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Rate Regulation by Government Competition

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STUDENT NOTE

RATE REGULATION BY GOVERNMENT COMPETITION

In the recent TVA case, the complainants were fourteen (originally nineteen) privately owned public utility companies producing, distributing and selling electric power in nine states.¹ Respondent Tennessee Valley Authority, an agency of the federal government, and its directors, under authority of an act of Congress,² were producing and selling electric power in competition with some of complainants, and contemplated competition with others. Complainants filed a bill in equity seeking, broadly, to enjoin production and sale of electric power by respondents, on grounds that the act of Congress, purporting to authorize such production and sale, and the activities of the TVA under the act, vio-

¹ Tennessee, Alabama, Mississippi, North Carolina, South Carolina, Kentucky, Virginia, West Virginia, and Georgia.

² Tennessee Valley Authority Act of 1933, as amended 48 STAT. 58 (1933), 49 STAT. 1075 (1935), 16 U. S. C. §§ 831 *et seq.* (1937), 16 U. S. C. A. §§ 831 *et seq.* (1938).

lated the Fifth, Ninth, and Tenth Amendments of the Federal Constitution.³

The bill, in substance, alleged that complainants, lawfully engaged in generating and selling electricity by authority of the laws of the several states concerned, more than satisfied the needs of their respective territories, and were ready and able to furnish additional facilities as needed; that their properties were modern, economically operated, and of great value; that the rates charged by each yielded no more than a reasonable return on the fair value of the property used and useful in serving the public, and that these concerns were fully regulated by the states. It was charged that the TVA, from headquarters in Knoxville, Tennessee, carried on a proprietary business of generating, transmitting and distributing electric power in Tennessee, Mississippi, Georgia, and Alabama; that the act creating the Tennessee Valley Authority disclosed a purpose to authorize a large and indeterminate number of water works in order to create a vast supply of electric power, and to establish the federal government in business, in competition with privately owned utilities, without constitutional sanction;⁴ that the underlying purpose of the act, sought to be concealed behind provisions relating to the war and commerce powers of Congress, was one of effecting a federal control of intrastate electric rates and service through "regulation by competition"; that the "yardstick" applied to wholesale power rates was the wholesale price set by the TVA for sale of power produced by it, while the retail "yardstick" was the price at which TVA power was resold by municipalities to consumers. It was alleged that, including the power dams already constructed, eleven dams were to be completed by 1943, while it was proposed to use every available site on the Tennessee River and its tributaries; that, in an area of 40,000 square miles, there were 149 sites on which could be constructed dams capable of producing 25 billion kilowatt hours of electric energy annually, and that this could be sold only by displacement of existing utilities, and that

³ Fifth Amendment, ". . . nor shall any person . . . be deprived of life, liberty or property without due process of law . . ."

Ninth Amendment, "The enumeration in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people."

Tenth Amendment, "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

⁴ See the findings of Grubb, J., in *Ashwander v. Tennessee Valley Authority*, 9 F. Supp. 965 (D. C. N. D. Ala. 1935), as to the purposes of the act and the power program.

the program was intended to accomplish such displacement. It was charged that respondents were attempting to disrupt business relations of existing utility companies by inducing municipalities, through offers of federal grants, PWA loans, and cheap power, to build their own distribution systems, and by procuring breach of contracts, and by enticing away customers; that respondents had lobbied through state legislatures bills authorizing their activities in the states concerned; that TVA personnel had been installed in the area to spread propaganda in favor of the government program and to spread false and misleading rumors that complainants' rates were unjustly high and unreasonable; that the Electric Home and Farm Authority, cooperating with the TVA, was engaged in financing sale of electric appliances, and circulated costly advertising in praise of the TVA program; that complainants could not complete with the noncompensatory "yardstick" prices, and were therefore, facing loss of their properties, and destruction, at the hands of an unauthorized government agency acting under color of an unconstitutional law; that Congress was without constitutional authority to so regulate the internal affairs of the states; that the power program denied the constitutional rights of liberty to earn a livelihood and acquire and use property subject only to state regulation, and deprived complainants of their property without due process of law.⁵ In the Federal District Court for the Eastern District of Tennessee, the bill was dismissed. That court held the legislation and the production and sale of power under it constitutional, and found that the unlawful practices alleged were not proved. On appeal to the Supreme Court of the United States it was held that complainants have suffered no injury which the law recognizes, have not shown that they will suffer a legal wrong, and therefore have no standing to complain.⁶ Two members of the court, dissenting, thought complainants were entitled to have the constitutional questions decided, since the bill asserted rights not held and injuries not sustained in common with the general public,

⁵ Even if the regulation were valid, Congress could not directly regulate in such a manner as to deprive one of his property without due process of law.

⁶ *Tennessee Electric Power Co. v. Tennessee Valley Authority*, 59 S. Ct. 366, 83 L. Ed. 341 (1939). The opinion of the district court is found in 21 F. Supp. 947 (D. C. E. Tenn. 1938). The fact that the three judge district court found it necessary to decide the constitutional questions; that two members of the Supreme Court considered it as necessary; and the length to which the majority opinion goes to justify the position assumed, might indicate some doubt as to that position. The dissenting opinion suggests that the majority has undertaken to compress into a few narrow questions issues which can not be so compressed, and to ignore other issues.

and disclosed threatened direct, special and irreparable loss from the acts of a government agency claimed to be acting without lawful authority.

Even prior to the decision in the principal case it was regarded as probable that the court, though it strained a point in order to consider the constitutional questions raised in the case of *Ashwander v. Tennessee Valley Authority*,⁷ would avoid if possible the constitutional issues here raised; but it was generally hoped, in view of questions left open by the decision in the *Ashwander* case, that the court might find it necessary to define with greater certainty the limits beyond which the federal government may not go in regulation and control, by competition, of privately owned, intrastate business. That some limitations necessarily exist is plain,⁸ but what these may be is far from being so. The decision sheds little light on that subject. The majority opinion of Mr. Justice Roberts, and the minority opinion of Mr. Justice Butler, when read together, convey a feeling that the court here strained a point to avoid consideration of the constitutional questions presented. The only guide remaining, aside from the *Ashwander* decision, is the opinion of the district court, which, however, under the view taken by the Supreme Court, was wholly unnecessary. As guides, in considering the present problem, neither the opinion of the district court in the principal case, nor of the Supreme Court in the *Ashwander* case, are satisfactory. It is not the purpose of this inquiry to undertake to solve a problem which the Supreme Court seems designedly to have avoided. But a solution, at some time, may become necessary. The question will not be settled as an abstract one separated from its natural setting. Not to solve, but to serve to indicate the nature of the problem, and to suggest some of the factors, legal and extra-legal, which are likely to have a bearing upon the ultimate solution, it would be well to survey, briefly, the background of the TVA.

The act creating the Tennessee Valley Authority purports to intend, among other things, the improvement of certain waterways for purposes of navigation, to provide for flood control, reforestation, the proper use of marginal lands, agriculture, the industrial

⁷ *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 56 S. Ct. 466, 80 L. Ed. 688 (1936). Here it was held that stockholders of a power company could complain where the company had entered into contracts, otherwise valid, with an unconstitutional government agency.

⁸ If no limitations existed, the government could at will convert its coal, oil, and timber reserves into by-products and go into a great variety of businesses, thereby controlling intrastate industry.

development of the Tennessee valley, and to provide for the national defense by creating a corporation to operate government properties.⁹ It authorizes the production of electric energy at hydroelectric power dams, built and to be built, and the sale of such electric power as is not required for government use, consistent, however, with the use of the dams for purposes of flood control, navigation, and national defense.¹⁰ As before indicated, this statute was assailed as a sham and a pretense behind which the federal government sought to conceal the real purposes of the Tennessee Valley project, because the real purposes, it was claimed, were without constitutional support. The district court, per Allen J., unlike Grubb, J., in the case of *Ashwander v. Tennessee Valley Authority*,¹¹ declined to go beyond the act itself to determine the purposes of the project. But no one, familiar with contemporary history, could suppose that the act summarizes all the elements which gave rise to the TVA.

Administrative tribunals, exercising legislative powers,¹² long have been recognized as necessary to the effective functioning of government.¹³ Similar tribunals, performing judicial functions,¹⁴ or exercising powers both legislative and judicial,¹⁵ have become necessary in order to take care of particular classes of interests with which the courts, generally, are not adequately qualified to deal, either because of the cumbersome procedure of the law courts, causing expense and delay,¹⁶ or because expert attention is called

⁹ See the numerous sections of the act, cited by the district court in 21 F. Supp. 958, 959.

¹⁰ See note 9, *supra*.

¹¹ See the district court's opinion in *Ashwander v. Tennessee Valley Authority*, 9 F. Supp. 965 (D. C. N. D. Ala. 1935).

¹² Among these are the regulatory commissions, such as the Interstate Commerce Commission.

¹³ See *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 Pac. 1083, Ann. Cas. 1916E 282 (1914); *Trustee of Saratoga Springs v. Saratoga Gas, etc. Co.*, 191 N. Y. 123, 83 N. E. 693, 18 L. R. A. (N. S.) 713 (1908); *Minneapolis, St. P. etc. Ry. Co. v. Railroad Com'n*, 136 Wis. 146, 116 N. W. 905, 17 L. R. A. (N. S.) 821 (1908). And see language in *Panama Refining Co. v. Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935), and *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935).

¹⁴ The state workmen's compensation commissions, among others, exercise functions essentially judicial.

¹⁵ The public service commissions act legislatively, and at the same time may exercise powers similar to those exercised by courts.

¹⁶ See, for example, *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133, 51 S. Ct. 65, 75 L. Ed. 255 (1930), where the United States Supreme Court remands for further proceedings, a suit begun in 1923.

for by the particular subject matter involved.¹⁷ There is now in progress a conflict between the courts and these tribunals, similar to the conflict between the courts of law and courts of equity some centuries ago. The judges of the law courts have had the last word in litigation arising before administrative tribunals, and they have been slow to accord finality even to administrative findings of fact,¹⁸ and have been inclined to view, with some care, the activities of the commissions, the organization of these bodies, and the qualifications of the members.¹⁹ The effect has been that legislative devices, designed to facilitate the settlement of cases in particular fields, have often been of little avail.²⁰ Where delay and expense were sought to be avoided, reversals of commission orders, in the courts, for what seem to be insufficient reasons, have continued to cause expense and delay.²¹

In the public utility field, where rate fixing is a troublesome problem, the courts have insisted upon methods of valuation regarded by many as economically unsound,²² and undesirable; have insisted upon, not only substantive due process, but "procedural

¹⁷ The necessity of expert attention is recognized in *Interstate Commerce Com'n v. Union Pacific R. R. Co.*, 222 U. S. 451, 32 S. Ct. 108, 56 L. Ed. 308 (1912). And see *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337 (1917).

¹⁸ See *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 40 S. Ct. 527, 64 L. Ed. 908, P. U. R. 1920E 814 (1920).

¹⁹ Compare, generally, the finality given to fact findings of the Interstate Commerce Commission with that given to findings of the Federal Trade Commission, as in *Federal Trade Com'n v. Klesner*, 280 U. S. 19, 50 S. Ct. 1, 74 L. Ed. 138 (1929), and *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314, 35 S. Ct. 113, 59 L. Ed. 245 (1914).

²⁰ The case of *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 40 S. Ct. 527, 64 L. Ed. 908 (1920), is indicative of the results where attempts have been made to make findings of fact conclusive. But see *United Gas Co. v. Texas*, 303 U. S. 123, 58 S. Ct. 483, 82 L. Ed. 702 (1933), and *Washington, V. & M. Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 57 S. Ct. 648, 81 L. Ed. 965 (1937), which would seem to disclose a present tendency in the reverse direction.

²¹ Observe the treatment by the West Virginia Supreme Court of Appeals of workmen's compensation cases, as in *Demasters v. Compensation Com'r*, 112 W. Va. 498, 165 S. E. 667 (1932); *Scott v. Compensation Com'r*, 112 W. Va. 608, 166 S. E. 274 (1932); *Gable v. Compensation Com'r*, 111 W. Va. 404, 162 S. E. 314 (1932); *Sedinger v. Compensation Com'r*, 109 W. Va. 51, 152 S. E. 857 (1930).

²² The value of a business, if value is income capitalized, depends upon the rate of return; but commissions are required to arrive at value as a basis for determining the rate. See *Smyth v. Ames*, 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1898). And see, expanding the doctrine of the *Smyth* case, *Southwestern Telephone Co. v. Public Service Com'n*, 262 U. S. 276, 43 S. Ct. 544, 67 L. Ed. 981 (1923). For a criticism of the doctrine of reasonable return on "fair value", see the opinion, in the latter case, of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes.

due process” as well;²³ have declared that, where confiscation is claimed, there must be full opportunity for an independent judicial determination of both the law and the facts.²⁴ A depression, perhaps unparalleled, has served to magnify the obstacles which the courts have placed in the way of economic and governmental reform. It has emphasized the fact that the courts too often are not competent to deal with special problems calling for consideration by experts. As a consequence of this emphasis, perhaps, a host of new administrative bodies has been added to the ever increasing list.

It is generally felt that electric utility rates have been unfairly high. The consumer is not on an equality with the utility in litigation to determine what these rates ought to be at any given time. The holding company device has been improperly used, to conceal overvaluation of property considered in rate base determination.²⁵ In such determinations, methods of doubtful validity have been insisted upon.²⁶ Out of all these interacting factors, and others, proceed the underlying purposes of the Tennessee Valley Authority. If other satisfactory avenues of rate control were closed, the government itself would enter the electric utility field, force rates down through government competition, and, by means of its own experience, create a “yardstick” for determining what electric utility rates should be.²⁷

This device was put into effect at a time when the long embraced economic ideal of free competition had given way to the notion that regulated competition was economically and socially more desirable. It thus added complication to an already complicated economic scene. It might have been supposed, from the ten-

²³ *West v. C. & P. Telephone Co.*, 295 U. S. 662, 55 S. Ct. 894, 79 L. Ed. 1640 (1935). But see *Railroad Com'n of California v. Pacific Gas & Electric Co.*, 58 S. Ct. 334, 82 L. Ed. 327 (1938).

²⁴ *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 40 S. Ct. 527, 64 L. Ed. 908 (1920).

²⁵ The district court in *Tennessee Electric Co. v. Tennessee Valley Authority*, 21 F. Supp. 947 (D. C. E. Tenn. 1938), at page 950, observes: “The complainants are in general owned by holding companies.”

²⁶ *Southwestern Bell Telephone Co. v. Public Service Com'n*, 262 U. S. 276, 43 S. Ct. 544, 67 L. Ed. 981, 31 A. L. R. 807 (1923); *Smyth v. Ames*, 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1898).

²⁷ See the opinions of the district court and circuit court of appeals in *Ashwander v. Tennessee Valley Authority*, appearing respectively in 9 F. Supp. 965 (D. C. N. D. Ala. 1935), and 78 F. (2d) 578 (C. C. A. 5th, 1935). In the latter court, the finding of the district court that one purpose of the TVA was to create a “yardstick” was not challenged, but no mention of “yardstick” is to be found in the district court’s opinion in *Tennessee Electric Power Co. v. Tennessee Valley Authority*, 21 F. Supp. 947.

dency to restrict wasteful competition between privately owned utility companies,²⁸ that the same limitations would apply to competition between governmental agencies and private concerns. In the long run, the consumer must pay for wasteful duplication, by whatever agency it is brought about. Generally, it would seem more desirable to limit such competition, unless utilities already in the field can not be made to serve "adequately".²⁹ And even though the states, and state agencies, since the states, broadly, possess all the powers not prohibited by the Constitution, have been permitted to engage in such competition with private utilities,³⁰ it might have been supposed that the federal government, being, generally, a government of enumerated powers, would be more restricted than the states, within its particular sphere, by the ideal of regulated competition. But recent decisions have not tended toward this restriction.³¹

In the principal case, the bill charged conspiracy, coercion, fraud, and duress, to effect unlawful contracts for sale of TVA power to the injury of complainants. To all these latter charges, the district court had the same answer: Not proved. It conceded only the claim of injury. These charges are not material to the present inquiry. As to the constitutional questions raised, the district court, in effect, disposed of them in the following manner:

The Constitution empowers Congress to regulate interstate commerce,³² and this authority includes provision for navigation and flood control. Congress likewise is authorized to provide for the

²⁸ See *Monongahela West Penn Public Service Co. v. State Road Com'n*, 104 W. Va. 183, 139 S. E. 744 (1927).

²⁹ Where existing utilities can not be required to give "adequate" service, there would seem to be justification for allowing a competing utility to serve. But so long as high rates may be reduced by proper action, it can not be said that such rates render service so inadequate as to justify competition.

³⁰ Whether it is desirable or not, the states undoubtedly have the power to set up government agencies competing with privately owned utilities. But if a municipality, in operating an electric plant or a water system, acts in its proprietary capacity, it is arguable that it should not receive a treatment, where the question of competition arises, different from that accorded to a private enterprise. It likewise is arguable that the federal government occupies a position not unlike that of the municipality, for, just as the city must look to its charter for authority to operate a utility, so should the federal government look to the Constitution.

³¹ See *Ashwander v. Tennessee Valley Authority*, *supra* n. 7. A situation seems to exist in which competition between privately owned concerns is regulated, but in which competition by governmental agencies with private concerns is permitted. Cf. *Monongahela West Penn P. S. Co. v. State Road Com'n*, 104 W. Va. 183, 139 S. E. 744 (1927), and *Re Village of Hustisford*, 2 P. U. R. (N. S.) 485 (Wis. 1934).

³² U. S. CONST. Art. I, § 8.

national defense,³³ and, further, to dispose of property belonging to the United States.³⁴ Wilson dam was constructed under the war powers of Congress.³⁵ The court assumes that, under the decision in the *Ashwander* case,³⁶ the production and sale of electric power at Wilson dam, without further qualification, is within the constitutional powers of Congress. The other dams above Wilson dam, intended to maintain an even flow of water at the latter dam, are so connected with the purposes for which it was constructed, that the power to build and operate them can not successfully be questioned. And each of the dams, constructed or proposed, is a unit of an "integrated multiple-purpose project" concerned primarily with navigation,³⁷ flood control, and national defense. This being so, the supposedly subordinate purpose of power development is so connected as to be within the powers of Congress. But if the fact that it is part of a "multiple-purpose project" is not enough to lend it validity, nevertheless water power, the right to convert it into electric energy, and the energy produced, constitute property of the United States; therefore, under the constitutional provision authorizing Congress to dispose of property of the United States,³⁸ the production and sale of electric energy in competition with private industry, without limit, is lawful. The *Ashwander* case³⁹ is cited as authority for this proposition. It may well be doubted that the decision in that case justifies the district court's opinion here. The latter opinion creates a feeling that the power of the federal government, to not only dispose of its lawfully held property in the form acquired, but to convert it into other forms, and in these forms to sell it in competition with private business, is utterly without limit. There is also to be found in the Supreme Court's opinion in the principal case the statement that the sale of government property in competition with others is not a violation of the Tenth Amendment. The statement does not limit such sale to property lawfully acquired.

Heretofore, it might have been supposed that the authority of the federal government to dispose of power created at government

³³ *Ibid.*

³⁴ *Id.* at Art. IV, § 3.

³⁵ *Id.* at Art. I, § 8. Wilson dam was the first of the dams to be constructed. See *Ashwander v. Tennessee Valley Authority*, *supra* n. 7.

³⁶ *Ibid.*

³⁷ Control of navigation is included, by implication, within the commerce clause, U. S. CONST. Art. I, § VIII.

³⁸ *Id.* at Art. IV, § 3.

³⁹ *Ashwander v. Tennessee Valley Authority*, *supra* n. 7.

dams extended only to such incidental surplus as might be available over and above that amount of power required for government purposes, after an effort, in good faith, to produce only a quantity sufficient to care for present government needs, with a reasonable margin for needs reasonably expected to arise.⁴⁰ But under the opinion of the district court in the principal case, any project may be carried on which bears a substantial relation to some constitutional exercise of power; and a purpose which, alone, could not be lawfully pursued, becomes lawful when made part of a multiple-purpose project, the other purposes of which are lawful. By this device, the federal government would be enabled to exercise a direct control, in this instance by competition, not only over interstate business, but upon intrastate business as well.⁴¹ In so far as it discusses the questions raised in the case, the opinion of the Supreme Court seems to take the position that competition is wholly a matter of legislative policy; that the states may permit it or prohibit it; that as the states involved have authorized it, this competition is lawful; that the franchises of appellants do not give them a right to be free of competition; that if there is federal regulation, it is but incidental to the competition; and that the record justifies the findings of the district court that there was no coercion, duress, fraud, malicious motive nor conspiracy. On the point of regulation being only an incident of the competition, the Supreme Court reasons that competition by a privately owned company, permitted by the state, would constitute as much a regulation in the same sense. The reasoning, however, seems to overlook the fact that the state has constitutional power to so regulate, and that the very question raised is whether the federal government has such power.

There are those who contend that government regulation of business, generally, is desirable. With this broader issue, the present discussion is not concerned. It has, however, long been recognized that regulation by government agencies of some businesses is desirable. It is generally felt that regulation of electric utility companies, in the public interest, has not been as effective as it ought

⁴⁰ See the opinion of Grubb, J., in *Ashwander v. Tennessee Valley Authority*, 9 F. Supp. 965.

⁴¹ The Constitution gives Congress authority to regulate commerce among the states. But even if it could be said that this includes, by implication, the power to regulate such commerce by government competition, there is no authority conferred to regulate intrastate enterprise by this method, nor is there any implied power to enter a purely local business. For a discussion of this subject see Welch, *Constitutionality of the Tennessee Valley Project* (1935) 23 GEO. L. J. 389.

to be. If the feeling has any basis in fact, then the objects to be attained by the TVA are socially and economically desirable, and only the methods employed to attain these ends are of doubtful validity. Some such feelings, or sentiments, may well have exerted an influence, consciously or unconsciously, upon the Court in the principal decision. Such sentiments and feelings can not be utterly divorced from the mind. There is apparent in recent decisions a tendency to draw away from some of the doctrines which have blocked effective rate control.⁴² In a sense, the present decision is not wholly inconsistent with these. Further, in a broad sense, the necessity for a decision of the questions raised would seem to be lessened, if only in degree, by the apparent intention of the administration not to expand its power activities to any great extent, and the seeming likelihood that appropriations for power development will be restricted by Congress.

Limited to the power industry, where legitimate regulation is conceded to be necessary, the government competition complained of may be calculated to achieve a desirable result. But its effect upon the interests concerned is less only in degree than if it were unlimited. It runs counter, whether so limited or not, to a present tendency favoring the doctrine of "state's rights". It conflicts as well with an apparent trend away from excessive centralization of powers, and clashes with the economic ideal of regulated competition. Too, the necessity for a "yardstick" and for rate control by government competition will have disappeared if the courts continue to pursue a present policy of giving greater finality to findings of administrative tribunals.⁴³

C. L. C.

⁴² See *Railroad Com'n of California v. Pacific Gas & Elec. Co.*, 302 U. S. 388, 58 S. Ct. 334, 82 L. Ed. 327 (1938); *Lindheimer v. Illinois Bell Telephone Co.*, 292 U. S. 151, 54 S. Ct. 658, 78 L. Ed. 1182 (1934). And see *Standard Oil Co. v. United States*, 283 U. S. 235, 51 S. Ct. 429, 75 L. Ed. 999 (1931).

⁴³ See *United Gas Co. v. Texas*, 303 U. S. 123, 58 S. Ct. 483, 82 L. Ed. 702 (1938), limiting the kind of review theretofore required in due process cases; *Railroad Com'n of California v. Pacific Gas & Elec. Co.*, 302 U. S. 388, 58 S. Ct. 334, 82 L. Ed. 327 (1938), substituting, in effect, the "prudent investment" rate base for "fair value"; *Washington, V. & M. Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 57 S. Ct. 648, 81 L. Ed. 965 (1937), indicating a rough trend toward giving greater finality to commission findings of fact, though the commission concerned is new, comparatively untried, and is a target for considerable open criticism.