

of the TVA Commission procedure in the type of land acquisition program TVA carries on that they expressly preserved it in rule 71A, and at the same time gave Federal judges discretion to use a somewhat similar commission system in other Federal condemnation cases. The one kind of condemnation case which all courts apparently regard as appropriate for the exercise of such discretion is what they describe as the "TVA type of case." For example, in *United States v. Buhler*, 254 F. 2d, 876 (5th Cir. 1958), the court said this:

The cases in which denial of a timely demand for jury trial are justified certainly include those similar to TVA cases * * * that is, where large areas held by many small landowners, or property too distant for a jury to view the premises are involved. In such cases, the court's discretion is exercised because of the location or quantity of the property to be condemned.

Similarly, in *United States v. 186.82 Acres of Land, Etc.*, 207 F. Supp. 395 (W.D. Pa. 1962), the court stated:

In the construction of the six dams or reservoirs which have already been built, many hundreds of condemnations have passed through this court, but since the passage of Rule 71A, adopted in 1951, the issue of just compensation has been determined in all cases by a commission, except in two or three instances * * *.

* * * In the report of the Advisory Committee at the time this rule was formulated, mention was made of the use of commissioners instead of juries in Tennessee Valley Authority cases. What is there mentioned * * * has applicability in this instance. The majority of the parcels of lands condemned are situated in the Village of Kinzua, which in turn is situated along the banks of the river. In these small properties it seems essential that uniformity in awards is most desirable * * *. As in the TVA condemnations, it is impractical to take a jury from Erie to Kinzua in each trial involving a separate owner and a separate parcel of land.

What is true of reservoir properties is equally true of rights taken for electric powerlines. In *United States v. Certain Land Situated in Ripley, Stoddard, and Butler Counties, State of Missouri* (109 F. Supp. 618 (E.D. Mo. 1952)), involving rights-of-way for a powerline crossing a number of farms, the court, in upholding an award by commissioners, commented:

What a sad commentary it would have been upon economical administration of justice to have held jury trials as to each tract.

In short, the TVA-type case is the very type of case which the courts have held should be tried, in the interest of justice, by commissioners rather than juries where other Federal agencies are involved. It would seem to us strange indeed—and as I said earlier, a step backward—for Congress now to say that in such cases involving TVA itself, trials must be by jury. We also think that to repeal the special condemnation provisions of the TVA Act and leave the issue of commission hearing versus jury hearing to the discretion of the courts under the general provision of rule 71A, as S. 1637 would do, passed by the Senate, would be undesirable for two principal reasons:

First, since the TVA-type case is the kind of case which the courts have said should be tried by commissioners, there is no reason to provide for discretionary jury trials, and to do so might well lead to confusion.

Second, the commission procedure followed under the present TVA Act differs in some respects from that followed under rule 71A, and, in our opinion, is definitely superior from the standpoint of landowners and TVA alike.