counts, [and that] [i]f the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end," the Court, in effect, abdicated from the position assumed in the *Ben Avon* case.[187] Without surrendering the judicial power to declare rates unconstitutional on the basis of a substantive deprivation of due process,[188] the Court announced that it would not overturn a result it deemed to be just simply because "the method employed [by a commission] to reach that result may contain infirmities. . . . [A] Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order . . . carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." [189]

In dispensing with the necessity of observing the old formulas for rate computation, the Court did not articulate any substitute guidance for ascertaining whether a so-called end result is unreasonable. It did intimate that rate-making "involves a balancing of the investor and consumer interests," which does not, however, "'insure that the business shall produce net revenues.' . . . From the investor or company point of view it is important that there be enough

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[187] Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920).

[188] In FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 599 (1942), Justices Black, Douglas, and Murphy, in a concurring opinion, proposed to travel the road all the way back to Munn v. Illinois, and deprive courts of the power to void rates simply because they deem the latter to be unreasonable. In a concurring opinion, in Driscoll v. Edison Co., 307 U.S. 104, 122 (1939), Justice Frankfurter temporarily adopted a similar position; he declared that "[t]he only relevant function of law [in rate controversies] . . . is to secure observance of those procedural safeguards in the exercise of legislative powers which are the historic foundations of due process." However, in his dissent in FPC v. Hope Natural Gas Co., 320 U.S. 591, 625 (1944), he disassociated himself from this proposal, and asserted that "it was decided more than fifty years ago that the final say under the Constitution lies with the judiciary and not the legislature. Chicago, M. & St. P. Ry. Co. v. Minnesota, 134 U.S. 418 [1890]."

[189] FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944). *See also* Wisconsin v. FPC, 373 U.S. 294, 299, 317, 326 (1963), in which the Court tentatively approved an "area rate approach," that is "the determination of fair prices for gas, based on reasonable financial requirements of the industry, for . . . the various producing areas of the country," and with rates being established on an area basis rather than on an individual company basis. Four dissenters, Justices Clark, Black, Brennan, and Chief Justice Warren, labeled area pricing a "wild goose chase," and stated that the Commission had acted in an arbitrary and unreasonable manner entirely outside traditional concepts of administrative due process. Area rates were approved in *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

The Court reaffirmed *Hope Natural Gas's* emphasis on the bottom line: "The Constitution within broad limits leaves the States free to decide what ratesetting methodology best meets their needs in balancing the interests of the utility and the public." Duquesne Light Co. v. Barasch, 488 U.S. 299, 316 (1989) (rejecting takings challenge to Pennsylvania rule preventing utilities from amortizing costs of canceled nuclear plants).