Early Limitations on Review.—Even while reviewing the reasonableness of rates, the Court recognized some limits on judicial review. As early as 1894, the Court asserted that "[t]he courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates . . . is unjust and unreasonable, . . . and if found so to be, to restrain its operation."[165] One can also infer from these early holdings a distinction between unreviewable fact questions that relate only to the wisdom or expediency of a rate order, and reviewable factual determinations that bear on a commission's power to act.[166]

Further, the Court placed various obstacles in the path of the complaining litigant. Thus, not only must a person challenging a rate assume the burden of proof,[167] but he must present a case of "manifest constitutional invalidity."[168] And, if, notwithstanding this effort, the question of confiscation remains in doubt, no relief will be granted.[169] Moreover, even the Court was inclined to withhold judgment on the application of a rate until its practical effect could be surmised.[170]

In the course of time this distinction solidified. Thus, the Court initially adopted the position that it would not disturb findings of

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[165] Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 397 (1894). And later, in 1910, the Court made a similar observation that courts may not, "under the guise of exerting judicial power, usurp merely administrative functions by setting aside" an order of the commission merely because such power was unwisely or expediently exercised. ICC v. Illinois Cent. R.R., 215 U.S. 452, 470 (1910). This statement, made in the context of federal ratemaking, appears to be equally applicable to judicial review of state agency actions.

[166] This distinction was accorded adequate emphasis by the Court in Louisville & Nashville R.R. v. Garrett, 231 U.S. 298, 310–13 (1913), in which it declared that "the appropriate question for the courts" is simply whether a "commission," in establishing a rate, "acted within the scope of its power" and did not violate "constitutional rights . . . by imposing confiscatory requirements." The carrier contesting the rate was not entitled to have a court also pass upon a question of fact regarding the reasonableness of a higher rate the carrier charged prior to the order of the commission. All that need concern a court, it said, is the fairness of the proceeding whereby the commission determined that the existing rate was excessive, but not the expediency or wisdom of the commission's having superseded that rate with a rate regulation of its own.

[167] Des Moines Gas Co. v. Des Moines, 238 U.S. 153 (1915).

[168] Minnesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, 452 (1913).

[169] Knoxville v. Water Co., 212 U.S. 1 (1909).

[170] Willcox v. Consolidated Gas Co., 212 U.S. 19 (1909). However, a public utility that has petitioned a commission for relief from allegedly confiscatory rates need not await indefinitely for the commission's decision before applying to a court for equitable relief. Smith v. Illinois Bell Tel. Co., 270 U.S. 587 (1926).