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Recommended Citation

Robert L. Tarrel, *Illinois Commerce Commission*, 22 DePaul L. Rev. 779 (1973)
Available at: <https://via.library.depaul.edu/law-review/vol22/iss4/4>

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ILLINOIS COMMERCE COMMISSION

ROBERT L. TARREL*

THE Illinois Commerce Commission is an executive appointed administrative body created by the state legislature under the provisions of a law entitled "An Act Concerning Public Utilities," approved in 1921, and amended from time to time thereafter. It is a bipartisan body consisting of five commissioners, not more than three of whom may be members of the same political party at the time of appointment.¹ Its major function is to regulate the intra-state activities of the public utilities pursuant to the Illinois Public Utilities Act, and in addition is responsible for regulation of the activities of electric cooperatives pursuant to the provisions of the Electric Supplier Act² and motor carriers pursuant to the provisions of the Illinois Motor Carrier of Property Law.³ This article shall, however, deal essentially with its functions concerning public utilities, *i.e.* those privately-owned companies which provide telephone, electric, gas, water and sewer services, and railroad and motor bus services to the public.

The regulation of public utilities is the historical outgrowth of the regulation of grist mills, ferries, canals, toll bridges and turnpikes which began with the first General Assembly of the State of Illinois, and the regulation of rates and services of railroads pursuant to the provisions of the state constitution.⁴ The state constitution specifically directed the General Assembly to pass such laws as might be necessary "to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs."⁵

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1. ILL. REV. STAT. ch. 111½, § 1 (1971).
2. ILL. REV. STAT. ch. 111½, §§ 401 et seq. (Supp. 1972).
3. ILL. REV. STAT. ch. 95½, §§ 18-100 et seq. (Supp. 1972).
4. ILL. CONST. art. XI, §§ 12 and 15 (1870).
5. ILL. CONST. art. XI, § 15 (1870).

Provision was also made for the regulation of warehouses for the storage of grains or other property, which were declared to be public warehouses; and the General Assembly was given the duty, among other things, to pass all necessary laws "to give effect to this Article of the Constitution, which shall be liberally construed so as to protect producers and shippers."⁶ Today, however, the Illinois Commerce Commission is no longer responsible for the regulation of public warehouses, such responsibility now being vested in the Illinois Department of Agriculture.

Acting pursuant to the mandate contained in those provisions of the Illinois Constitution, the state legislature created the Railroad and Warehouse Commission which was initially authorized to investigate and examine the management of railroads and warehouses to determine if they were complying with other laws of the state. Subsequently the authority of this Commission was extended to rates and services, and its powers were extended to all common carriers.⁷

The authority asserted by the Illinois Legislature in fixing maximum rates for grain storage was challenged by a claim that the due process clause of the fourteenth amendment to the Constitution of the United States denied Illinois the right to set such rates. In a landmark decision the United States Supreme Court paved the way for the regulation of the use of private property affected with a public interest.⁸ In upholding the constitutionality of the Illinois law the Court recognized that the legislature was not confined to the regulatory field established at common law, but had the power to regulate the rates and service of other business enterprises which today are customarily referred to as public utilities.⁹

Public utilities are only a part of a general class of businesses which have been designated as "business affected with a public interest," and are distinguishable from other businesses affected with a public interest because they are: "(a) free from business competition to a substantial degree, and are often pure monopolies; (b) re-

6. ILL. CONST. art. XIII, § 6 (1870).

7. ILL. REV. STAT. ch. 114, §§ 167-185q (1911).

8. *Munn v. Illinois*, 94 U.S. 113, 125-126 (1877).

9. *Id.* at 134. The Court found that the determination of reasonable compensation for the use of property devoted to public use was a legislative and not a judicial question, except in those cases where no statutory limitations are precluded.

quired to charge only reasonable rates that are not unjustly discriminatory; (c) allowed to earn but are not guaranteed a reasonable return on its investment; (d) obligated to provide adequate service to the public on demand; and (e) closely associated with the processes of transportation and distribution."¹⁰

In 1914 the Railroad and Warehouse Commission was abolished, and was succeeded by the State Public Utilities Commission.¹¹ This Commission went through a series of amendatory acts until it became the Illinois Commerce Commission in 1921.¹²

Since its inception the regulatory powers of the Illinois Commerce Commission have been extended to cover considerably greater areas of interest relating to the financial and service requirements of public utilities. The obligations of the Commission are essentially twofold: to assure the providing of adequate service to the public at just and reasonable rates, and to preserve the financial integrity of the utilities by permitting them to earn a fair rate of return on the fair value of their utility plant used and useful in providing such service. Neither of these requirements can exist without the other.

In order to fulfill its obligations the Commission has been granted broad regulatory powers and duties which include: supervision of accounts, security issues and corporate transactions;¹³ regulation of rates and service;¹⁴ conducting investigations and hearings;¹⁵ and enforcement of the Act and Commission orders thereunder.¹⁶ To assure the impartiality of the Commission, no commissioner, officer or employee may have any pecuniary interest in any public utility.

Aside from the payment of commissioners' salaries and the salary of the secretary of the Commission, whose salaries are specifically set by statute,¹⁷ and are paid out of the General Revenue Fund, all the ordinary and contingent expenses of the Commission are paid out of the Public Utility Fund, up to a designated maximum

10. P. GARFIELD & W. LOVEJOY, PUBLIC UTILITY ECONOMICS (1964).

11. ILL. REV. STAT. ch. 111a, §§ 1-86 (1913).

12. ILL. REV. STAT. ch. 111½, §§ 1-95 (1921).

13. ILL. REV. STAT. ch. 111½, §§ 8-9 and 11-31 (1971).

14. ILL. REV. STAT. ch. 111½, §§ 33-39, 44-53, 55-59a (1971), *as amended* (Supp. 1972).

15. ILL. REV. STAT. ch. 111½, §§ 64-79 (1971), *as amended* (Supp. 1973).

16. ILL. REV. STAT. ch. 111½, §§ 80-84 (1971), *as amended* (Supp. 1973).

17. ILL. REV. STAT. ch. 111½, § 2a (1971).

amount.¹⁸ Contributions to the Public Utility Fund come from a tax imposed on the annual gross revenues of each public utility doing business in the State of Illinois¹⁹ and fees assessed for the issuance of stocks and bonds by the utilities.²⁰ The effect of this funding scheme is that the public utilities bear the expense of their own regulation. This is reasonable if the tax imposed is not used to raise general revenue for the state and there is a reasonable relation between the amount paid by each particular company and the work done by the Commission in regulating it.²¹ These standards are met by the limitation imposed by the legislature on the Commission's budget and by the reimbursement of excess funds in the Public Utility Fund to the utilities on a pro rata basis at the end of each fiscal period.

The trend has been for the courts to broaden the areas of regulation. The Commission has been given the authority to exercise general supervision of public utilities, and in addition, they may examine and inquire into their non-utility business insofar as it may be necessary in order to enforce any of the provisions of the Public Utilities Act. As a consequence, the Commission has been granted the power to establish uniform systems of accounts for the various types of utilities; to require filing of annual reports and financial statements; to regulate transactions with affiliated interests; to approve the issuance of securities, mergers, consolidations and reorganizations; and regulate the payment of dividends, various transfers, encumbrances, leases and other agreements affecting utility property, franchises and operating rights.²²

18. ILL. REV. STAT. ch. 111½, § 7a.2 (1971).

19. ILL. REV. STAT. ch. 111½, § 7a.5 (1971).

20. ILL. REV. STAT. ch. 111½, § 31 (1971).

21. *Great Northern Ry. Co. v. Washington*, 300 U.S. 154 (1937); *Wisconsin Telephone Co. v. Public Service Comm'n*, 206 Wisc. 589, 240 N.W. 411 (1932). See 5 U.S.C. § 140 (1951) for legislation stating that it is the sense of Congress that each federal agency providing services or material to any person shall be self-sustaining to the fullest extent possible, and is authorized to prescribe by regulation, fees therefor. An order of the FCC prescribing a schedule of radio and television fees is valid. *Aeronautical Radio, Inc. v. United States*, 335 F.2d 304 (7th Cir. 1964), *cert. denied*, 379 U.S. 966 (1965). The FCC has also adopted a schedule of filing fees for certain applications. Docket No. R-282, Order 317, 31 FED. REG. 430; Order 317A, 31 FED. REG. 4890 (1966).

22. ILL. REV. STAT. ch. 111½, §§ 8-9, 11-31 (1971), *as amended* (Supp. 1972). C. KNEIER, *STATE REGULATION OF PUBLIC UTILITIES IN ILLINOIS* (1927).

There appears to be a growing number of persons expressing the viewpoint, apparently nurtured and supported by the utilities in their effort to diminish the scope of regulation, that the Commission is already overburdened, and there are many matters which should not come before the Commission, *e.g.*, approval of sales of property or leases,²³ which do not relate to property used or useful in the performance of its duties to the public.

The argument against this viewpoint may be strongly illustrated by recent events. During the past few years with the decline in railroad services, and in the effort to reduce expenses, the railroads' abandonment of facilities has resulted in the sale of considerable properties. As a result, the ratepayer of the utility, who has for years been paying rates designed to give the utility a fair rate of return on this property devoted to utility service, now finds that through the decrease of services to him, the railroad gains a profit on the sale of the property no longer needed, which accrues to the benefit of the investors and not the ratepayers. There certainly has been no evidence of a reduction in rates arising from this practice. On the other hand, the utilities argue that there has been an indirect benefit to the ratepayer because the property sold is now taken out of the rate base thereby reducing the rate of return that the utility is entitled to, which in turn reduces the amount of revenue increases that are constantly being sought by the utilities at the present time to meet their increased costs.

Another current practice, relating particularly to the railroads and giving rise to arguments concerning the extent of regulation, is the creation of holding companies which acquire the ownership of the railroads. By sophisticated, legitimate manipulations of stock interests, the holding companies are created with virtually no capital investment. Through the guise of the holding company, valuable properties have been siphoned off from the utilities and have been utilized for the benefit of the investors in the holding company, the former investors in the utility. The ratepayer is left with the burden of supporting the less profitable properties which are devoted to providing utility services, while the investors reap substantial profits.

In a recent rate proceeding the Illinois Commerce Commission

23. ILL. REV. STAT. ch. 111½, § 27(c) (1971). There is an exemption for tangible personal property, but not real estate.

approved the inclusion of land held for future use in the rate base where evidence indicated that such land may not be used and useful for utility purposes for at least twenty years. The rationale of the utility, accepted by the Commission, was that managerial discretion dictated the early purchase of certain lands adjacent to existing facilities in order to provide for eventual growth, and because such lands could be now bought at a much lower price than would be required in the future, all to the ultimate advantage of the ratepayer as well as the utility.²⁴ But what if such lands are never used for utility purposes and are ultimately sold by the utility at a profit? Who benefits from this? It seems to result in a "heads I win, tails you lose" situation for the utilities. The effect of this is to impose upon the ratepayer an obligation to pay rates which include a rate of return on property which may never become useful in providing utility service to the public. The point here, however, is that such property may eventually be sold without ever having been devoted to utility service and the ratepayer has gained nothing thereby. Certainly there appears to be considerable justification for the Commission to retain its jurisdiction over such matters as the sale of property, despite its already overburdened work load. The answer is not less regulation, but more funds for more active regulation. This is one area where more bureaucracy is in the public interest.

Utility regulation goes through cycles as the demands of the utilities change. After World War II with the burgeoning population growth and building development, the utilities were greatly concerned with the problems of expansion in order to satisfy the public demand for service. There was a nominal adjustment of utility rates to conform to the new post-war economy, but the expense of meeting the growth was borne mainly by the increased revenues generated by large numbers of new customers.

However, the relationship between growth resulting in increased revenue and the additional expense incurred to meet this growth,

24. In re Illinois Bell Telephone Co., 86 PUR 3d 65, 72 (1970). The Commission stated that "reasonable managerial discretion was exercised in said purchases to avoid the problem that such property may not have been available at the time it was needed for such expansion, or that its acquisition at such time would undoubtedly be more costly. The Commission is of the opinion that this property is, therefore, useful and that the costs thereof should be included herein."

together with the effects of a spiraling inflationary economy, resulted in reaching a saturation point. No longer could the utilities meet through operating revenue the demands being placed on them. They were compelled to go into the money markets to seek both additional equity and debt financing. The declining rate of return which the utilities began to experience needed to be bolstered, and they were compelled to seek rate relief from the regulatory agencies. For the past five years the Illinois Commerce Commission has been burdened with consideration of major rate cases initiated by most of the major utilities.²⁵ The utilities may claim that had they been given the relief initially requested constant rate increases would not be required. Experience has not borne this out. Even when the Commission has been generous, additional rate relief has been sought.

In general the obligation of the utilities is to charge just and reasonable rates, to refrain from unjust discrimination and preferential treatment, to furnish adequate, safe and efficient service and facilities. All other matters are directed to and related to this end. The Commission controls commencement, extension and furnishing of service as well as discontinuances and abandonment.²⁶ It also has the power to prescribe standards of service.²⁷

The courts have held that the authority of the Commission, in exercising these controls over service and rates, is subject to constitutional and statutory limitations of propriety and reasonableness. The power of regulation was not intended to make either the public or the regulatory agency the general manager of public utilities.²⁸

25. Commonwealth Edison Company has just filed its third major rate case since 1969. Illinois Bell Telephone Company is in the middle of its third filing during this period. Union Electric Company has filed for three general rate increases. Most of the commuter railroad lines have filed for numerous rate increases during this period.

26. ILL. REV. STAT. ch. 111 $\frac{2}{3}$, §§ 44-53, 55-59a (1971), *as amended* (Supp. 1972).

27. *Id.* §§ 10a, 54, 59a, 60-62. *See also* City of Chicago v. Chicago and Northwestern Ry., 4 Ill. 2d 307, 122 N.E.2d 553 (1954); Central Illinois Public Service Co. v. Ill. Commerce Comm'n, 18 Ill. 2d 506, 165 N.E.2d 332 (1960).

28. Ill. Commerce Comm'n v. East St. Louis & Carondelet Ry. Co., 361 Ill. 606, 198 N.E. 716 (1935). In State Public Utilities Comm'n v. Springfield Gas & Electric Co., 291 Ill. 209, 234, 125 N.E. 891, 901 (1919), the Court stated: "[T]he Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation."

Increasing consumer interest and participation in rate proceedings has caused the commissions of various jurisdictions to take a fresh look at some of these criteria. For a long period of time the Illinois Commerce Commission, relying on an interpretation of the Illinois Supreme Court's decision in *Village of Apple River v. Illinois Commerce Comm'n*, followed the contention of the utilities that the quality of service is not an element to be considered in a rate proceeding and in the determination of just and reasonable rates on a fair value rate base.²⁹ Parties complaining about service were encouraged to file separate proceedings in the nature of complaints.

The Commission has abandoned this position, and so far this reversal of position and interpretation of the court decision in the *Apple River* case has been acquiesced in by the utilities through their compliance with any orders relating to service which have been included in rate proceedings.³⁰

Rate proceedings are initiated by the filing of new tariff schedules by the utility. Publication of notice of such filing must be made in accordance with the requirements of the statute³¹ and the provisions of General Order 157 of the Commission. There is no presumption of wrong in the filing of new rates, and they may be auto-

29. 18 Ill. 2d 518, 165 N.E.2d 329 (1960). In that case Northwestern Telephone Company was granted a rate increase. During the hearing it was brought out that the Commission had previously ordered the utility to do certain work on its facilities, and the order had not been complied with. There was evidence that the service provided by the utility was not all that could reasonably be expected. Upon appeal to the circuit court, the court took note of the deficiencies and concluded that the order of the Commission allowing the increase was unreasonable because of the utility's failure to comply with the prior order. The Supreme Court reversed the lower court and the order of the Commission granting the rate increase was affirmed. It ruled that non-compliance with the prior order was not of itself an adequate basis for denying a rate increase. The Court found no previous decisions in Illinois, but determined that other states have held that a commission may not so act as to confiscate the property of a utility, and may not condition a rate increase upon the improvement of service or facilities. See *Elyria Telephone Co. v. Public Utilities Comm'n*, 158 Ohio St. 441, 110 N.E.2d 59 (1953). Similarly in *Florida Telephone Corp. v. Carter*, 70 So. 2d 508 (Fla. 1954), the court determined that the Commission had no authority to deny an increase in rates as a penalty for poor or inadequate service. The cases recognize that although the approval of proposed rate increases is necessarily related to the services offered, a rate that is otherwise just and reasonable may be a necessary condition precedent to adequate service.

30. In re Commonwealth Edison Company, 85 PUR 3d 199 (1970). The Commission made 50 percent of the rate increase granted contingent upon Edison's compliance with a certain schedule relating to pollution controls.

31. ILL. REV. STAT. ch. 111½, § 36 (1971).

matically put into effect.³² If the Commission declines to suspend proposed rates, its judgment is not subject to judicial review.³³ Rare is the case that the Commission has not suspended a proposed general increase by a utility. The effective date of a proposed general rate increase is 30 days after filing and the Commission has the authority to suspend the effective date for the proposed rates for a period of ten months thereafter³⁴ for the purpose of holding a hearing concerning the propriety and reasonableness of the proposed general rate increase. If the Commission fails to enter an order relating to the proposed rates within that time, the rates become effective; but the Commission must conclude hearings and enter a proper order.³⁵

In determining whether existing or proposed rates are just, reasonable and non-discriminatory, the Commission must exercise "sound business judgment," and should give due consideration to all relevant factors including the cost and value of service, type and volume of business, competitive conditions, existing and prospective earnings, and all other circumstances affecting service.³⁶ To achieve this, Illinois adopted the "fair value" doctrine.³⁷ Although fair value was subsequently repudiated as a constitutional requirement by the United States Supreme Court³⁸ and in the majority of state jurisdictions, it has until recently, prevailed in Illinois allegedly as the only satisfactory basis for providing an equitable solution to the constant dilution of return and erosion of capital resulting from inflation.³⁹

Perhaps no single element of the rate-making process is as impor-

32. *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill. 2d 607, 150 N.E.2d 776 (1958).

33. *Antioch Milling Co. v. Public Service Co.*, 4 Ill. 2d 200, 123 N.E.2d 302 (1954); *Colton v. Commonwealth Edison Co.*, 349 Ill. App. 490, 111 N.E.2d 363 (1953).

34. ILL. REV. STAT. ch. 111½, § 36 (1971).

35. *Illinois Bell Telephone Co. v. Ill. Commerce Comm'n*, 304 Ill. 357, 136 N.E. 676 (1922); *City of Edwardsville v. Illinois Bell Telephone Co.*, 310 Ill. 618, 142 N.E. 197 (1923); *Central Illinois Public Service Co. v. Ill. Commerce Comm'n*, 5 Ill. 2d 195, 125 N.E.2d 269 (1955).

36. *State Public Utilities Comm'n v. Springfield Gas and Electric Co.*, 291 Ill. 209, 125 N.E. 891 (1919).

37. *Smyth v. Ames*, 169 U.S. 466 (1898).

38. *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *F.P.C. v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942).

39. *Illinois Bell Telephone Co. v. Ill. Commerce Comm'n*, 414 Ill. 275, 111 N.E.2d 329 (1953).

tant as the determination of a fair rate of return. It is a matter which requires expert judgment, for the decisions in Illinois, as elsewhere, make it clear that there is no simple formula which will lead inevitably to a fair rate of return in every case. Nonetheless, the court has sought to establish standards for measuring the degree to which a proposed rate of return is fair when it stated:

[I]t was the duty of the Commission to fix just and reasonable rates and to use a rate base which represented the fair value of the utility property arrived at after full and proper consideration of its original and reproduction cost. The rates fixed by the Commission should be sufficient to provide for operating expenses, depreciation, reserves that are necessary in good business judgment and operation, and a reasonable return based upon an appraisal of the opportunities for investment in other enterprises involving similar risks.⁴⁰

As a result the Commission has heretofore specifically considered the following factors in determining fair value and a fair rate of return: (a) current economic conditions, (b) current price levels, (c) the reproduction cost new of utility property, (d) original cost of utility property, (e) depreciation, (f) operating revenues under particular rates, (g) operating expenses, (h) working capital requirements, (i) reserves, and (j) reasonable return to investor. It is obvious that many of the factors become subject to personal judgment and cannot be reduced to definitive amounts.

In a recent rate proceeding, the Commission rejected the historical use of the fair value concept by refusing to consider the reproduction cost new of the utility plant in its determination of fair value.⁴¹ The Commission criticized reproduction cost new on the basis that in most cases the evidence in reproduction cost studies is simply inconclusive.⁴² Further, the usefulness of such studies is impaired by the uncertainty which arises in hypothesizing a reproduced plant when new technology and economies of scale are present which did not exist when the plant was originally constructed.⁴³ Use of trending or price indices to compensate for inflation since the plant was originally constructed⁴⁴ results in "an estimate of a hy-

40. *Iowa-Illinois Gas & Electric Co. v. Ill. Commerce Comm'n*, 19 Ill. 2d 436, 445, 167 N.E.2d 414, 418-419 (1960).

41. *Central Illinois Public Service Co.*, No. 57300 (I.C.C., Mar. 13, 1973).

42. *Id.*

43. *Id.*

44. *Id.*

"The use of trending indices or price indices to express the cost of plant in today's dollars is a straightforward attempt to compensate for inflation, with

pothesis (reproduction cost new), reduced by an estimate (observed depreciation), to arrive at a mathematical non-entity (reproduction cost new less depreciation), which defies documentary verification."⁴⁵

Finally, in determining fair value the relative percentages of original cost depreciated and reproduction cost new less depreciation are added together to produce a weighted fair value rate base.⁴⁶ This weighting has resulted in an "artificially high rate base on a given level of earnings . . . [thereby showing] an apparent lower rate of return in a rate case order."⁴⁷ Thus the Commission noted that the result of costly and time consuming reproduction cost studies is increased monthly bills to consumers.⁴⁸

The impact on the consumer must of course be weighed with "the responsibility of allowing the utilities to earn a fair rate of return. However there are other means to recognize the impact of inflation"⁴⁹ Recognizing that determination of the rate base to which a fair rate of return should be applied is one of the most controversial issues in public utility regulation, and that the majority of the states as well as the Federal Power Commission use the original cost method rather than the fair value method advocated in Illinois, the Commission found that the reproduction cost component in the rate making process is not the only means by which the utility can keep abreast of the current economic conditions. Rather, by law

[t]he rate of return is determined from evidence in the record on, among other things, the cost to the Company of its capital—familarly referred to as 'cost of capital' evidence. The very essence of this evidence is current economic conditions, which, if given proper effect, impels the Commission to grant the Company earnings (a rate of return) which will enable it to operate effectively in current economic conditions.⁵⁰

no evaluation of the efficacy of the plant or equipment being considered.

"Regardless of the method used in arriving at a final figure, the gross reproduction cost new amount is merely someone's best estimate, or a consensus best estimate.

"This gross figure is then reduced to reflect 'per cent of new condition,' either by deducting 'observed depreciation,' or by multiplying a percentage figure purported to represent the condition of the present plant in relation to a new one."

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

Thus, although the Supreme Court had directed the Commission to consider reproduction cost in determining fair value under the statutory mandate directing that utilities be allowed to earn a reasonable return upon their investment,⁵¹ the Commission focused its attention on Section 36 of the Illinois Public Utilities Act charging it with the responsibility for establishing just and reasonable rates *for the protection of the consumer*. For the reasons discussed, reproduction cost does not further this responsibility:

The preparation and introduction of large volumes of evidence and testimony in support of reproduction cost assertions have been time-consuming and expensive for the utilities. The Commission Staff has been obliged to expend considerable time and money to audit and challenge these estimates. The very scale of these hypothetical and conjectural presentations has precluded effective challenge by intervenors. The net effect of this burden is to place in jeopardy the Commission's ability to serve the public adequately, since the resultant estimated rate base presented defies documentary verification. The millions, if not billions, of dollars that are involved in major rate cases make it mandatory, in the public interest, to eliminate, as much as possible, these uncertainties in the rate-making process. In the Commission's judgment, the 'original cost' method best accomplishes the basic obligation of the Commission in fixing rates as low as possible for the consuming public, but sufficient to provide for operating expenses, depreciation, necessary reserves, and a fair and reasonable return to the investor.⁵²

In the conduct of its investigations and hearings the Commission's position is not adversary.⁵³ Proceedings are quasi-judicial, but informal. Although technical rules of evidence are not binding,⁵⁴ hearsay should be excluded and the right of cross-examination should exist.⁵⁵ The statute grants the Commission the power to administer oaths, certify official acts, issue subpoenas, compel attendance of witnesses and the production of documents, papers,

51. *Id.*

52. *Id.* The analysis of the Central Illinois Public Service Company decision has been followed by the Commission in Illinois Power Co., No. 57520 (I.C.C., May 16, 1973); The People Gas Light and Coke Co., Nos. 57573 and 57947 (I.C.C., May 25, 1973). This present position was argued by the City of Chicago in its brief and oral argument in an appeal now pending before the Supreme Court of the State of Illinois. Illinois Bell Telephone Co. v. Ill. Commerce Comm'n, No. 45866 (May 25, 1973). Several utilities and other interested parties filed amicus curiae briefs in the proceeding in opposition to the Commission's rejection of the fair value concept in the subsequent cases.

53. *Inter-State Water Co. v. City of Danville*, 379 Ill. 41, 39 N.E.2d 356 (1942).

54. ILL. REV. STAT. ch. 111½, §§ 64, 95 (1971); Ill. Commerce Comm'n v. Chicago Ry. Co., 362 Ill. 559, 1 N.E.2d 65 (1936).

55. *Chicago and North Western Ry. Co. v. Ill. Commerce Comm'n*, 326 Ill. 625, 158 N.E. 376, 55 A.L.R. 654 (1927).

books and accounts.⁵⁶ Complete records are kept of all proceedings, and upon the conclusion of a hearing the Commission is compelled to make findings based on the record to support its orders. Since the Commission proceedings are only quasi-judicial, its orders do not have *res judicata* effect, and the Commission may alter orders when circumstances may so require.⁵⁷

The Commission may award reparations, but not damages for improper service or wrongful charges.⁵⁸ In order to secure civil damages, action must be brought in a court of law.⁵⁹ Although the Commission may grant a public utility the authority to exercise eminent domain,⁶⁰ the monetary award for condemnation of property is established by a court of law.

Appeal may be made to a court of law from orders of the Commission.⁶¹ However, no judicial review may be sought until all administrative remedies have been exhausted. Appeals are first directed to the circuit courts, and from there may be further appealed to the appellate court and then to the Supreme Court.⁶² The court proceedings are not a trial *de novo*. The ultimate issue before the court on judicial review is the reasonableness or lawfulness of the Commission order, *i.e.*, is the order supported by essential findings and are the findings supported by the evidence.⁶³ The record on appeal is certified by the Commission, and matters not raised on rehearing may not be raised on appeal. The court may not modify the Commission's orders,⁶⁴ it must sustain or set aside the whole order.⁶⁵

56. ILL. REV. STAT. ch. 111½, §§ 64-67 (1971), *as amended* (Supp. 1973).

57. In *Mississippi River Fuel Corp. v. Ill. Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 397 (1953), the court said, "[W]hatever may be the moral obligation of the commission to adhere to the purpose and spirit of its own previous orders, it cannot be said that it is under a legal duty to do so."

58. *Barry v. Commonwealth Edison Co.*, 374 Ill. 473, 29 N.E.2d 1014 (1940).

59. ILL. REV. STAT. ch. 111½, § 73 (1971).

60. ILL. REV. STAT. ch. 111½, § 59 (1971).

61. ILL. REV. STAT. ch. 111½, § 68 (1971).

62. *See also* ILL. REV. STAT. ch. 110A, § 302(b) (1971). ILL. REV. STAT. ch. 111½, § 71 (1971).

63. *Atchison, Topeka & S.F. Ry. Co. v. Ill. Commerce Comm'n*, 335 Ill. 70, 166 N.E. 466 (1929).

64. *Peoples Gas Light & Coke Co. v. City of Chicago*, 309 Ill. 40, 139 N.E. 867 (1923).

65. *Terminal Railroad Ass'n v. Brotherhood of Railroad Trainmen*, 379 Ill. 403, 41 N.E.2d 481 (1942), *aff'd* 318 U.S. 1 (1943).

Equitable relief has been granted where it has been determined there is no remedy at law or by proceeding before the Commission. This form of relief was reviewed in detail in *Peoples Gas Light & Coke Company v. Slattery*,⁶⁶ where the court held that the legislature could not deny such relief where statutory appeal is inadequate to protect the utility from confiscatory rates or irreparable injury.

Generally procedures before the Commission relating to the regulation of motor carriers pursuant to the provisions of the Illinois Motor Carrier of Property Law are substantially the same as those relating to the regulation of public utilities under the Illinois Public Utilities Act. Therefore, this article has refrained from a review of such matters.

From an examination of the leading cases which have established the law relating to the regulation of public utilities, one can only conclude that the greater weight of influence has been exercised by the utilities themselves. Most lawyers versed in public utility law are those employed by the utilities, or by the regulating agencies. Municipal attorneys do participate in utility matters before the Commission, and historically, only through their efforts and that of the regulating agencies themselves, have the courts of law received the benefit of another viewpoint upon which to base their decisions in a highly technical aspect of the law, which the courts themselves have admitted a complete lack of expertise. Today, with more and more interest being exhibited by the public through the intervention of consumer groups, there is a growing need and demand for knowledgeable legal representation on behalf of the ratepayer. While primarily concerned with the public interest, the regulatory agencies themselves do not have the resources to rival those of the utilities in order to act as an absolute buffer against the utilities' constantly growing and continual demands. It must again be noted that the role of the regulatory agency is not adversary, and adversary representation is really what is needed to provide the evidence giving regulatory agencies the alternative upon which to make findings to support their orders.

66. 373 Ill. 31, 25 N.E.2d 482 (1939).

DEPAUL LAW REVIEW

Volume XXII

SUMMER 1973

Number 4

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