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Our Supreme Court Holds

North Dakota State Bar Association

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BUDGET FOR 1941-42

Bar Briefs Annual Number.....	\$ 325.00
Bar Briefs Monthly Number	325.00
Executive Committee Meetings	225.00
President's Expense	200.00
Printing and Postage	150.00
Annual Meeting	200.00
Ethics and Internal Affairs	150.00
Miscellaneous	500.00
Sec'y-Treas.-Editor	1,500.00
Bar Board Referendum	
	\$3,575.00
Licenses paid in 1941 were 514, at \$6.50....	Amounting to \$3,331.00
Licenses paid in 1942 were 470, at \$6.50....	Amounting to 3,055.00
Licenses paid in 1943 were 413, at \$6.50....	Amounting to 2,684.50
Estimate for 1944 — 375 at \$6.50.....	Amounting to 2,437.75

OUR SUPREME COURT HOLDS

In Northern States Power Company, Pltf. and Respt., vs. Public Service Commission, et al., Defts. and Appls.

That Public Service Commission may, upon notice to the public utility affected and after affording the utility an opportunity to be heard, amend its order fixing rates of return and depreciation allowable to such utility.

That a notice to a utility stating that a hearing would be held and that evidence would be taken relative to the question of rates and to the operation, property and condition of the property of the utility was sufficient to authorize the Public Service Commission to consider an amendment to a prior order fixing rates of return and depreciation for the utility.

That Public Service Commission must base its decisions upon evidence disclosed at a hearing and incorporated in the record.

That amendment of the Public Service Commission's order directing that the rate of return allowable to a utility, originally fixed at 6 percent of fair value, be reduced to 5.5 percent of fair value must be set aside where it appeared the Commission's finding rested upon evidence which was not in the record.

That amendment of the Public Service Commission's order directing that the rate of depreciation allowable to a utility originally fixed at 4 percent be reduced to 3.5 percent must be set aside where there is no evidence in the record which would justify such a reduction.

That a court has exclusive jurisdiction over moneys deposited in court pursuant to its order.

That the legislature of this state has adopted the fair value formula as set forth in *Smyth v. Ames* (169 U. S. 466, 42 L. ed. 819, 18 S. Ct. 418) and as modified by subsequent decisions of the Supreme Court of the United States as the formula for determining rat bases for public utilities.

That the weight to be given to historical cost, reproduction cost and other classes of evidence in a consideration of the value of a utility's property is to be determined in the light of the facts of the case.

That in the light of the principle that fair value must include the increase in value over original cost, the Public Service Commission may not disregard evidence of reproduction cost or refuse to give such evidence weight as one of the major factors in reaching its conclusions as to fair value.

That where the Public Service Commission gave equal weight to reproduction cost and historical cost in reaching its conclusions as to fair value it did give weight to reproduction cost as a major factor.

That upon an appeal from a decision of the Public Service Commission it is the court's duty to exercise its independent judgment on the evidence but the commission's findings of fact are entitled to great weight.

That the value of a utility may properly be limited to the sum upon which it can earn a fair return at rates for service which the utility concedes are proper.

That Public Service Commission may depreciate historical cost before giving it consideration in determining fair value where the affected utility has made a practice of charging annual depreciation.

That in an investigation of the value of the property of a public utility for the purpose of establishing a rate base, the value which must be ascertained is the reasonable value of the utility's property used or useful for the public service at the time it is being so used.

That the allowance to a utility of interest upon its cumulative investment in construction costs during the time of the construction of new facilities, is sufficient compensation until such new facilities are used for the public service.

That Statute providing that no order for valuation or revaluation shall be made or filed more than once in every three years does not prohibit the Public Service Commission from including in its final order in an investigation as to value, separate rate bases for the years the investigation was in progress.

That it is general price trends and not intermediate or abnormal fluctuations in price which must be considered in the computation of reproduction cost of a utility's property.

That the Public Service Commission has the power to originate and establish schedules of rates for public utilities.

(Syllabus by the Court)

Appeal from the District Court of Cass County, Holt, J. **AFFIRMED IN PART AND REVERSED IN PART.**

Opinion of the Court by Burke, J., Christianson, J. specially concurring.