The Federal Power Act is today found to grant to the Commission jurisdiction over *any* company which generates electric energy in the form of alternating three-phase 60-cycle current, if that company is interconnected and electromagnetically synchronized with any other generating source producing electric energy in the same form in another State.

More than 90% of the Nation's electric generating capacity is interconnected in this fashion. The only major exception is the electric generation of Texas, which is interconnected within Texas but not with out-of-Texas systems. Such a test for jurisdiction writes out of the statute the intrastate and industrial exceptions to coverage under the Act, and in doing so objectionally usurps a prerogative of the Congress.

From its outset, the case was tried on the narrow issue of jurisdiction—a so-called "straight status case." Florida Power & Light Company has an interconnection with Florida Power Corporation, at a point 180 miles from the Georgia state line. The decision turns on the theory that at this interconnection, any "flow" of energy from Florida Power Corporation to Florida Power and Light Company may not be assumed to be Florida-generated energy from Florida Power Corporation's generating system, but rather to be interstate in origin by reason of the interconnection by the Florida Power Corporation with out-of-Florida generating sources. The Florida Power Corporation system is said to be "permeated" or commingled with out-of-Florida energy.

The facts of interconnection are uncontroverted. Aided by the engineering testimony of Staff witnesses Jessel and Jacobsen, the Staff's case for the ultimate jurisdictional fact of electric energy in Florida Power & Light Company's system being transmitted in interstate commerce is this "permeation" or "commingling". The examiner neatly summarized:

"The cause and effect relationship in electric energy occurring throughout every generator and point on the Georgia, Corp and Florida systems constitutes interstate transmission of electric energy by, to, and from Florida. It is the electromagnetic unity of response of Florida, Corp, Georgia and other interconnecting systems that constitutes the interstate transmission of electric energy by Florida." (Ex. Dec. Mimeo., p. 11.)

In undertaking to temper the impact of the examiner's forthrightness (a forthrightness conforming to the theory upon which Staff's case was submitted), the Commission turns to Exhibit 18 as supporting a Commission finding (as opposed to an Examiner's finding) that interstate energy reached the system of Florida Power & Light Company. But that exhibit (or any exhibit) shows no more than that "commingled" energy reached the Florida Power & Light Company system. This assumes the fact in issue, and thus begs either the question of jurisdiction or the question of substantiality or both. No staff exhibit purports to depart from the assumptions made to support the "commingling" theory.

The examiner fairly recognized that "commingling" is only a theory. But he found that the theory of commingling was sound and proved, and that its proof obviated tracing.

If commingling obviates tracing, then the reach of the Commission's jurisdiction is plenary. Furthermore, it has become plenary in 1967, while the act was passed in 1935 and has not been changed by Congress (in respects material here) since.

The Supreme Court in *Connecticut Light and Power Co.* v. *FPC*, 324 U.S. 515, at 515, credited the Congress with determining that "federal jurisdiction was to follow the flow of electric energy." (at 529)

But is federal jurisdiction to follow the changes in the theories which are devised by company or Commission engineers to describe a still-mysterious phenomenon? For myself, I cannot accept the premise that the "commingling" theory can change the law as radically as to eliminate two explicit exceptions to our jurisdiction.

Turning to the cases cited by the majority, most of these cases involved jurisdiction over wholesale sales, not jurisdiction *per se*. The two "straight status" cases in the Supreme Court reports—*Connecticut Light and Power Company* v. *FPC*, 324 U.S. 515 (1945), and *Jersey Central Power & Light Co.* v. *FPC*, 319 U.S. 61 (1942)—do not support the approach used here, and the Commission's opinion today is directly contrary to the latter's statement (at 319 U.S. 72) that "mere connection determines nothing." Today's decision has connection determine everything.