

the Federal Power Commission had from 1935 on jurisdiction to supervise wholesale sales of electrical power in interstate commerce.

Actually, they did not have to wait until the *Colton* case. The *Jersey Central* case in 1943 which went to the Supreme Court made that clear, but all of us apparently woke up to the clarity of this with the *Colton* case. It made it absolutely clear that the Federal Power Commission has the jurisdiction and exclusively that jurisdiction to supervise wholesale rates in interstate commerce, even though State statutes may have given that power to the individual State commissions.

The Federal Government, by the 1935 amendments to the Federal Power Act, occupied that field. So that you have to realize as the Supreme Court said in that case, and as repeated since then, the Congress drew a bright, clear line leaving to State commissions jurisdiction over retail rates and to the Federal Power Commission jurisdiction over wholesale rates when they were in interstate commerce.

Mr. KORNEGAY. Does the North Carolina Commission exercise that right to supervise wholesale sales?

Mr. TALLY. In our State our statutes in terms permit the North Carolina Utilities Commission to regulate wholesale and retail rates but because of the Court interpretation of the Congress having occupied this field they would be bound by that and therefore they do not have the power to regulate wholesale rates even though such statutes still are on the books.

Mr. KORNEGAY. Thank you, sir.

I am sure that you are familiar with the contentions made by Florida Power & Light, familiar with the contentions and the view heard here in the testimony. In your opinion are they engaged in interstate commerce?

Mr. TALLY. I think there is no question at all about it. Of course, the matter is still before the courts but the precedent of these cases, the Indiana and Michigan case particularly, make it plain I believe that they will be held to be in interstate commerce. I think that is a lot more predictable than a football game.

Mr. KORNEGAY. Is that by reason of the fact that they do have these interties for emergency purposes only?

Mr. TALLY. It is by reason of their having within their system electrical energy that comes from outside the State. The Court again has made it plain following the language of the statute. The statute is cast in terms of interstate energy, not in legalistic terms about which corporation buys and which sells, but interstate energy. As the Court itself said at one point, and I think this is quite a commonsensical and clear understanding of it—this was from the case of *Connecticut Light & Power Co. v. the Federal Power Commission* and was a repetition of what they said in the *Colton* case—"We have said of part II of the Power Act that Federal jurisdiction was to follow the flow of electric energy and engineering and scientific fact rather than a legalistic or governmental test."

There is no question that in that engineering and scientific context they have interstate power flowing through their conductors. That is why I think it would be safe to predict that the circuit court would affirm the Federal Power Commission and the Supreme Court will deny certiorari.

Mr. KORNEGAY. Thank you very much. It is nice to have you before our committee.