out of the special statutes applicable to railway properties. While the distinction between other utility properties and railway properties may not logically exist, the statutes, on examination, will disclose marked differences.

The Worcester Case

It is rather interesting to find that one of the oldest and most conservative of the state regulatory commissions has recently vigorously assailed the doctrine of the Indianapolis Water Company Case. I refer to the opinion of the Massachusetts Department of Public Utilities handed down on June 3, 1927. There were pending before the Department complaints against the Worcester Electric Light Company, demanding that the maximum rates of the company be reduced. It appeared in evidence that the proceeds of the sale of stock, including a good deal of stock sold at premium, were in excess of $4,000,000; that the company had enjoyed earnings and dividends since 1920 of from 7% to 27.2%; that it had accumulated surplus in excess of $1,500,000, and that the market value of its stock was about six times its par value.

The Department has used the following language in repudiation of the doctrine of reproduction at recent costs less depreciation:

"We are of the opinion that in this Commonwealth a rate based upon reproduction value less observed depreciation is not only unsound legally and historically but also economically. * * * Regulation should be certain, definite and capable of speedy
application in the determination of rates which will do justice both to the public and to the owners of the utility. We believe that a rate base which takes as the controlling factor capital honestly and prudently invested possesses these qualifications and under normal conditions is sound both in law and in economics."

The Department further says:

"It (that is, reproduction cost) assumes the reproduction of a plant, which as a matter of fact would not be reproduced as is, and on a basis which men of sound business judgment do not consider in determining the value of their plants for other than rate making purposes. Depending as it does upon the level of prices of labor and materials projected into the future, it creates a constantly varying rate base, which is not easily or speedily capable of determination, but, on the contrary, involves long and expensive investigations, culminating in a composite guess not based wholly upon facts but upon conjectures as to the future. And when that composite guess, called the reproduction value, is finally determined, the factors may have so changed that it can no longer be of value, and the process must be repeated. It does not enable justice to be done speedily and efficiently either to the public or to the investor. In periods of enhancement of prices, the public, under this theory, is compelled to pay exorbitant rates. In periods of depressed prices the investor is compelled to receive much less than
a fair return upon the capital invested. A goodly portion of the plants of many of our electric companies was built after the war in an era of high prices. If there should be a sharp decline in prices in the next ten years, rates, based upon the reproduction theory, would be such as would prevent the investor from receiving a fair, if any, return upon his investment. A theory which produces such results cannot be maintained. * * * ”

The Department in its opinion expresses something in the nature of a threat. Even if it is not a threat, it is a very pertinent and incisive reminder of the legal status of the permits in that Commonwealth. It is true that this comment would not be easily applicable to the situation in Wisconsin, for the reason that the methods provided by law here for terminating permits or amending them are not so liberal and broad as they are in Massachusetts. As you well know, our law in the absence of facts constituting non-user or mis-user, provides for only one method for terminating a permit, and that is by purchase by condemnation of the property, and secondly by amending the exclusive right of service by the granting of competitive permits.

The Massachusetts Department has this to say regarding franchise rights in Massachusetts:

“In this Commonwealth the permits, issued to gas and electric companies to use the highways for their distribution equipment, are subject to revocation by the state
at any time. Such companies have been
given no permanent rights in the highways
and their use of them is at the will of the
Commonwealth. The very charters of the
companies may be altered, amended or re-
pealed at any time by the Commonwealth.
We cannot believe that the property of such
companies situate in the public highways,
subject at any time to an order of removal
by the Commonwealth, can or should, for
rate making purposes, be subject to any
such rule of law as that which the company
advances. Nor does it seem either logical
or economically sound to contend that the
conduits of the company in the public high-
ways become more valuable as the Common-
wealth or its municipalities lay down better
and more expensive pavements and roads
upon conduits.”

With more or less modification, the Mas-
sachusetts opinion no doubt pretty effectively
expresses the attitude of practically all of
the state commissions. As evidenced in recent
decisions and opinions, it is apparent that in
states where the Supreme Courts of such states
have not given a final adverse opinion on the
subject, the commissions are still at liberty to
follow their own convictions in this regard.
We quite thoroughly realize that this attitude
by the Wisconsin Commission is no longer
tenable in the light of the holding in the Wau-
kesha Case. It may be of interest to say
that the Massachusetts Department, possibly
anticipating a reversal in court, did make a
finding of the value of the property in ques-
tion, based on reproduction cost less depreciation, and found that such value would not exceed $10,000,000. The company, however, submitted a number of engineering and accounting valuations in which the value so found was in excess of $17,000,000. It is evident from this finding that valuation engineers, in attempting to apply the rule of the Indianapolis Case, may vary as widely in their conclusions as they ever did in working under the investment theory.

**Overhead Costs**

A very significant and important element of valuation is the allowance always claimed and made usually in part as claimed for overhead costs. The term costs in this connection under a strict application of the method giving dominance to reproduction at current prices would be inapplicable, for the reason that in making valuations on the investment basis, at least to a considerable extent, the costs of engineering and supervision, the interest costs, the cost of organization and legal expense, for taxes, could measurably be ascertained from the accounts of the company. This would not be true for the item listed under omissions, which would have to be based largely upon general experience.

The practice of the Wisconsin Commission has been in the past to allow approximately 15% for these so-called overhead costs. One case has been before the Commission where claims have been made as high as 49% of the physical value, as allowances for overheads, and in these claims have been included such