

ciation,”¹⁸⁰ “going concern value and good will,”¹⁸¹ “salvage value,”¹⁸² and “past losses and gains,”¹⁸³ only to emerge from this maze in 1944 at a point not very far removed from *Munn v. Illinois* and its deference to rate-making authorities.¹⁸⁴ By holding in *FPC v. Natural Gas Pipeline Co.*¹⁸⁵ that “[t]he Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas,” and in *FPC v. Hope Natural Gas Co.*¹⁸⁶ that “it is the result reached not the method employed which is controlling, . . . [that] [i]t is not the theory but the impact of the rate order which

Comm’n, 289 U.S. 287 (1933) and *Railroad Comm’n v. Pacific Gas Co.*, 302 U.S. 388, 399, 405 (1938), the Court upheld respectively a valuation from which reproduction costs had been excluded and another in which historical cost served as the rate base.

¹⁸⁰ *Knoxville v. Water Co.*, 212 U.S. 1, 9–10 (1909) (considering depreciation as part of cost). Notwithstanding its early recognition as an allowable item of deduction in determining value, depreciation continued to be the subject of controversy arising out of the difficulty of ascertaining it and of computing annual allowances to cover the same. Indicative of such controversy was the disagreement as to whether annual allowances shall be in such amount as will permit the replacement of equipment at current costs, *i.e.*, present value, or at original cost. In the *FPC v. Hope Natural Gas Co.* case, 320 U.S. 591, 606 (1944), the Court reversed *United Railways v. West*, 280 U.S. 234, 253–254 (1930), insofar as that holding rejected original cost as the basis of annual depreciation allowances.

¹⁸¹ *Des Moines Gas Co. v. Des Moines*, 238 U.S. 153, 165 (1915) (finding “going concern value” in an assembled and established plant, doing business and earning money, over one not thus advanced). Franchise value and good will, on the other hand, have been consistently excluded from valuation; the latter presumably because a utility invariably enjoys a monopoly and consumers have no choice in the matter of patronizing it. The latter proposition has been developed in the following cases: *Willcox v. Consolidated Gas Co.*, 212 U.S. 19 (1909); *Des Moines Gas Co. v. Des Moines*, 238 U.S. 153, 163–64 (1915); *Galveston Elec. Co. v. Galveston*, 258 U.S. 388 (1922); *Los Angeles Gas Co. v. Railroad Comm’n*, 289 U.S. 287, 313 (1933).

¹⁸² *Market Street Ry. v. Railroad Comm’n*, 324 U.S. 548, 562, 564 (1945) (where a street-surface railroad had lost all value except for scrap or salvage it was permissible for a commission to consider the price at which the utility offered to sell its property to a citizen); *Denver v. Denver Union Water Co.*, 246 U.S. 178 (1918) (where water company franchise has expired, but where there is no other source of supply, its plant should be valued as actually in use rather than at what the property would bring for some other use in case the city should build its own plant).

¹⁸³ *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942) (“The Constitution [does not] require that the losses of . . . [a] business in one year shall be restored from future earnings by the device of capitalizing the losses and adding them to the rate base on which a fair return and depreciation allowance is to be earned”). Nor can past losses be used to enhance the value of the property to support a claim that rates for the future are confiscatory. *Galveston Elec. Co. v. Galveston*, 258 U.S. 388 (1922), any more than profits of the past can be used to sustain confiscatory rates for the future *Newton v. Consolidated Gas Co.*, 258 U.S. 165, 175 (1922); *Board of Comm’rs v. New York Tel. Co.*, 271 U.S. 23, 31–32 (1926).

¹⁸⁴ 94 U.S. 113 (1877).

¹⁸⁵ 315 U.S. 575, 586 (1942).

¹⁸⁶ 320 U.S. 591, 602 (1944). Although this and the previously cited decision arose out of controversies involving the National Gas Act of 1938, the principles laid down therein are believed to be applicable to the review of rate orders of state commissions, except insofar as the latter operate in obedience to laws containing unique standards or procedures.