

The cases cited in the Commission's opinion, although sales cases not solely status cases, carry the process of interpreting legislative language *almost* as far as the Commission goes today. The final step may be a short one, but short or not, it is legislative.

The discussion which asserts that the commingling or electromagnetic synchronism test for jurisdiction under section 201 of the Federal Power Act supports the public interest in the expansion and extension of interconnection arrangements for greater service reliability is not persuasive. I fully agree that interconnections serve the objective of reliability, and that reliability is strongly in the public interest. But with the present near universality of interconnections, it would seem that the Commission's opinion would as likely lead to present connections being broken as to new connections being established or existing connections strengthened.

Congress may have intended that the provision of section 201(b) which states that the Commission "shall not have jurisdiction * * * over facilities used * * * only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter" was to have a diminishing effect with the passage of time; but I do not think that Congress can be said to have intended this diminution to proceed to the vanishing point. It reaches that point for all practical purposes when the Commission adopts the commingling test for determining interstate flows after virtually the entire electric generating capacity of the United States is interconnected under electromagnetically synchronous conditions.

My doubts that the statute should be so read are reinforced when the diminished meaning of section 202 following the application of the commingling test is considered.

The stated purpose of section 202 was to assure an abundant supply of economical energy by *voluntary* interconnection of facilities. If jurisdiction inexorably follows interconnection, the nonjurisdictional utilities cannot retain any aspect of their independence once they agree to interconnect. Impregnation is indivisible. Such a reading of section 202 is hardly conformable to its general spirit, and is inconsistent with the legislative history, of this part of the Act.¹

Another consideration, not related to the scope of the statute, suggests itself. The Commission's adoption of the commingling theory conceivably could deny to a small utility remote from its supplier's generation the opportunity to object to wheeling charges on a mileage or rolled-in cost basis, as opposed to cheaper charges based on a displacement theory. The far-reaching commingling theory adopted today could prove embarrassing to the Commission, which presumably would not want to have one rule for establishing jurisdiction, and another for regulating under it.

I do not wish to be misunderstood. From the standpoint of it being the largest electric utility in Florida, on the basis of its being nationally ninth in revenues, fourteenth in plant investment, and sixteenth in energy sales, and from the standpoint of the upward trend in its energy transactions with interconnected companies, Florida Power & Light Company probably ought to be under Federal Power Commission regulation.

But our adjudicative responsibilities do not turn upon what the law ought to be, but upon what it is. Counsel for the company candidly admitted that the law as it is quite possibly would apply to one of his company's wholesale sales. Such a result might be equally offensive to my reading of the statute, but it would have the merit of resting squarely upon decided cases. We elected to plow new ground with a straight jurisdictional approach, and absent square authority, I find the result to constitute too great a stretching of our charter. I would reverse the examiner, and let a jurisdictional finding wait for a sale case.

JOHN A. CARVER, Jr., *Commissioner.*

Mr. CUNNINGHAM. First, we are against the bill. The reason for it, primarily, is that we have had help from the FPC in Florida. Ten of our members purchase all their wholesale power requirements from

¹ Senate Report No. 621 on S. 2796, 74th Cong., 1st Sess., at p. 49, May 13, 1935; and, House Report No. 1318 on S. 2796, 74th Cong., 1st Sess., at p. 27, June 24, 1935.