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LEGISLATIVE CONTROL OF PUBLIC UTILITIES IN WISCONSIN

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THE implications involved in the problem of the regulation of public utilities challenge the attention of every thinking individual, and have large consequences for everyone whether he thinks or not. No discussion of this problem can take place without bringing into focus the battling forces of tattered *laissez-faireism* on the one side and the neatly uniformed hosts of elaborate governmental control on the other. Under the driving force of collectivism, what private business today will find itself tomorrow clothed with a public interest? In this battle array, shall we enroll on the side of controlled monopoly, or shall we be found at times on the side of competition and duplication? Can we intelligently appraise the significance of the human element in this matter of regulation, put our faith in public service commissions, and complacently assume that legislatures deftly know the difference between regulation and strangulation? Is it possible to discern a dividing line near the middle of the twilight zone which separates high-wrought control from state ownership? How far can government go in the protection of the public without surrendering the power and stimulus of private enterprise? Experience illuminates the problem, and points in the direction of an authoritative answer. Wisconsin is known as one of the most progressive states in the American nation. What is this great commonwealth doing with its public utilities?

I

Administrative, economic and ethical reasons prompted the enactment of the Public Utilities Law of Wisconsin.

Wisconsin in 1907 was on the threshold of a great advance in the control of her public utilities[1] by passing what has become generally known as the Public Utilities Law.[2]

In the first place, from a governmental point of view, it was a significant step to substitute administrative simplicity for existing confusion in the granting of utility franchises. Justice Marshall has portrayed the situation existing before 1907 in an impressive way:

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[1] A public utility as defined by the Wisconsin law embraces "every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every town, village or city that may own, operate, manage or control any toll bridge or any plant or equipment or the conveyance of telephone messages or for the production, transportation, delivery or furnishing of heat, light, water or power directly or indirectly to or for the public."

[2] Chapter 499, Wis. Stats.

"The confusion created during the years preceding the public utilities law of 1907 by granting franchises in several different ways,—some directly by the state, some by cities as state agencies, some by the state in the main but with power to the various municipalities as state agencies to add supplementary features, fitting particular situations, some by the state without regard to local police regulations, and some likewise having such regard either expressly or by necessary implication, some having contractual features creating doubt in regard to constitutional status, and some having such features but without doubtful character, many of such matters being, in the ultimate, more or less detrimental to consumers whether public or private, and proprietors as well —in the whole, created a perplexing situation in respect to harmonious administration."[3]

Again, there was a legislative decision that as a general proposition the theory of public utility competition was wrong and that regulated monopoly was right. Referring to the law of 1907, the supreme court of Wisconsin stated: "One of the main purposes of the law was to avoid duplication and it was thought that by efficiently controlling the rates to be charged by a *single* utility the consumer would derive the benefit resulting from economy in production."[4] (Italics ours.)

Then, there were certain financial offenses which were more or less the natural outgrowth of an unregulated, natural monopoly, the services of which were in constantly increasing demand. Wealth was being concentrated in the hands of a relatively small number by taking advantage of the unprotected consumers through the device of watering stock,[5] attended a little later with increase in rates[6] to provide payment on the additional capitalization.[7] This financial power was not only an end in itself, but was being used to dominate elections and to mould the decisions of municipal officials.[8]

Motivated by these purposes the legislature went about its work, but in the business of setting up machinery of control and in defining

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[3] *La Crosse* v. *La Crosse Gas and Electric Co.,* 145 Wis. 408, 420, 130 N.W. 530 (1911).

[4] *Wisconsin Traction, L. H. & P. Co.* v. *Menasha,* 157 Wis. 1, 8, 145 N.W. 231 (1914).

[5] "Down at the bottom of the public service corporation agitation is the watered stock evil." Alderman J. B. Leedom, Milwaukee, quoted in *The Milwaukee Journal,* July 12, 1906.

[6] In the early states of regulation the question of rates seemed to be of greatest importance in the minds of the people. For example, the Railroad Commission was known as the "Railroad Rate Commission." See Lewis E. Gettle, "Telephone Regulation from the Commission's Point of View," p. 3.

[7] There were complaints of large dividends, high rates, and poor service. See *The Milwaukee Journal,* August 20, 1906.

[8] "For many years the public service corporations throughout the country have done more to control municipalities than the municipalities have done to control them . . . Money making has been the one aim of public service corporations . . . " Douglas J. Mangan, assembly candidate, quoted in *The Milwaukee Journal,* August 16, 1906.

the rights of the public utilities under the new regime, there was an exhibition of an admirable sense of justice. On the one side there was a possibility that regulation might go too far. It had been pointed out that "the whole question of regulation borders at all times on the dangerous," and that too much regulation might curb private initiative or compel capital to leave the state.[9] On the other side, not enough regulation might prove to be only an empty gesture, and there would be in the face of all the legislation a practical continuation of the abuses. There are evidences that the control in Wisconsin has been quite satisfactory,[10] although, as will be discussed later,[11] changing conditions have brought about severe criticisms[12] and a modification of the earlier law.

II

It was the legislative decision in 1907 that the fundamental purposes of regulation could best be attained by state rather than by local control.

Two major philosophies of public utility control were represented before the legislature of 1907,[13] the one incorporated in the Committee's

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[9] *The Milwaukee Journal,* July 13, 1906.

[10] After five years of experience with the Wisconsin law, R .V. Johnson states that the results have been "generally satisfactory to the public, the utilities, and the investors in utility securities." "Workings of Wisconsin Commission," *Public Service,* April, 1912, p. 129.
Matthew S. Dudgeon said in 1914 that "both the public and public utilities seem to agree that it is at once effective, just and practical." "Public Utility Legislation," *Electric Railway Journal,* 1914, p. 728, 731.
Seven years after the Wisconsin law had been in effect, John H. Roemer, Chairman of the Railroad Commission, pointed out the experimental nature of the regulation, and went on to say that the experience up to that time in the various states could "furnish no conclusive warrant or assurance that the system . . . will prove itself universally adaptable to existing political and economic conditions in the various states." "Certain Salient Features of the Regulation of Public Service Corporations by State Commissions," p. 1.

[11] See *infra,* p. 91.

[12] " . . . the so-called indeterminate franchise law, which was adopted in 1907 and has since been frequently amended, is probably the very worst type of utility laws from the standpoint of the cities of the state and the very best for the companies.
"Among other things this law proceeds upon the theory that in the electric light and power field in every community there should be an absolute monopoly,—no competition should be permitted. Furthermore, under existing conditions this absolute monopoly is essentially perpetual as well. The law provides that cities may buy, but the state railroad commission is to fix the price, must issue a certificate of 'necessity and convenience' and the cities are not always in a position to meet the requirements." Carl D. Thompson, Secretary, Public Ownership League, "Essentials of a Constructive Program for Public Power Development in Wisconsin," *The Municipality,* July, 1928.

[13] The Public Utilities Law was an extension of the control begun in 1905. In that year the legislature created the Railroad Commission and passed the Railroad Rate Law. (Chapter 362.) This legislation was so well received and so many qualities of leadership were displayed by the new commission that it became easy to amend the law of 1905 and to extend the regulation. See John R. Commons, "The Public Utilities Law," *Review of Reviews,* August 1907, Vol. XXXVI.

bill,[14] which would put the entire control in a state commission, and the other embodied in a substitute amendment,[15] which would put valuation and uniform accounting in the hands of the state, but would leave the important matter of rate regulation to local authorities.[16]

The principal arguments against the Committee's plan of centralized control were that it was a recognition of the failure of local self-government, the assumption being that municipal councils were either incompetent or dishonest;[17] that it would favor the public utilities because of delays in administration; that it would result in smaller matters being ignored entirely; that with it the large utilities could easily unite to dictate the appointment of members of the commission,[18] and that it was contrary to the tendencies of the times.[19]

The advantages of the Wisconsin scheme of state control over local control were presented by the Railroad Commission[20] to the Legislature of 1925 in a very comprehensive way in preparation for a move on the part of some to bring back local control. The reasons for central or state control can be summarized as follows:[21]

1. Local control would be accompanied by a lack of necessary and adequate information. Local bodies are in very many instances without experts in accounting system and hence would not provide records developed along scientific lines. To illustrate, it might happen that certain local bodies might make no distinction between repairs and replacements, or confuse construction costs and those chargeable to oper-

[14] 581S and 933A.

[15] No. 2S to 933A.

[16] "The lack of . . . expert technical knowledge on the part of those who acted for municipalities in establishing rates before the passage of the utility law was one of the chief reasons which led the legislature to take the regulation of rates out of the hands of municipal authorities and to vest that power in the commission." *Pabst Corporation* v. *Milwaukee,* 190 Wis. 349, 356, 208 N.W. 493 (1926).

[17] "The committee's bill is drawn on the theory that the . . . common council cannot be trusted . . . It is drawn on the theory that the municipal councils even with . . . sources of information are incompetent and dishonest. The bill is drawn on the theory that local self-government is a failure; it is an impeachment of our form of government . . . It is absurd to say that if the council has impartial valuation of the property and an accurate account of every item of expenditure and income and knows the output of any plant, that they cannot determine what would be reasonable returns to charge for the services rendered." J. A. Aylward, "Hearings and Comments on Wisconsin Legislative Bills No. 518S and 933A."

[18] *Ibid.*

[19] As illustrative of these tendencies were mentioned the primary nomination bills, the demand for popular election of senators, and the growing use of the referendum. *Ibid.*

[20] In 1931 the name was changed to Public Service Commission. In 1931 a law was passed giving to this Commission the power to obtain its expense involved in investigation or service from the particular public utility concerned. Sec. 196.85, Wis. Stats.

[21] These arguments were elaborated in a sixty-eight page mimeographed report to the Wisconsin legislature, entitled "State versus Local Regulation of Public Utilities," by the Railroad Commission.

ation. Therefore, it is necessary to have a central body not only providing a uniform scientific accounting system, but a body having the power to enforce a proper accounting. Furthermore, the question as to whether the operating expenses of a certain utility are reasonable or not cannot be answered by an examination of a scientific report, but by comparison with the records of other utilities. This comparison is made possible only through the instrumentality of a central body.[22]

2. Local control would result in excessive cost for the necessary information and for a competent staff. The necessary information is relatively easy to obtain and to tabulate; but for the task to be assumed by each local body would require an immense amount of time accompanied by a prohibitive cost to most of the local communities. Even after the information had been obtained it would be to a large degree valueless owning to the lack of uniformity in accounting systems. With respect to the maintenance of a proper staff of experts in engineering, accounting, statistics and other fields with their mechanical and scientific equipment, even the largest cities would find the cost burdensome, while for the others it would be financially impossible.[23]

3. Local control is dominated too much by local influences and demands. A demand for a decrease in rates may be made by a community for no other reason than that another community is enjoying lower rates. There are many factors, however, that make for a difference of rates which a central controlling body is better able to discover and evaluate. Among these factors are the price of coal, plant location, the character and adequacy of the service rendered, the relation between demand and consumption, and the degree of saturation of the business. Furthermore, local control cannot be freed from bias. As a judge is not competent to act in a case in which he finds himself a party, so a common council or a local commission is rendered incompetent to deal justly with the demands made by the public, which is so directly represented.[24]

4. Local control is illogical and impracticable owing to the fact that many utility operations are statewide in character. What would probably happen regarding the rates of a telephone company which serves not only a city but the surrounding community? Of course the rural subscribers should not be discriminated against, but discrimination would probably result owing to the weak bargaining power of the latter. Some other matters such as the physical connection of telephone lines and toll service could not be handled at all by local regulating bodies. The same general principles apply to other services. A single electric company, for example, supplies current to numerous cities, villages, and rural districts. How could anything except confusion and bitter disputes come from an attempted regulation of this company by each of the communities which it serves?[25]

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[22] Pages 15-18.
[23] Pages 19-22.
[24] Pages 23-25.
[25] Pages 26-42.

5. Local regulation of rates would lead to an unnecessary duplication of expense owing to the fact that state valuations must be made anyway for the purpose of regulating security issues. There is no question regarding the necessity for security regulation. Over-capitalization with its consequent heavy fixed charges leads to an impairment of service and a destruction of credit which is necessary for additions and betterments. Security regulation is legally a function of the state, as corporations are creatures of the state; but without legal obstacles, piece by piece regulation by local bodies is very evidently an absolute impossibility.[26]

Owing to the experimental nature of the new legislation, it was decided to place some control in the hands of the municipalities, a control, quite naturally, that was not extensively exercised. Referring to the situation in 1907, Lewis E. Gettle says:

"At that time there were certain misgivings and apprehensions of municipal governing bodies relative to the surrender of the municipal regulatory authority to the centralized commission. The fact was evidenced by the inclusion in the original utility law of section 196.58 wherein it is provided in brief that every municipal council shall have the power to determine by contract, ordinance or otherwise, the quality and character of each kind and product of service to be rendered within the municipality, and all other terms and conditions not inconsistent with the general powers conferred upon the Commission. It is further provided that the municipal council might require any public utility, by ordinance or otherwise, to make additions to, and extensions of, the physical plant, such as it deemed to be reasonably necessary in the interest of public demands, and these provisions were so reserved notwithstanding the provisions of the prior sections relative to the broad and inclusive jurisdiction of the Railroad Commission over the same subjects. * * * "In a few years, as was to be expected, municipal councils very generally discontinued and abandoned all attempts to exercise such reserved rights and functions."[27]

III

The granting of a limited monopoly, which was one of the fundamental purposes of the law, was effectuated by the employment of the indeterminate permit.

Reference was made above to one of the main purposes of the law as being the elimination of economic waste by avoiding duplication. This legislative purpose was supported both by the courts and the

[26] Pages 43-45.

[27] "Commission Regulation of Municipally Owned Utilities," pp. 3-4. This addition was made to the law by section 3 in 1931: "The commission shall have original and concurrent jurisdiction with the municipalities to require extensions of service and to regulate service of public utilities. Nothing in this section shall be construed as limiting the power of the commission to act on its own motion to require extensions of service and to regulate the service of public utilities." Sec. 183.03, Wis. Stats.

commission. In a leading Wisconsin decision[28] the benefits of monopoly were referred to as the "elimination of excessive investments and excessive expenses caused by two or more public utilities, each with its separate property and fixed charges, where the need of the consumers only required one, and elimination of the risk to investors by encroachments, or threatened encroachments, upon an occupied field of public service without any public necessity therefor."[29] On another occasion the court in pointing out the ills of competition stated that the final result was either consolidation or an agreement concerning the rates to be charged, but that the consumer must bear the burden of the duplicated plants in the prevailing rates.[30]

The doctrine of competition for effective public utility control was also condemned by John H. Roemer, a member of the Railroad Commission, who said: "Potential competition has ever been a futile and ineffective means of enforcing either the common law or the contractual obligations which public service corporations owe the public in respect to charges and services."[31] He went on to state that actual competition has always been of short duration and has without fail resulted in economic waste, thus burdening the public with unnecessary expense and bringing financial catastrophe to those investing in the securities of such competitive corporations.[32]

The device used to provide for a limited monopoly was called in the Wisconsin law an indeterminate permit. The monopoly granted was not the kind that of old had an evil repute, but the "one purchased by giving an equivalent to the public, as in the case of a patent allowed by the federal government."[33] The limitation consisted in regulation by

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[28] *Calumet Service Co.* v. *Chilton,* 148 Wis. 334, 135 N.W. 131 (1912).

[29] Page 365.

[30] *Wisconsin Traction, L. H. & P. Co.,* v. *Menasha,* 157 Wis. 1, 145 N.W. 231 (1914). "In either event (consolidation or agreement)," says the court, "the rates were usually adjusted so as to cover fixed charges and to *yield a return on the cost of constructing the competing plants . . .* " Page 8. (Italics ours.)

[31] "Certain Important Provisions of the Public Utilities Law of Wisconsin," p. 3.

[32] This matter has been discussed at some length owing to the fact that the doctrine of monopoly has been challenged, at least so far as the production of electricity is concerned, by the Interim Committee on Water and Electric Power, appointed by the Legislature of 1927 by Joint Resolution No. 54. Admitting that the aggregate cost of competing plants would be greater, the Committee attempts to prove that this "is but a very small matter compared to the enormous saving that has resulted in cities throughout the country in the lower rate secured by means of establishing competing plants." See *Report,* August 30, 1929, p. 67.

[33] *Calumet Service Co.* v. *Chilton,* 148 Wis. 334, 359, 135 N.W. 131 (1912).

the commission,[34] which might even allow under certain conditions either municipal or other competition.[35] But in any event the municipality could in case of dissatisfaction terminate the permit by actual purchase of the utility.[36] It apparently was the intent of the framers of the law that regulated monopoly should be the rule, with municipal ownership an easy method in case regulated monopoly was not workable or failed to give consistent satisfaction, although there is opinion that the use of the indeterminate permit was to "smooth the way for municipal purchase."[37] At any rate municipal ownership was a fact before the enactment of the law of 1907, and regulation in itself could have little bearing upon municipal attitudes so far as this point is concerned.

IV

A monopoly having been established, the legislature sought to prevent its abuse by (a) a control of service and rates, and (b) a termination in case its existence became undesirable.

As service standards are technical in their nature, the legislature provided that "the commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by a public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof."[38]

As for rates, they have a relation to accounting, valuation and capitalization, all three of which are provided for in the law. A system of accounting[39] put an end to many difficulties. In the first place, it brought about a much closer inspection of the operating expenses of public utilities, thus curbing tendencies toward excessive expenditures.[40] In the second place, it ended the prevailing confusion which made impossible the determination of the exact cost of giving service, which is

[34] Section 196.02, Wis. Stats.
[35] Section 196.50, Wis. Stats.
[36] See Chapter 197, Wis. Stats.
[37] E. Orth Malott, "Forces Affecting Municipally Owned Electric Plants in Wisconsin," p. 17.
It was the opinion of the majority, at least, of the Interim Legislative Committee authorized by the Legislature of 1927 that the "law was grounded upon the conception that the utility business is a natural monopoly" and that municipal ownership was a protection against abuse. See *Report,* p. 49.
[38] Section 1797m-23, Wis. Stats. (old section number)
[39] See section 1797m-9, Wis. Stats.
[40] "Extravagant salaries, excessive expenses for promoting new business, etc. are not willingly included in the type of detailed operating expense exhibits required by the commission where there is the probability that such an exhibit will be reviewed by the banker, the stockholder and the consumer." R. V. Johnson, "Workings of Wisconsin Commission," *Public Service,* Vol. XII, No. 4, p. 129.

the basic principle of an accounting system.[41] In many instances there was a confusion of the cost of construction with the cost of operation, or no distinction made between repairs and replacements, or no account taken of depreciation.[42] There could consequently be no rational rate system with such an existing cost confusion, for if all items of operation are not included, there is a resulting over-statement of net earnings, while if improper items are included, there is an understatement of net earnings. In the third place, a uniform system of accounting makes possible a comparison of one utility with another, thus making for greater general efficiency.[43]

The importance of valuation should not be under-estimated.[44] While the law very simply states that "the commission shall value all the property of every public utility actually used and useful for the convenience of the public,"[45] the question as to what constitutes valuation has had an interesting answer in Wisconsin, but which in a discussion of this character would lead us too far afield.

While there is now a general agreement as to the elements which enter into the determination of value, the relative weight to be given some of them presents a still unsolved problem.[46] So much has been written concerning the elements of valuation that only a brief reference is necessary to show the development in Wisconsin. It was said in an early decision of the Railroad Commission that certain elements constitute evidence of what is a fair value,[47] enumerating them as the original cost of construction new, the cost of reconstruction new less depreciation, capitalization, and the gross and operating expenses. But in making such an enumeration it must be made clear that the importance of any one element depends upon the circumstances of each case.[48] Furthermore, in getting at a just valuation there must be an elimination of abnormal conditions,[49] a recognition of the fact that plants are not the product of one continuous building operation,[50] and an appraise-

[41] John H. Roemer, "Salient Features of the Regulation of Public Service Corporations," p. 19.
[42] R. V. Johnson, "Workings of Wisconsin Commission," *op. cit.*
[43] John H. Roemer, *op. cit.*, p. 19.
[44] "Physical valuation is the basis of the Wisconsin law regulating public utilities. Almost every part of the law is shaped with reference to this fundamental principle. Given physical valuation as a starting point, the other features logically and necessarily follow." John R. Commons, "How Wisconsin Regulates Her Public Utilities," *American Review of Reviews,* August, 1910.
[45] Section 1797m-5, Stats. of 1911.
[46] See *infra,* pp. 91, 92 et seq.
[47] "The main question involved in the valuation of a utility for rate making purposes is to find the fair value, or that value upon which the investors are entitled to reasonable returns and which is equitable as between the investors on the one hand and the customers on the other." *State Journal Printing Co. et al* v. *Madison Gas and Electric Co.,* 4 W. R. C. R. 501, 535 (1910).
[48] *Hill et al* v. *Antigo Water Co.,* 3 W. R. C. R. 623, 631 (1908).
[49] *Ibid,* p. 633.
[50] *Ibid,* p. 634.

ment of the ability of the utility to meet reasonable demands from consumers.[51] Going value, of course, is given recognition.[52]

Those matters which cannot be considered at all or which receive very little recognition are franchise value,[53] capitalized value,[54] book value,[55] market value,[56] good will[57] and contract value.[58]

The Wisconsin law[59] very properly provides for the control of capitalization. Although arguments can be found against such control, they are far from convincing.[60] The points in favor of such regulation can be summarized as follows: Over-capitalization makes the securities of public service corporations less safe for investment purposes, presents a temptation to pay dividends on an inflated basis, with less emphasis on service and extensions, and has a bad moral effect upon stockholders, officers, and employes.[61]

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[51] *City of Neenah* v. *Wis. T. L. H. & P. Co.*, 7 W. R. C. R. 477, 480 (1911).

[52] *Ibid.*

[53] "The value of the franchise is itself based on the capacity of the company to earn a profit." *City of Appleton* v. *Appleton Water Works Co.*, 5 W. R. C. R. 215, 282 (1910).

[54] "It is well known from experience that public utilities are mostly over-capitalized, and that the par value of their securities usually exceeds the actual investment in the property used and useful in connection with the services they render to the public." *City of Milwaukee* v. *T. M. E. R. & L. Co.*, 10 W. R. C. R. 1, 84 (1912).

[55] "Book value is important, but it is so much dependent upon the original cost, and even on the cost of reproduction and other elements, that it is difficult to draw any distinct line between them." *State Journal Printing Co.* v. *Madison Gas and Electric Co.*, 4 W. R. C. R. 501, 557 (1910).

[56] "Market price . . . is not a safe basis for rate fixing. It may be based on rates that are too high and should be reduced." *Hill et al.* v. *Antigo Water Co.*, 3 W. R. C. R. 623, 722 (1909).

[57] "Good will is an attribute of competitive business only." *Payne et al* v. *Wis. Tel. Co.*, 4 W. R. C. R. 1, 60 (1909).

[58] It was contended that the owners of a utility were entitled to a "contract" value where water power had been substituted for steam. This was not sustained. *City of Rhinelander* v. *Rhinelander Lighting Co.*, 9 W. R. C. R. 406, 426 (1912).

[59] Chapter 183, Laws of 1931.

[60] The arguments advanced in opposition are that there is a tendency to restrict new enterprises, that the control of valuation and the designation of standards for rate-making purposes goes far enough, and, furthermore, that capitalization must be fixed in advance of rates. See Halford Erickson, "Regulation of Public Utilities," pp. 50-52. It has been stated, also, that capitalization is and ought to be a matter or private management and policy. This was the position of John H. Roemer in 1914 when he stated that to control capitalization was to substitute the judgment of the state for that of the corporation. "Under the circumstances," he went on to say, "errors of judgment and misconduct of officials are attributable to the state, and should in all fairness bind it equally with the corporation in dealing with those who have in good faith invested in the authorized securities." He predicted that it might become embarrassing to the commission in its business of regulating service and rates, a prediction, however, that has not been realized. See a pamphlet by him entitled "Certain Salient Features of the Regulation of Public Service Corporations by State Commissioners," p. 12.

[61] Halford Erickson, "Regulation of Public Utilities," p. 42.

This law, known as the Stock and Bond Law, was enacted by the legislature of 1907. It has been subjected to several changes, some important ones having been made in 1931. Among the modifications and additions are the following: The old law set out the purposes for which securities might be issued, while the new one shifts the judgment as to the reasonableness of the purpose to the commission;[62] under the old law [63] bonds must bear a reasonable proportion to stock, while under the new [64] it is proposed that securities shall bear a reasonable proportion to each other, thus giving a control over preferred stock issues and compelling a sufficient common stock equity; and under the old law[65] funds must be identified or tagged, no public service corporation being allowed, according to a literal construction, to issue securities for the purpose of paying short term debts which were not properly chargeable to capital account, while under the new, control is given to the commission, the corporation being required to state the purpose of issuance "in such detail as the commission may deem necessary."[66]

There are two important additions. It is provided that the commission may attach conditions to the issuance of securities.[67] For example, a bond issue may be coupled with the requirement that there must be an additional issue of common stock. As a further protection to the owners of senior securities, a corporation may be prevented from paying dividends on its common stock to the impairment of its capital.[68]

The old law prohibited the payment of a stock dividend, for which prohibition no sound reason could be advanced. Section 184.14, which covered this matter, was repealed.

A comparison of the law of 1907 and the law of 1931 reveals that apart from the legislative determination of certain matters which arose out of the wording and interpretation of the original law, the most significant changes have had to do with the prohibition on the impairment of capital and the control of the proportion of all classes of securities.

The second method of preventing the abuse of monopoly, as has been indicated, is a provision, under certain circumstances, for its termination. The law provides that it may be terminated by municipal purchase or by municipal or other competition.

The law of 1907, supplemented by the law of 1911, really created three classes of utilities so far as franchises are concerned. Of those already in existence there were some that surrendered their franchises for the indeterminate permit and some that did not surrender; and,

[62] Section 184.05, Wis. Stats.
[63] Section 184.08, Wis. Stats.
[64] Section 184.05 (4), Wis. Stats.
[65] Section 184.06, Wis. Stats.
[66] Section 184.06 (1), Wis. Stats.
[67] Section 184.06 (2), Wis. Stats.
[68] Section 184.11, Wis. Stats.

in addition, there were those receiving their permits after the law went into effect. Those surrendering their franchises consented thereby to a purchase by the municipality in which a major part of the utility is situated, waiving the right of requiring the necessity for the purchase to be established by a jury.[69] Those receiving their permits after the law went into effect by the act of acceptance waived the right.[70] As there were those that did not surrender their franchises voluntarily,[71] the legislature provided in 1911 that all franchises should be indeterminate, but as to these the constitution of the state had application,[72] which prohibited municipal corporations from taking private property for public use without the consent of the owner unless a jury established the necessity thereof.[73]

A municipality may compete with an existing utility, but only after securing from the commission a declaration, following a public hearing of all parties interested, that public convenience and necessity require such municipal public utility.[74]

Competition by another utility, other than municipal, is allowed, but only on the same terms that the municipality itself may compete.[75]

V

The control of rates and service has been impaired by (a) the decision of the courts, and (b) the growth of holding companies.

It was the holding of the supreme court of Wisconsin in 1923 that the prudent investment principle should receive more weight than the cost of reproduction, the statement being made that "justice as well as sound economic practice requires that *controlling* weight should be given in the valuation of a plant of a public utility to the investment cost where the investment has been prudently made."[76] (Italics ours.)

[69] Chapter 499, Laws of 1907; Section 1797m-71.

[70] "It seems to us that the acceptance of an indeterminate permit by a public utility amounts to this: that a verdict of necessity is thereby perpetually waived and the utility consents that its property may be acquired in the particular manner prescribed by the act." *Connell* v. *Kaukauna,* 164 Wis. 471, 487, 160 N.W. 1035 (1917).

[71] For the franchises already in existence there might be a surrender if made before their expiration and prior to July 1, 1908 (section 1797m-77). This time was subsequently extended to January 1, 1911 (chapter 180, Laws of 1909), but in that year the legislature changed all unsurrendered franchises into indeterminate permits (chapter 586). Up to 1911 only ten per cent. of the public utilities had surrendered their franchises, the principal reasons being that either the franchises had been hypothecated to secure existing bond issues, or a wrong idea existed as to the value of the franchise. See John H. Roemer, "Some Features of State Regulation of Public Utilities," 1907, p. 23.

[72] Article XI, Section 2.

[73] Section 197.03, Wis. Stats.

[74] Section 196.50 (4), Wis. Stats.

[75] Section 196.50 (1), Wis. Stats.

[76] *Waukesha Gas and Electric Co.* v. *Railroad Commission,* 181 Wis. 281, 302, 194 N.W. 846 (1923). For a number of years the commission and the court adhered to the prudent investment principle with "reasonable fidelity." See page 301. See also *Hill* v. *Antigo Water Co.,* 3 W. R. C. R. 623 (1908).

This decision, made at a time of rising prices, met with popular approval, as municipal purchase of utilities was made less difficult, speculative activities based upon mounting values were curbed, and consumers had some assurance that rates would not be inordinately increased.

However, the court took a different view four years later, owing to the intervening decision of the Supreme Court of the United States in *McCardle* v. *Indianapolis Water Company.*[77] In the well-known case of *Smyth* v. *Ames*[78] the Supreme Court of the United States set out a number of factors to be employed in determining the fair value of the property used for the convenience of the public, stating that they "are all matters for consideration and are to be given such weight as may be just and right in each case."[79] The McCardle case then used this language at a time of rapidly rising prices,—language which quite logically followed from the refusal of the court in the earlier case to take either of the extreme positions:

"It is well established that values of utility properties fluctuate and that owners must bear the decline and are entitled to the increase. The decision of this court in *Smyth* v. *Ames* * * * declares that to ascertain value 'the present as compared with the original cost of construction' are, among other things, matters for consideration. But this does not mean that the original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure. The weight to be given to such cost figures and other items or classes of evidence is to be determined in the light of the facts of the case in hand."[80]

The supreme court of Wisconsin in following this opinion,—an opinion that had "generously" ignored previous decisions,[81] used this language:

"In the McCardle case a valuation made substantially like that of the commission in the present case was set aside by the court because, in view of the great advance in prices during and after the war, it did not correctly reflect the actual value of the property as of the time the valuation is made, which is the date of the order fixing the rate and the probable value for some years to come. A valuation which does not as to the tangible property substantially reflect the then cost of reproduction less depreciation does not meet the requirements. * * * Where there has been a period of rising prices for many years, the original

[77] 272 U. S. 400, 47 Sup. Ct. 144, 71 L. Ed. 316 (1926).
[78] 169 U. S. 466, 547, 18 Sup. Ct. 418, 42 L. Ed. 819 (1898).
[79] The court really took a compromise position regarding elements to be considered. In 1896 prices were very low. The railroads made the contention that dividends should be based on the original investment, while William J. Bryan contended for the state that profit should be based upon the reproduction value.
[80] Page 410.
[81] The *McCardle* case has been subjected to much criticism. See Donald R. Richberg, "Value—By Judicial Fiat," 40 Har. Law Rev. 567 (1927) for an able analysis and criticism of this case.

cost plus cost of additions does not correctly measure the present value."[82]

The strong tone of this decision is apparently somewhat modified by the language in *Pabst Corporation* v. *Railroad Commission*,[83] where it is pointed out that as to the relative weight to be given prudent investment and cost of reproduction, there was no intention to withdraw what had been said in the first *Waukesha* case any farther than was necessary to conform to the federal rule; and that the requirement of the federal rule is that "due consideration" be given to present-day construction costs.

At any rate some weight is given to the cost of reproduction. As prices continued to rise after these announcements by the federal and state courts, there were some newly organized companies which sought to take advantage of them to their financial benefit, although the older companies were content to earn a return on their original valuations.

There were a great many dissatisfied individuals[84] in Wisconsin who sought methods of evading the effect of these decisions. Two possible plans were suggested. One provides for a legislative adoption of the prudent investment principle, while the other, far reaching in its economic and governmental significance, seeks to set up a system of municipal and state utility ownership and operation.[85]

The plan for the legislative adoption of the prudent investment principle was advocated by Edward Bennet, Professor of Electrical Engineering, University of Wisconsin. He said:

"It seems fairly clear that the problem in the agitation of the public utilities is a problem which lies at the door of the legislature. Stating this problem in general and yet in specific terms, it is the problem of effectively embodying in the law, particularly in the stipulations relating to the granting of indeterminate permits, the statement that public interest and necessity require the adoption of the principle that land, structures and equipment purchased or acquired by a public utility for the service of the public are thereby dedicated to the service of the public and are held in trust for the public, and that a fair annual return to the investors in the utility shall be deemed to be such an annual

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[82] *Waukesha Gas and Electric Co.* v. *Railroad Commission*, 191 Wis. 565, 211 N.W. 760 (1927).

[83] 199 Wis. 536, 227 N.W. 18 (1929).

[84] The dissatisfaction with the cost of reproduction theory has not only been expressed in Wisconsin, for which see the *Report of the Interim Committee on Water and Electric Power*, 1929, page 47, but it has been quite general with utility regulating bodies. See Note, 26 Mich. Law Rev. 89, 92 (1927), where it is said: "It is . . . noteworthy that commissions, bodies which are much more closely in contact with the problem and better fitted to solve it most intelligently, stubbornly prefer the prudent investment theory in spite of repeated reversals by the courts who are not so well acquainted with the situation."

[85] See *infra*, p. 98 et seq.

return on the money honestly and prudently invested as to command all the capital needed in the enterprise."[86]

There would probably be no constitutional question involved so far as utilities to be organized in the future are concerned, as the prudent investment principle would become a part of the contract between the state and the utility. There might be some question regarding utilities already in existence, as the bill which he advocated[87] provided that if a utility has failed after two years to take steps toward the acceptance of the principle, the commission may authorize competition.[88] However, in answer to the question as to whether this is undue pressure which would render the law unconstitutional, it was said:

"Under the utilities law each existing public utility has been granted an indeterminate permit which confers upon the utility an exclusive, or monopolistic, right to serve its territory as long as it continues to meet the standards of the legislature, as these standards may from time to time be set by its agent, the commission. But let it be recalled that this utilities law stipulates that by the very acceptance of its indeterminate permit, the utility has given its perpetual consent to the purchase of its property at any time by the municipality in which the major part of it is situated,—the purchase price and the terms to be fixed by the commission. * * * It seems improbable that a statute which brings existing utilities under the uniform standards adopted by the legislature, crediting the owners with the values at which they have consented to the purchase of the properties, will be declared unconstitutional on the ground of undue pressure."[88]

In view of the fact that commodity and labor prices have declined to such extent that the cost of reproduction may in many cases be less than the original prudent investment, it is quite probable that agitation for the legislative adoption of the prudent investment principle will entirely disappear so far as the public is concerned.[89]

Another impairment of the control of rates and service has come through the holding company. Most of the operating electric utilities of Wisconsin are subject to the domination and ownership of three large holding companies. That this situation has given rise to certain problems has been pointed out by a noted authority on public utilities:

"While it is true that in rate cases the utilities are always maintaining the position that everything pertinent to the issues of the case is shown

[86] "The Inadequacy of the Public Utilities Law of Wisconsin," *The University of Wisconsin Studies in Electrical Engineering,* 1930.
[87] Bill 715A, 1931.
[88] *Brief* Relative to Bill 715A, 1931, by Edward Bennett, p. 19.
[89] Jay Morrison, president of the savings division of the American Bankers' Association, in 1932 predicted a probable thirty per cent. reduction in utility rates on present reproduction valuations, and with falling prices the utility companies would probably return to their original contention that original cost should be the basis for rate making. *The Chicago Tribune,* Part 2, p. 5, January 31, 1932.

on the operating company books and records and that the holding company is merely the stockholder into whose private affairs the state has no business to inquire, this claim is technical and theoretical. In fact, the holding company often performs many of the functions of operation and, particularly, the holding company controls the financing of the utility so that there can be no free consideration and adjustment of the uitlity's affairs without the commission having actual and complete jurisdiction over the holding, as well as the operating company. This is quite impossible where the holding company is a foreign corporation and is practically impossible because of the magnitude and complexity of its operations wherever the holding company or the management corporation is a concern located in one of the financial centers and having control over utilities scattered everywhere."[90]

The Interim Committee of the Legislature of 1927 likewise decried the control of the holding companies and stated that "the municipalities of the state are more and more losing control of the capital account and financial structure of the electric light and power industry and, as they lose that control, they lose control over rates, service, and the possibility of purchase upon any sort of reasonable basis."[91]

While the suggestion has been made that it may be necessary to outlaw holding company activities as conspiracies to interfere with public regulation of public business,[92] no such drastic legislation has as yet been contemplated by the legislature of Wisconsin.[93]

The Legislature of 1931 did, however, take action[94] to control the contracts or arrangements between operating and holding companies, the latter being included in the broad expression, "affiliated interests."[95]

Contracts or arrangements between public utilities and affiliated interests must receive the written approval of the commission, but there can be no approval unless the contract or arrangement is reasonable and consistent with the public interest. Satisfactory proof must be submitted to the commission of the cost to the affiliated interest of the service rendered or the property furnished.[96]

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[90] Delos F. Wilcox, "The Indeterminate Permit and Its Relation to Home Rule and Municipal Ownership," p. 70.

[91] See *Report*, p. 96.

[92] This suggestion was made by Donald R. Richberg, "Critical Issues in Public Utility Regulation," *The Journal of Land and Public Utility Economics*, Vol. VI, No. 1, February 1930, pp. 8-9.

[93] That holding companies can perform a useful service is brought out by the Wisconsin commission: " . . . there are considerations of uniformity and standardization which are important in relation to the development of a universal telephone service and which could hardly be met by the subsidiaries of the American company acting independently . . . " *Bogart* v. *Wisconsin Telephone Co.*, 17 W. R. C. R. 524, 551 (1916).

[94] Chapter 183, Laws of 1931.

[95] Those owning five per cent or more of voting securities, or having one or more common directors, or exercising a "substantial influence" over policies, or having a connection through blood relationship are thus defined.

[96] Chapter 183, Laws of 1931.

The commission is given continuing supervisory control over contracts and arrangements, and the fact that entry into contracts has been approved will not preclude disallowance of payment thereunder if experience shows that payments made or provided for were or are unreasonable; and all orders of approval by the commission shall be conditioned upon the reserved power of the commission to amend the terms of such contracts.[97]

In order that this regulation may be made effective, the commission has been given power of immediate enforcement. If payments are made on contracts that have not been approved, or if payments are made after being disallowed, the commission has power to issue a summary order directing the public utility to cease, with authority in the circuit court of Dane county to enforce the order, including the issuance of a preliminary injunction.[98]

VI

It having appeared that the termination of the monopoly given to the public utilities has become illusive because of (a) the limitations on municipal indebtedness[99] *and because of (b) the practical prohibition on competing utilities, the legislature has considered measures of rectification.*

The constitution of Wisconsin limits the indebtedness of governmental units to five per cent of the value of their taxable property. As this limitation has been approached because of increasing expenses for schools and other municipal improvements, it has become impossible from a financial point of view for a municipality to acquire existing utilities. In order to remedy this situation, a joint resolution was passed in 1929[100] and again in 1931[101] excepting indebtedness created for the purpose of purchasing or constructing a public utility or any other income-producing property, the indebtedness to be secured solely by such property and not to be a general obligation. The question voted on in November, 1932, was as follows: "Shall Section 3 of Article XI of

[97] Section 196.52 (5), Wis. Stats.
[98] Section 196.52 (7), Wis. Stats.
[99] Utilities may be acquired by the creation of an indebtedness which has no reference to the constitutional limitation. This is provided for in Chapter 595, Laws of 1919. By virtue of this act a municipality may issue what are popularly called revenue bonds, which are a lien on the property acquired, but which are payable only out of the revenues from the specific property. The law was held constitutional in *State ex rel. Morgan* v. *Portage*, 174 Wis. 588, 184 N.W. 376 (1921), there being, according to the court, no legislative attempt to create corporate municipal indebtedness. This method of financing, however, presents two major difficulties. One has to do with the disposal of the bonds. See *Report of the Street Railway and Electric Power Committee*, Milwaukee, July, 1921, p. 82. Another difficulty grows out of the court decision, viz., that the indebtedness for improvements is subject to the constitutional limitation.
[100] 61A.
[101] 14A.

the constitution be amended to allow municipalities to finance public utilities by mortgaging the utility or its income instead of incurring a general indebtedness to be paid from taxes?" The voters answered, "Yes."

In the second place, competition with existing utilities as a means of control is subject to the decision of the public service commission, which must be convinced after a public hearing that convenience and necessity require such competing utility.[102] As it is the theory of the law as interpreted by the courts that competition is wasteful, competition is to be allowed only in extraordinary cases, and in fact, very little competition has been allowed by the commission. The situation as it exists in Wisconsin is presented by Delos F. Wilcox:

"The establishment of guaranteed monopoly * * * under the Wisconsin law * * * prevents the municipality from itself establishing a municipal plant and rendering service even for strictly municipal purposes without first acquiring the existing utility plant, unless the municipality is able to persuade the state commission that public convenience and necessity require the establishment of a competing utility plant. The effect of this corollary of the indeterminate permit is to put the state squarely behind the policy of monopoly in utility operation and to lay upon the municipality a *heavy burden of proof* to convince the state commission that in a particular case an exception to the general policy should be made. The commission's authority in the matter being in the main discretionary, the municipality can make no effective appeal from its decision."[103] (Italics ours.)

An attempt to remedy this situation was made in 1929 and in 1931 by a bill which would give to the municipalities the absolute right of competition without offering proof to or securing from the commission a declaration that convenience and necessity required the second utility.[104] The bill was defeated, as were two substitute amendments.[105] One substitute amendment was intended to overcome the constitutional objection that the franchise contract would be impaired by simply providing a rule of evidence for the guidance of the commission. The provision for a declaration from the commission that public convenience and necessity required the competing utility, according to the proposal,

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[102] Concerning the commission's power to issue certificates of convenience and necessity, the supreme court of Wisconsin, speaking through Justice Owen, makes this significant statement: "The policy to be followed in the exercise of the power is one very largely in the discretion of the commission, and in no event will its orders or determinations in such matters be disturbed by the courts, unless its exercise thereof transgresses the boundaries of reason . . . " *Union Co-operative Telephone Co.* v. *Public Service Commission*, 206 Wis.

[103] See the bulletin, "The Indeterminate Permit and Its Relation to Municipal Ownership and Home Rule," p. 7.

[104] Bill 10S, 1931.

[105] Substitute Amendment No. 1S to 10S, 1931, was defeated by only one vote.

would remain, but it would be modified by an additional provision that the adoption of a resolution by the governing body of the municipality, with the resolution approved by the voters, would be *prima facie* evidence that convenience and necessity required the competitor.[106] The other substitute amendment[107] provided that there could be no competition until notice of intention should be filed with the public service commission, after which a duty is placed upon the commission to make an investigation and submit a report.

VII

It is the legislative policy to make municipal and state ownership and operation of electric utilities a real cure for the limitations that have developed out of the original law.[108]

To the end that municipal and state operation might be a real alternative for private ownership and operation of electic utilities, the legislature of 1931 made a provision looking toward a constitutional amendment[109] for the recapture of water power and for state operation, passed laws relating to power districts, and provided for the creation of a state utility corporation.[110]

A joint resolution to amend the constitution[111] to provide for the recapture of water powers, and permitting the state to enter into the electric utility business, points out the object as follows:

"For the purpose of promoting the wider use of light, heat, and power in the home and on the farm, and for the purpose of encouraging the industrial development of the state, the state may acquire by gift, purchase, lease, license, or condemnation, and may own, convey, sell, assign, lease, mortgage, construct, repair, and extend water powers, plants, lands, equipment, materials, patents, rights, contracts, and franchises, and all manner of real and personal property, used or useful for or in connection with the production, generation, transmission, and distribution of light, heat and power, and may produce, generate, transmit, distribute, buy and sell light, heat, and power directly or indirectly."[112]

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[106] Substitute Amendment 1S to 10S, 1931.

[107] Substitute Amendment 1S to 10A, 1931.

[108] This program has naturally brought considerable criticism. "The menace of the large voting power that employes of the public could wield in elections to retain existing administration is in itself . . . a sufficient argument against municipal ownership to warrant opposition . . . " Editorial, *The Wisconsin State Journal*, March 16, 1931.

[109] Section 10 of Article VIII of the constitution of Wisconsin provides that the state shall never contract any debt for works of internal improvement or be a party in carrying on such works.

[110] This general program was outlined by Carl D. Thompson in 1928 in *The Municipality*, the official publication of the League of Wisconsin Municipalities. See "Essentials of a Constructive Program for Public Power Development in Wisconsin," Vol. XXIII, July, 1928, p. 235.

[111] By the addition of section 11 to Article VIII.

[112] S. J. Resolutions, 10S, 1931: S. J. Resolution 46S, 1933, made certain changes. Thus, another submission to the legislature of 1935 becomes necessary.

In addition, the state is given power to finance these operations and to provide for public corporations to carry out the purposes of the amendment.

The power district law[113] provides for a new type of governmental unit.[114] The main reason for its creation is the fact that large scale production and distribution of electric power has placed municipal operation at a disadvantage, though recent technological developments have favored the smaller areas.[115] There is an additional reason for the creation of the district in that the new unit will have its own constitutional debt limitation.

These power districts may be created by any two contiguous or non-contiguous municipalities, with the restrictions that (a) no municipality may be divided, and (b) that no municipality may be included unless by a majority vote.[116] Contiguous territory containing one or more municipalities may be added upon terms fixed by the board of directors and ratified by the electors in the municipalities to be annexed.[117] Districts may be consolidated by an ordinance which has been passed by the board of directors of each power district and ratified by the electors in each district.[118]

The method of creation is by referendum. The initiative for this referendum may be begun in two ways: (a) By resolution on the part of the governing bodies of one-half or more of the municipalities proposed to be included in the district or (b) by a petition signed by ten per cent or more of the electors in the proposed district. After the commission has made a recommendation with reasons as to the feasibility

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[113] Chapter 50, Laws of 1931. G. C. Neff, in a *Brief* of the Wisconsin Utilities Association presents arguments against such legislation. He points out that it means another political subdivision calling for increased expenditures, that the efficiency of service will decline after the substitution of political management for private initiative, and that an "impelling reason" must exist for liberalizing the constitution with respect to tax restrictions. See *Report of the Wisconsin Interim Legislative Committee on Water and Electric Power*, 1929, pp. 256-258.

[114] Power district laws are not new. California, for example, has had one for several years.

[115] "Up to the year 1926 the acquisition of municipal plants by large systems went on at a rapid rate, but since that time, that is in the last five years, the facts available indicate that instead of the inter-connected systems gaining ground at the expense of the independent plant in most sections of the country the contrary seems to be the case." This change is due, he points out, to technological development, efficiency of production on a small scale being due to the modern Diesel engine and the improvement of the steam turbine. Thus, he states, "*the question can fairly be raised whether a community can be more cheaply served with electricity by an inter-connected transmission system than by an independent generating plant using the most efficient type of equipment.*" David E. Lillienthal, then-Commissioner, Public Service Commission of Wisconsin, "Some Problems of Municipally Owned Utilities," *The Municipality*, August, 1931.

[116] Section 198.02, Wis. Stats.

[117] Section 198.19, Wis. Stats.

[118] Section 198.20, Wis. Stats.

or non-feasibility of the proposed district, the referendum vote is taken.[119]

The government of each power district is placed in the hands of five directors with four-year terms. The directors shall appoint a general manager and such other officers as they deem necessary.[120]

The district not only has ample authority to conduct a utility business,[121] but having existence as a governmental unit, it has the power to tax.[122] It is important to note in this connection that the utility property is not exempted from taxation.[123] The justice of such a provision is immediately apparent, as there would be a serious disadvantage to certain taxpayers were the situation otherwise.

The capstone of state utility ownership and operation[124] is found in the "State Utility Corporation of Wisconsin,"[125] the control of which is to be in the hands of five directors appointed by the governor. The functions of this corporation, which give it no mean place in the possible future power program of the state, are indicated by the law as follows: (a) to encourage the public ownership and operation of the electric utilities; (b) to develop a state-wide plan for unification and integration of power facilities; (c) to furnish expert advice and service to municipal utilities; (d) to survey the state resources and facilities of power production; (e) to enter into contracts with private utilities for the stabilization of their rate base; (f) to provide for the purchase and the fixing of a price of utility properties; and (g) to furnish an organization for the construction and operation of plants when the constitutional authority has been given.

SUMMARY

To summarize, the Public Utility Law of 1907 provides for a centralized control, with certain concessions to the municipalities. The state granted to the utilities a limited territorial monopoly,—a monopoly that could be terminated by purchase by the municipality or in necessary cases by competition, but which during its existence could be kept within bounds by giving the control of rates and service to a com-

[119] Sections 198.03 and 198.04, Wis. Stats.
[120] Sections 198.07; 189.145; 198.16, Wis. Stats.
[121] Section 198.14, Wis. Stats.
[122] Section 198.10, Wis. Stats.
[123] *Ibid.*
[124] "This measure represents the climax to Wisconsin's public power program. During the immediate few years it is anticipated to function more or less in an advisory capacity but when the constitutional authority is conferred upon the state to actually maintain a publicly owned electric utility as in Ontario, then the state utility corporation is designed to be the corporate entity which operates the business." Alvin C. Reis, "Power Legislation in the State of Wisconsin," *Minnesota Municipalities,* September, 1931, p. 347.
[125] It is a state department as well as a corporation.

mission. With a change in conditions—municipalities borrowing up to their constitutional debt limits to provide for schools and other local improvements—the phenomenal growth of great holding companies—the scientific developments making possible the distribution of electricity over wide areas and the integration of small plants in divers places, and with court decisions making municipal purchase more and more difficult in a period of rising prices, it was the legislative decision that the old controls needed more strengthening, and that municipal ownership should be a real rather than a theoretical alternative for state regulation. As a result, laws were provided for the close supervision of holding companies so far as their practices are concerned, and for the creation of power districts in keeping with the demands of scientific development; while the constitution would be amended to provide for the expansion of municipal indebtedness in order to make utility acquisitions financially possible, and to allow the state to enter into the business of furnishing power in a gigantic program of industrial development.

The political and economic center of gravity, so to speak, of the utility business in Wisconsin is in the electric field; and it could be only far-fetched reasoning that would fit the new state power program into the theory of the old public utility law. The new idea is this section of the utility development has no reference to regulation, for the necessities of the future, it is thought, can be cared for only by governmental participation. Thus spoke Philip F. LaFollette, at the time governor of Wisconsin:

"In the civilization of the present, and promised for the future, the supply of productive energy is a key factor. * * * The State of Wisconsin lacks oil and coal; if it is to have a civilization balanced between the city and the country, between the production of food and of manufactured goods, we must insure an intelligently directed supply of power at the *lowest possible cost.* * * * "[126] (Italics ours.)

In a titanic battle to maintain economic equality or superiority, the state cannot regulate—it must command the resources and direct the activities for ultimate success. Again the former governor said: "It is urgent that we create a * * * power program, the chief objective of which should be to restore to the people of Wisconsin effective control of this essential source of economic prosperity and social well-being,"[127] so that the State of Wisconsin "can successfully compete with the economic life of any other State in America."[128]

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[126] Philip F. La Follette, *The United States Daily,* May 6, 1931.
[127] *Message* of Philip F. La Follette to the Legislature, Thursday, January 15, 1931, in pamphlet form, page 20.
[128] Philip F. La Follette, *The United States Daily,* May 6, 1931.