, first, whether it is
5 available under the Florida Power Corporation's system, point
6 one; point two: it has to be scheduled in.

7 Q I don't understand this, for obvious
8 reasons, but how do you schedule this sudden breakdown?

9 A Well, you don't schedule the sudden break-
10 down. The point is that it is true that power will flow --
11 frankly it will flow mostly from Gainesville to Florida Power
12 according to the staffkicks. But it is true that instantaneous-
13 ly, as if a load goes down on one or the other side of the
14 interconnection, power will flow, but that doesn't mean it will
15 flow forever. It can be shut off almost immediately if the
16 power is needed somewhere else.

17 Q I get it.

18 Q Did I understand you to say that the firm
19 customers of Florida Power, under their pool agreements or
20 otherwise, have a prior claim on the power over Gainesville?

21 A I say that the firm's customers do have a
22 prior claim on the power; yes, sir.

23 Q But not the pool arrangements?

24 A Not the pool, because, as the Commission
25 evidence shows, in fact, by installing Gainesville into the

1 pool under the terms, what the Commission was really trying to
2 do was to fit Gainesville in as a full-fledged member of the
3 pool without being, having to pay twice the dues because they
4 were late in joining. And instead of getting any credit for
5 having done that, we're blamed because we didn't follow what
6 someone else says the industry practice is.

7 Well, of course, the Commission is under no
8 obligation to follow what the industry practice is.

9 Q Yes, but Mr. Gooch, has the Commission ever
10 approved an interconnection where some payment is provided
11 more than just for the power when and as used?

12 A The -- if we take the instances which were
13 not in the record but mentioned in the briefs of Florida Power,
14 I caused those specific instances to be checked by the section
15 at the Federal Power Commission who reviews those things and
16 they informed me that if we were to resolve that kind of dis-
17 pute at this hearing they would testify that none of the con-
18 tracts cited by the Florida Power Corporation contained the
19 kind of standby charge that Florida --

20 Q But, I understood from Mr. Emory -- perhaps
21 I misunderstood him, but some of their connections were paying
22 more than it is going to cost Gainesville?

23 A Well, sir, on page 26 of their brief they
24 refer to a 12-megawatt sale which is, I believe the one that Mr.
25 Emory was referring to. That was, in our view, an entirely

1 different situation because the line was placed in for the
2 benefit of Florida Power's customers. Now, subsequent to the
3 time that the evidence was in in this case, subsequent to that
4 time, the Florida Power Corporation came in said that they had
5 negotiated a deal with another company in which they had im-
6 posed this sort of standby charge.

7 Q With another system?

8 A Well --

9 Q Not a paying customer?

10 A That was our understanding, but it -- the
11 point that causes the problem is that the only reason to bring
12 up that kind of point is to claim that the Federal Power Com-
13 mission gave Gainesville better membership conditions in the
14 pool than others have. Now, we say that is not so and all the
15 evidence shows that Gainesville has the same thing.

16 Q Even if it was so, I suppose there were
17 two ways of curing it?

18 A Yes, sir.

19 And the second I am just getting ready to bring
20 up, and that is that the Commission specifically provided in
21 its order that Florida Power Corporation may file for a rate
22 increase under the Commission's regulations if they are not
23 getting what they think they are entitled to under the service
24 in the interconnection.

25 Q They won't know anything about that in the

1 way of experience until they have some interchange?

2 A Precisely, and the Commission -- the
3 expert evidence on which the Commission relied showed that the
4 City of Gainesville will be providing proportionately more
5 service to Florida Power than otherwise.

6 Now, I'd like to touch on that point for a
7 second, if I might. 50 to 60 megawatts: Florida Power admits
8 that they can give 50 or 60 megawatts without even feeling it
9 in their system. They have got a swing of 30 to 40 megawatts
10 which they say means nothing to them.

11 But I say that 50 megawatts going back across the
12 interconnection from Gainesville to Florida Power can't be too
13 insignificant if Florida Power is buying firm from tiny Orlando
14 at 100 megawatts. If the interconnection, the valid intercon-
15 nection between the Florida Power system and its members to the
16 north in Georgia who have opened at 130 megawatts -- if Florida
17 Power will negotiate a 12-megawatt transaction and they have
18 cited in their brief as an example, as if as the minutes of the
19 Florida Operating Committee show, the Florida Operating Com-
20 mittee does not even maintain at all times adequate spinning
21 reserves under their own standards.

22 And if, as in this record, the City of Gainesville
23 and Florida Power Corporation are arguing over service to indi-
24 vidual customers in Alachua County, it seems to me that we can-
25 not argue that 50 megawatts is insignificant to Florida Power

1 Corporation.

2 Now, the Commission has to resolve these kinds of
3 disputes all the time and they would have to resolve the dis-
4 putes not only because it is a dispute between parties, but
5 because they have an affirmative obligation to develop a policy
6 that will work nationwide. And the staff tries to do its best
7 to put on a case that will be of assistance to the Commission.
8 The Commission, of course, doesn't always take the best part of
9 anybody's case, but they resolve the disputes in this case;
10 they set the rates and they ordered the interconnection and we
11 believe the Fifth Circuit was in error in saying that the Com-
12 mission may not set the rate on the basis that they did.

13 Q Mr. Gooch, you referred to the expert
14 testimony put in by the Commission staff, I take it?

15 A Yes, sir.

16 Q On this flow that would be from
17 Gainesville, more likely to Florida Power.

18 A Yes, sir.

19 Q Was that disputed or was that undisputed?

20 A Well, it is disputed in the sense that I
21 don't -- it's difficult to say. Yes, it was disputed. There
22 were witnesses that said that that's just a mathematical pro-
23 bability and the mere fact that it's a mathematical probability
24 doesn't mean that it actually will happen. There were plenty
25 of arguments to the weight of it addressed to the Commission.

1 But I do not recall any competing exhibits that showed any
2 different.

3 Q What were the findings of the Commission
4 on the point?

5 A The Commission found that it was likely
6 that Florida Power would be drawing on the interconnection more
7 than the City of Gainesville would and the Commission, by im-
8 posing the same standards of responsibility on Gainesville as
9 were imposed on Florida Power by the operating agreement, the
10 Commission felt there was an equality here.

11 And, since Gainesville can, at some period,
12 deliver the full 50 to 60 megawatts -- not all the time --
13 across the interconnection --

14 Q The Court of Appeals set that finding
15 aside?

16 A The Court of Appeals said that that par-
17 ticular finding was not entitled to weight under the substan-
18 tial evidence rule. The Court of Appeals said that the bene-
19 fits that the Federal Power Commission found for the Florida
20 Power system were vague and insubstantial.

21 And the Court said that because of the firm
22 obligation that was being imposed on Florida Power by the Com-
23 mission's order that a standby charge was in order and the Com-
24 mission would have to come up under some theory to do this.

25 Q And the Commission found there was no such

1 firm --

2 A That's right. The Commission ordered
3 absolutely ordered no firm and if there was any doubt that the
4 Commission ordered the firm you would have thought that the
5 Florida Power, in their motion for rehearing before the Commis-
6 sion would have pointed out an inconsistency in the order
7 between saying: This is a nonfirm order as to the interconnec-
8 tion and the facilities that were actually being ordered in.
9 But nothing appears in the rehearing and --

10 Q I suppose this matter remains within the
11 jurisdiction of the Commission in the sense that if two years
12 from now a showing could be made under the experience this was
13 connectable on the basis of new developments not now in the
14 record, the Commission should alter its order?

15 A Yes, sir.

16 Q And there is no reason, from your
17 experience, I imagine down there with the Commission, to
18 imagine that if it does show anything like that the company
19 won't call it to your attention?

20 A No, Your Honor.

21 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Gooch.

22 ORAL ARGUMENT BY RICHARD W. EMORY, ESQ.

23 ON BEHALF OF RESPONDENTS

24 MR. EMORY: Mr. Chief Justice and may it please
25 this Court:

1 I think it's important to understand what standby
2 is and I don't think that that is really understood.

3 Mr. Justice Marshall referred to it as insurance
4 and that, in a sense, is what it is. Maybe a better definition
5 is: the water in the pipes all around the City of Washington
6 where you have fire hydrants, and you've got quite a complicated
7 system of water pipes and fire hydrants and somebody is paying
8 for those water pipes and those fire hydrants and the water
9 that's in there, and that is what Florida Power is paying for
10 and what we say we are not going to get any compensation for.

11 We're paying for the fire department, the fire
12 engines, the firemen, the water pipes and the water and it's
13 there at all hours of the day and night and it's constantly
14 available.

15 Now, we feel one of the reasons this has never
16 come up before: this is the first time the Federal Power
17 Commission has ever come up with this idea of relative burdens;
18 sharing burdens in proportion to size. They never -- nobody
19 ever dreamed of such a theory, as far as I know. You can't find
20 it anywhere in any of their decisions and the one decision that
21 they had on the subject they said charges across an intercon-
22 nection should be based on reciprocity and mutual exchange of
23 services.

24 And the cases or the rates that have come up
25 since, actually until this came along they really hadn't passed

1 on any rates. They hadn't had a forced interconnection case.
2 What we think makes this highly unfair and highly discrimina-
3 tory, where the Federal Government agencies, Southeastern Power
4 Authority, which is an agency of the Department of Interior,
5 has come in with the same kind of standby charge request they
6 have been allowed; they are getting \$2.75 a kilowatt per year
7 for standby. They have 100 megawatts of reserve and they are
8 selling it to three people on, really a "when, as and if"
9 available basis. And the contracts say that if any one of the
10 other three are using it, it's too bad, fellow; you can't get
11 it.

12 But, this is being paid for every hour of the day
13 or night. Now, when they actually take power if they should
14 have a breakdown and start taking power they stop paying this
15 \$2.75 and I think they pay \$9.00 or \$10 and a half. They pay a
16 higher rate. But, in addition to paying for it they pay for
17 the fire department; they pay for the pipes that are in the
18 ground and the water that's at all times there.

19 Now, Gainesville -- something was said about
20 Gainesville maintaining this 15 percent reserve. Let me show
21 you how ridiculous that is: they had 112 percent reserve when
22 we tried this case and they proposed, by tapping into our
23 transmission system and relying on us, to reduce that reserve
24 to 15 percent. And what is 15 percent? They have got a
25 hundred megawatts of demand. We are talking about a 15-megawatt

1 reserve and here we need 500 instantaneously and they are going
2 to reduce their reserve from 112 percent to 15 percent and they
3 talk about that being a burden and to me it just doesn't make
4 any sense at all.

5 Now, the one expert who heard all the witnesses
6 and testimony in this case, was the trial examiner and he
7 decided this case right down the line for us, 100 percent. Now
8 he decided that there should be definitely some charge for
9 standby; said it was well-recognized in the industry that where
10 you provide a service for which you get no return they are sub-
11 ject to some charge.

12 And it is also not uncommon in these interconnec-
13 tion arrangements to split the benefits; to decide what the
14 savings are and one fellow gets half and the other gets half
15 and he proposed that standby be paid for by a splitting of the
16 financial savings. We don't object to that. Actually, we
17 think that would cost them a little more than what we propose
18 to charge them, although it's never been fully priced out. But
19 it's a perfectly reasonable proposal and it is a proposal that
20 is used in many of these interconnection arrangements.

21 Now, something has been said about our customers
22 having a prior claim over Gainesville for this standby. Your
23 Honors, that just ignored the physical facts of how electricity
24 operates. We cannot even subordinate the demands of our cus-
25 tomers to Gainesville. We've got this large transmission system

1 -- if you look at Exhibit 32, which is a map of it, you will
2 see that it's a pretty large thing. And that is a big electric
3 transmission system that's charged at all hours of the day and
4 night to feed any demands for current off of it.

5 Q Well, do you deny what Mr. Gooch says
6 about the firmness of the requirements of your company?

7 A Absolutely. We think it will be just as
8 firm as it can be and the Gainesville witnesses admitted that.

9 Q You mean you deny his statement or you
10 deny what the Commission found, that you were not bound to
11 supply them power?

12 A I deny his statement and I deny what the
13 Commission found. I think saying that we willnot be under a
14 firm obligation to supply this standby is just a play on words.
15 You don't write the word "firm" in there. That's what they say:
16 We didn't put in the word "firm." You don't need to put in the
17 word "firm."

18 Q Well, if they can draw the contract of --
19 if some man's firm is bound to do something they put it in
20 there.

21 A Well, you don't have to; you don't have to
22 put the word "firm" in. You just sign a contract: "I hereby
23 agree to buy a horse." You don't say "I hereby firmly agree to
24 buy a horse." And that's what we're talking about here. They
25 said: you let Gainesville tap your transmission system.

1 Q And you have to do it whether you want to
2 or not?

3 A Whether we want to do it or not. And
4 the mere fact they do it puts us under a firm obligation to
5 supply them, whether they call it "firm," or call it nothing.
6 And it's the same: "I promise to buy a horse," or "I firmly
7 promise to buy a horse."

8 Q A horse, of course, is a little different.

9 A Well, that's what we're talking about, is
10 whether they use the word or don't use the word; that's all it
11 is.

12 Q Well, I understood that what he was talk-
13 ing about was: the Commission found that there was no firm
14 duty on your part to sell and that there was no duty on the
15 company's part to sell, and for that reason that they were not
16 entitled to recover compensation for a requirement that didn't
17 exist.

18 That's the way I understood his argument. I
19 may be wrong in understanding him or he may be wrong.

20 A I don't think, and I'm trying to recollect;
21 I don't think the word "firm" was ever used in connection with
22 this standby. I think they talked about the --

23 Q I was talking about the requirement --

24 A There was no firm obligation to supply what
25 in the industry is called "firm power, firm service." I agree

1 to buy 100 kilowatts from you for the next three months. That
2 is called "firm power." There is no obligation in this agree-
3 ment to have us sell them firm power and there is on reason,
4 and only one reason: if they ever put that in their words, that
5 would require us to enlarge our generating facilities or would
6 give us an argument that it would require us to enlarge them.

7 Q Then you would be entitled to pay for it?

8 A Then we would be entitled to say they
9 didn't have any jurisdiction because they don't have the juris-
10 diction to undertake to do anything that would definitely,
11 positively, require us to enlarge our facilities.

12 Now, this word "firm" in connection with standby,
13 I'm not sure that the Commission ever used the word or did use
14 the word, because actually, as I say, you don't need to use the
15 word. It's a meaningless word. We are firmly bound whether
16 they say so or not.

17 Q I imagine that if they had made a demand
18 and you didn't supply it and it would cost you a lot of money
19 you could then find more reason to say that the word "firm"
20 would have been pretty good in the contract.

21 A Well, we can't envisage -- we sincerely
22 and honestly cannot envisage their making a demand that we won't
23 supply and the Commission knows that and Gainesville knows that.
24 How could they reduce their reserve from 112 percent to 15 per-
25 cent, down to 15 megawatts if they didn't feel that their

1 generator capability was going to be firmly protected?

2 Q Or supplied by themselves.

3 A But they are trying to eliminate this
4 supply to themselves; they are going to rely on us to supply
5 it. And the Commission would be derelict in their duty if they
6 said Gainesville can reduce its reserve by about 100 percent if
7 they didn't feel that Florida Power was going to supply that.
8 And they knew we were going to supply it; and in the case of
9 the Southeastern Power Administration and the Southwestern
10 Power Administration and other agencies they would recognize
11 that.

12 Now, one of the real reasons I think maybe this
13 case was argued separately -- I don't know -- was the Government
14 took quite a different position in their brief from what
15 Gainesville did. Gainesville said the question in this case was
16 whether they should be made to pay for benefits received in
17 addition to reimbursing us for costs. Well, we say they aren't
18 reimbursing us for costs, much less paying us for benefits
19 received.

20 The Government took the position that their
21 relative burdens, if Gainesville supported us in proportion to
22 its size, that should be enough. And we say proportion to size
23 in this case, is meaningless.

24 They also argued in their brief and Mr. Gooch made
25 the remark with respect to his argument that the Federal Power

1 Commission doesn't have to pay any attention to the industry
2 practice. But in their brief they acknowledge that the vast
3 majority of interconnections between utilities are effected
4 voluntarily. In contested interconnection cases therefore, and
5 this is the first contested interconnection case that's ever
6 hasn't been settled. There have been about two or three others
7 but they have always been settled. It is appropriate that
8 Commission decisions establishing compensation terms take into
9 account the terms of current interconnection agreements arranged
10 at arms length.

11 In other words, what they said was: We don't have
12 any expertise; we've never been faced with this problem before;
13 therefore we will look and see what the industry has been doing.
14 And every time you give them an example of what the industry
15 is doing they say that's not applicable; that's not the same
16 case.

17 None of these cases are the same; none of them
18 are identical. Almost every interconnection arrangement is
19 different.

20 Now, Mr. Spiegel, in his reply brief, referred
21 to an interconnection we had with Tallahassee which was put in
22 after this case, so it is not in the record; he says we are not
23 charging them for standby. We are not charging them for stand-
24 by for two reasons, and there may be others. One is: the
25 interconnection is too small for us to supply a standby and the

1 second reason: they have built some transmission for us. So we
2 are getting some transmission from them. All these things have
3 been done at arms length. They are all based on evaluation of
4 what the various equities are and if there is mutuality or any
5 relative or reasonable mutuality in what each party is doing
6 for the other you don't have special charge, but if one fellow
7 was doing nothing but getting a free ride it's standard to have
8 him pay some reasonable compensation and if you don't do that
9 and the Government argues if you don't follow their position
10 you are going to destroy the incentive for interconnections.

11 We say if you don't provide some mutuality or
12 reimbursement or compensation that will destroy the incentive.
13 What incentive have we got to interconnect with Gainesville or
14 any number of other municipalities if they are going to just
15 take a free ride on our backs?

16 Q In Tallahassee I understood you to say
17 that the interconnection was too small to provide this standby.
18 What's the point of having the interconnection?

19 A This is something that I didn't know a
20 thing about until I got this brief on Monday and I really don't
21 know much about it. I asked the company the terms of that and
22 it's a small connection; I guess we're supplying the power or
23 they are selling us power; I really don't know.

24 We are selling them some firm capacity. In other
25 words they are buying 10 megawatts, 20 megawatts, whatever it

1 is, and for standby they need 50 or 60. They are buying some
2 power from us.

3 Q And is it also municipally owned?

4 A That's municipally owned.

5 The municipal ownership is no problem here. We
6 are interconnected with Orlando; have been for years. We are
7 interconnected with, through Florida Power Light with Jackson-
8 ville, a municipal system. Those municipal systems are members
9 of our operating group, but they are paying their way. We are
10 not objecting to the fact that they are municipal; that doesn't
11 bother us. We say that we shouldn't do it for nothing.

12 But, as I say, the industry practice is definitely
13 and positively to arrange for some mutuality and if there is
14 not mutuality to have an exchange of compensation.

15 Now, I'll read one more thing out of the brief:
16 "The Report to the President of the Federal Power Commission on
17 the Prevention of Power Shortage," and it recited this matter of
18 the problem of interconnections and the necessity for inter-
19 connections to provide reliability of service, particularly to
20 small systems and after pointing out the importance to
21 small systems it said at the same time users must contribute
22 their proper share of the costs. This was the Federal Power
23 Commission talking before they decided this case.

24 And going on, they talk about the factors which
25 should be taken into account and I quote: --- this is the

1 Federal Power Commission reporting to the President: "To the
2 extent that it may be physically impossible for a small system
3 to fulfill all such obligations in kind, equalization should
4 take the form of exchanging power or dollars among systems. No
5 formula has been accepted as universally applicable to these
6 situations. A wide range of pertinent factors are being con-
7 sidered, such as: relative benefits, methods of participation,
8 reliability of service, conservation of natural resources,
9 alternative opportunities and broad equities."

10 Now, that is really all we're asking them to do:
11 to put their pocketbooks, so to speak, where their mouth is and
12 do what they say they are going to do and what they have al-
13 lowed Federal agencies to do and be fair to our system and to
14 our customers who, if Gainesville gets a free ride, are going
15 to bear the whole cost.

16 Q You don't take the position, I understand,
17 that it's impossible that Gainesville would ever be called
18 upon to give you some help?

19 A They might be called upon to give us help
20 over time and that's important. I'm glad you asked that ques-
21 tion. Any help that you give over time, no matter what amount
22 of time, if it isn't instantaneous, is no trade for the help
23 that you need instantaneously. Because every system has
24 generation that they can start up and give you over time if you
25 have the time to react.

1 Q Giving 12 hours notice or six hours or --

2 A Well, actually they would take two hours
3 notice on most of their equipment. That's just not the
4 equivalent. If we get two hours notice we can start up our own
5 generators. We've got a lot of generators that aren't operat-
6 ing all the time. If we have to maybe in ten minutes they will
7 get started or two hours.

8 Now, as far as over time is concerned, until they
9 get down to this reserve, if they reduce this reserve down to
10 15 percent anything they can give us over time isn't worth
11 anything. But as long as they have this 100 percent reserve they
12 can give us maybe 50 or 60 megawatts over time and by their
13 testimony over two hours. But, by the time two hours have
14 expired they have got no units, Your Honors. They have got
15 5 megawatts; one of them is one megawatt; 14 megawatts. We
16 might have a 125-megawatt unit sitting around that over time
17 we can start up and not need Florida Power and Light, Orlando,
18 all the other systems that are interconnected with over time.

19 And I would like to say one more thing, and that
20 is about this business about the testimony. Mr. Gooch was
21 asked about the testimony of Florida Power relying on this
22 interconnection when it was disputed.

23 They put a man on the stand and made some computer
24 studies. And they took the Florida Power system and they
25 treated it as an independent system with no interconnections

1 with anybody and he found that we wouldn't have enough power to
2 meet our peak load something like 25 days out of the year. This
3 is all in the brief.

4 Then he said -- you've got another study -- now,
5 if you tie in with Gainesville they won't be able to make their
6 peak load 19 times out of the year, so therefore they are going
7 to rely very heavily on this interconnection. He assumed that
8 we had no connections; that we couldn't call on Florida Power
9 and Light; that we couldn't call on Tampa; we couldn't call on
10 Orlando; we couldn't call on Jacksonville. Actually, we don't
11 have these deficiencies. We can meet our peak loads unless we
12 have big energies every day of the year and this really --
13 it's such a theoretical study it's almost absurd. And the
14 Examiner really cut off my -- if you look at the record and it's
15 in there. He really cut off my cross-examination on that. He
16 said: Mr. Emory, I've heard enough about that, because he saw
17 how ridiculous it was.

18 Thank you, Your Honors.

19 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Emory.

20 Mr. Gooch, you have ten minutes.

21 REBUTTAL ARGUMENT BY GORDON GOOCH, ESQ.

22 ON BEHALF OF PETITIONERS

23 MR. GOOCH: Thank you, Mr. Chief Justice.

24 Southeastern Power Administration: that is a
25 firm 100 megawatt reserve that's got to be available to those

1 three customers at all times.

2 The installed reserve point: Florida Power
3 Corporation is under no obligation under the Florida Operating
4 Committee rules to maintain any installed reserve and I
5 strongly suspect that 15 percent of the installed reserves
6 would look awfully good to the Florida Power System, come this
7 summer when Turkey Point doesn't come in.

8 The next point: the Commission imposes on the
9 City of Gainesville an installed reserve capacity that would
10 see to it that it would always be self-sufficient. The only
11 thing that the Commission provided was that when Florida Power
12 could help its own neighbor out it should do so; when the
13 Florida Power had the ability to do so.

14 Now, what does this mean to the rate-payer in the
15 City of Gainesville?

16 Q But also only when Gainesville had some
17 peculiar need for the power. All of its regular needs it was
18 obligated to maintain a full reserve for.

19 A Yes, sir.

20 Now, the reserve that Gainesville is required to
21 maintain under the Operating Committee formula is one thing;
22 what it has the capability to put across that interconnection is
23 another.

24 Mr. Emory would have you to believe that the
25 Gainesville system is so antiquated and so small that it has

1 a response of only two hours or more. I point out and it is
2 in the brief: they have two 15 megawatt gas turbines; they have
3 a 50-megawatt generator and a numberseven unit of 26 megawatts.
4 Their testimony is thatit would always be running those two:
5 the 7 per 7 in number eight and had a number two available.
6 So, I suggest that it is somewhat unfair to the City of
7 Gainesville to say that they cannot respond with emergency
8 power across that interconnection.

9 Now, as to the relative benefits: again, by
10 imposing on the City of Gainesville a demand charge, a standby
11 charge, based on the size of their largest unit, what that
12 effectively does to rates to rate treatment, is to prevent the
13 City of Gainesville from increasing the size of its larger
14 generators, thereby increasing the amount of rate that the
15 citizens in Gainesville would have to pay if they are going to
16 be an isolated system.

17 It would mean that they would have to buy in
18 increments of smaller, less efficient generators so that there
19 was --

20 Q Well, they wouldn't have to.

21 A Well, if there were --

22 Q They would just have to pay a little more
23 for them than Florida Power.

24 A No, sir -- oh, as the alternative?

25 Q Yes.

1 A Yes, sir; they would be faced with the
2 economic choice of not completing the interconnection and
3 building their own generation and the Federal Power Commission
4 has recognized, just like Florida Power recognizes that it is
5 uneconomic and wasteful to carry more installed capacity than
6 you are going to need for a reasonable period of time.

7 And so, rather than deprecate the City of
8 Gainesville for being able to reduce their installed capacity,
9 this is one of the purposes, one of the benefits of intercon-
10 nection. And Florida Power cannot maintain its own and does
11 not maintain its own installed reserves by itself to take care
12 of itself in the event of major outages on its system.

13 So, it is easy to, I suppose, deprecate the
14 contribution that Gainesville can make but then we should also
15 deprecate the contribution that Orlando makes, which is not that
16 much bigger than Gainesville, which includes a 100 megawatt
17 firm sale.

18 On value of service it seems to me unnecessary to
19 say that a regulatory commission is not bound to take into
20 consideration value of service. The value of electricity to a
21 man in an iron lung is a lot more than the value of electricity
22 to someone making coffee in the morning. But that has not been,
23 and is not in this case, the basis on which the Commission sets
24 rates for utilities.

25 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Gooch.

1 Thank you, Mr. Emory. The case is submitted.

2 (Whereupon, at 3:00 o'clock p.m. the argument
3 in the above-entitled matter was concluded)

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