WATER CARRIER MIXING RULE EXEMPTION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 7610

TO AMEND SECTION 303(b) OF THE INTERSTATE COMMERCE ACT TO MODERNIZE CERTAIN RESTRICTIONS UPON THE APPLICATION AND SCOPE OF THE EXEMPTION PROVIDED THEREIN

(And identical bills)

OCTOBER 4, 10, 11, AND 12, 1967

Serial No. 90–13

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
85-465 WASHINGTON : 1967

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
HORACE R. KORNEGAY, North Carolina
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
DANIEL J. RONAN, Illinois
BROCK ADAMS, Washington
RICHARD L. OTTINGER, New York
RAY BLANTON, Tennessee
W. S. (BILL) STUCKEY, JR., Georgia
PETER N. KYROS, Maine

WILLIAM L. SPRINGER, Illinois
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky
G. ROBERT WATKINS, Pennsylvania
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, JR., Ohio
DAN KUYKENDALL, Tennessee
JOE SKUBITZ, Kansas

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
JAMES M. MENGER, Jr.
WILLIAM J. DIXON
ROBERT W. LISHMAN

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

SAMUEL N. FRIEDEL, Maryland, *Chairman*

JOHN D. DINGELL, Michigan
J. J. PICKLE, Texas
DANIEL J. RONAN, Illinois
BROCK ADAMS, Washington

SAMUEL L. DEVINE, Ohio
GLENN CUNNINGHAM, Nebraska
ALBERT W. WATSON, South Carolina
DAN KUYKENDALL, Tennessee

CONTENTS

WATER CARRIER MIXING RULE EXEMPTION

WEDNESDAY, OCTOBER 4, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The committee will come to order.

This morning the Subcommittee on Transportation and Aeronautics is meeting to consider 12 identical bills which would amend section 303(b) of the Interstate Commerce Act in three particulars:

(1) The bills would eliminate the so-called mixing rule. This is done by striking the third sentence of the subsection setting out the definition that two or more vessels while navigated as a unit shall be considered to be a single vessel;

(2) They eliminate the cutoff date of June 1, 1939, for determining what commodities were transported in bulk in accordance with existing custom of the trade; and

(3) The bills effectively lift the ceiling of three commodities insofar as transportation by barges is concerned, though retaining it as to lake and coastwise vessels.

Basically, the bills seek to overturn the series of rulings of the Interstate Commerce Commission over a period of 25 years, which have held that the mixing in a single tow of bulk commodities exempt from regulation with regulated nonbulk commodities causes the exemption from regulation to be lost, culminating in its position being sustained by a circuit decision that was upheld last March by the Supreme Court. These decisions have struck down various attempts by the carriers to utilize the incidental towing authority of section 303(f)(2) to avoid the direct restrictions of section 303(b) applying to the transportation of commodities in bulk.

The subject is not a new one to the committee, having been before us in bills since the 86th Congress. In the 87th Congress this committee held extensive hearings in the spring of 1962 on several bills attempting to meet the problem of the mixing rule; either by repeal of the rule or by repeal of the exemption. The latter approach is that which the Interstate Commerce Commission has recommended now for a number of years.

At that time the water carriers appeared to be divided, some urging the repeal of the mixing rule and others urging its retention. These positions were the same which they had taken before the ICC in the proceedings following the various applications for declaratory orders made by the water common carriers.

It is my understanding that the Interstate Commerce Commission in May of this year reconsidered its order of August 1960 in the light of the order of the Supreme Court this past March affirming the judgment of the district court sustaining the Commission's order, and has extended until January 1968 the date to which the water carriers must comply with the Commission order. (See p. 18.)

A list of the bills together with a copy of one of the bills and the agencies reports thereon will be included in the record at this point.

(Bills identical to H.R. 7610, Cabell, of Texas, are as follows: H.R. 10315, Adams, of Washington; H.R. 10659, Boggs, of Louisiana; H.R. 11875, O'Neill of Massachusetts; H.R. 12126, Clark, of Pennsylvania; H.R. 12143, Sullivan, of Missouri; H.R. 12452, Hamilton, of Indiana; H.R. 12602, Fulton of Pennsylvania; H.R. 12689, Moorhead, of Pennsylvania; H.R. 12848, Kuykendall, of Tennessee; H.R. 13018, Erlenborn, of Illinois.)

(The text of H.R. 7610 and departmental reports follow:)

[H.R. 7610, 90th Cong., 1st sess.]

A BILL To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303(b) of the Interstate Commerce Act, as amended (49 U.S.C. 903(b)) is amended (1) by striking from the second sentence thereof the parenthetical expression "(in accordance with the existing custom of the trade in the handling and tranportation of such commodities as of June 1, 1939)". (2) By striking the third sentence in its entirety.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 7, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 7610 and H.R. 10315, identical bills to amend scetion 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

The bill would amend the bulk commodity exemption for water carriers to eliminate an outmoded definition of what constitutes a bulk commodity and the requirement that two or more vessels while navigated as a unit be considered to be a single vessel. As amended, the exemption would therefore apply to each vessel in a multi-vessel tow.

This bill is a constructive step toward removing artificial barriers to the free flow of commerce and the elimination of rate regulation where it serves little public purpose. The Bureau of the Budget, therefore, recommends enactment of this legislation.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 25, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 7610, a bill to amend section 303(b) of the Interstate Commerce

Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

Presently, section 303(b) extends an exemption from economic regulation by the Interstate Commerce Commission to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This exemption is applicable only in the case of commodities in bulk which are "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)" loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. In applying section 303(b), two or more vessels while navigated as a unit are considered to be a single vessel.

The proposed legislation would strike the parenthentical clause quoted above. The net effect of such action would be to free the definition of what constitutes a bulk commodity of a trade custom of over a quarter of a century ago, if indeed it is possible to determine precisely today exactly what such a custom may have been or meant. As a result, bulk traffic would now be accorded a readily understandable and easily applicable definition. For these reasons, the Department would favor this aspect of the legislation.

In addition, H.R. 7610 would eliminate the requirement that two or more vessels while navigated as a unit be considered to be a single vessel. This proposal would permit the regulatory exemption to be applied to each vessel in a multi-vessel tow rather than to the tow itself, and is designed to overcome a statutory interpretation by the Commission in *Mississippi Valley Barge Co. Exemption, Section 303(b)*, 311 I.C.C. 103, which subjected movements by a certificated tower of a barge of three or less bulk commodities in a mixed towload along with nonbulk freight to economic regulation. This holding was sustained upon judicial review.

Extension of the exemption in the manner proposed to each vessel in the tow would be consistent with sound operating practices and with the realistic economics of modern water carrier transportation. It would remove past artificial barriers to the free flow of commerce. It has become increasingly apparent that the need for rate regulation in this area of transportation serves a public purpose of little or no significance. The Department would therefore also support this portion of the proposal.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., July 11, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This responds to your letter of May 29, 1967, requesting the views of the Commission on H.R. 10315, a bill "To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein." This matter has been referred to our Committee on Legislation and on its behalf I am authorized to submit the following comments.

At the present time, section 303(b) provides an exemption from regulation of the transportation, by water carriers, of commodities, in bulk, when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. The exemption has several limitations, the pertinent ones being set forth in the second and third sentences of section 303(b). The second sentence contains a parenthetical expression which defines bulk commodities in terms of those "which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count." The third sentence provides "for the purposes of this subsection

two or more vessels which navigated as a unit shall be considered to be a single vessel."

The changes proposed by S. 1314 would (1) strike from the second sentence the parenthetical expression, and (2) strike the third sentence entirely. The pertinent amended subsection 303(b) then would read:

> (b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. * * *

The definition of bulk commodities in terms of the custom of the trade as of June 1, 1939, has resulted in much confusion and some litigation. Many commodities, such as chemicals and sugar, were carried by water carriers in containers as of June 1, 1939, but because of efficiency and convenience are now carried in bulk in modern barges and tankers. By orders in WC–2, decided November 17, 1958, and WC–6, decided October 20, 1960, the Commission declined to review the issues presented, and denied petitions of certain barge carriers and other interests which requested the issuance of declaratory orders to remove uncertainty respecting whether or not the transportation by water of various commodities, in bulk, is exempt under section 303(b) by reason of the custom of the trade clause.

Considerable litigation has also arisen over the second limitation in section 303(b).

Common carriers on inland waterways engaged in towing and affreightment are subject to regulation by the Commission under part III of the act. Unless expressly exempted, they are required to possess certificates of convenience and necessity for the routes on which they operate; maintain reasonable rates, charges and practices; publish and adhere to tariffs; file reports and comply with other regulatory requirements. Under section 303(b), transportation of not more than three bulk commodities in a single vessel or vessels being navigated as a unit (a flotilla) is exempted from regulation and may be performed without regard to certificated route authority or of published tariff rates. Since 1941, the Commission, in a number of proceedings, has considered the scope of this exemption as applied to tows which "mix" bulk cargoes and non-bulk cargoes. Although section 303(b) exempts bulk cargoes from economic regulation, the Commission has consistently held that this exemption does not apply when exempt bulk commodities are "mixed" or carried in the same tow with non-bulk (and non-exempt) commodities. In these circumstances, the entire movement is subject to regulation.

Although it has been argued that this so-called "no-mixing" rule applies only to the water carrier actually towing the mixed load, the Commission has held otherwise in *Mississippi Valley Barge Co., Exemption*, Section 303(b), 311. I.C.C. 105, sustained in *Gulf Canal Lines, Inc.* v. *United States*, 258 F. Supp. 864 (1966), affirmed per curiam by the Supreme Court on March 20, 1967. This proceeding arose in 1959 on a petition for a declatory order by a number of certificated water carriers having non-certificated affiliates, which handle exempt contracts of affreightment for bulk commodities. After entering into such a contract with a shipper, a non-certificated barge line may engage the certificated carrier to tow the shipment from an intermediate point to its ultimate destination, where the non-certificated carrier then takes possession again and delivers the barge to the consignee. The question involved here arises when, in performing its contract of towage, the certificated carrier combines bulk with non-bulk commodities in a single tow.

The net effect of this decision, which would be overturned by this bill, is to require the carriers involved to cease the transportation of "mixed" tows or, in the alternative, subject the transportation of otherwise exempt bulk cargoes to economic regulation by the Commission when such commodities are transported with non-exempt cargoes. Because of the need for additional time to comply with the Commission's order and because of the pendency of this legislation, the Commission, at the request of the parties in this proceeding, has stayed the effective date for compliance with its order until January 1, 1968.

The effect of this legislation on the described portions of present section 303(b) will be to simplify, but simultaneously broaden, the scope of the exemption as presently interpreted by the Commission. The transportation by water of all commodities in bulk (except in intercoastal commerce) irrespective of whether

they were so handed during June 1939, will be within the scope of the exemption. Further, by deletion of the third sentence in present section 303(b), this bill would broaden in scope of the exemption in two ways. First, it would overturn the Commission's determination that the mixing of exempt and non-exempt commodities subjects the entire movement to regulation. Second, because this deletion would eliminate the present standard that two or more vessels (i.e. barges) operated as a single unit shall be considered as a "single vessel," the present limits of three bulk commodities in a tow would be eliminated and as many as 60 separate bulk commodities could be carried in a tow of 20 barges.

Since the railroads, which are the water carriers' principal competitors for bulk commodity traffic, have always been subject to full economic regulation by the Commission, we have recommended on a number of occasions that the exemption provided by section 303(b) be repealed in its entirety in the interest of providing equality of competitive opportunity and regulatory treatment among the several modes of transportation. No action has ever been taken on these proposals by Congress. Although we continue to believe that the present exemption is neither conducive to fair and effective regulation nor to effectuation of the goals of the National Transportation Policy, we also recognize that there is substantial Congressional sentiment for the retention of this exemption. In these circumstances, the present situation is inequitable and unfair to substantial segments of the water carrier industry. As I have noted previously, the Commission's order in the *Mississippi Valley* proceeding requires that the carriers either cease towing mixed shipments or file tariffs and rates on otherwise exempt commodities. The first alternative would preclude the carriers from making efficient and economical use of their equipment and facilities while the second would place carriers in a poor competitive position vis-a-vis other competing water carriers who tow only bulk cargoes and thus would be fully within the exemption afforded by present section 303(b).

In conclusion, we have no objection to this bill if the Congress as a matter of policy feels that the inequitable effects of this exemption, as between water carriers, should be eliminated. However, we continue to believe that repeal of the exemption will ultimately be required as a necessary step toward elimination of inequalities between carriers of different modes.

Sincerely yours,

COMMITTEE ON LEGISLATION,
WILLIAM H. TUCKER,
LAWRENCE K. WALRATH,
PAUL J. TIERNEY, *Chairman.*

Mr. FRIEDEL. I have a statement of the history of the "mixing rule" which I would like to have included in the record at this point.

(The statement referred to follows:)

HISTORY OF THE "MIXING RULE"

1940

Enactment of the Transportation Act.

1942

Mulgreen Contract Carrier Application, 250 ICC 436, held: The transportation of bulk commodities is not exempt when such commodities are handled in the some tow and nonbulk commodities. *Jacob Rice & Sons*, 250 ICC, 727 (1942), reaffirmed.

1944

ICC Bureau of Water Carriers informal letter (March 27) ruling that a carrier, towing a solid tow of bulk commodities, who contracted to act as an incidental tower of a barge of package freight for a regulated carrier, under conditions which would make the tower exempt as to the package freight, under section 303(f)(2) if handled separately, would not lose the exemption under section 303(b) for the bulk freight.

1955

American Barge Line, Petition for Declaratory Order 294 ICC 796: Held that the towage by a carrier of bulk-loaded barges of another carrier was not incidental (under sec. 303(f)(2) to the through transportation undertaken by the other

carrier when the towing carrier combined in a single tow the bulk-loaded barges with barges of non-bulk cargoes. In dictum, stated the exemption was lost for only that portion of trip where a mixed tow was present.

1957

Commercial Transportation Corporation, 300 ICC 66, held that where an unregulated carrier towing bulk-exempt barges included in its tow a non-bulk loaded barge which it was towing incidentally for a regulated carrier, the exemption was lost.

1958

Commercial Barge Lines v. *United States*, 166 F.Supp.867, ICC decision sustained; affirmed per curiam, 359 US 342(1959).

1960

Mississippi Valley Barge Co. Exemption, 311 ICC 105, held that under conditions of The American Barge Line decision, the exemption is also lost as to the entire trip, including the initial movement in a non-mixed tow.

1966

Gulf Canal Lines, Inc. v. *United States*, 258 F.Supp.864, Commission sustainer. Affirmed Supreme Court, per curiam, March 20, 1967.

1967

ICC order No. W–C–5, 31st May, staying Aug. 25, 1960 order until Jan. 1, 1968.

(The 1960, 1966, and 1967 orders, referred to above, follow:)

311 ICC

INTERSTATE COMMERCE COMMISSION

(No. W–C–5)

MISSISSIPPI VALLEY BARGE LINE COMPANY EXEMPTION, SECTION 303(b)

Decided August 25, 1960

On petition, transportation services entirely by water carrier of commodities in bulk, in circumstances whereby beginning at an intermediate point, such commodities are towed in a unit with nonbulk commodities, found not to be exempt from regulation under the provisions of section 303(b) of the Interstate Commerce Act. Proceeding discontinued.

Richard J. Hardy, Nuel D. Belnap, Harry C. Ames, Donald Macleay, and W. Y. Wildman for petitioners.

Robert J. Bernard, J. D. Feeney, Thomas J. Houser, Ed White, James W. Nisbet, and E. R. Leigh for rail replicants.

Kenneth J. McAuliffe, Paul T. Truitt, Walter D. Matson, Donald Macleay, Russell S. Bernhard, and W. Y. Wildman for shipper organizations and water-carrier replicants.

REPORT OF THE COMMISSION ON PETITION

DIVISION 1, COMMISSIONERS MURPHY, GOFF, AND HERRING

By Division 1:

By petitions filed August 31, 1959, Mississippi Valley Barge Line Company, Federal Barge Lines, Inc., and American Commercial Barge Line Company, hereinafter called the Mississippi carriers, and John I. Hay Company and Coyle Lines, Incorporated, hereinafter called Hay and Coyle, respectively, seek declaratory

orders under the provisions of section 5(d) of the Administrative Procedure Act, to remove uncertainty as to the construction and application in described circumstances of the exemption from regulation as provided in section 303(b) of the Interstate Commerce Act. The Mississippi carriers filed a brief in support of their position. The petitions were docketed and notice thereof published in the Federal Register. Hay and Coyle replied to the petition filed by the Mississippi carriers. Additionally, the Louisville and Nashville Railroad Company, class I rail carriers in the western district, the Manufacturing Chemists Association, Inc., and the National Plant Food Institute, hereinafter called the association and the institute, respectively, filed replies to the petitions. The Pennsylvania Railroad Company was permitted to intervene and become a party to the proceeding.

Petitioners, except Coyle, are authorized to operate as common carriers by water by barge and towboat, hereinafter called freighting,[1] of general commodities as here pertinent, between ports and points along the Mississippi River, the Illinois Waterway, and certain tributaries of the Mississippi River. They also hold authority to perform towing services in territories generally coextensive with their freighting authorities. Coyle is authorized to perform both freighting and towing services along the Gulf Intracoastal Waterway, the Mississippi River below and including Baton Rouge, La., and certain other inland waterways entering the Gulf of Mexico. The association and the institute represent shippers which move by water carriers, large quantities of chemicals, coal, fertilizers, and other commodities in bulk, under the exemption from regulation provided by section 303(b) of the act.

Petitioners seek answers to questions based on hypothetical statements of facts. The questions and statements of fact are set forth in the appendix hereto. The association and the institute contend that the petitions clearly spell out matters which present a question for an adversary proceeding rather than a proceeding looking toward a declaratory order; that the shipping public is entitled to have the questions resolved in a case presenting clearcut issues based on actual facts rather than on hypothetical statements of facts; and that the petitions should be denied or dismissed. The railroads assert that the considered hypothetical facts relate to transportation in the same tow of bulk traffic with nonbulk traffic which, they maintain, clearly was found not to be within the 303(b) exemption in *American Barge Line Co. Petition for Declaratory Order*, 294 I.C.C. 796, hereinafter called the *American Barge Line* case, and *Commercial Transp. Corp., Exemp., Sec. 303(b) and 303(f)(2)*, 300 I.C.C. 66, hereinafter called the *Commercial Transport* case (reviewed and sustained in *Commercial Barge Lines, Inc.*, v. *United States*, 166 F. Supp. 867, by the District Court for the Eastern District of Michigan, which judgment was affirmed by the Supreme Court in 359 U.S. 342. They contend that the petitions should be dismissed, or in the alternative, if the Commission holds that the petitioners may be considered under section 5(d) of the Administrative Procedure Act, that such petitions be denied by an order holding that the exemption provided by section 303(b) of the act does not apply in the circumstances presented.

The instant petitions seek relief under section 5(d) of the Administrative Procedure Act. The provisions of section 5, however, are expressly limited in their applicability to matters which are required by statute to be determined "on the record after opportunity for an agency hearing." The nature of the instant proceedings is not such as to require an agency hearing within the provisions of section 5 of the Administrative Procedure Act and, accordingly, the petitions were improperly filed thereunder. We may, however, under our authority in general, entertain petitions seeking interpretive rulings and opinions. Compare *Atlantic Frt. Lines, Inc.—Petition For Declaratory Order*, 51 M.C.C. 175. In certain instances in the past the Commission has entertained petitions of the type presented herein and has issued reports answering hypothetical questions. In view of this past practice and the absence of any prior notice to the contrary, we will entertain the instant petition under our general interpretive authority. We wish to point out at this time, however, that we do not believe it is in the public interest to entertain and issue decisions with respect to hypothetical questions posed by a relatively small segment of those who would be affected, and, in the absence of compelling circumstances, future petitions of this type will be dismissed.

---

[1] "Freighting" denotes service which includes furnishing by the carrier of the cargo space, such as a barge, and of motive power (generally supplied by the towboat).

Section 303(b) of the act exempts the transportation by water of bulk commodities when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three commodities. For the purpose of the subsection, it further provides that two or more vessels while navigated as a unit shall be considered to be a single vessel. In construing these provisions, the Commission, Division 4, consistently has held that the exemption provided therein does not apply when nonbulk commodities and bulk commodities, although in separate vessels, are moved in tows as a unit. *Portland Tug & Barge Co. Ext.—Washington-California*, 265 I.C.C. 325, 335; *Mulqueen Contract Carrier Application*, 250 I.C.C. 436, 439; and *Jacob Rice & Sons Contract Carrier Application*, 250 I.C.C. 727, 729. However, some confusion has arisen concerning the applicability of the exemption to the services of carriers which undertake by contracts with shippers to provide the complete transportation service as against those which perform towing services for the originating or freighting carrier.

In the *American Barge Line case*, on which the Mississippi carriers rely, the question there posed was:

> Does the inclusion of the barge carrier "A" loaded with bulk freight in such a tow of Federal (carrier B) destroy the exemption which the transportation being performed for Carrier "A" would have if Carrier "A" used its own power in towing the bulk shipment in question?

Division 4 concluded that the considered transportation of commodities in bulk by carrier B in a unit with nonbulk commodities is not transportation exempt from regulation under the provisions of section 303 (b) of the act, and discontinued the proceeding. With respect to the collateral question relating to the status of transportation performed by carrier A (the freighing carrier) prior to the inclusion of its bulk-commodity barge or barges in carrier B's tow, the division observed, upon the factual situation there described, that such prior transportation was not affected by the subsequent mixed tow [2] and loss of exempt status. In this connection, the division said:

> Because of the issuance by carrier A of its bill of lading to the shipper by which the carrier contracts to transport a bulk commodity the entire distance from the origin on carrier A to the destination on carrier B, the contention is advanced that in these circumstances the entire movement must be considered as an entity and thus be either exempt or nonexempt. This contention is without merit. The issuance of a so-called through bill of lading is a mere incident and is not indicative of the exempt or nonexempt status of the transportation service. The well-established principle just referred to that the inclusion of nonbulk commodities in a tow with a bulk commodity has the effect of subjecting the entire cargo to regulation may not be extended to include the part of a multiple-carrier, line-haul transportation only of a bulk commodity in the circumstances here presented.

In the *Commercial Transport* case, the question presented was whether the inclusion of a barge of regulated nonbulk commodities, in an otherwise solid tow of dry-bulk commodities moving under the section 303(b) exemption, would destroy such exemption as to the tower. In its report, the division found, as here pertinent, that the transportation of commodities in bulk in a unit with nonbulk commodities is not transportation exempt from regulation under the provisions of section 303(b) of the act. Thus the Commission has consistently held that the bulk-commodity exemption does not apply to commodities transported in mixed tows. It also held that the incidental towage performed for other carriers subject to the act is exempt from regulation under the provisions of section 303(f)(2).

Petitioners seek an expression from the Commission to remove uncertainty as to the status, under the act, of persons performing the towing services for the freighting carrier based on the submitted statement of facts. Relying on the *American Barge Line* case, *supra*, the Mississippi carriers contend that carrier A, when under an affreightment contract with the shipper to transport bargeloads of bulk freight as exempt from regulation on agreed rates not published and filed with this Commission, does not subject itself to regulation upon transferring at point Y (the intermediate point), the bargeloads of bulk freight to carrier B which tows such barges in mixed tows to point of destination; and Hay

---

[2] A mixed tow, as that term is hereinafter used, is a tow in which both bulk and nonbulk freight are transported.

and Coyle contend that carrier A, in the same circumstances, is exempt from regulation as long as it moves a tow containing not more than 3 bulk commodities, but subjects itself to regulation for that part of the movement of its bargeloads of bulk commodities when they are being transported by carrier B in a mixed tow. Stated otherwise, the Mississippi carriers argue that the entire transportation to point of destination undertaken by carrier A is exempt under section 303(b), and that it cannot be held to forfeit that exemption by reason of the mixed tow of carrier B beyond point Y in connection with which the latter performs regulated transportation; Hay's and Coyle's position is that the section 303(b) exemption ceases to exist with respect to transportation by anyone, including the contracting carrier A during the period when the bulk commodity is in a mixed tow. The Mississippi carriers take the position that, in the circumstances presented, carrier B as a tower is subject to regulation, and if it charges carrier A its published towing rates the arrangement does not disturb the status of carrier A, and is lawful.

A study of the legislative history of section 303(b) leaves no doubt that Congress intended to exempt the transportation of commodities in bulk, but it is clear that such exemption is to apply only if not more than three bulk commodities are being transported in a single vessel which, in this case, means two or more vessels being navigated as a single unit. See *Commercial Barge Lines, Inc.*, v. *United States*, *supra*. It is likewise clear that had the tow of not more than three bulk commodities been continued uninterruptedly from point of origin to final destination, or had carrier B continued the tow as one consisting of not more than three bulk commodities, such transportation would have been within the exemption and not subject to regulation as to any of the carriers participating therein. Under the circumstances posed in the submitted statements of facts, when carrier A engages carrier B to supply the power needed to transport the bulk commodity bargeloads to point Z it does not, insofar as the through movement is concerned, relinquish its control over the bargeload of bulk freight as the freighting carrier but, in effect, merely engages B as the incidental tower. Because of the limitation of the subsection, that not more than three bulk commodities may be carried in the same vessel or tow, the transportation of all the commodities in the tow becomes subject to regulation. Accordingly, carrier A, if it holds authority to transport the considered traffic from point X to point Z, must observe its Commission filed rates from and to such points, or may participate in the transportation only to the extent of its authority and observe the rates and charges of the participating carriers, including itself, as published and on file with this Commission. If carrier A has no authority to perform the transportation which it contracts to do as the freighting carrier, it must perform the transportation pursuant to the limitations of the exemption in order to be within its purview, otherwise it should discontinue such practices, or it subjects itself to prosecution for operating without authority. Compare *Commercial Barge Lines, Inc.*, v. *United States*, *supra* and *Water Carrier Service on Great Lakes, Non-owned Vessels*, 285 I.C.C. 52.

In reaching our conclusions, we have also considered the purpose of the certificate and permit provisions of the act regulating the entry of new carriers into the transportation field and extension of the operations of the existing carriers. The device of contracting with shippers to transport bulk commodities at rates different from those published and on file with the Commission, and then employing the towing services of others as posed in the questions, would permit the transportation of bulk commodities free of regulation irrespective of the conditions of the exemption; and carriers not holding certificates or permits would be able to circumvent the certificate, permit, and tariff provisions of the act and enter the transportation field, or extend their operations merely by utilizing the towing services of authorized carriers. Clearly if the bulk-commodity exemption is to be applicable, the limitations thereof must be observed for the entire continuous movement.

In reaching this conclusion we are not unmindful of the dictum in the *American Barge Line* case, *supra*. There the circumstances involved a part of a multiple-carrier, line-haul transportation service; however, the continuity of the through movement in the involved transportation was not shown or was not clearly discussed and understood. Here it is clear that carrier A, in contracting with the shipper to transport bulk-commodity shipments to point of destination as through continuous movements within terms of the exemption, is the freighting carrier for the movements; and because it transfers the shipments to other carriers for the remainder of the journey under incidental towage arrangements, the

continuity of its responsibility for the through shipment is not destroyed. In fact, carrier A again takes actual possession of the shipment at destination and makes delivery to the consignee. The Commission, division 4, has held that where a carrier participates in through transportation under common arrangements with other carriers under circumstances not in conformity with the limitations imposed in connection with exemption provisions, such entire transportation is not within the exemption claimed. Compare *Water Carrier Service on Great Lakes, Nonowned Vessels, supra, Bernert Common and Contract Carrier Application*, 250 I.C.C. 756, and *American Barge Line Co. Applications*, 265 I.C.C. 231.

We find that the transportation services in their entirety by a water carrier, in circumstances whereby beginning at some intermediate point in transit, commodities in bulk are towed in a unit with nonbulk commodities, are not exempt from regulation under the provisions of section 303(b) of the Interstate Commerce Act. An order will be entered discontinuing the proceeding.

APPENDIX

Hypothetical statement of facts set forth by the Mississippi carriers, petitioners

Carrier A—the person to be considered—is a carrier by water engaged in the transportation of commodities in bulk under the section 303(b) exemption. Carrier A furnishes to a shipper at point X an empty barge which the shipper loads with bulk grain. Carrier A agrees to transport said grain to point Z on an agreed rate which is not published or filed with the Commission. The water route from X to Z passes through Y. Carrier B (a petitioner herein) holds a certificate authorizing the performance of general towage for hire from points X and Y to point Z and publishes and files with the Commission rates covering such regulated general towage services. Carrier A transports the barge of grain from X to Y in its own solid bulk tow. At Y, carrier A engages carrier B to tow the barge loaded with grain to Z on carrier B's published and filed towage rates. Carrier A takes possession of the barge at Z and delivers it to the consignee as aforesaid in a tow containing nonbulk freight. Said nonbulk freight may be moving in the affreightment service of carrier B for shippers, or in the regulated general towage service of carrier B for other persons, or in towage exempt as to carrier B because performed for another regulated carrier under the arrangement dealt with in section 303(f)(2).

Questions:

1. Does the inclusion of nonbulk freight in the tow in which the barge of grain is towed from Y to Z by carrier B for carrier A make the services of carrier A between the same points subject to regulation?
2. Is the answer to question No. 1 any different if the regulated general towage by carrier B is for the whole journey from X to Z, rather than for the part of the journey represented by the haul from Y to Z?
3. Is the answer to question No. 1 any different in a case in which carrier A holds affreightment authority covering grain from X to Z and publishes and files rates thereon different from those agreed to, then when carrier A holds no such operating authority and, consequently, maintains no such published and filed rates?
4. If the answer to question No. 1 is in the affirmative, does it follow that the service performed by carrier A from X to Y in its own solid bulk tow is also subject to regulation?

Hypothetical statement of facts set forth by Hay and Coyle, petitioners

1. Carrier A is an unregulated barge line operator engaged in the transportation of commodities "in bulk" under the exemption afforded by section 303(b). It enters into a freighting service (defined in footnote 1 in the report) contract for the movement of a bargeload of such a commodity from point X to point Y and furnishes a barge which is loaded by the shipper. Carrier A then delivers that barge to carrier B for towage from point X to point Y. Carrier B is certified common carrier barke line operating under regulation, who mingles the barge in one of its regular tows containing barges loaded with nonbulk commodities. Carrier B transports the barge from point X to point Y, where it returns the barge to carrier A, who pays carrier B the latter's published rate for towage, and makes delivery to consignee.

2. Carriers A and B are certificated common carrier barge lines, both operating between points X and Y, both having published and on file with the Commission rates covering the performance of a freighting service in the transportation of a bulk commodity from X to Y, and both also having published and on file with the Commission rates on a considerably lower level covering only towage of a barge loaded with such commodity from X to Y. Either (or both) enters into contracts with shippers for the transportation of bulk commodities from X to Y as exempt transportation under the exemption in section 303(b) at rates lower than its freighting rates published and on file with the Commission, and then employs the other to perform towage, in the same manner as described in situation 1, above.

3. Carrier A is owned or controlled by Carrier B. In all respects, the factual situation is the same as described in situation 1, above.

Question:

Under each of the three factual situations set forth above, does the mingling and movement of the barge of carrier A loaded with the bulk commodity in a tow of carrier B containing nonbulk commodities destroy the exempt status under section 303(b) of the freighting service which carrier A has contracted and undertaken to perform for the shipper?

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 25th day of August, A.D. 1960.

No. W–C–5

MISSISSIPPI VALLEY BARGE LINE COMPANY EXEMPTION, SECTION 303(b)

This proceeding having been duly submitted and full investigation of the matters and things involved having been made, and the said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission, division 1.

(SEAL) HAROLD D. MCCOY,
Secretary.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 25th day of April, A.D. 1961.

No. W–C–5

MISSISSIPPI VALLEY BARGE LINE COMPANY EXEMPTION, SECTION 303(b)

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Joint petition of Mississippi Valley Barge Line Company, Federal Barge Lines, Inc., and American Commercial Barge Line Company, filed September 29, 1960, for reconsideration, embracing a request for oral argument;

(2) Joint reply by Class I Rail Carriers in the Western District, dated October 14, 1960;

(3) Joint reply by John I. Hay Company and Coyle Lines Incorporated, filed October 18, 1960;

(4) Reply by Louisville and Nashville Railroad Company, filed October 31, 1960;

and good cause appearing therefor:

It is ordered, That the said petition be, and it is hereby, denied, for the reasons that the findings of Division 1, are in accordance with the evidence and the applicable law, and that no sufficient cause appears for reopening the proceeding for reconsideration or for oral argument.

By the Commission.

(SEAL) HAROLD D. MCCOY,
Secretary.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

(Civil Action No. 13649)

GULF CANAL LINES, INC., COMMERCIAL TRANSPORT CORPORATION, VALLEY LINE SUPPLY AND EQUIPMENT COMPANY, MISSISSIPPI VALLEY BARGE LINE COMPANY, FEDERAL BARGE LINES, INC., AMERICAN COMMERCIAL BARGE LINE COMPANY; CORPORATIONS, PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

Before HUTCHESON and BROWN, Circuit Judges, and INGRAHAM, District Judge.

BROWN, Circuit Judge:

By this suit[1] and plaintiffs[2] seek to enjoin and set aside an order of the Interstate Commerce Commission entered in Mississippi Valley Barge Line Co., 311 I.C.C. 103 (1960).[3] The question here is whether the three-bulk-cargo exemption from regulation of Sec. 303(b) of the Act, 49 U.S.C. Sec. 903(b), continues to apply to an originating unregulated carrier where during a portion of the through trip the movement is perfromed for the originating carrier by a regulated tower who physically intermingles barges carrying non-bulk commodities with the barges of the originating carrying bulk commodities. The Commission determined that the inclusion of non-bulk commodities during any portion of the through trip placed the entire carriage outside the exemption of Sec. 303(b) and subjected the originating carrier to Commission regulation. As we analyze the Commission's ruling we are convinced of its correctness and accordingly it is sustained.

This proceeding originated before the Commission on petitions[4] requesting a declaratory order to remove uncertainty as to the construction and application of the Sec. 303(b) exemption. The petitions sought answers to questions based on hypothetical statements of fact. The factual framework presented on this appeal, and to which the Commission addressed its order, is as follows:[5]

[Diagram omitted.]

---

[1] This action is brought under Secs. 1336, 1398, 2284, and 2321–25 of the Judicial Code, 28 U.S.C. Secs. 1336, 1398, 2284, and 2321–25, Sec. 17(9) of the Interstate Commerce Act, 49 U.S.C. Sec. 17(9) and Sec. 10 of the Administrative Procedure Act, 5 U.S.C. Sec. 1009.

[2] The six plaintiffs are all barge line companies engaged in interstate commerce common carriage by water in non-self-propelled barges with the use of separate towing vessels. Three of them, American Commercial Barge Line Company, Federal Barge Lines, Inc., and Mississippi Valley Barge Line Company, are certificated common carriers by water authorized by their respective certificates to perform water carriage, including general towage for published, regulated towage rates (see note 5 infra). The three others, Gulf Canal Lines, Inc., Commercial Transport Corporation, and Valley Line Supply and Equipment Company, are non-certificated water carriers engaged in non-regulated activities including affreightment of bulk commodities exempt from regulation when transported within the conditions of Sec. 303(b) of the Act (see note 5 infra). These three exempt carriers, on occasion, employ one or the other of the three certificated carriers to perform towage of bulk-loaded barges in completion of contracts of affreightment between the exempt carriers and shippers of bulk commodities. Unless otherwise indicated, as used herein "plaintiffs" refers collectively to all six plaintiffs.

[3] The Commission's order became administratively final on April 25, 1961, upon denial of a petition for reconsideration.

[4] The initial petitioners before the Commission were the three certificated plaintiffs (note 2 supra), American, Federal, and Mississippi Valley. John I. Hay Company and Coyle Lines, Inc., filed a separate petition. Additional interested parties intervened during the Commission proceedings. On this suit the three certificated plaintiff-carriers are joined in attacking the Commission's order by the three exempt carrier-plaintiffs (note 2 supra), Gulf Canal, Commercial, and Valley Supply. The defendants are the United States and the Interstate Commerce Commission. Hay entered an appearance in support of the Commission's order, as did Waterways Bulk Transportation Council, Inc.

[5] The diagram and factual description are taken verbatim from Brief for Plaintiffs, p. 8. This presentation accurately and simply summarizes the actual hypotheticals before the Commission, set forth in an appendix to the Commission's order, 311 I.C.C. at 109–10.

As used by the parties and in this opinion the terms employed have this meaning:

(1) A "bulk commodity" is defined in Sec. 303(b) of the Act as one which is "loaded and carried without wrappers or containers and is received and delivered by the carrier without transportation mark or count."

(2) A "bulk-exempt" carriage is defined in Sec. 303(b) as "two or more vessels while navigated as a unit," the cargo space of which "is being used for the carrying of not more than three such [bulk] commodities."

(3) "Towage" or "tower" pertains to that carriage or carrier by water where the trans-

The question posed based upon this factual setting was whether the inclusion by the tower, Carrier B, of the non-bulk commodities with Carrier A's bulk-loaded barges for a portion of the through trip covered by Carrier A's contract with the bulk-shippers deprives Carrier A of Sec. 303(b) three-bulk-cargo exemption during (1) that part of the movement (Y to Z) performed by Carrier B, as tower, in which Carrier A's bulk-loaded barges are included in a mixed tow; or during (2) the entire through trip (X to Z) for which Carrier A had contracted. The Commission ruled that the inclusion of non-bulk during any portion of the through trip destroyed the Sec. 303(b) exemption otherwise applicable to Carrier A and operated to subject to regulation Carrier A's contract of affreightment with the bulk shippers for the entire trip.

Plaintiffs assail this holding on two grounds. First, they emphasize that the Commission's interpretation of the Sec. 303(b) exemption requires not only that the express conditions of Sec. 303(b) (a cargo of not more than three bulk commodities) be met, but also that the cargo contain no non-bulk commodities. In other words, there may be no mixing. This "Commission-imposed" requirement is said to be improper and insupportable under the language of the statute. Second, plaintiffs vigorously assert that the status of the exempt carrier (Carrier A) cannot be disturbed or destroyed because of the addition of non-bulk commodities to an otherwise exempt cargo by a certificated, fully regulated tower employed by the exempt carrier to supply towage under towage tariffs for all or a portion of the through trip covered by the exempt carrier's contract.

At this late date no serious question is raised by plaintiffs' first argument. The language of Sec. 303(b) is plain and easily understandable:

"(b) Nothing in this chapter shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are * * * loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. * * *"[6]

The exemption applies only to a cargo consisting of three or less bulk commodities. It is the physical makeup of the cargo that determines whether the cargo is exempt under this section. And it is clear that the cargo must be considered in its entirety in appraising the impact of Sec. 303(b) on it. There is no reference whatsoever to non-bulk commodities. These considerations certainly justify, if they do not compel, the Commission's determination that the inclusion in a single tow of non-bulk commodities places the bulk cargo outside the ambit of the Sec. 303(b) exemption. And in light of the wealth of Commission decisions to this effect,[7] rendered as they were by the agency charged with administration of the Act, we are doubly sure that we should give approval to this long-maintained determination. See Brotherhood of Maintenance Employes v. United States, 366 U.S. 169, 179 (1961).

Plaintiffs' major attack is made upon the Commission's holding that the inclusion by Carrier B of non-bulk commodities in the otherwise exempt bulk

---

porter furnished only the non-cargo carrying power equipment for the movement of commodities loaded in barges furnished by others.

(4) "Bulk-exempt towage" is towage of bulk-loaded barges in a tow exempt from regulation under Sec. 303(b) of the Act.

(5) "Incidental towage" is towage of barges in a tow exempt from regulation under Sec. 303(f)(2) of the Act (49 U.S.C. Sec. 903(f)(2)).

(6) "Regulated" or "general" towage is a form of common (or contract) carriage by water subject to certificate and rate regulation by the Commission under the Act.

(7) "Affreightment", "freightage", or "freighting" pertains to that carriage by water where the transporter undertakes to furnish all of the instrumentalities of carriage, specifically including the cargo-carrying barge.

(8) "Bulk-exempt" freightage is freightage of bulk-loaded barges in a tow qualifying for the Sec. 303(b) exemption.

(9) "Regulated" freightage is freightage subject to certificate and rate regulation by the Commission under the Act.

(10) "Mixed tow" is a tow in which both bulk and non-bulk (regulated) commodities are carried.

[6] Sec. 303(b), 49 U.S.C. Sec. 903(b).

[7] See e.g., Commercial Transp. Corp., 300 I.C.C. 66, 71 (1957), sustained sub nom. Commercial Barge Lines, Inc. v. United States, 166 F. Supp. 867 (E.D. Mich. 1958), aff'd per curiam, 359 U.S. 342 (1959); American Barge Line Co., 294 I.C.C. 796, 799 (1955), and the cases there cited.

cargo subjects Carrier A to regulation for the entire through trip. Assuming that mixing non-bulk with bulk commodities destroys the Sec. 303(b) exemption (as we have held above), plaintiffs ask *whose* exemption is destroyed by that mixing—the tower who mixed (Carrier B), or the freighting (Carrier A) who engaged the tower.

For some years now the Commission has struggled to define the exact scope of the three-bulk-cargo exemption of Sec. 303(b). To understand fully the Commission's ruling in the instant case and our own views with regard to it, a brief survey of the exemption and several of the decisions construing it is helpful.

Part III of the Act, 40 U.S.C. Secs. 901 et seq., was enacted in 1940 and included the three-bulk-cargo exemption of Sec. 303(b). Shortly thereafter the Commission's staff ruled that a bulk-exempt cargo lost its exemption upon the inclusion of non-bulk commodities. Administrative Ruling No. 6, CHH Fed. Carr. Rep. para. 25406 (March 20, 1941). As previously pointed out, the Commission has consistently adhered to this view (note 7 supra).

Of importance to our case are two relatively recent decisions of the Commission. In American Barge Line Co., 294 I.C.C. 796 (1955), Carrier A[8] issued a through bill of lading to shippers of bulk commodities for the transportation of the bulk cargo from Port X to Port Z. Carrier A physically performed a part of the through transportation, but at an intermediate point (Port Y) it employed Carrier B to tow the bulk-loaded barges for the remainder of the voyage. In performing this towage of the bulk-loaded barges Carrier B included barges subject to regulation. At issue was the status of B, the tower. It was argued that the towage of the bulk-loaded barges by Carrier B was "incidental" [under Sec. 303(f)(2)] to the through transportation undertaken by Carrier A and thus should not be considered as transportation subject to regulation by Carrier B in a mixed tow. The Commission found otherwise. It ruled that since Carrier B had included non-bulk commodities with bulk commodities—an act which Carrier A could not do and retain the exemption of Sec. 303(b)—the towage by Carrier B was not incidental to Carrier A's transportation for the bulk shippers.

It concluded that Carrier B was not exempt under Sec. 303(b), but rather this towage was subject to regulation because of the transportation of bulk and non-bulk cargoes. And of significance to our case, the Commission also commented on the exempt status of Carrier A. It decided that the mixing of bulk and non-bulk by the tower, Carrier B, subjected the tower to regulation for only that portion of the trip in which a mixed tow was present, (Y to Z), and did not affect the exempt status the bulk-only leg (X to Y) of the trip.[9]

The second case is Commercial Transp. Corp., 300 I.C.C. 66 (1957).[10] Their Carrier A,[11] an unregulated carrier entered a contract of affreightment with shippers of bulk commodities to transport such commodities as bulk-exempt cargoes from Port X to Port Z. Carrier B was a regulated common carrier by water with contracts of affreightment for transporting regulated commodities in the areas served by Carrier A. Occasionally Carrier B employed Carrier A as a tower of its non-bulk-loaded barges which were, of course, subject to regulation. On these instances Carrier A included Carrier B's non-bulk-loaded barges in the tow of its own bulk-loaded barges. Again at issue was the status of the tower, in this case Carrier A. Carrier A contended that since Carrier B's non-bulk-loaded barges were towed "incidentally" by Carrier A for another carrier (Carrier B), they were thus exempt from regulation under Sec. 303(f)(2) of the Act.[12] Consequently the fact that such barges were included in Carrier

---

[8] The party (Carrier A, B, etc.) and place (X, Y, Z) designations here utilized correspond to those employed in the factual hypothetical presented in the case at bar.

[9] The Commission stated its views at 294 I.C.C. 799–800: "Because of the issuance by carrier A of its bill of lading to the shipper by which the carrier contracts to transport a bulk commodity the entire distance from the origin on carrier A to the destination on carrier B, the contention is advanced that in these circumstances the entire movement must be considered as an entity and thus be either exempt or nonexempt. This contention is without merit. The issuance of a so-called through bill of lading is a mere incident and is not indicative of the exempt or nonexempt status of the transportation service. The well-established principle just referred to that the inclusion of non-bulk commodities in a tow with a bulk commodity has the effect of subjecting the entire cargo to regulation may not be extended to include the part of a multiple-carrier, line-haul transportation only of a bulk commodity in the circumstances here presented. * * *."

[10] Sustained sub nom. Commercial Barge Lines, Inc. v. United States, 166 F. Supp. 867 (E.D. Mich. 1958), aff'd per curiam, (1959) 359 U.S. 342, —— S. Ct. ——, —— L. ed. ——.

[11] See note 8, supra.

[12] 49 U.S.C. Sec. 903(f)(2).

A's otherwise bulk-exempt tow should not destroy that exemption and subject the towage to regulation. The Commission, relying on *American Barge Line Co.*, supra, held to the contrary. The Commission first acknowledged Carrier A's status as an "incidental" tower under Sec. 303(f)(2). "It is clear that when a towing service is performed by a person [Carrier A] for a water carrier [Carrier B] which is engaged in * * * transportation subject to regulation under * * * the Act, that the intention of Congress was not to subject to separate and additional regulation to person [Carrier A] performing the incidental towing service." 300 I.C.C. 66, 69.

Consequently, viewing the "sole issue" to be "the proper application of Sec. 303(b) * * *", the Commission ruled that the inclusion of the non-bulk-loaded barges with the bulk-loaded barges destroyed the Sec. 303(b) three-bulk-cargo exemption to which Carrier A would otherwise have been entitled.

This brings us to the Commission decision now before us for review. Here the issue is the status of the affreighting carrier (Carrier A), not the status of the tower (Carrier B). Of course it is the tower (Carrier B) who complains, not because it befriends unregulated exempt bulk carriers (Carrier A) but because this denies to the tower the right to seek and obtain towage business to be performed at rates and under conditions prescribed by lawfully filed towage tariffs.

On this hypothesis Carrier A contracts for a through shipment of bulk commodities to be transported as a Sec. 303(b) exempt tow. Carrier B, a regulated tower, is hired to tow the bulk-loaded barges for a portion of the through trip, and while so doing the tower, Carrier B, includes in the tow barges loaded with non-bulk commodities. In answering the question as to the status of Carrier A the Commission ruled that Carrier B's mixing took Carrier A's contract of affreightment out of the exemption of Sec. 303(b) for the entire trip.

Plaintiffs strenuously assault this conclusion. Even accepting the Commission's position that mixing destroys the Sec. 303(b) exemption, plaintiffs assert that the exemption is lost only by Carrier B and then only for Carrier B's portion of the trip. This they say is only reasonable, since Carrier B has in fact physically mixed bulk with non-bulk, and since it is only during Carrier B's portion of the trip that mixing occurs and exists. They further contend that this conclusion is demanded by the *American Barge Line Co.* decision by virtue of the Commission's statement in that case (see note 9 supra) regarding the exempt status of Carrier A. Essentially their argument is that the mixing in Carrier B's tow can operate only to regulate Carrier B's towage *or* Carrier A's freightage, *but not both*. Consequently, the argument runs, since the Commission has heretofore held that Carrier B's towage is subject to regulation, it is now inconsistent, and totally improper, to hold the Carrier A's operations also are subject to regulation.

This argument has much force. Carrier B, whose towage must be regulated under previous Commission rulings, and whose towage in the instant case is performed pursuant to authorization by, and under regulated rates filed with, the Commission, is legally obligated as a regulated carrier to accept and transport tows offered to it, regardless of the *source* of that tow. Plainly Carrier B's performance of its towage agreement with Carrier A is legal. Thus it is energetically argued that since Carrier B's towage is legal and in compliance with Commission authorization, and therefore does not in any manner rest on any exemption, it should have no effect whatsoever on Carrier A's status as an exempt carrier under Sec. 303(b). The Commission, so the argument runs, has ample resources to control the transportation through regulation of the tower. This is the theory both of the "incidental towage" exemption under Sec. 303(f)(2), and the regulation of towage as such. See Cornell Steamboat Co. v. United States (1944), 321 U.S. 634, —— S. Ct. ——, —— L ed ——.

To this they add the further fact that what *American Barge Line* held not to be towage "incidental" to the operations of the bulk carried under Sec. 303(f)(2) is now considered to be such.[13] And the rationale becomes all the more confusing since it now repudiates as ill-considered dictum the earlier declaration (See note 9, supra)' that the through bill of lading shipment would not subject Carrier A to regulation during the unmixed leg (X to Y).

---

[13] The report states:
"Under the circumstances posed * * *, when Carrier A engages Carrier B to supply the power * * * it * * * in effect merely engages B as the incidental tower. * * *" 311 I.C.C. 103, 107.

This leads the plaintiffs to offer this as a recapitulation: "**the Commission report here under review would hold to be regulated the freighting service by carrier A which the 1955 ruling [American Barge Line] concluded was exempt, and would hold to be 'incidenal', the towage by Carrier B which the 1955 ruling had found 'not incidental' and 'not exclude[d] from regulation'."

But notwithstanding these conceptual discrepancies and undulations, we are compelled to the conclusion that the Commission's ruling in our case not only is sufficiently consistent with its own decisions, but also is a reasonable interpretation of the Sec. 303(b) exemption as well. The plaintiffs correctly observe that the Commission has denied the Sec. 303(b) exemption in situations similar to the present case *because of the physical mixing of non-bulk commodities with bulk commodities.* Without question physical intermingling of bulk and non-bulk commodities occurs here. And this, we believe, effectively extinguishes the Sec. 303(b) exemption for *all* carriers who during the time the mixing occurs perform "transportation" services essential to consummating the affreightment contract.

In *American Barge Line Co.* and *Commercial Transp. Corp.*, the Commission looked to the status of the *tower* and held it subject to regulation. We cannot agree that these decisions preclude regulation of the originating carrier, here Carrier A.[14] For the transportation of the bulk commodities, even while in Carrier B's tow, is transportation for which Carrier A contracted and for which it is responsible. This is so notwithstanding Carrier A's use of Carrier B, an independent agency, to effectuate the actual physical movement of the bulk cargo. The contract of towage between Carrier A and Carrier B was merely a convenient means employed by Carrier A to accomplish its contractual obligations to the bulk shippers.[15]

Thus the movement of the bulk commodities from Port X to Port Z—the entire trip for which Carrier A contracted with the bulk shippers—was transportation by Carrier A, on its own or through intermediaries, in furtherance of its contract of affreightment. We hold, in agreement with the second thoughts of Commission, that since Carrier A is responsible for the entire through trip, it cannot claim the benefits of the Sec. 303(b) three-bulk-cargo exemption unless the conditions of that section are strictly observed throughout the entire trip.

This of course does not mean that Carrier A cannot seek and obtain towage by independent towers to assist it in fulfilling its contracts of affreightment with bulk shippers. But it does mean that if Carrier A does so, then to retain the Sec. 303(b) exemption it must see to it that the towage performed by these other carriers complies with the conditions of that section. The result is that during the course of a through movement for which it has contracted with shippers of bulk Carrier A cannot employ transportation facilities which will cause or bring about a mixture of non-bulk and the bulk commodities for which Carrier A claims an exemption.[16] To this extent Carrier A is less free to arrange its affairs as it sees fit than are other originating carriers and shippers.

Whereas generally a carrier may contract with a regulated tower for towage of vessels and not be concerned with, or penalized for, what that tower does with those vessels, a party who claims the exemptions of Sec. 303(b) and utilizes

---

[14] We would add that our position is not intended to and does not require regulation of both Carrier A's affreightment and Carrier B's towage. Our holding, and that of the Commission, is that Carrier A's affreightment for the entire trip becomes subject to regulation by virtue of the mixing that occurs during Carrier B's towage in furtherance of that affreightment. Since Carrier A is, and must be, thus a regulated carrier, then Carrier B's towage clearly comes within the provisions of the Sec. 303(f)(2) "incidental towage" exemption. And while apparently this is contrary to the Commission's holding in *American Barge Line Co.*, yet in that case the only question concerned the status of the tower, Carrier B. The Commission readily admitted during oral argument that its holding in the present case, that Carrier A is subject to regulation, would enable Carrier B now to qualify for the incidental towage exemption of Sec. 303(f)(2).

[15] Carrier A contracted with the bulk shippers for the entire trip, and thus was obligated to transport the bulk commodities from Port X to Port Z. And Carrier A's movement of the bulk commodities by means of towage supplied by Carrier B plainly was "transportation" by Carrier A within the definition of that term under the Act. Section 302(h) of the Act, 49 U.S.C. Sec. 902(h), defines "transportation" to include "the use of any transportation facility *(irrespective of ownership* or of any contract, express or implied, for such use) * * *" (emphasis added). "Transportation facility" is defined in Sec. 302(g) of the Act, 49 U.S.C. Sec. 902(g), as "any vessel * * * or any other instrumentality or equipment of any kind, used in or in connection with transportation by water subject to this chapter."

[16] We do not mean to imply that Carrier A should or would lose its exempt status were mixing to occur inadvertently through the act of an independent agency (such as Carrier B) which Carrier A could not have foreseen or controlled (as where accidental mixing occurred).

towers—even regulated towers—in connection with the movement of bulk-exempt cargoes must see to it that the towers refrain from mixtures which forfeit the Sec. 303(b) exemption. The price for bulk exemption is no mixing. The price may be high. But so long as the antimixing rules survive this puts the exempt carrier under a double restraint: the exempt carrier may not mix; nor may he use otherwise available facilities which result in mixing. The sanction is not therefore on the tower. Rather it is directly on the one claiming exemption.

We are, as we have several times pointed out, fully aware of the Commission's statement in *American Barge Line Co.* regarding the exempt status of Carrier A.[17] While apparently at odds with the position now taken by the Commission, this does not bind us. The Commission has two explanations. First, as noted by the Commission in the order here under attack, the principal question in *American Barge* was the status of Carrier B, the tower. The language relied on by plaintiffs herein was not at all necessary to the ruling in that case. And the Commission avoided any general statement regarding the exempt status of Carrier A. It carefully hedged its discussion with "in the circumstances here presented". Next, it makes it quite plain that it no longer adheres to that view. As would a court. The Commission we suppose has the right, indeed the duty, to change its mind when it sees the error of its ways.

We are convinced that the Sec. 303(b) exemption applies only if at no time during the entire through trip for which exemption is claimed bulk and non-bulk commodities are not to be transported in the same tow. Here that requirement is not met. The Commission was correct in ruling that Carrier A is not exempt, and accordingly its order will be sustained and plaintiff's complaint will be dismissed. As the issue is perhaps of extraordinary importance and has many built-in difficulties, our order will postpone the effective date of the Commission's order until final action by the Supreme Court if an appeal is timely taken.

If, as argued so strenuously, this application of Sec. 303(b) brings about transportation inefficiencies which discriminate against regulated carriers of bulk commodities, or regulated towers, or both, the remedy is to be in Congress. Through the Commission and otherwise it has been made aware of these problems and their possible consequences. If Congressional handiwork now produces unwanted results it is for the Congress, not the Judiciary, to right the machinery.

Order enforced, petition dismissed.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

GULF CANAL LINES, INC., COMMERCIAL TRANSPORT CORPORATION, VALLEY LINE SUPPLY AND EQUIPMENT COMPANY, MISSISSIPPI VALLEY BARGE LINE COMPANY, FEDERAL BARGE LINES, INC., AMERICAN COMMERCIAL BARGE LINE COMPANY; CORPORATIONS, PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS
(Civil Action No. 13649)

Before HUTCHESON and BROWN, Circuit Judges, and INGRAHAM, District Judge.

The COURT, for the reasons expressed in its opinion, being of the view that the order of the Interstate Commerce Commission is valid and should be enforced, accordingly orders and adjudges:

First: The order of the Commission is valid and to be enforced;

Second: The complaint shall be, and hereby is, dismissed;

Third: The effective date of the Commission's order is postponed until final action by the Supreme Court if an appeal is taken within thirty days.

Done at Houston, Texas, August 26, 1966.

J. L. HUTCHESON, Jr.,
U.S. Circuit Judge.
JOHN R. BROWN,
U.S. Circuit Judge.
JOE INGRAHAM,
U.S. District Judge.

---

[17] See note 9 supra and accompanying text.

ORDER

(Service date June 8, 1967)

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 31st day of May, A.D. 1967.

No. W–C–5

MISSISSIPPI VALLEY BARGE LINE COMPANY EXEMPTION, SECTION 303(b)

Upon consideration of the record in the above-entitled proceeding; the report therein, 311 I.C.C. 103; the order of March 20, 1967, of the Supreme Court of the United States in No. 947, October Term, 1966, *Gulf-Canal Lines* v. *United States*, affirming the judgment of the United States District Court for the Southern District of Texas, Houston Division, in 258 F. Supp. 864, sustaining the action of the Commission in said proceeding; and of:

(1) Petition of Federal Barge Lines, Inc., American Commercial Lines, Inc., and Mississippi Valley Barge Line Company, filed April 12, 1967, for leave to file tendered petition, accompanied by tendered petition to reopen the above-entitled proceeding and to fix a date for compliance with the Commission's report and order of August 25, 1960, in the proceeding.

(2) Petition of Union Barge Line Corporation, filed April 19, 1967, for leave to intervene in the proceeding, embracing tendered petition seeking the same relief as the tendered petition in (1) above.

(3) Petition of A. L. Mechling Barge Lines, filed April 19, 1967, for leave to intervene, embracing tendered petition seeking the same relief as the tendered petition in (1) above.

and good cause appearing therefor:

It is ordered, That petitioners Union Barge Line Corporation, and A. L. Mechling Barge Lines, be, and they are hereby, permitted to intervene in the proceeding with the right to appear and participate in all further proceedings therein;

It is further ordered, That the tendered pleadings in (1) (2) and (3) above, be, and they are hereby, accepted for filing;

It is further ordered, That the order of the Commission, entered August 25, 1960, in the above-entitled proceeding be, and it is hereby, modified to establish a date by which the water carriers affected thereby shall be required to conform their operations and otherwise comply with said order of the Commission; and that the date by which the water carriers affected thereby shall be required to conform their operations and otherwise comply with said order be, and it is hereby, established to be not later than January 1, 1968, and

It is further ordered, That in all other respects the order of the Commission, entered August 25, 1960, in the above-entitled proceeding be, and it is hereby, affirmed, and that the petitions be, and they are otherwise hereby, denied.

By the Commission.

(SEAL)

H. NEIL GARSON,
Secretary.

Mr. FRIEDEL. I have letters from the American Trucking Associations, the Southern Railway System, the Sarpy County (Nebr.) Farm Bureau, and a wire from the Oglebay Norton Co., which I would like to have placed in the record.

(The letters and telegram referred to follow:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., October 2, 1967.

HON. SAMUEL N. FRIEDEL,
Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We have been notified of your plans to hold hearings on October 3 and 4 on several identical bills to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein. The trucking industry strongly feels that this legislation should be amended in a manner to assure that to the extent that

economic controls by the Interstate Commerce Commission are removed from the traffic involved, the applicable antitrust laws should be put in force.

As you know, the Interstate Commerce Act contains exemptions from some of the antitrust provisions for carriers subject to ICC regulation.

On April 5, 1962, when the late President John F. Kennedy submitted a Transportation Message recommending certain exemptions from the Interstate Commerce Act, he recognized the need for offsetting action in the following language:

"To prevent the absence of minimum rate regulation . . . from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency, the Congress should make certain that such practices by carriers freed from minimum rate regulations would be covered by existing laws against monopoly and predatory trade practices."

Again, in his message of March 5, 1963, in which he reiterated his recommendation, Mr. Kennedy stated:

"The most significant recommendation in my message of last year dealt with the inequality resulting from exempt transportation of bulk commodities by water and agricultural products by truck. I recommended that this inequality be corrected by removing minimum rate regulation from all transportation of bulk and agricultural commodities, *but under the protection of existing laws against monopolistic and predatory trade practices applicable to business generally.* In the alternative, appropriate regulation might be applied in the areas presently exempt, as I recommended in my message last year. I, therefore, renew my request that, in the interest of equality, one of these solutions be adopted." [Emphasis supplied.]

Then, in a message renewing the same recommendations and dated January 27, 1964, President Lyndon Johnson stated:

"Legislative proposals before your committee would equalize the impact of regulation on various modes of transportation by providing exemption from minimum rate control to the transportation of agricultural and fisheries products and to bulk commodities. Equalization is also sought, in some proposals before your committee, by legislation extending regulation to these commodities in those instances where they are exempt. Either approach to the equalization of competition would be appropriate.

"In order that any change in the power of the ICC to control rates be accomplished without the introduction of destructive competition and discriminatory practices, I believe we should rely on the antitrust statutes, under normal procedures, with such limited modification as may be necessary because of the nature of the industry."

You will recall H.R. 4700, submitted by the Administration and considered by your Committee on Interstate and Foreign Commerce during the 1st Session of the 88th Congress. This bill would have exempted from ICC minimum rate regulation all transportation of bulk and agricultural commodities. At the same time, the bill specifically would have lifted the antitrust protection provided by Section 5a of the Interstate Commerce Act with respect to collective rate making on the commodities which the bill would exempt.

The language to which I refer, and which we believe should be added to the bills now before you, is set forth in a rewritten version thereof, which is attached hereto. We have italicized the new language which should be included in any legislation, such as that under consideration.

We respectfully request that you make this letter and the rewritten bill attached a part of the official record.

Very truly yours,

W. A. BRESNAHAN.
Managing Director.

A BILL To amend *section 5a and* section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303(b) of the Interstate Commerce Act, as amended (49 U.S.C. 903(b)) is amended (1) by striking from the second sentence thereof the parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)". (2) By striking the third sentence in its entirety. *(3) By adding after the fourth sentence, the following: PROVIDED, that if any carrier or carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any*

arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: PROVIDED FURTHER, that nothing contained in this section shall be construed to prohibit a common carrier from establishing, in accordance with the provisions of section 5a of the Interstate Commerce Act, reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes.

SEC. 2. *Section 5a of the Interstate Commerce Act is amended by changing the period at the end of paragraph (9) to a comma, and adding the following: except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 303(b) of this Act.*

SOUTHERN RAILWAY SYSTEM,
Washington, D.C., September 28, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN: No doubt you are aware that Southern has long advocated more competition between regulated carriers. We believe that this increased competition might be obtained by lessening the regulatory authority of the Interstate Commerce Commission over railroad rates. The increased competition that would result therefrom would benefit our shippers by according them lower rates which would allow them to compete more effectively and would increase our earnings by allowing Southern to utilize its facilities more effectively.

We understand that certain of our water carrier competitors are asking approval of H.R. 7610 or a similar bill to give them an increased measure of deregulation by means of striking the presently effective date of June 1, 1939, for determining the existing custom of the trade in the transportation and handling of such commodities and by eliminating the requirement that two or more vessels navigated as a unit shall be considered a single vessel. The effect of these proposed changes is to take the limit off the number of bulk commodities that can be carried in a single tow without regulation and to allow barges of regulated commodities to be carried in a tow with unregulated commodities without subjecting the entire tow to regulation. Mixing of barges, some containing unregulated commodities and some regulated traffic, in a single tow has been held by the Interstate Commerce Commission to subject all the commodites in the tow to regulation.

It has been our policy and it continues to be our policy not to oppose legislation that would reduce rate regulation of either ourselves or our competitors. Accordingly, we do not object to our water carrier competitors receiving the requested broadened deregulation with respect to bulk commodities, but we think it is only fair and just that if the water carriers are accorded this deregulation, similar freedom from rate regulation should be extended to the railroads.

Thus, I suggest that the bill be amended to extend to railroads as well as barges the right to transport bulk commodities without regulation of the level of their rates.

I believe you will agree that the granting of such deregulation simultaneously to the barge lines and to the railroads would bring us nearer to accomplishing the American ideal of free competitive enterprise and would not only benefit shippers and railroads, but would allow lower costs to the consuming public, who must pay all costs of production, including freight charges.

I am informed that you have announced hearings on this legislation to begin October 3rd. I shall be grateful for an opportunity to appear and testify at a suitable time to be arranged.

In order that your colleagues may know of our position, I am sending each of the members of your subcommittee a copy of this letter.

Sincerely,

D. W. BROSNAN, *President.*

SARPY COUNTY FARM BUREAU,
Papillion, Nebr., October 2, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE FRIEDEL: The Sarpy County Farm Bureau (363 members) favors the adoption of H.R. 7610 amending Section 303(b) Interstate Commerce Act. We firmly believe adoption by your committee will help the people of Sarpy County by safeguarding the area from increased transportation costs.

Very truly yours,

DWIGHT TRUMBLE, *President.*

[Telegram]

OGLEBAY NORTON CO.,
Cleveland, Ohio, October 2, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, Rayburn House Office Building, Washington, D.C.:

As shippers of coal and other bulk commodities we are vitally interested in preserving low-cost efficient water transportation on the rivers and therefore urge your support of H.R. 7610 and several identical bills.

GORDON C. NICHOLS,
Assistant Secretary.

Mr. FRIEDEL. We will now have the statement of Senator Magnuson, chairman of the Senate Commerce Committee, who has sponsored similar legislation. Please proceed Senator.

STATEMENT OF HON. WARREN G. MAGNUSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MAGNUSON. Mr. Chairman, I have asked that you incorporate this statement into the record of the hearings of the Subcommittee on Transportation and Aeronautics on H.R. 7610, and related bills, to modernize section 303(b) of the Interstate Commerce Act, to stress the importance of early and favorable action.

A similar bill, S. 1314, which I introduced in the Senate, was reported favorably last Friday, September 29, 1967, by the full Committee on Commerce without a dissenting vote.

This legislation is needed to allow our Nation's shippers and consumers to realize the full benefits of technological progress on our inland waterways. The archaic and complicated definitions in the present law bar the realization of greater efficiency in water transportation.

Technological innovation in the last 20 years has produced more powerful towboats permitting the accumulation of large economical towloads of 40 or more barges. Unless we modernize section 303(b), however, this efficiency will be lost, and instead there will be artificial increases in transportation costs to shippers and consumers.

The Department of Agriculture in support of this change advised:

The economy and efficiency likely to result from enactment of this proposed legislation would be beneficial to agricultural producers and shippers.

The Department of Transportation supports this change because:

Extension of the exemption in the manner proposed to each vessel in the tow would be consistent with sound operating practices and with the realistic economics of modern water carrier transportation.

Shippers support this legislation. The following shipper organizations presented testimony or submitted statements in support of S. 1314

at the Senate hearings: American Farm Bureau Federation, National Industrial Traffic League, Manufacturing Chemists' Association, National Plant Food Institute, National Coal Association, Grain & Feed Dealers National Association, and Institute of Scrap Iron & Steel, Inc. Testimony or statements in support were also received from the National Rivers & Harbors Congress, Mississippi Valley Association, Waterways Association of Pittsburgh, Ohio Valley Improvement Association, Inc., and many others.

No shipper or shipper organization appeared to testify against this measure, or even submitted a statement in opposition.

The legislation is supported by all of the inland waterways carriers, and by maritime labor. There has long been a need for the changes embodied in this legislation, and I think maritime industry and labor are to be commended for reaching agreement on provisions to allow realization of the full fruits of technological progress.

It is important not only that this legislation be enacted, but that it be enacted in the near future. The Supreme Court on March 20, 1967, upheld an Interstate Commerce Commission decision which as a practical matter will mean the end of longstanding practices which have enabled the water carrier industry to achieve the economies of larger tows without a change in section 303(b). The ICC has fixed a compliance date of January 1, 1968, for implementing the Supreme Court decision. Therefore, it is important that prompt action be taken to modernize this law.

The Senate Commerce Committee in taking unanimous favorable action on S. 1314 rejected the railroad position that there should be a delay in modernization of section 303(b) until the overall question of competitive equality is resolved.

Senator Frank J. Lausche, Surface Transportation Subcommittee chairman, asked the Department of Transportation for its views on the delay urged by the railroads. The Department, in a reply dated August 29, 1967, advised against such delay:

> We believe that S. 1314 should be looked upon by your committee as a welcome recognition that realistic economics and technological progress have an obvious meaningful place in transportation life.
>
> It may well be that there are other areas where amendment of the basic regulatory and promotional statutes affecting other modes of traffic are appropriate. It would be desirable if all such changes could be accomplished at once. All too frequently, however, the best is the enemy of the good with inaction the result. That should not be allowed to happen in this situation where the committee has before it a piece of legislation which is clearly meritorious in its own right.

The Senate Commerce Committee in unanimously favorably reporting S. 1314 followed this recommendation of the Department of Transportation that modernization of section 303(b) is justified on its own merits, and should not be delayed.

The Commerce Committee indicated in its report that priority consideration will be given to the overall matter of competitive equality, and to that end called upon the Secretary of Transportation and the regulatory agencies to promptly prepare and submit legislation providing for uniformity and equality of treatment of all modes of transportation.

I strongly believe that separate consideration of the immediate problem of modernization of section 303(b), and the overall prob-

lem of competitive equality of all modes will best serve the interests of the shipping and consuming public.

I urge your subcommittee to achieve early favorable consideration on H.R. 7610, and related bills, and report it to the full committee, in order that efficiencies of inland water transportation can continue to benefit our Nation's shippers and consumers.

Mr. FRIEDEL. Thank you Senator, for your testimony. It is always a pleasure to hear the distinguished chairman of the Senate Commerce Committee. Are there any questions? If not, we shall hear next from Senator Hartke, cosponsor of S. 1314.

STATEMENT OF HON. VANCE HARTKE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator HARTKE. Mr. Chairman, I am making this statement as a part of your subcommitee record on H.R. 7610, and related bills, to modernize the water carrier bulk commodity exemption, to underline my strong support for early enactment. I cosponsored with Senator Magnuson, a similar bill, S. 1314, in the Senate.

Improved technology on the inland rivers, particularly the introduction of more powerful towboats in recent years, has made possible better service to shippers at substantially reduced freight rates. This proposed legislation would allow the barge lines to continue assembling economical, large tows on the inland rivers.

The testimony before the Surface Transportation Subcommittee of the Senate Commerce Committee, of which I am a member, was overwhelmingly in support of early enactment. Not a single shipper, Government agency, or regional association appeared to oppose this legislation, or submitted a statement in opposition. The legislation was supported by witnesses appearing on behalf of the Common Carrier Conference of Domestic Water Carriers, American Waterways Operators, Inc., National Industrial Traffic League, Manufacturing Chemists' Association, Farmers Union Grain Terminal Association, American Farm Bureau Federation, Continental Grain Co., National Plant Food Institute, Gulf Intercoastal Association, Island Creek Coal Co., National Rivers & Harbors Congress, Mississippi Valley Association, Waterways Association of Pittsburgh, and Ohio Valley Improvement Association, Inc.

Statements or letters in support of S. 1314 were received from the AFL–CIO Maritime Trades Department, AFL–CIO Maritime Committee, National Coal Association, Grain & Feed Dealers National Association, Institute of Scrap Iron & Steel, Inc., Memphis and Shelby County Port Commission, Chicago Regional Port District, Commission of Public Docks of the City of Portland, American Merchant Marine Institute, Inc., Lake Carriers' Association, Shipbuilders Council of America, Ouachita River Valley Association, The Propeller Club of the United States, Congressman Donald M. Fraser, and the Governor and commissioner of commerce of the State of Kentucky, and others.

The Department of Agriculture and the Department of Transportation advised the committee of their support. The Vice Chairman of the Interstate Commerce Commission in his testimony advised that the ICC recognized that the present situation is inequitable, as between

water carriers, and would have no objection to passage if the Congress as a matter of policy decided this inequity should be eliminated.

The need for this legislation was concisely stated by the witness for the National Industrial Traffic League, who said:

> If this amendment is not passed, it is our firm conviction that the shipping public will be deprived of important economies and efficiencies in barge transportation. Put another way, the shipping public will ultimately be compelled to bear the burden of inefficient, more costly, barge transportation.

In their testimony before the Surface Transportation Subcommittee, the railroads urged that action not be taken on S. 1314 until consideration be given to the problem of competitive equality among all modes.

The Senate Commerce Committee in favorably reporting S. 1314 followed the recommendation of the Department of Transportation that this legislation is justified on its own merits, and that action should not be postponed to await the accomplishment of all changes at once.

The committee requested the Secretary of Transportation, the Interstate Commerce Commission, and the Civil Aeronautics Board to promptly prepare and submit legislation to equalize the impact of regulation on all modes, and announced that the committee will give priority consideration to hearings on this matter.

Our Nation's shippers and consumers are entitled to efficiency in operation and the fruits of technological progress. I urge that the subcommittee take early and favorable action on these measures to modernize section 303(b), the so-called dry bulk exemption.

Mr. FRIEDEL. Thank you Senator. We appreciate having your views presented to our committee.

It is my pleasure to have as our next witness one of our colleagues, who was here yesterday, by the way, and I want to apologize that we could not have our hearing because of a last minute Democratic caucus.

Mr. Erlenborn, will you acquiesce to Mr. Boggs?

Mr. ERLENBORN. Yes, of course.

STATEMENT OF HON. HALE BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. BOGGS. Thank you very much, Mr. Chairman and members of the committee. First, let me thank Mr. Erlenborn for his courtesy.

I shall only take a minute.

I appreciate this opportunity to appear before you in support of my own bill, H.R. 10659 and identical companion bills, to modernize section 303(b), the so-called dry bulk exemption. I need not stress the importance of this measure to my district, to New Orleans and the great industrial complex that has grown up in my area since World War II.

Efficient rail, truck, and pipelines service have all contributed to this growth and benefited from it. Barge transportation on the Mississippi River connecting my area with the 26-State region of the Mississippi River system and the Gulf Intracoastal Canal has been especially helpful in stimulating what some people have called a nearly miraculous industrial flowering.

The issue before us is quite simple. Technological development has resulted in larger and larger river tows over the past 10 years. Today, tows of 40,000 tons are not uncommon and the opportunity exists for

even larger tows. In order to accumulate the most economical tows, the bargelines must mix regulated and unregulated commodities.

The economies of the volume movements have already been passed along to the customers and consumers along the river valleys. Failure to pass this legislation will mean that the bargelines will have to separate regulated and unregulated barges, run smaller tows, and give up the advances made possible by the new, more powerful towboats. In a time of rising costs and prices, we would be the unwilling instrument forcing cost and rate increases on the river carriers.

Senator Warren G. Magnuson, chairman of the Senate Committee on Commerce, whose committee has just unanimously recommended a companion measure for passage, has frequently stressed the need for quick action. An Interstate Commerce Commission deadline of January 1, 1968, hangs over us all. By that date, the new technology will, in effect, be canceled and the bargelines left with no alternative but rate increases.

Senator Magnuson recently quoted with approval a recent editorial in the New York Journal of Commerce which aptly describes the present dilemma. The editorial said the situation reminded them of A. Lawrence Lowell's comment on the immigration laws. And I quote the editorial:

> A Chinese woman had been permitted to land at San Francisco with a child born on the voyage. The immigration officer asked the authorities in Washington whether the child, having no permit to land, must be sent back to China. In view of the statutes refusing immigration without a permit, the legal question might have presented difficulties, and the answer was appropriate: "Don't be a damn fool."

The editorial goes on:

> This is the kind of answer the Congress ought to give in the case of the bargelines problem. In effect, don't let's be so foolish to send back the baby and cancel out technological benefits.

Our issue here is simply one of preserving the technological advances of the bargelines of the past 10 years. There is no question that this is very much in the public interest. I am hopeful that this committee will adopt the proposal very promptly so that we can get it passed in time to meet the ICC deadline.

This bill, as you know, has wide sponsorship, including the gentleman from Illinois, who I did not mean to supersede and I apologize.

To my knowledge there are at least 10 sponsors of similar bills, and I think that anyone who has any contact with the vast inland waterway system in our country would be for this bill, including my distinguished colleague who represents a village up the river from me, which is growing so fast that it may pass us in size.

Mr. FRIEDEL. Are you referring to our colleague, Congressman Kuykendall?

Mr. BOGGS. Yes.

You might be interested in knowing that there is more river commerce between Memphis and New Orleans today than at any time in the whole history of our country. As a matter of fact, I think that the wisdom of Congress has been demonstrated in the almost phenomenal growth of transportation on our inland waterway system.

As you know, that system is not limited to the rivers in the interior, although it is a part of it, but it also stretches down the east coast to Florida and from Florida over to the Texas border.

As you also know, a canal is being built across Florida which will connect the whole system on the east coast.

All the bill does is to permit the carriers to use the modern devices that have been perfected despite an old regulation of the ICC which really should not have any impact today.

We have developed these tows particularly on the Mississippi River and its main tributaries, the Ohio and Missouri, which are capable of transporting an enormous amount of cargo.

I saw some figures the other day on the number of freight trains of cargo that can be moved by one integrated tow, as it is called. Unless this bill is passed the carrier has to make all kinds of rather ridiculous adjustments on what he has in that tow. There are certain regulations that affect one type of cargo and other regulations that affect others. All this bill would do is to bring about uniformity in the assembly of these cargoes.

I shall not go into the technical details. I think this is a valuable piece of legislation. I might add, in light of the present mood of the body of which we are all Members, it does not cost the taxpayers a penny.

Thank you very much, Mr. Chairman.

Mr. FRIEDEL. You are quite welcome.

Are there any questions?

Mr. PICKLE. Mr. Chairman, I do not have any questions. I appreciate the appearance of our distinguished colleague here this morning. I notice there are other Members of the House here to testify, and there are several witnesses, so I will forgo my questioning at this point, except to express my appreciation for your testimony.

Mr. BOGGS. Thank you very much, Mr. Pickle.

Mr. KUYKENDALL. I want to welcome the distinguished majority whip and compliment him for bringing out a point that probably is not thought of a great deal.

Even though I am a Memphis Congressman, I spent several years of my life on the coast in Houston, Tex., and I would bring out the point that the Intercoastal Waterway is a vast system.

If you have ever been in the middle of the marshes in the South duck hunting or goose hunting and seen a huge ship that looks like it is coming out of a rice paddy from one of those intercoastal canals you realize what a vast system it is; not only the rivers that we think about, the internal waterways of our Nation, but this vast intercoastal system which ultimately should go, hopefully, from Corpus Christi, Tex., to New York City or Boston. I thank you for bringing that out.

Mr. BOGGS. Thank you very much.

Mr. FRIEDEL. I just want to compliment my political leader for his fine statement that I have already read. I know where you stand and the committee will go into this very, very thoroughly.

There is one thing I want to know, that while we help one mode of carrier others might be adversely affected. We might have to work out a bill that would make it competitive for all.

Mr. BOGGS. Mr. Chairman, with your wisdom, I am sure that will be no great problem.

Mr. FRIEDEL. Thank you, Mr. Boggs.

Our next witness will be Congressman Erlenborn. Please proceed, Mr. Erlenborn.

STATEMENT OF HON. JOHN N. ERLENBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ERLENBORN. Thank you, Mr. Chairman and members of the committee, for the opportunity to appear before you in support of H.R. 7610 and the several identical bills, including my bill, H.R. 13018, which seek to revise and thus modernize present restrictions in the Interstate Commerce Act of 1940 with regard to the operations of inland waterway bargelines.

By utilizing technological developments which in recent years have produced equipment capable of moving dozens of separate barges in a single tow, towboat companies are able to accumulate tows of 40,000 tons of cargo, generating economies which the carriers have passed on to the public in the form of average rates that are less than those of 20 years ago—a claim few segments of the economy can make.

The courts, though, have declared that such volume movements, which necessarily mix ICC regulated and unregulated cargoes, violate section 303(b) of the Interstate Commerce Act, and the Interstate Commerce Commission has set January 1, 1968, as the date on which compliance with the technical wording must be met.

I do not argue that the ICC has erred in its action—it must demand compliance with the law—but we in Congress must act to delete archaic provisions of our laws which inhibit economies and thwart technological advancements.

The law exempts from ICC regulation a vessel carrying no more than three dry bulk commodities, "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939"—trade customs of almost 30 years ago—and considers a vessel towing more than one barge to be a single vessel. The legislation under consideration would eliminate these artificial and outdated restrictions.

Enactment of this legislation will permit the shipping public to realize the fruits of technological progress and bring the law into harmony with modern conditions. Enactment of this legislation—and enactment with dispatch—will effect the cost savings, efficiencies, and healthy competition that serve the best interests of our Nation as a whole.

I am informed that the Department of Agriculture and the Department of Transportation have both expressed support for this measure. I am hopeful that your subcommittee and the full Committee on Interstate Commerce will act favorably and promptly so that the relief sought by these bills may be timely provided prior to the January 1, 1968, deadline.

Again, Mr. Chairman, I thank you for your kindness in allowing me to appear before you today.

Mr. FRIEDEL. I want to thank you for your very brief and informative statement. Are there any questions? If not, thank you very much.

Mr. ERLENBORN. Thank you.

Mr. WATSON. Mr. Chairman, may I ask my colleague one question, and I apologize for not being here for your entire statement, but I shall read it.

Did you touch upon whether or not you would agree to provide the same exemption for all of the carriers?

Mr. ERLENBORN. I know this question has arisen. I have not touched on that in my statement.

My own personal feeling is that, since this is an emergency measure, which must be enacted during this session of Congress prior to January 1 of 1968, the broader question of other carriers would no doubt delay the enactment of this legislation and probably should not be considered together with this.

In the wisdom of this subcommittee and the full committee, of course, you may decide to do that. But I would hope that this question would not delay the enactment of this legislation which is so desperately needed by the bargeline companies.

Mr. WATSON. I would agree with you that it is needed and, of course, prompt action is necessary. Perhaps I erred in my judgment, but I had just the opposite opinion from you. I thought we would bring them all in and treat them all alike, and we would have the push of all of the carriers, not just the water carriers, and perhaps that would expedite the passage of it rather than slow it down.

Mr. ERLENBORN. My understanding of the problem here is that it is somewhat unique to the bargelines in that the mixing problem is altogether different from that with other modes of transportation. It is this exemption from the law, which is somewhat archaic—relating back to the practices in 1939 and the technological abilities of that time—it is an exemption from those archaic laws that is needed. The question of regulation or nonregulation of bulk cargoes I think is a broader question and one that deserves the study of this committee. But to delay the enactment of this exemption from the mixing regulations for that broader study I think would be a mistake.

If it can be done and all can be treated fairly and the legislation can be passed prior to the 1st of January, certainly this would be fine.

I would hope, if there is to be a delay as a result of considering the whole question of regulation or nonregulation of bulk commodities, that the question would be put off and that the exemption for mixing on the bargelines would be handled expeditiously.

Mr. KUYKENDALL. Mr. Chairman, may I ask a question also? You mentioned, first, the fact that we have tows of 40,000 tons. I think you or your predecessor mentioned that. Those here who may be observers and not members of any of the industries should bear in mind that is equivalent to three oceangoing liners, which is a very important thing. When we were first considering the introduction of this bill, yes, I have a companion bill in on this particular legislation, the first question I asked, does this increase the flexibility of our overall transportation system? I was assured, and I have been assured many times since, that it does increase the overall flexibility. The next step is that when this sort of request for flexibility is given me by either of the other truckers or the railroads I shall be for that also. I think what we are primarily interested in is the improvement of the overall system. In the scheme of things there may very well be a time when we have to take it step by step. If we could carry them all through expeditiously I am sure that you would look at it favorably.

If it is a matter of delay because of some other factors, we might have to treat it differently. This is something we have to decide. To me, and let me ask you if you feel the same way, the overall goal here is flexibility and efficiency in our overall transportation system.

Mr. ERLENBORN. That certainly is something that I would concur in wholeheartedly. I would add that the formation of the Department of Transportation last year, in which I played a part as ranking member of the subcommittee that handled that legislation, was for the purpose of having a Government agency that would take an overall view of our transportation needs and the conflicting regulations. I think it is important for us to recognize that this new Department of Transportation has, as I understand, taken a position in favor of this legislation from the vantage point of having this overall view of the needs of our transportation system.

Mr. FRIEDEL. Thank you.

It gives me great pleasure to have as our next witness a very distinguished colleague of ours from Texas, Mr. Jack Brooks.

STATEMENT OF HON. JACK B. BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BROOKS. Mr. Chairman, I want to thank you for the opportunity to appear before you today and testify briefly concerning the water carrier mixing rule exemption.

The Ninth Congressional District of Texas includes a substantial segment of the Gulf Intracoastal Waterway. My district has shared in the remarkable economic and industrial development which, in large part, has been due to the existence of this useful waterway. Low-cost water transportation has proved a reliable stimulant to industrial growth enabling our industries to reach easily markets in the 26-State area served by the Mississippi River and its tributaries.

The bargelines operating along the Gulf Canal and on the Mississippi system connecting industries in my district with Chicago, Pittsburgh, Minneapolis and St. Paul, and all the destinations in between, have, over the past 10 years, developed new technologies which have had the effect of making possible reductions in rates to their customers. More powerful towboats have made possible the accumulation of larger towloads with a consequent reduction in the unit cost of transportation by barge. The same trend has taken place in other segments of the transportation industry. Large railroad freight cars, 10,000-ton "unit trains," larger volume pipelines, larger tanker vessels and larger airplanes are all designed to provide more economical transportation services.

Section 303(b) of the Transportation Act of 1940 is so worded that it restricts the ability of bargelines to mix regulated and unregulated commodities in a single tow and prevents the accumulation of a sufficient volume of barges to take full advantage of capacity of the large and more powerful towboats. Unless the wording of the section is modernized, the bargelines will have to separate regulated and unregulated commodities and operate smaller and less economical tows. Costs will be increased, rates will have to go up, and industries such as those in my district adversely affected.

The solution is to remove from the section the sentence which defines a flotilla of barges as a single vessel. This would have the effect of allowing the mixing of regulated and unregulated barges and the accumulation of economical towloads.

The proposal has the enthusiastic support of labor, shipper, and farm groups, of the Department of Agriculture and the Department

of Transportation, of port and river development groups, and of many of my colleagues whose districts border the river and canal systems.

The Interstate Commerce Commission has set a deadline of January 1, 1968, by which time the bargelines must conform their operations to the letter of this obsolete statute. Bargelines and their customers and the consumers of the products manufactured by the industries using inland water transportation urgently need this modernization of the statute. My district urgently needs this modernization. I therefore urge prompt action on this measure so that the bargelines may meet the deadline set for them by the ICC.

I want to thank you, gentlemen. If there is anything I can answer as to the effect in my district, I will be very pleased to try to do so.

Mr. FRIEDEL. I think we understand your feelings very clearly. I want to thank you for your very informative statement. I have no questions.

Are there any questions?

Mr. PICKLE. Do you have other copies of your testimony?

Mr. BROOKS. I have this copy here and I have another one in my office, Congressman. I will furnish this one to you.

Mr. PICKLE. I was impressed with your testimony and I would like to read it.

Mr. BROOKS. Thank you.

Mr. FRIEDEL. We have another distinguished colleague of ours from Texas, the Honorable Earle Cabell.

STATEMENT OF HON. EARLE CABELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. CABELL. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate this opportunity to appear before you to support H.R. 7610, which I introduced earlier this year. This bill to modernize bulk exemptions on the inland waterways is the first of several House bills on this subject. Witnesses from the inland water carrier industry will describe the public advantages of this proposal in detail. Let me briefly state that technological advances on the inland waterways have resulted in the construction of towboats which are between three and four times as powerful as those of 10 years ago. These larger towboats have the capacity to handle greater volumes of barges, and the larger volume has meant that unit costs are lower.

As a result, the inland bargelines have been able to reduce their rates an average of 10 percent since 1960.

They have run into a legal snag over the interpretation of the wording of section 303(b). As it now stands, and unless it is changed, the wording prevents the accumulation of the economical large tows and the full use of the new technology.

The Interstate Commerce Commission has set a deadline of January 1, 1968, at which time, unless this bill is passed, the bargelines will have to revert to the technology of 10 years ago. Costs will be artificially increased; rates will go up. Nobody wants that. My bill would prevent rate increases and I urge this committee to take early and favorable action.

You may wonder why I, a Representative from an inland district, am interested in this legislation. I will tell you:

We don't intend to remain an inland city for too many more years. Despite the fact that our growth is phenomenal, we are the second largest city on this continent that does not have water transportation.

We want to eliminate that present handicap.

After years of research and millions of dollars of non-Federal money having been expended in engineering and construction, the comprehensive development of the Trinity River Basin was authorized in the Public Works Act of 1965. One of the projects in this development will be the canalization of the river for barge traffic.

Much of the cargo of the barges will be low-value, bulky commodities such as aggregates, fluxing stones, sand, and the like that require the maintenance of the presently exempt rates.

I bespeak your favorable consideration of this legislation.

Mr. FRIEDEL. I want to thank you. As always, you have made a very, very fine statement. Are there any questions?

Mr. PICKLE. Mr. Chairman, I would observe that Congressman Cabell is perhaps the first person to introduce legislation on this subject in the Congress. He talked with me about it many times, and I know of his keen interest. Now, I do not know whether the barges will ever get as far as Dallas. At any rate, it does stimulate my interest in the subject.

Mr. CABELL. Thank you, Mr. Pickle. We are not anticipating deep water. We will settle for barges.

Mr. FRIEDEL. Thank you.

Our next witness will be Mr. J. W. Hershey, president of the American Commercial Lines, Inc., Jeffersonville, Ind.

STATEMENTS OF J. W. HERSHEY AND L. P. STRUBLE, JR., REPRESENTING THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS

Mr. HERSHEY. Thank you, Mr. Chairman.

My name is J. W. Hershey, president of American Commercial Lines of Houston, Tex., and Jeffersonville, Ind. I appear on behalf of the Common Carrier Conference of Domestic Water Carriers, a group of the leading ICC-regulated common carrier inland, Great Lakes, coastal, and intercoastal water carriers.

Among our members who are particularly concerned to support the proposal to modernize section 303(b) of the Interstate Commerce Act are W. J. Barta, president, Mississippi Valley Barge Line Co., St. Louis; Charles E. Walker, president, Union Barge Line Corp., Pittsburgh; Herman T. Pott, president, Federal Barge-St. Louis Ship, St. Louis; F. A. Mechling, executive vice president, A. L. Mechling Barge Lines, Joliet, Ill., who is also appearing on behalf of American Waterways Operators; George E. Peterkin, president, Dixie Carriers, Houston; Howard King, president, Arrow Transportation Co., Sheffield, Ala.; Capt. David Parker, president, Sioux City & New Orleans Barge Lines, Houston; Floyd Blaske, president, American Commercial Barge Line Co., Jeffersonville, Ind.; Chauncey G. Willis, Jr., president, C. G. Willis, Inc., Paulsboro, N.J., and chairman of the executive committee of the Common Carrier Conference; Neville Stone, Southern Barge Line and chairman of the board of American Waterways Operators, Paducah, Ky.; F. E. Thompson, president,

Coyle Lines, New Orleans; Lew S. Russell, Tidewater Barge Lines, Portland, Oreg.; L. R. Fiore, president, The Ohio River Co., Cincinnati; and Louis Igert, Jr., Igert, Inc., Paducah, Ky.

I want to express my appreciation at this time to your committee with its very heavy schedule, for scheduling this hearing which is of vital importance to us. If I may, at this point I would like to introduce, for the purpose of making a statement, Mr. Struble, who is now executive vice president of the Dravo Corp., who are one of the leading designers and innovators and builders of marine equipment.

Mr. Struble makes a statement relating to the physical progress of the inland river fleet and the relationship to the dimensions of the inland waterways.

Mr. FRIEDEL. Mr. Hershey, do you want your full statement included in the record at this point?

Mr. HERSHEY. Mr. Chairman, when Mr. Struble has finished, I would like to read my statement for the record.

Mr. FRIEDEL. Mr. Struble.

STATEMENT OF L. P. STRUBLE, JR.

Mr. STRUBLE. Thank you, Mr. Chairman.

My name is L. P. Struble and I am executive vice president of Dravo Corp. of Pittsburgh, Pa. Dravo is a complex of enterprises in the construction, manufacturing, engineering, shipbuilding, and transportation industries. Our company has built over 5,000 hulls for inland river service in the 51 years since our first piece of floating equipment was launched in 1915. Among Dravo's major subsidiaries is the Union Barge Line Corp., which operates over 6,200 miles of the inland waterways.

I have been associated with Dravo since 1935 and have had many assignments related to the rivers. From 1956 to 1961 I was president of Union Barge Line Corp. From 1961 to 1966 I was general manager of Dravo's engineering works division which, among other activities, designs and builds towboats and barges.

My assignment today is to outline the technological development of transportation equipment used on our vast, shallow draft, inland waterways system of 25,380 miles and relate this development to the year 1950, when domestic water transportation was brought under regulation by the Interstate Commerce Commission.

I could go back to the 1700's when the Ohio River was the artery of commerce used by the early pioneers who settled in the West and the South. This review would encompass the story of the flatboat, the keel-boat, the packet-boat and the early push type towboats employed in the late 1800's.

I could describe the "glory days" of the packet-boats, throw in a few stories about the legendary river hero "Mike Fink" and outline the demise of river transportation as the new railroad industry developed and took over the movement of goods as our country expanded to the West.

However, for the purpose at hand, I will start with the year 1929 when canalization of the Ohio River was completed. From that time on, river transportation between the industrial center of Pittsburgh and the expanding markets in the South and Southwest, became a 365-day-per-year operation. No longer were sailing schedules dependent

on the whims of the weather. Fleets of barges and towboats did not have to lie in the Pittsburgh harbor for months awaiting a flood which would buoy the equipment over the sandbars and rocks of the river on the way down to the Mississippi. Other river developments soon followed. The Illinois River improvements opened the route from Chicago to the same markets in 1933. Canalization of the Upper Mississippi from St. Louis to St. Paul and Minneapolis was completed in the late 1930's.

With the canalization of the Ohio, Tennessee, Illinois, Kentucky, and Upper Mississippi Rivers, and channel development on the Missouri, navigation became a scientific operation. The national program of water resource development of the Congress had many objectives, of course, but the development of the rivers as a transportation resource was a major objective, along with the objectives of flood control, drought control, bank stabilization, power and, more recently, recreation.

I have a picture in my files of the Ohio River in the early 1900's. It shows a horse and wagon being driven across the river and the water does not come up to the wheel hubs. If the dams had not been built and a stable supply of water provided for electric power generation and for other industries, the economic development of the Ohio Valley would have been quite different.

It was in response to the national policy decision to develop navigation that the river operators and the shipyards started to redesign and improve the old western river steamboat which had seen no fundamental, technological changes since the late 1800's. This was only natural as the inherent delays and related costs of operating on an undeveloped river were so extensive that there was little or no incentive to develop operating efficiencies that mean so much today with the modern river towboat.

One of the first improvements was the switch from paddle wheels to propellers. While several propeller-type towboats had been built prior to 1929, they were not generally accepted in the trade. The 500 or 600 horsepower stern wheel steamboat was the principal motive power on the Ohio River. This boat could push very well, but when it came to steering, she was deficient. As she approached a bend in the river, it was necessary to reverse the paddle wheel and direct the water against her rudders in order literally to back around the bend. This operation is known as flanking. Because of poor control many a river tow ended up aground on the riverbank when the swift current was too much for this type of operation to insure safe passage along the winding river.

A second major improvement was the switch from the steam engine to the more efficient diesel engine with its low maintenance costs and capability for continuous operation without significant downtime for repairs. Steamplants required frequent downtime to wash boilers and perform other maintenance and repairs. The first major diesel engine installation in a river towboat occurred shortly after 1929.

In 1934, the first of the modern type, twin-screw, diesel towboats appeared on the Ohio River. Her name was the *Peace* and she had 760 horsepower, just about the same power as was employed in the larger size stern wheel steam towboat. While this boat was very successful, several years of experimentation with rudder arrangements were necessary. This towboat would steer very well while moving ahead, but

when a "flanking operation" was tried, her steering ability was not quite as good as was experienced with the stern wheel towboat.

A third major innovation was the "Kort" nozzle, an importation from Germany in 1936. This metal shroud around the propeller, which concentrated the water against the propeller blades, added some 25 percent to the effective push or thrust of the towboat while underway. It also produced savings by protecting the propeller from damage from groundings in low water areas. By strategically locating rudders forward and aft of the nozzles, the naval architects developed a towboat which had absolute steering control, forward and backward, plus the added faculty of being able to slide sideways with no forward motion while maneuvering and making up a tow.

The decade of the 1930's was devoted to perfecting these developments. They were not universally accepted immediately. The subject of propeller versus stern paddle wheel was argued vigorously at any gathering of river men. However, by 1940, the efficient positive-steering propeller boat had started to gain wide acceptance.

I should emphasize that date of 1940. It was the year of the passage of the Transpirtation Act of 1940 which placed domestic water transportation under the regulation of the Interstate Commerce Commission. It was a year, also, when the shape of modern river operations was just beginning to appear.

World War II halted further development of river craft except for 21 2-000-horsepower steam drive twin-screw towboats known as DPC's built for the Defense Plant Corporation. These were real monsters, served their purpose at the time when diesel engines were unavailable, but were very inefficient.

Following World War II, technological innovation continued. Manufacturers of river equipment were being urged to develop more powerful towboats for two main reasons. First, on the lower Mississippi, the prevention of floods and the developing navigation channels had resulted in a swifter flowing river and this in turn meant that the barge lies needed more power to push upstream against the current.

It will interest you to know that the Mississippi River is more than 100 miles shorter today than it was in 1940. A shorter river means a faster current. Also, of course, the operators wanted to push a greater volume of barges and hence achieve lower costs of operation.

More horsepower was desirable, but the direct connected, reversing, slow speed diesel engine was so cumbersome and heavy that hull size limitations dictated a maximum horsepower of about 2,000. The breakthrough to a higher power came with the development of the reversing reduction gear which allowed the use of higher speed diesel engines, which decreased the physical dimensions of the power unit and also so reduced the weight that more horsepower could be put into a normal size towboat hull. Perfection of the supercharger added even more horsepower for a given weight and today we have twin-screw towboats with 6,400 horsepower and triple and quadruple screw towboats with horsepower ranging up to 9,000. However, it was not until late 1955 that the first of these modern powerful towboats appeared on the rivers.

When the Ohio was originally canalized, it had 53 locks with chambers 110 feet by 600 feet. A double-locking tow consisted of a towboat and a maximum of twenty 175- by 26-foot barges. Assuming 800 tons

per barge, this made a 16,000-ton tow. In the late 1930's it was clear that it would be necessary to replace and enlarge the locks on the Ohio River system. Construction began shortly after the war and by the late 1970's the replacement program will be completed. Each dam will have a lock of 110 by 1,200 feet. Hence a double locking tow could then consist of 34 barges of 1,200-ton to 1,400-ton capacity, or about 40,000 tons. Couple this increase in capacity with the fact that the redevelopment of the Ohio will make possible a 12-foot instead of a 9-foot channel and the potential for further improved efficiency in the future is tremendous.

These major changes in navigation facilities require a similarly massive response from private industry in new investment in more powerful towboats and larger barges.

The increase in power of towboats accompanied by greatly improved steering control are of course the major technological advances, but there have been a number of improvements in barge line operations which, taken together, mean a further substantial increase in inland waterway productivity and reduction in costs.

A major development was the use of a specially developed short-range radar. Without it, in bad weather and on dark nights, particularly in foggy weather, towboats tied up to the bank rather than operated. Radar helped make the operation 24 hours, day in and day out.

It is impossible to put a specific figure to the improved productivity resulting from a number of electronic advances, but all of them help. Depth finders help avoid groundings, swing indicators—highly sensitive indicators of change of direction of the tows—are helpful in high winds, automatic pilots make for more efficient steering, ship-to-ship and ship-to-shore telephones expedite operations, automated engine-rooms improve crew productivity, bow thrusters expedite handling of long tows in sharp bends and in terminal areas, and stainless steel propellers contribute to low maintenance costs.

Along with the development of the power unit, there has also been radical improvement in the design and capacity of barges. From a 800- to 900-ton standard barge of 15 years ago, we have progressed until today the most modern barges are capable of carrying 1,200 to 1,400 tons. Following a series of tests in model tanks, the shape of the barges has been greatly modified to reduce water resistance and produce greater speeds and more efficient use of power. Shipyard building techniques have also been improved and made more productive.

Rather than spell out all these detailed improvements, I would like to introduce an exhibit for the record which goes into greater detail on the developments I have mentioned.

Mr. FRIEDEL. This will be included in our files and not in the record.

Mr. WATSON. Mr. Chairman, before he removes the last picture, did I interpret that correctly that it looked as though you had 30 barges?

Mr. STRUBLE. It would be at least 30. It might be 40. I have not counted them.

Mr. WATSON. In one towboat?

Mr. STRUBLE. That is right. These modern towboats can steer them downstream with the current and can also push them upstream against the current.

Mr. WATSON. That is certainly a dramatic development. That puts you in a very good competitive position with railroads and others.

Mr. STRUBLE. I would say it does that; also, that development has enabled us to combat inflation, which has been brought about by higher labor costs and higher costs of equipment and so on.

Our costs of equipment have increased tremendously over the last 20 years.

Mr. WATSON. I agree with you, Mr. Struble, and applaud you. I can see if we would treat them all alike perhaps it would result in benefits for all of the people regardless of what medium they use for transporting freight.

Mr. STRUBLE. I might say the next picture there shows the radar and the console where the pilot has many other electronic devices that aid in the navigation of the boat. What they are is more fully described in this exhibit. I won't take time to go into that this morning.

In summary, we have reached the point at which the productivity of our towboats has more than tripled in the past 16 years. The technology has opened out opportunities for great savings in operating costs which the bargelines have translated into benefits to shippers and consumers. We can now handle 30- and 40-barge tows with ease. We look forward to the day when 50- and 60-barge tows of barges loaded to 12-foot depths will bring new and even greater economies to the commerce of the Nation.

The engineers have developed a most effective technology, the bargelines are ready to apply it in the public interest. The only roadblock is the obsolete wording of a 1940 act which H.R. 7610 and its identical other bills are designed to remedy.

Engineers can only tell you what can be done; it is the policymakers who must decide whether the available technology will be applied in the public interest.

I thank you, Mr. Chairman.

Mr. FRIEDEL. Have you considered what effect this might have on the railroads and truckers as far as competition is concerned?

Let me put it this way: Do you know whether the railroads and the truckers are opposed to this bill and it would put them at a contrary advantage?

Mr. STRUBLE. I am not aware of opposition on the part of the truckers. I am aware that there is some objection by the railroads. Mr. Hershey will get into that a little more. I would like to point out that what we are asking in this bill is to allow us to continue doing what we have been doing over the last decade and longer. So if this bill is passed, the competitive relationship between modes of transportation will not be changed over what it has been for 10 years or longer.

Mr. FRIEDEL. As I understand it, the court ruling is that what you have been doing for the past decade has been a violation of the law.

This bill will correct that. We want to help you. But we still do not want to put the railroads and truckers at an unfair disadvantage. We should have free competition all the way through.

Mr. PICKLE. Mr. Chairman, I am sure that you as chairman, an able chairman, are speaking from your individual viewpoint. I would like to have all the facts adduced before I draw a conclusion. I would assume that the gentleman testifying now is testifying with respect to the construction, the size, and the capacity and the technological changes that occurred in his industry. I do not assume that he intends to speak from a policy standpoint for the industry. I assume the

gentleman at the desk with you will address himself to that fact. If that is so, I would like to hear the testimony of Mr. Hershey and then other people of the industry.

Mr. FRIEDEL. I intend to. I was just trying to get some information. I have not drawn a conclusion one way or another. I would like to help them if I can, but I do not feel we should help one segment and crucify the others. Whether this bill will or not, I do not know. That is what we are trying to determine.

Mr. WATSON. Mr. Chairman, I certainly do not want to inject myself into a discussion between my dear Democratic friends over there, but I certainly do not mind stating for the record before this hearing begins and during it and afterward, certainly I do not want to put any of these mediums at a competitive disadvantage. You spoke very well for one individual on this side when you spoke a moment ago.

Mr. KUYKENDALL. Mr. Chairman, if the gentleman would care to, I would like to have him state simply whether he feels that the items that are deregulated, let us say, by the proposed action here should also be deregulated in the other modes of transportation. Maybe not in this act, but in the future. Let us assume here that each of your modes of transportation—and when I say yours, I look around the rooms and see a lot of friends and if you look at the geographical location of my district on the crossroads of rail, barge, and truck and air, you realize what diversity of friends I have involved in this matter.

I think each of you has advantages and disadvantages. Some of you offer the utmost speed, some offer the utmost in rate, some the utmost in other things. Do you personally have any objection to giving ultimately, and I am not speaking specifically of this bill, the other modes of transportation the same freedom of regulation that you are asking for here?

Mr. STRUBLE. I think whatever I would say on this subject of regulation or deregulation would not be accepted by all of the modes of transportation.

Mr. KUYKENDALL. I am asking you personally if you will. If you do not care to answer, I certainly will not press you.

Mr. STRUBLE. First of all, I do not think this is an issue between the trucks and bargelines. I think this matter of regulation, deregulation, is an issue between railroads and bargelines. I think the situation is entirely different as far as the bargeline is concerned and as far as the railroad is concerned. Anybody can start a bargeline and move unregulated commodities. I am closest to our regulated bargelines, the Union Bargelines, and the reason I am for this bill is that I think that the regulated carriers should have the flexibility of mixing their tows as we have had over the past 10 years or so.

How I feel about deregulation on the railroads, where there is not freedom of entry. I have to in all honesty say personally that I do not favor deregulation of bulk commodities on the railroads. That is a broad statement because I do not know the details of any legislation that would be proposed. Maybe some form of deregulation would be acceptable to me.

Mr. KUYKENDALL. You may wonder what I personally am trying to accomplish by this question. I am trying to make a little legislative history just in case we are not able to accomplish something in this bill that we may intend to accomplish in the future.

The reason for asking the question is for the purpose of legislative history here, so that we may set our intent straight for the possible long-range future.

Mr. WATSON. Mr. Chairman, could we ask whether or not Mr. Hershey holds the same view as was just given by Mr. Struble?

Mr. HERSHEY. I will be glad to answer that question. I have in my testimony a statement on that question, and if it would be all right with you, I would like to take that matter up in sequence in my direct testimony. Would that be satisfactory to the committee?

Mr. WATSON. Yes.

Mr. FRIEDEL. You may proceed.

STATEMENT OF J. W. HERSHEY

Mr. HERSHEY. We have one more exhibit which I think would perhaps illustrate the impact of what Senator Magnuson has called the archaic and restrictive phrasing of section 303(b) of the Interstate Commerce Act.

As a result of a long series of interpretations since the section was adopted in 1940, the bargelines, as a practical matter, will have to break up economical, large volume tows into separate smaller tows of regulated commodities and nonregulated dry bulk commodities.

We see at the top a tow which would probably have 35,000 to 40,000 tons of cargo in it. It is made up of five dry bulk commodities, the solid color barges illustrating the dry bulk commodities and the others illustrating regulated commodities, paper, steel, sacked grain, and things of that kind. In the absence of the remedy as proposed in this bill, on January 1 of next year we must first remove from that large tow all of the nonbulk or the regulated commodities and put them on a separate vessel. This would leave a smaller tow of regulated commodities, and a larger tow of bulk commodities. However, the bulk commodity tow remaining at the top would still be an illegal tow because it would have more than three bulk commodities in it.

So therefore it would be necessary to take two of the bulk commodities off of the original tow resulting in three towboats, three sets of crews, three sets of lockages, for the transportation of the same amount of cargo. Obviously I do not have to go into the details of the effect of this upon the economics of the movement of traffic which would have to be reflected in the freight rate structure to support the movement.

Breaking up the large volume, low unit cost tows will cancel the effect of many years of vigorous technological innovation. Costs will go up; rates will have to go up. No one wants that. But that is precisely what will happen if we do not find a solution before January 1, 1968.

We are here today to support H.R. 7610 and its identical companion bills, a simple solution to the problem. We will demonstrate the public interest benefits of the proposal.

Mr. L. P. Struble, Jr., of the Dravo Corp., a leading innovator of shallow-draft equipment, has briefly described for you the main developments of river transportation technology in modern times. In dozens of ways through Dravo and other shipyards on the river system, the industry has applied its energy, imagination, and inventiveness to increasing the productivity of its operations.

The operating efficiencies resulting from this improved technology can be clearly demonstrated. We have surveyed the five principal common carrier pioneers of the big towboats, American Commercial, Federal, Mechling, Missisippi Valley, and Union, to give the committee a useful insight into the impact of the new technology.

In 1955, for operations on the Ohio-Mississippi system, the average load per tow was 14,400 tons. Last year, the average tow load had risen to 29,600 tons, more than double, with individual tows ranging over 40,000 tons, or four times the capacity of a Liberty ship. In the U.S.-flag offshore dry bulk trades, there are no ships having a capacity greater than 40,000 tons, and only 20 tankers. On the Great Lakes, the most efficient ore carriers will transport up to 27,000 tons of cargo.

Stated another way, the average towboat in 1955 produced 1,505,000 cargo ton-miles per boat operating day. Last year the average had more than doubled to 3,310,000 ton-miles per boat day. The largest towboats have, on occasion, achieved up to 8 million ton-miles a boat day.

Improved productivity has enabled the bargelines to offset increases in the costs of labor and materials and even achieve substantial reductions in freight rates. A study of the rates of the five carriers listed above shows that average per ton revenue in 1960 was $2.56 and that in 1966 it was $2.31, a 10-percent reduction. Average revenues per ton-mile showed even greater reductions. In 1960, average revenue per ton-mile of the five carriers studied was 3.76 mills. In 1966, it was 3.1 mills per ton-mile, a reduction of 17 percent.

The new technology has made possible similar economies throughout the industry, not just limited to the common carriers but to the many more numerous exempt carriers who also have benefited from the very substantial improvement in equipment. And just as in the common carriers, so in the exempt carriers, their rates also has shown a positive reduction in the last 6 to 10 years. Indeed, average revenues per ton-mile are now approximately what they were in the 1920's although the Consumer Price Index since that time has almost doubled.

I stress these figures because I want to emphasize that the benefits of the new technology have already been passed on to the consumers. A reversion to the technology of 10 years ago will mean that the shippers and consumers using and benefiting from low-cost transportation on the inland waterways will be deprived of economies which they are now enjoying.

About 9 percent of the total intercity freight service of the country moves on the Nation's inland waterways. Hence, the savings of the new technology have significance for the entire economy, but especially for shippers of pipe, steel plate, coal, grain, ore, petroleum, fertilizers, sugar, paper, rubber, chemicals, building aggregates, and many other commodities adapted to river movement. Unless the bargelines can continue to apply the new technology, these shippers and consumers will be adversely affected.

One of the earlier witnesses has already remarked on the fact that Dallas is the second largest city in the United States which is not on a navigable waterway, and I think investigation will reveal there are only two metropolitan areas having more than a million people that are not subject to barge traffic.

The dramatic successes of the inland river operations in improving productivity may be more startling than the improvements achieved by other branches of the industry, but it has been along the same gen-

eral lines. In the past 10 years we have seen larger railroad freight cars, larger airplanes, larger bulk freighters, larger tankers. All these innovations have the same objective: larger volume shipments to make possible lower unit costs and to help offset rising costs of labor and materials.

The critical importance of encouraging improved productivity in our economy is widely recognized. Better productivity constitutes an extremely effective counter to inflationary pressures resulting from increased wage and material costs. Increased wages produce increased standards of living only if they are not offset by rising prices. If industry can make more effective use of labor, then the wage increases granted will, in the end, result in an increasing standard of living.

The anti-inflationary contribution made by improved river technology is one benefit. An equally important benefit has been the contribution it is making to sound overall growth in the economy. More efficient use of available resource is a source of sound growth in the economy, just as formation of new capital for investment is an important source of growth.

For all of the enthusiasm of the barge operators for the new technology and their willingness to invest in radically new and more expensive equipment in the past 10 years, a serious problem has existed over the phrasing of the so-called dry-bulk exemption, section 303(b), which defines conditions under which river transportation is exempt from regulation. In brief summary, under the latest interpretations, the exemptions work as follows:

In determining whether a bargeload is subject to regulation, a distinction is made between dry bulk commodities, such as grain, coal or sand, transported without mark or count, and nonbulk commodities, such as steel pipe and packaged sugar, which can be marked and counted. A tow of three or less dry bulk commodities is exempt; the addition of a fourth dry bulk or any nonbulk commodity subjects all barges in a towload to regulation.

The present difficulty is how to apply modern technology in transportation, with the maximum public interest advantages in terms of cost and service, in a situation where part of the business is regulated by the ICC and part is exempt from regulation.

I might say first that those who have not looked into the situation very deeply ask us why we do not publish all our rates and make all commodities we carry subject to economic regulation by the ICC. Then we would be allowed to mix any number of regulated commodities in a tow.

As a practical matter, this alternative is not available to us. If the regulated carriers want to continue in the river trades, they must compete on the same terms as exempt carriers. The Congress in framing the exemptions specifically contemplated that they should.

The barge lines have tried to solve the problem a number of other ways without reference to Congress, but each time they have run into a stone wall. I will not attempt here to repeat in detail the legal history of the struggles the common carrier barge lines have been through to fit modern operating efficiencies to interpretations of an act written at a time the new technologies had not been conceived.

We have been chiefly concerned with two limitations on efficiency: denial of the right to expedite service by hiring noncertificated barge

lines to gather and distribute barges at junction points on the main rivers; and, denial of the right to accumulate regulated and nonregulated traffic in a single tow to achieve volume movements at low unit costs.

Section 303(b) appeared sufficiently flexible to meet the needs of water commerce at the time it was passed in 1940. Indeed, there was nothing intrinsic in the wording which required the kinds of interpretations that have been placed on it. But as the technology advanced, the ICC and the courts, over 27 years, have piece by piece really eliminated the flexibility of the language of the section and narrowed it down to a degree of inflexibility which today leaves no room at all for modern technology.

For example, common carriers used noncertificated carriers to deliver and assemble regulated nonbulk traffic at junction points under a letter of authority from the ICC issued in 1944. The letter was rescinded in 1957 and the interpretation narrowed at precisely the time it became highly useful.

Again, the section says there shall be no more than three bulk commodities in a tow if it is to remain exempt. The addition of a nonbulk commodity did not seem to be caught by this language any more than the addition of a pear to two apples makes three apples. But, by interpretation, the definition was narrowed so that if an otherwise exempt tow load of bulk barges, including three or fewer commodities, added a barge of regulated steel or regulated paper on its way down the river, the exemption for the entire tow was lost.

Still again, under the act, towing tariffs, as distinct from affreightment tariffs, are also subject to regulation. There is nothing in the language of the act or any discernible public policy which appears to prevent anyone, including noncertificated carriers, from hiring towing services from a regulated bargeline and paying the published rate for towing. The resulting tow should be a fully regulated tow in which the question of mixing does not arise. But an interpretation again narrowed the meaning of the act and this solution was thrown out.

Little by little, the flexibility of the exemption applied to dry bulk traffic has been whittled away. By contrast, the liquid exemption, section 303(d), has remained completely flexible. The exemption of liquid commodities is not affected by the number of commodities in the tow or by whether some are bulk and some are nonbulk. Liquids are exempt from rate regulation without qualification, and I think it is interesting here to observe that the largest single commodity that moves on the waterway system is petroleum.

In fairness, it should be said that the question of mixing regulated and unregulated commodities in a single tow was not an issue of importance until the revolution in power took place in the mid-1950's. It was the advent of larger towboats in 1955 and the possibility of larger volume tows which have raised the question. At that time, the bargelines themselves asked the Commission for clarification. It was a fatal question to ask. The Commission responded by finding the section to be completely inflexible.

The bargelines brought the problem to the Congress in 1961. The matter was explored in hearings before the Senate Committee on Commerce on June 9 and August 7 of that year. There was no resolution of the issue at that time, primarily, I suspect, because the barge-

lines had at that time not exhausted all their remedies in court. We were then still hopeful that a court might restore some of the flexibility which we believed originally existed in the act. At the same time, the hearings revealed a lack of unanimity in the water carrier industry and among the shippers using water carriage.

The situation is different today.

Since 1961, our case has been fully heard by the courts and our judicial remedies finally exhausted. A decision of the U.S. District Court of the Southern District of Texas last year made this comment:

> If, as argued so strenuously, this application of section 303(b) brings about transportation inefficiencies which discriminate against regulated carriers of bulk commodities, or regulated towers, or both, the remedy is to be with Congress. Through the Commission and otherwise it has been made aware of these problems and their possible consequences. If Congressional handiwork now produces unwanted results it is for Congress, not the judiciary, to right the machinery.

Following an appeal to the Supreme Court, the lower court's decision upholding the ICC's decision was affirmed (18 L. Ed. 98, 1967).

After completely exhausting their legal remedies, the bargelines now come before the Congress with a proposal that has the full support of all segments of the water carrier industry and labor. We do not today have a divided industry. Equally important, we have the support of the major shippers of waterborne commodities, as well as the support of numerous small businessmen who depend on efficient common carrier services for the economical operation of their businesses.

One of the goals the bargelines set themselves in developing the proposal now before you was to make as small a change as possible in the law. Our aim is to permit continuation of the present technologies and efficiencies which are so obviously in the public interest and to change present practices as little as possible.

We were struck by the fact that there is no logic or legislative history to justify making the dry-bulk exemption conditional on other commodities in the tow. Why should a 30-barge tow suddenly lose its exemption because another barge is added on a trip down the river? There is no sensible answer to that question.

The solution is embodied in H.R. 7610 and its companion bills. The sentence which causes all the trouble in section 303(b) is the one reading as follows:

> For the purpose of this subsection two or more vessels while navigated as a unit shall be considered a single vessel.

In other words, the large tow which you saw up there originally is considered under 303(b) as one vessel. Without this sentence, the dry-bulk exemption would have almost, but not quite, the same flexibility as the liquid exemption. A barge would be considered a vessel and the prohibition would then mean that no more than three commodities could be mixed in a single barge. If, as Justice Oliver Wendell Holmes said, the life of the law has been experience, the experience of 27 years of river operations suggests that this change makes sense.

Instead of blocking progress, lower transportation costs, and more efficient service, the section would then ecourage progress, promote technological innovation, encourage lower freight rates, and better transportation service.

For shippers, of course, it will mean the continuation of the savings that have already been passed along to them as a result of the new technology. It means assurance that future technological improvements can also be applied without legal impediment or restraint.

We were originally hopeful that there would be no opposition to this measure. There is none from the trucking industry—there was none from the trucking industry we knew anything about before we got an indication today there might be some from the trucking industry. There is none from the airlines, the shippers, the farmers. Indeed there is very broad support from the shippers, farm groups, labor, the communities served by river traffic, the Department of Transportation, and the Department of Agriculture. It has been unanimously adopted by the Senate Committee on Commerce.

At this point I would like to read into my testimony an addendum which goes to the question which has been directed to Mr. Struble and to me concerning competitive equality, so to speak. So I would like to digress from my prepared statement to support the Senate Commerce Committee's recommendation for dealing with the competitive equality question. The report discusses the past recommendations for repeal of the exemptions and for extension of the exemptions to the railroads. It says:

> The committee in favorably reporting S. 1314 is following the recommendation of the Department of Transportation that this legislation is justified on its own merits, and that action should not be postponed to await the accomplishment of all changes at once.
>
> The committee is of the judgment that competitive equality must be established for all modes of transportation so that rights under law granted to one mode shall also be granted to other modes similarly situated.
>
> The committee will give priority consideration to hearings on legislative changes in our present regulatory statutes to equalize the impact of regulation on various modes of transportation.
>
> The committee requests the Secretary of Transportation, the Interstate Commerce Commission and the Civil Aeronautics Board to promptly prepare and submit legislation providing for uniformity and equality of treatment of all modes of transportation in the carrying of bulk commodities.
>
> The commitee urges that priority be given to the preparation of studies and legislative recommendations in order that committee hearings may proceed without delay.

Mr. FRIEDEL. Right there, that is the statement from the Senate; is that correct?

Mr. HERSHEY. That is correct. I am reading from the Senate report.

Mr. FRIEDEL. How do you feel about that?

Mr. HERSHEY. I think the question of equality is an enormously broad question. Certainly there is a difference between something being equal from the standpoint of competitive opportunity and something being identical. For 27 years there has been a dry-bulk exemption on the river, at the time that exemption was passed there was no thought given to also exempting any rail bulk traffic. At the time that exemption was given, the three-commodity clause had really no significance because tows were not big enough to move, generally speaking, more than three commodities; and furthermore, at that time almost all the dry bulk commodities were moved under tariffs. Is this not correct?

Mr. STRUBLE. Yes.

Mr. HERSHEY. The rise of the exempt carriers on the Mississippi River occurred primarily originally because of the tremendous influx

of petroleum that hit the river during World War II, and large and small exempt carriers were formed and did a magnificent job of moving petroleum as there was no other way of moving it. Then when the full effects of the peace came, pipelines were constructed and the tanker fleet was restored, those people naturally resorted to a search for other types of commodities which they could legally move and the only thing they could legally move was dry bulk commodities.

So these developments took place which have resulted in a completely different situation with respect to the need for flexibility in handling exempt commodities.

Now the railroads say, we want to have an exemption. They do not say, we want to have the same privilege because that would not mean anything. The bargelines certainly do not care what the makeup of a train is. They have trainload service now which they operate on very reduced rates. If they want to have the privilege of taking on two rail cars of automobile parts or something to a trainload of coal, certainly the bargelines have no objection.

So equality of competitive opportunity is something that is a very complicated subject. Now the bargelines on the Mississippi River are moving about 120 billion ton-miles at the present time annually. Something in that range. Their rate is something like three-tenths of a cent per ton-mile. So that comes out to $360 million.

Now that is in contrast to approximately $10 billion of railroad revenues. But of that $360 million that the bargelines are moving a large proportion of it, probably a third, is represented by petroleum and liquid chemicals which we are really not concerned with here today because of the fact they have their own exemption that is absolute. So we are talking about a small amount of traffic compared to the enormous size of the railroads.

What is equal opportunity? If somebody puts me in the ring with Mohammed Ali and we both have the same number of feet and the same number of hands, this is not competitive opportunity if I am going to survive. I believe in fair play and fair competition.

Mr. WATSON. If the Government would tie Ali's hands behind his back and his legs together, you perhaps would reasonably be able to wage a competitive battle?

Mr. HERSHEY. It is possible. I certainly would have a better chance of keeping clear.

Mr. FRIEDEL. Am I reading into your statement that we should act on the bargelines bill separately and you reserve the right to object to the railroads or truckers having the same exemption?

Mr. HERSHEY. Certainly your first statement is correct. I would urgently try to persuade this committee to act on this bill.

Mr. FRIEDEL. Reserving the right to oppose their bill?

Mr. HERSHEY. I would have to reserve the right to oppose a bill until I saw what it was.

Mr. FRIEDEL. Suppose we gave them the same exemption you have, the same treatment?

Mr. HERSHEY. I would say this: that from the standpoint of a reasonable debate, it might be pretty difficult for us to say we oppose the railroads having this exemption. I do not know how we could do it.

But I would like to say this: that there will be no viable barge-line industry in the United States within a few years if the railroads

have the same exemption that we have, because of their capacity for internal subsidization of a particular movement. And running a rate down on water-compelled traffic and keeping it high or even raising it on long water competitive traffic is a weapon we have no counter to. Even under ICC protection we have had for certain commodities in certain areas a very, very difficult time.

Mr. FRIEDEL. Are you acquainted with the fact that the truckers will not oppose this bill if you put in the section that they not be exempt from antitrust laws?

Mr. HERSHEY. I am not aware that is their position. However, we believe that unregulated transportation is certainly subject to some portion of the antitrust laws at the present time. I am not an attorney and I cannot speak with much authority on the technicalities of the antitrust application to services generally, and particularly transportation services.

Mr. FRIEDEL. That is one of the amendments the truckers propose.

Mr. HERSHEY. Again speaking for myself, I would have no objection to that.

Mr. FRIEDEL. Then supposing we give this same exemption to the railroads and where they are now exempt from the antitrust laws, include them the same as the truckers propose.

Mr. HERSHEY. There again it is pretty difficult for me to give a sensible answer because I do not know the extent of the protection that the antitrust laws would give us against an enormously stronger mode of transportation.

For instance, I believe that the Robinson-Patman Act is considered part of the antitrust laws, a section of the Clayton Act.

Mr. FRIEDEL. Yes.

Mr. HERSHEY. The Robinson-Patman Act as applied to discrimination in the sale of commodities has some very severe penalties, as I recall; treble damages and things of that kind. It is entirely possible those remedies might be better remedies against predatory competition than we have now under the ICC Act, but I am certainly not qualified to know or to say.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. FRIEDEL. Yes.

Mr. KUYKENDALL. As the gentleman in the witness chair may not know, I am one of the people that has this bill in for this privilege in your industry.

Mr. HERSHEY. Yes; I know that.

Mr. KUYKENDALL. And I am wholeheartedly for this, but I think it might be well that, as a freshman Congressman, I give you some of my observations because sometimes a new view might be a little more enlightening than someone's who has had the charge for several years.

When I introduced this bill and first talked to our chairman and the ranking minority member about it I said what objection could we possibly get? And I was immediately given the view of lots of skeletons that were dragged out and shown to me. And the primary makeup of this skeleton was that my good friends the barge people wanted their cake and have the privilege of eating it too.

In other words, the idea of working out a reasonable, workable, fair approach to it as opposed to an all one-sided approach to it was something that your industry had not been willing to discuss and had not been willing to have your attorneys work up a possible compromise on.

I am very, very regretful in saying that the testimony this morning has borne out their forebodings, that this has been the case—that you do want to reserve the right to object on anything we might try to do in the future to further liberalize and make more flexible the transportation system of this country.

I think it is well we repeat the fact that is so well known, that we are not probarge and we are not antibarge, we are not prorailroad or protrucker or anti, that we want the best possible transportation system at the lowest possible cost.

I think when you look at the profit and loss statement for the average railroad and look at the return on their investment, which is ridiculously low, we know that if it is possible they could be put under the antitrust laws in that particular area; being regulated, they do not have the money to be playing around and try to run you out of business because they will go out of business themselves. I think they have less money than you have, the way I see it, the way the return on their capital is.

So as one who has the bill in and wants to see it passed, I also would like to have you tell us what would be really fair in the treatment of all of our modes of transportation, because the warnings that I was given a week and 2 weeks ago by some of my senior colleagues have already been borne out in this testimony this morning, I am sorry to say.

Mr. HERSHEY. Sir, I think I can assure you that the bargelines would like to have a healthy railroad industry. We are not seeking a competitive advantage over the railroads through this bill. This bill is a bill which preserves a competitive situation as it has existed, and I do not believe that even you feel that any of the railroads' past financial difficulties stem from the fact that a small amount of revenue for moving cheap commodities on the river has been going to the bargelines.

I would certainly deny there was any tendency on my part or my company's part and, as I observe it, on the part of the common carriers whom I represent here to take a dog-in-the-manger attitude that we want you to do something for us but we do not want you to do anything for the railroads. This is certainly not the case.

Since you have opened up this subject, I would like to say my personal view is that transportation is a service which must be regulated. I feel that if there is going to be a uniformity of treatment under the law, the public interest would by far be better served by eliminating most of these exemptions and putting them squarely under the ICC regulation or some suitable body.

Mr. KUYKENDALL. Would you say that putting them directly under the ICC rates or regulation, or the antitrust laws, one or the other generally speaking would be the alternatives we have?

Mr. HERSHEY. Those would be the only two alternatives I could think of, sir, yes.

Mr. KUYKENDALL. I am sure what I have to say here applies to every person on this subcommittee. In any case such as this where we do not have an overall political or governmental philosophy involved where we are talking about two parties, I think every one of us looks at the one overall pervading question—is it fair? And this is my position.

Mr. FRIEDEL. Mr. Hershey, you may proceed.

Mr. HERSHEY. I would also like to call the committee's attention to this statement by Charles Schultze, Director of the Bureau of the Budget, made to the Senate Government Operations Committee last year:

> At the present time, significant information gaps make it difficult or impossible to estimate the full impact of the government's policies and programs. For example, the impact of any substantial change in the rules of rate-making, upon carriers, shippers and the general public can only be surmised. Detailed studies are needed as a basis for making constructive recommendations on regulatory and other aspects of transportation policy.

I believe that the recommendations of the Senate Commerce Committee and the comment of the Bureau of the Budget place an obligation on all of us to be constructive about the policies and the studies planned, and we intend to be conservative.

But I think it is abundantly clear that the studies required and the policies to be formulated cannot be made available to this committee before the ICC's deadline of January 1, 1968, at which time the bargelines will be required to revert to an inefficient method of operation.

Let me suggest the key reason why shippers, truckers, bargelines and, most especially, small railroads have in the past opposed the deregulation alternative so vigorously and why it is prudent to approach the subject with caution.

Whereas the mixing rule deals with a very small and peripheral issue, the question of price deregulation of rail traffic is a central question which cannot be resolved without considering at the same time other fundamental aspects of the regulatory system such as entry controls, prevention of discrimination and the need for added protection—antitrust or other—against abuse of the very considerable economic power enjoyed by the railroads.

The size and diversity of railroads, particularly those railroads which have recently been successful in mergers, provide an opportunity to capture traffic not through superior efficiency or service but through abuse of economic power. The water carriers have been constructive in their approach to railroad mergers; they have not opposed them. But a proposal for price deregulation removes an important element of public restraint on which we relied in not asking for safeguards in these mergers. In the absence of public restraints, the economic power of the merged railroads would permit them to engage in a virtually unlimited program of internal subsidization of selected portions of their traffic. They would be able to use substantial profits from certain parts of their traffic to subsidize losses or unreasonably low profits on others.

Equality is certainly an important public objective which we support. But the public also has a stake in effective restraints against the abuse of overwhelming economic power and this requires much careful thought.

Almost the only opposition has come from the railroads. It is our belief that the railroad interest is not materially affected.

We base our position on three premises:

1. It is a mistake to assume that what is good for river traffic is bad for railroads. Earlier this year, the employee magazine of the Illinois Central Railroad, which is surely more competitive with river traffic than any other railroad in the Nation, had words of praise for the industrial complex which has grown up between Baton Rouge

and New Orleans on the lower Mississippi River. The Illinois Central has achieved much new traffic from the development which would not have located where it has but for the ready access to the river.

This reinforces an earlier statement of the Illinois Central made in 1923 and often quoted as putting the rail-water rivalries in proper perspective:

> The Illinois Central, of course, recognizes that the bargeline offers competition paralleling it on the Mississippi River, but our interests are clearly identified with the interests of the people in the Mississippi Valley.
>
> We have regarded the inauguration of this service on the Mississippi River as more or less experimental. I do not believe anybody knows whether it can be permanent. A great many people have faith in its permanency, but if it is a good thing for the people of the Mississippi Valley it, in some way, will probably operate as a good thing for the Illinois Central system.
>
> If it supplies additional transportation that is needed, and may be needed in the future, that we cannot supply, or if it supplies cheaper transportation than we can supply, and all for the prosperity of the people in that section of the country where our interests are bound up in some way, that will work back to our own selfish interests. Perhaps it will increase the population, increase the amount of business that everybody does down in that territory. If it does operate that way, we are going to reap some benefit, too.

River navigation has been good for the people of the Mississippi Valley; it has also been good for the Illinois Central. In the last 30 years, the bargelines have achieved a major role in the national economy and the IC has prospered. Compared to 1936, its growth has far outdistanced the record of the railroad industry generally. Revenue of class I railroads as a whole have increased 169 percent in 30 years; the IC's have increased 191 percent. Tonnage of class I railroads is up 52 percent over 30 years; the IC's tonnage is up 99 percent.

2. Let us assume the worst. H.R. 7610 fails and common carrier bargeline costs are artificially increased. Traffic lost to common carrier bargelines would not go to railroads. The large shippers on the river would be more likely to turn to an expansion of private water carriage. The differences in costs are such that there is a powerful incentive for large shippers to go into private carriage. The small shipper of the occasional barge load would be cut out of his markets entirely; most of his traffic could not bear the higher rail tariffs.

3. The railroads have raised the question of competitive intermodal relationships. They argue in effect that the relatively minor technical issue of mixing regulated and unregulated commodities in a single tow should not be settled until the very broad and controversial question of the exemptions themselves is settled. On this question the railroad industry itself has not reached agreement as to a solution. They are saying, in effect, we do not know the answer to the broad question but, in the meantime, do not solve the minor question.

If the railroad purpose is simply to load artificial cost increases on a competitor, it seems to us they are in the same position we would have been in if we had opposed railroad mergers on the grounds that cost savings would damage our competitive position. Bargelines did not oppose the mergers. For the same reason, railroads should not oppose H.R. 7610.

We have approached our problem pragmatically. The solution makes the least change possible in the law and at the same time permits realization of the public benefits of modern technology.

An alternative solution would be to repeal all the exemptions, and give the present exempt carriers grandfather rights to continue in

their present business. This would be a very major change. Any consideration of such a change should be separate and apart from a consideration of H.R. 7610.

The inland waterway common carriers have traditionally supported repeal of the exemptions. I think we can take for granted, however, that any move in that direction today would precipitate another bitter and protracted dispute. The water carrier industry would again be sharply divided. The shippers would no doubt be divided, but probably overwhelmingly against; I am not even sure where the railroads would be. It is possible the railroads would be split on the question.

Government agencies differed among themselves the last time the proposal was seriously discussed. The Department of Agriculture favored broadening exemptions. The ICC wanted repeal of the exemptions.

I hope I have said enough to demonstrate that any proposal to cure this problem by proposing the repeal of the exemptions would precipitate a lengthy fight. The urgent relief the bargelines need would be lost in the struggle of large contending armies.

One other modernization is included in H.R. 7610. A provision in section 303(b) restricts the exemption to commodities carried "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939."

This has lost its meaning since the ICC found that alumina, a new commodity to the rivers, was entitled to the exemption (325 ICC 745). Since new commodities make their debut frequently, there is no need to keep the reference in the section. It is better deleted.

The problem of the inland water carrier is essentially a simple one. The bargelines have developed an improved technology which has resulted in better service at lower rates. It is in the public interest to continue to apply this new technology and to encourage further improvements. H.R. 7610 accomplishes this purpose. It merits adoption.

Again, I would like to emphasize how much we appreciate the fact that this committee has set down the issue for hearings. We hope H.R. 7610 will be favorably recommended to the full committee and passed by the House in time for action before the deadline set for us by the ICC which, I repeat, is January 1, 1968, less than 3 short months away.

Mr. FRIEDEL. Mr. Hershey, I am going to submit some questions to you in writing that you can deliberate on and give the answers for the record, including the application of the antitrust laws to both fully regulated and unregulated industry. You will have time more thoroughly to digest it and answer it for the record.

Mr. HERSHEY. Fine, I will be glad to reply to them.

(The following correspondence was subsequently submitted:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., October 4, 1967.

Mr. J. W. HERSHEY,
President, American Commercial Lines,
Houston, Tex.

DEAR MR. HERSHEY: I appreciate your helpfulness in expediting our hearings, and readiness to reply to some questions by letter for inclusion in the record on H.R. 7610 and companion bills amending section 303(b) of the Interstate Commerce Act, relating to the mixing rule.

I had two lines of questions which I think are pertinent to our understanding of the situation. These I enclose in draft form as I had them for refreshing

my memory interrogating you during the course of the hearings. You will recognize that they are not couched in the nicety of expression which addressing you by letter ordinarily would entail, but I think in the interests of time I shall simply send along these drafts for you will recognize their purport and I know be able to discuss them fully. It is my understanding that Mr. Stevenson of our staff also has been in conversation with you in general terms as to these questions.

One has to do with a full appreciation of actually what has been done by the carriers since the ruling of the Bureau of Water Carriers in 1944 in their utilization of the language of section 303(f)(2) relating to incidental towing by a water carrier for another water carrier. I think over the years we have some understanding of the filing of tariffs required by the absence of the exemption provided in section 303(b) but by the same token, we do not have any record to which we might advert as to just what is entailed in this towing.

The other question is one having to do with a full discussion of where the various carriage by water may be with respect to either section 5a of the Interstate Commerce Act or of the antitrust laws. I think it would be clear to you from the line of questions this morning by other Members of the Committee as well as myself, and your own recollection of the thoroughness with which this matter was considered in connection with H.R. 9903 that this is a topic on which we should like and expect a considered discussion.

With every good wish to you.

Sincerely yours,

SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics.

Mr. Hershey, in your testimony before the Senate Committee, you have said that under the Act towing tariffs are also subject to regulation and that "there is nothing in the language of the Act or any discernible public policy which appears to prevent anyone, including noncertificated carriers, from hiring towing services from a regulated bargeline and paying the published rate for towing."

You go on to say that " the resulting tow should be a fully regulated tow in which the question of mixing does not arise". You say that this interpretation was thrown out by the Fifth Circuit Court and affirmed by the Supreme Court in March of this year, but if this bill were to be enacted, would the effect mean that the resulting tow would be a "fully regulated tow".

Q. Do you mean regulated under section 303(f)(2)? Just how is it fully regulated? If some of the barges are of exempt commodities under the towing company's bill of lading, are they regulated? What is the nature of the regulation over the barges which are under a towing contract? Does the Commission determine the rate? Is this rate treated in the same fashion as generally divisions are treated, namely that if the contracting parties agree the Commission cannot upset the rate?

Q. If the barges are of exempt commodities, what is the Commission's jurisdiction over the towing charge?

As you know, in the discussions had on H.R. 9903 in the 88th Congress, much attention was given to the question of the applicability of the antitrust laws. At that time certain witnesses testified that the commodities under the agricultural exemption of Part II and the bulk commodity exemption of Part III were not subject to section 5a of the Interstate Commerce Act, but were fully within the purview of the antitrust laws. I think Mr. Ingersoll, speaking for the Common Carrier Conference, acknowledged the applicability of the Sherman Act but had some reservations as to the Clayton Act and the Robinson-Patman Act. The Committee in its report on the bill, however, clearly was of the opinion that the antitrust laws apply where these commodities were exempt from rate regulation.

Q. However, I think that your testimony here raised some question for the presumption that they were exempt under section 303(b). If exempt under 303(b), and according to you, regulated under 303(f)(2), what is their position with respect to the antitrust laws or to section 5a of the Interstate Commerce Act?

Q. Would you please give us a clear statement of what is the applicability to the transportation of bulk commodities, both as to the present and as proposed under the bill here being considered, of the Interstate Commerce Act and of the antitrust laws?

AMERICAN COMMERCIAL LINES, INC.,
Houston, Tex., October 18, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Transportation and Aeronautics Subcommittee, House Interstate and Foreign Commerce Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. FRIEDEL: Thank you for the opportunity to clarify the towing and antitrust questions referred to in your letter of October 4, 1967.

The towing question enables us to bring out clearly that our problem is not one of new exemptions, but simply the efficient handling of barge loads of commodities already exempted by the Congress. Are they to be handled efficiently in high volume *low* unit cost tows or are they to be handled inefficiently in small volume, *high* unit cost tows?

The thrust of technology dictates high volume tows; the thrust of ICC and court interpretations, because of the restrictive and archaic language of Section 303(b), has been to reduce and, ultimately, to block the operating methods by which barge lines have achieved efficient handling. Hence the court's suggestion that the remedy, modernizing the wording of the Act, lay with Congress.

I. SOME RELEVANT DEFINITIONS

Regulated vs. exempt carriers: Exceptions from water carrier regulation are written in terms of transportation engaged in rather than by reference to the carrier performing that transportation. Strictly, therefore, there are no "exempt carriers", but the term is normally used to designated carriers exclusively engaged in exempt transportation. Regulated carriers are those who are certificated to conduct regulated transportation, although they may also conduct exempt transportation.

The dry bulk exemption (303(b)) so-called because liquids normally move under the unqualified exemption in 303(d), defines "commodities in bulk" and exempts their transportation in a "vessel" used for carrying not more than three "such" commodities. A "vessel" is defined as including a flotilla of barges.

The liquid bulk exemption (303(d)) exempts "liquid cargoes in bulk", without restrictions or conditions as to the number of such cargoes or mixing with other cargoes.

The "incidental" towage exemption (Section 303(f) (2)) so-called because it exempts only the service and charges of one carrier when performed as an incident to (a part of) the regulated services of another carrier, applies only to transportation (towage) for regulated carriers. It permits regulated carriers to subcontract the towage of regulated barges to exempt carriers, whose towing charges are privately negotiated and unpublished.

Freighting. A full water carrier service including provision of the cargo container—the barge—and the motive power—the towboat.

Towing. A water carrier's service including only provision of the towboat to propel loaded or empty barges tendered for transportation by the shipper or by another carrier.

The towing tariffs. Published by regulated carriers holding towing certificates from the Commission and subject to Commission regulation. Tariffs available for use by shippers of non-bulk commodities when not carried so as to qualify the tower for the bulk exemption. Bulk exempt carriers using towing service are treated as shippers and pay same charges as shippers.

II. CHRONOLOGY

1941. Informal administrative ruling of the ICC said "not more than three" bulk commodities also meant "no non-bulk." This no-mixing condition to the bulk exemption went unchallenged, presumably because it mattered little to the infant barge industry which was then towing half a dozen or fewer barges per tow-load.

1944. Permits ICC coal freighting by exempt carrier also handling non-bulk as "incidental" tower, without losing the bulk exemption for his coal. Two exempt transactions, freighting of exempt coal and incidental towing of non-bulk exempted under 303(f)(2), were not considered regulated although they were *physically performed simultaneously.*

1957. The 1944 interpretation reversed. The *physical mixing* of incidentally towed non-bulk with freighted bulk was held to result in the forfeiture of exemption on the bulk. Thereafter, incidental towage, as a practical matter, was

performable only by liquid bulk carriers whose cargo is unconditionally exempt under 303(d). *Commercial Transp. Corp. Exemp., Sec. 303(b) and 303(f)(2)*, 300 I.C.C. 66 (1957).

1955. Commission concluded that when a regulated carrier holding towage rights towed bulk for a bulk exempt carrier in a mixed tow, the result was to regulate that towage. *Physical mixing* of bulk and non-bulk in such tows, the ICC said, did not relate back to and regulate the freighting service of a bulk exempt carrier hiring the tower's regulated services in completion of the exempt transportation called for in his own contract with shippers.

Note. Certain lines, including my own, believed that this ruling (American Barge Line Co. Petition for Declaratory Order, 294 I.C.C. 796) offered a solution to the problem of accumulating tows matched to the increasing capacity of our ever larger towboats. These barge lines had affiliated companies operating in the bulk exempt trades whose cargoes could be moved at published towing rates either in the flotillas of their regulated affiliates or in the tows of other certificated carriers. In this manner two legally distinct transportation enterprises could be operationally integrated and barges *physically mixed*.

1960. The 1955 decision reversed. Commission decided that *physical mixing* of barges in the tows of certificated carriers resulted in the forfeiture of the bulk exemption by the exempt freighting carrier who hired towage from those certificated carriers, even though it paid the published towage rates and avoided mixing in its own tows. *Mississippi Valley Barge Co. Exemption 303(b)* (311 I.C.C. 103) *Gulf-Canal Lines, Inc.* v. *United States* (258 F. Supp. 864 (1966) and affirmed per curiam by the U.S. Supreme Court March 20, 1967.

III. YOUR QUESTIONS

Q. If this bill were enacted, would the effect mean that the resulting tow would be a "fully regulated tow?"

A. No. Dry bulk commodities would have almost the same unconditional exemption as now applies to liquid commodities. The only restriction would be that no more than three commodities could be mixed in a single barge. My testimony indicating that the tow resulting when a certificated carrier performs regulated towage of bulk for an exempt carrier "should be a fully regulated tow" was concerned with operations under the interpretation approved in 1955 but reversed in 1960. We have not drafted a bill which merely resuscitates the 1955 ruling or narrowly reverses the specific holding in 1960. H.R. 7610 permits the free inter-mingling of non-bulk and bulk by *anyone* in all circumstances so long as no individual barge has more than three bulk commodities or any non-bulk aboard. There is no basis in reason or in public policy for any narrower exemption. No person or group testifying before the Senate, or to date, before the House, has given a reason for attaching any condition to the dry bulk exemption.

Q. Do you mean regulated under Section 303(f)(2)?

A. No. Incidental towage would remain unregulated if H.R. 7610 is enacted. Section 303(f)(2) is an exemption from regulation.

Q. Just how it is (the resulting tow) fully regulated?

A. It is not. Towing tariffs would not be used for bulk if H.R. 7610 is passed. The tow would be regulated as to the non-bulk included but exempt as to the bulk whether the bulk is towed for another carrier or freighted (or towed) for a shipper.

Q. Does or can the Commission determine towing charges?

A. The Commission can regulate only the published towing charges of carriers who have towing certificates. It never could regulate incidental towing charges and, under H.R. 7610, it could not regulate towing charges applicable to bulk.

Q. Is this charge treated as divisions are treated, namely that if the contracting parties agree the Commission cannot upset the charge?

A. No. It is completely exempt. In the case of regulated towing, the published charge is fully regulated.

Q. If the barges are of exempt commodities, what is the Commission's jurisdiction over the towing charges?

A. Published towing charges are regulated. Under H.R. 7610, towing tariffs would no longer be used for bulk commodities.

Summary: The issue all along has been to try to arrive at an interpretation of the law that would permit barge lines to transport exempt and regulated cargoes *physically mixed* in the same tow. One by one, interpretations permit-

ting physical mixing were struck down. This is the reason for the barge line argument that while no one is restricting use of larger freight cars on the railroads, larger volume unit trains, larger bulk freighters on the ocean, larger tankers, and larger airplanes—all of which provide public interest benefits because larger volume leads to lower unit cost—on the rivers an archaic statute will, unless amended, prevent the barge lines from following the trend so firmly established in every other mode.

IV. IMPACT OF ANTITRUST LAWS

Your second area of inquiry pertains to the effect of H.R. 7610 upon the application of the antitrust laws to exempt transportation. We have always believed that the antitrust laws are applicable to transportation pricing not regulated by the Commission, subject only to limitations within the antitrust laws themselves. Transportation pricing exempted by Section 303(b) and Section 303(f)(2) is now subject to the antitrust laws and H.R. 7610 makes no change pertinent to the operation of those laws.

H.R. 7610 makes no change in Section 303(f)(2), which would continue to apply so as to exempt the charges assessed for "incidental" towage of non-bulk commodities. The only change in Section 303(b) is to permit the continued combined performance of bulk exempt and regulated transportation in larger, more efficient tow loads. Application of the antitrust laws to bulk exempt rates is not affected by the efficiency with which bulk transportation can be conducted, and that is all that this bill is directed to.

In Mr. Ingersoll's testimony on H.R. 9903, his expressed reservations as to the applicability of the Clayton and Robinson-Patman Acts to bulk exempt transportation arose from the wording of those Acts, which in certain important respects applies only to the pricing of "goods." Discrimination in the pricing of transportation services does not seem to be caught by that term. The water carrier industry believes that, at the very least, transportation which is now or may hereafter be exempted from Commission regulation, should not only forfeit the antitrust immunity conferred by Section 5a, but should also be made fully subject to Robinson-Patman Act type controls, including treble damages, criminal fines and forfeitures, etc. Cross examination during the hearings revealed that this may not be enough to protect the public interest.

The central problem is very simple to state and very difficult to reach with appropriate legislation. There is a great disparity in economic size and power between the railroads and their smaller competitors—barge lines, truck lines and the small railroads. It would obviously be in the public interest to prevent the larger railroads from abusing their superior economic resources through systematic internal subsidization of competitive rates and uneconomic price wars. Application of the Robinson-Patman Act to transportation services would be necessary.

V. CONCLUSION

H.R. 7610, by simply encouraging the most efficient means of the *physical handling* of cargoes under the terms of the regulations and exemptions adopted by Congress, is sound legislation on its own merits. As the Department of transportation and the Senate Committee on Commerce have said, this action should not be postponed to await the accomplishment of all changes at once.

The Senate is committed to a full examination of the issues raised by the railroads. The barge lines feel under an obligation to be constructive in this new evaluation. The key problem is public restraint of abuse of overwhelming economic power. This is as much in the public interest as it is a matter of survival for the railroad's smaller competitors. We have every confidence that review of regulatory matters would take appropriate notice of this problem.

In competing for bulk traffic, the railroads in the past few years have adopted a number of innovations. Special rates for larger freight cars, unit train rates, annual volume rates, incentive loading rates and multiple-car rates have been combined with the railroad inherent advantage of speed and convenience of delivery to make the railroads formidable competitors for bulk commodities. They have been permitted to put their competitive pricing theories into practice. While they claim to be hurt, the widely advertised railroad "comeback" of the past few years deos not substantiate this claim, nor have they presented any factual evidence to support their claim.

The long and the short of it is this: The new railroad ideas, which have been so successful in recent years, are nowhere challenged. The new barge tech-

nology, the benefits of which have already been passed on to the consumer in the form of rate reductions, can be completely frustrated unless H.R. 7610 is passed without amendment. This, we believe is a compelling reason for separating the mixing rule issue from the much larger issue of removal of rate regulation from bulk railroad traffic.

Sincerely yours,

J. W. HERSHEY, *President.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., October 13, 1967.

Mr. JOHN A. CREEDY,
President, Common Carriers Conference of Domestic Water Carriers,
Washington, D.C.

DEAR MR. CREEDY: It seems to me that it would be helpful if the record contained a clear description of just what is the effect of the Supreme Court affirming the Interstate Commerce Commission Order of 1960 on the water carriers and what is this effect as of January 1, 1968.

I think that the testimony advanced by the proponents of the bill had to do with the effect of the various orders of the Commission and court decisions since the use of incidental towing came into operation, and was not confined to the effect of this very last decision which is now in question.

Secondly, inasmuch as the stay of the Commission of its Order of 1960 expires January 1, 1968, I should like to know what the effect of the application of the order would be *at that time.* As I understand it, this last order has to do with the loss of the exemption held by a barge prior to its being incorporated in a regulated tow for that portion of the movement where it was exempt before it was combined in a regulated tow. Naturally I am not as conversant with the operations of the river as are you, but it does seem to me that the freezing of the upper portion of the Mississippi River system and the inoperability until sometime in the early spring, should be considered in any assessment of the significance of the January 1, 1968 date.

Sincerely yours,

SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics.

THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS,
Washington, D.C., October 23, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. FRIEDEL: Thank you for your letter of October 13 and a further opportunity to be helpful in clarifying the issues involving H.R. 7610 and companion bills. In their efforts to obtain declaratory orders that would provide more modern interpretations of an essentially archaic statute, the barge lines tried to fit the Common sense and logic of the new technology to words that, as the courts finally decided, could not be interpreted to fit. The right solution, and the one favored by the business, shipper, labor, port groups and U.S. government agencies supporting us, is to allow full scope to improved technology as a first order of business and not to tinker with a fundamentally obsolete statute.

The effect of the Commission's ruling in the Mississippi Valley Barge Line case (WC–5) as affirmed by the Supreme Court in the Gulf Canal Line case is simply this:

A bulk exempt carrier may not hire regulated towage at the published towing rates of certificated carriers for all or any portion of the line haul services contemplated in its freighting contracts with bulk shippers. Under this ruling, the consequence of the physical mixing of bulk and non-bulk (or more than three bulks) in the tows of certificated carriers is to regulate *not* the towage they perform for the exempt carrier, but the freighting service of the exempt carrier.

Heretofore certificated carriers have been able to provide frequent sailings in big, efficient tows by combining the barges which they handle for shippers under regulated rates with the bulk-loaded barges of an exempt carrier which they also have handled under published towing rates paid by the exempt carrier.

If the January 1, 1968 compliance date stands, bulk exempt and regulated carriage could no longer be combined in a single, efficient tow, but would have to be performed in separate, smaller and less efficient tows.

There is no argument in logic or reason for artificially handicapping available modern technology. In a period of rising costs and prices, it does not make sense to prevent by statute the application of a technology which has demonstrated its effectiveness in substantially reducing freight rates.

The only parts of the inland waterways which are closed during the winter months are the Missouri and the Upper Mississippi. The Ohio, the Illinois, the Lower Mississippi, where the largest tows operate and where the mixing problem is most acute, are operational on a year-round basis. Only a very small fraction of the movements are discontinued during the winter, about 7 to 10 per cent of the total. If the bill is not passed in time for the ICC's deadline, there will be a sudden and dramatic change in the operations of all the barge lines. The Congress and the ICC will be faced with immediate responsibility for forcing artificial cost and rate increases. The numerous showings of shippers, business, labor and port groups emphasize the importance of the issue to industry and agriculture in the areas served by the barge lines.

Passage of H.R. 7610 would continue a competitive relationship between barge lines and railroads without substantial change. Failure to pass the bill will, of course, artificially increase costs and rates for the barge lines and provide the railroads with a windfall advantage.

Sincerely yours,

JOHN A. CREEDY, *President.*

Mr. FRIEDEL. Anybody who has any questions will have the same privilege of submitting them and having the answers supplied for the record.

Are there questions?

Mr. WATSON. Mr. Chairman, I have one or two questions. I am sure everyone recognizes now that the main problem, as pointed out by Mr. Kuykendall, is that we treat all of the carriers fairly.

As I understood your statement, what you are after in this bill is to try to maintain the privileges that were given to you some 27 years ago. Is that not correct?

Mr. HERSHEY. That is essentially true.

Mr. WATSON. That is essentially true. But the difficulty I have here, Mr. Hershey, is that the factual circumstances are so dramatically different today than they were 27 years ago. You have just outlined, and Mr. Struble has, the great technological advances that you have made in the past 27 years. But do you think it is fair to come in and say, give me the competitive advantage I had 27 years ago in view of the fact that you have made some great advances?

You say in your statement that 9 percent of the interstate freight is hauled over inland waterways.

Mr. HERSHEY. Yes.

Mr. WATSON. Do you really think that is a fair request for you to make in view of the dramatic changes that have occurred over the past 27 years?

Mr. HERSHEY. I do indeed, because dramatic changes have been made in the technology of the other modes of transportation too. Dramatic changes have been made in railroading and pipelining and certainly in trucking. They have not stood still. They have a remarkably wonderful record of increasing productivity.

Mr. WATSON. Then we come to the next question.

Why shouldn't everyone be given the same privileges? I want to help but at the same time I would be less than honest if I did not say I felt that all should be treated alike.

I applaud your growth and I want you to keep growing, but I cannot distinguish in my mind any difference between a tow pushing a barge and a train pulling freight cars, except the fact that your barge is larger and you have less maintenance of rights-of-way and all of that.

If you can explain some justifiable reason for a difference there, I will listen to it.

Mr. HERSHEY. I am willing to talk about it, sir.

First of all, we must remember that the railroad industry is rapidly merging itself into a relatively smaller number of enormous systems. Now they have a geographical monopolistic privilege of hauling freight out of certain territories. Certainly this is a lot different than the Mississippi River that is open to anybody with respect to the movement of bulk commodities which comprise about somewhere between 85 and 90 percent of all of the traffic on the river. And anybody can go down and get a barge built and build a tug and start moving commodities on the Mississippi River. It is an intensively competitive situation.

Certainly that is just one of the differences. It makes your job very difficult, I must admit, in determining what is competitive equality, what is a fair deal. All we want is a fair deal and, as I have indicated, my personal view is that if, in the wisdom of Congress, it is felt there is too large a discrepancy between exemptions for one mode and nonexemptions for another, the way to do it is to eliminate the exemptions, put it under regulation.

Mr. WATSON. Then if that course were taken by this committee or by the Congress, you would have no objection to it yourself?

Mr. HERSHEY. I have no objection, but I must reiterate that we have a tremendous problem facing us. In just the matter of 2 months plus we are going to have to rebuild our bargelines. Frankly, I do not know how we are going to do it. We cannot use 6,000- and 7,000-horsepower boats and move 10,000-ton tows.

Mr. FRIEDEL. Mr. Springer?

Mr. SPRINGER. Mr. Hershey, were you the president of the American Commercial Lines and testified representing the Common Carrier Conference of Domestic Water Carriers 2 years ago when we had the transportation bill before the committee?

Mr. HERSHEY. Yes, I think so.

Mr. SPRINGER. Were you opposed to that bill?

Mr. HERSHEY. Was it H.R. 9903?

Mr. SPRINGER. This was the transportation bill, which you know about I am sure. You have not forgotten about that in 2 years.

Mr. HERSHEY. It was more than 2 years.

Mr. SPRINGER. Three years ago. This was the Harris transportation bill.

Mr. HERSHEY. If that is the bill that was going to confer a local bulk exemption or agricultural exemption on railroads, I was opposed to it.

Mr. SPRINGER. Were you opposed to a general transportation bill revision in an attempt to give everybody what we thought they fairly ought to have?

Mr. HERSHEY. I was opposed to it because I did not think the bargelines could survive under it. We have seen things happen under regu-

lation where rates for commodities on a particular river were reduced to the point where the bargelines did not have any of the traffic overnight.

Mr. SPRINGER. These are some of the things it did. [Reading:]

(1) A tow consisting of barges loaded with only one bulk commodity and of barges loaded with any number of exempt agricultural commodities and fishery products would be exempt from regulation.

(2) Any water carrier could freely enter into the business of transporting any number of bulk commodities (over one) without being required to obtain a certificate or permit from the Interstate Commerce Commission, but its rates would be subject to regulation.

(3) Except in the case of exempt agricultural commodities and fishery products, the "mixing rule" applicable to bulk commodities has not been changed. Thus, if a tow carries nonbulk commodities and bulk commodities, the entire tow is subject to Interstate Commerce Commission regulation. However, the exemption of a barge load of agricultural commodities (including grains) or fishery products in a tow would remain no matter what else was carried on other barges in the tow. And the exemption with respect to transportation of agricultural commodities and fishery products would remain even if nonexempt commodities or products were transported in the same barge or vessel.

(4) It should be noted that where the transportation of agricultural commodities and fishery products is under exempt conditions, there is a requirement for the filing of rates thereof even though such transportation is not subject to regulation.

Do you have any comment?

Mr. HERSHEY. I will have to read the bill.

Mr. SPRINGER. That is what I thought. If you get down to pick this down to what the changes were in the bill, it was my understanding at least when we took the bill to the Rules Committee that you people were going along with it, otherwise we would never have taken it over there.

Mr. HERSHEY. I was not a party to any commitment to this committee that we were going to go along with the bill.

Mr. SPRINGER. Then that is a misunderstanding because I am sure that is not what Mr. Harris understood and not what I understood.

Let me say this was a good bill in my opinion. I thought we had finally gotten straightened out the competitive matter between the various modes of transportation, including trucks, railroads, and water, and we attempted to establish some equity among all three. But this matter of coming in for just one thing which you want and nobody else gets anything, I am not very much sold, Mr. Hershey.

I think I would be just as opposed if I thought somebody else was coming in with just one thing for them.

I would say to you, if you think this bill in this form is going to be passed, you better back up and start over because it is not.

Mr. HERSHEY. I am sorry to hear that. All we can do is our best.

Mr. SPRINGER. You have been hearing some things from the committee this morning which I think ought to give you pause for thought. My mind is not closed on this but my experience of 3 years ago left a pretty sorry taste in my mouth. We spent 14 months working on that bill. Mr. Harris worked harder on that bill as chairman than on any piece of legislation he had ever had before this committee. We must have met for months on end in an attempt to work out a bill that was equitable and fair to everybody. He had a lot of water transportation in his area, too, so he was not prejudiced against it.

I thought you ought to have a fair statement this morning about how the committee feels about one industry in a very highly competitive group of industry coming in and seeking one advantage for yourself and not doing anything about the equities involved in other modes of transportation.

Mr. HERSHEY. You do realize, do you not, sir, we are not proposing to be able to do anything we are not doing right now and that we have not been doing for the last 15 years?

Mr. SPRINGER. But this was due to the fact that the ICC took judicial notice at last of some decision that had been handed down by the courts. Is that not correct?

Mr. HERSHEY. They changed their decision themselves, sir. We were operating under a letter of 1944 which was rescinded in 1957.

Mr. SPRINGER. Then you had a stay order, did you not, on May 31, 1967?

Mr. HERSHEY. That is right.

Mr. SPRINGER. Of the order of August 25, 1960, until January 1, 1968, which is not very far away. That was the result of *Gulf Canal Lines, Inc.*, v. *United States*, Commission sustained, and affirmed by the Supreme Court on March 20, 1967, and the Mississippi Valley Barge Company exemption, which held that under conditions of the *American Barge Line* decision the exemption is also lost as to the entire trip, including the initial movement in a nonmixed tow.

And in 1958, *Commercial Barge Lines* v. *United States*, ICC decision sustained and affirmed per curiam, 359 U.S. 342. Is that not why the stay order was issued?

Mr. HERSHEY. Yes.

Mr. SPRINGER. Was this not a large part of why the ICC was tightening up?

Mr. HERSHEY. That is correct.

Mr. SPRINGER. I wanted to be sure the committee understood why the ICC made this decision, and I agree. I wanted to be sure the committee had an understanding of why the ICC issued the stay of May 31, which I think was largely due to the fact that you had court decision which compelled them to.

Mr. HERSHEY. That is correct.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. I have absolutely no barge operations in my district and I think I can look at the problem as objectively as a person could. I am finding it difficult for me to be offended that you as one representing your people come here to ask for a clarification and amendment of the law. This is done every day and by every mode of transportation.

I do not think we ought to get up in arms about it and take a holier-than-thou attitude.

The thing that does interest me is this, and this is what I want you to explain to me:

First, I will say it seems to me like you do have a practical problem that time is running out. I, for one member want to try to resolve the problem and to help. I am sure this is shared by the other members. The problem is apparently whether there will be equality to other

shippers and would or should they all be subject to regulation and antitrust provisions. So I am going to ask you this:

If all of the commodities or the modes of transportation were to be regulated or if the railroads, we will say, or the truckers were given equality, why is that an unfair competitive position with you?

If the railroads, we will say, were given equality of treatment now from a practical standpoint, explain to me why this would be unfair competition to you, if you feel that?

Mr. HERSHEY. Assume that we have equality as I think you are using the term. We can charge anything we want that the shipper is willing to pay to move grain from Quincy, Ill., to New Orleans.

Continuing the assumption that the rate is just deregulated, competitive forces will determine what the rate will be and the railroads also have very competitive equality to publish a rate from Quincy to New Orleans. Let's say the rate at the present time is $3.50 and let's say the railroads decide they want that traffic. They have an opportunity now to drive a competitor out of business. And suppose they put in a rate of $1.

Mr. PICKLE. Suppose the railroads do?

Mr. HERSHEY. Yes. You will say they would not do that unless they made some money out of it, and this is where we part company with the railroads in the area of economics because we say that the past history has convinced us, rightly or wrongly, that under those circumstances the railroads will hold down the rates along the river and gradually dry the river up. We have no traffic which is not competitive with the railroads, and the railroads have a lot of traffic that is not competitive with the bargelines—the interior traffic, the traffic to and from your area.

Mr. PICKLE. If by your example you set a rate of $3.50 and the railroads come in and set a rate of $1, you say they would dry up the river and you would not be able to transport?

Mr. HERSHEY. That is right.

Mr. PICKLE. If that is the competition, why could you not lower your rates to $1?

Mr. HERSHEY. Because a $1-rate in my estimation is not profitable either to the railroads or to the bargelines.

Mr. PICKLE. You are saying then the railroads are so powerful they could come in and undercut you and undersell you and put you out of business?

Mr. HERSHEY. Unless there are tight legal controls to pricing of one method or another, that is correct, sir.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. PICKLE. Yes.

Mr. KUYKENDALL. Mr. Hershey, you have been asked several times about antitrust, whether or not you would suggest that this particular provision be included in this bill. I was called upon in my office twice last week and asked if I would accept this as an amendment to my bill, and I said I certainly would. Would this not stop a $3 below-cost rate?

Mr. HERSHEY. I do not know, sir.

Mr. KUYKENDALL. I can assure you that it would.

Mr. HERSHEY. I simply do not know.

Mr. KUYKENDALL. I can assure you it would. And I have a little personal experience in this matter in having been in the grocery business. The Robinson-Patman Act says that a national organization may not lose money in one area that it made in another for the purpose of running someone out of business. I thought it would take care of this.

I would like to have a recommendation from your group as to whether or not the antitrust would be acceptable to you and on what basis.

Thank you.

Mr. PICKLE. Would you care, Mr. Hershey, to comment on his statement other than that you do not know?

Mr. HERSHEY. I take it he would like to have our industry make a study to reply to the question, and we will be glad to do that.

Mr. FRIEDEL. I have submitted questions on that point, as I mentioned earlier.

Mr. HERSHEY. I think it is a very fair question and we will try to answer it.

Mr. PICKLE. I think the question should be submitted and answered.

Mr. FRIEDEL. I want to thank you, Mr. Hershey.

We have a list of witnesses here. The House goes into session in about 15 minutes.

I would like to say Congressman Abernethy of Mississippi was here and he wanted to introduce a very good friend of his, Mr. Jesse Brent of Greenville, Miss., but he had to leave to go to another committee.

If Mr. Brent is here, I wish he would stand. Do you have a statement you wish to submit for the record.

STATEMENT OF JESSE E. BRENT, PRESIDENT, BRENT TOWING CO.

Mr. BRENT. No, sir; Mr. Chairman, I do not. I did not have time to get a statement prepared. I thought at the last minute I would appear before the committee, and my main reason is that since the hearings over in the Senate side there has been some rumbling on the Hill, I understand, that little operators like myself were not going to benefit by this legislation, that just the big boys like Mr. Hershey and Mr. Struble's companies were the ones that were going to benefit.

I just want the committee to know that I come from a town of 25 small towboat operators. We are all independent carriers. We are vigorously supporting this legislation. If there is any thought in the committee's mind the little fellows in the industry are not supporting this, I would like that cleared up.

Mr. FRIEDEL. They are in favor of the bill?

Mr. BRENT. Yes, very much.

Mr. FRIEDEL. Mr. Abernethy introduced a companion bill and you want to support it.

Mr. BRENT. Yes, right.

Mr. FRIEDEL. Is there anyone else here that would like to submit a statement for the record?

STATEMENT OF F. A. MECHLING, CHAIRMAN, LEGISLATIVE COMMITTEE, AMERICAN WATERWAYS OPERATORS, INC.

Mr. MECHLING. My name is F. A. Mechling. I am on the witness list.

I do have a statement with me I would like to submit for the record in the interest of time.

Mr. FRIEDEL. I have a couple of questions I will submit to you that I would like to have answered for the record.

Mr. MECHLING. All right, sir.

(See p. 106 for questions, and reply thereto.)

(Mr. Mechling's prepared statement follows:)

STATEMENT OF F. A. MECHLING, THE AMERICAN WATERWAYS OPERATORS, INC.

My name is F. A. Mechling. I am executive vice president of A. L. Mechling Barge Lines Inc., of Joliet, Illinois. I appear before this committee representing The American Waterways Operators, Inc. (AWO) to present testimony in support of the enactment of H.R. 7610, a bill introduced by Representative Earle Cabell of Texas "to amend Section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein." I am a director of The American Waterways Operators, Inc., a regional vice president, and chairman of the Association's Legislative Committee. I served in the past as chairman of the AWO Board of Directors. The testimony I am about to present has been authorized by action of the Board of Directors and the membership of the Association.

First, I would like to explain for the benefit of the committee and for the record the characteristics of The American Waterways Operators, Inc., and outline the scope of its interests in the proposed legislation. AWO is a nationwide, voluntary, non-profit membership trade association with headquarters located at 1250 Connecticut Avenue (Suite 502), Washington, D.C. The Association has field offices in New York City and New Orleans. The Association has 211 members. One hundred seventy of these companies own and operate towboats, tugboats and barges in the performance of transportation services over the inland waterways of the United States and in some cases offshore along the Atlantic, Gulf and Pacific coasts as well as in trade to and from Puerto Rico, Alaska and Hawaii. The other 41 companies who belong to AWO are shipbuilders, terminal operators serving barge commerce, and mid-stream service companies. Among the companies operating towboats, tugboats and barges are carriers performing regular route common carrier service under Interstate Commerce Commission certificates, carriers performing service in the transportation of commodities, both dry and liquid, which are exempt from ICC regulation, and carriers performing proprietary transportation.

I am proud to say, Mr. Chairman, that our segment of the transportation industry—the towboat, tugboat, bargeline industry—comes before the Congress united in its support of H.R. 7610 and other identical bills which have been introduced.

I am proud to say also, Mr. Chairman, that the organization which I represent before the committee today, The American Waterways Operators, Inc., has had a part in achieving this position of unity for presentation to the Congress.

Very briefly may I point out to the committee that our industry and our Association have arrived at this position in which we are seeking enactment of H.R. 7610 after careful deliberation and after all avenues of operational and administrative remedy were exhusted.

Our industry has, since the end of World War II, been going through a continuing evolution in towboat horsepower capacity and design.

In the period 1945 to 1950 we went through an increase in horsepower per towboat from 800 to 1,000 horsepower, capable of pushing four to six barges with 5,000 up to 7,200 tons per tow. We then went to 1,800 horsepower and 3,200 horsepower boats capable of pushing 10,000 to 15,000 tons of cargo. Today, boats with 5,000 to 9,000 horsepower are operating on our rivers, pushing 30,000 up to 40,000 or 50,000 tons of cargo in a single flotilla of barges. The increase in the

power and capability of our boats is caused by greater utilization of barge service by the public, which resulted in increased tonnage. Using ingenuity and available American know-how, the barge industry utilized technological developments to meet, economically and efficiently, the increased tonnage and to improve its service to the public. As the result of these activities, rates have been held down and actually are lower today than they were in 1945—over 20 years ago. Rate levels in the range of three mills per ton mile are the average today, while an average of almost four mills per ton mile was common in the middle 40's and early 1950's. For example, in 1941 the O.P.A. ceiling rates on the transportation of petroleum products on the inland rivers was three and three-quarter mills per net ton mile. Today, these same commodities are transported on the inland river system at rates in the two mills to two and one-quarter mills per net ton mile range.

We are proud of this record and what it has meant to reduce inflationary pressures on inland freight rates to the benefit of our entire economy. The results have been very effective in affording lower rates on grain for export to foreign markets to help in our delicate balance of payments problem and to assist our domestic industries in meeting foreign competition, by delivering to domestic markets by low-cost barge service. For example, steel mills in the Chicago area compete with foreign producers on the same products in the consuming markets located along the Lower Mississippi River and the Gulf Coast. Any increase in freight rates would permit further invasion of these domestic markets by foreign producers. Agricultural commodities produced in the heart-land of the Midwest reach world markets via the inland river systems to the deep sea ports for export. The continuous efforts to hold down the cost of transportation is mandatory to permit these products to enter and compete in these world markets and provide a reasonable return to the farmer for his efforts in producing these food products.

All of this progress, growth and development, is now threatened to be cancelled out as a result of a recent decision interpreting the application of the exemption of dry bulk commodities under Section 303(b) of the Interstate Commerce Act of 1940.

We cannot continue an arrangement which has permitted us to tow together in the same flotilla regulated barges of steel or other non-bulk commodities and barges moving under the exemption loaded with bulk commodities such as grain. Compliance with this decision will require us to separate tows of bulk and non-bulk.

To separate tows in the manner described will require an additional towboat to do the same job that can now be done with one 5,000 horsepower towboat and 12 men. This would in reality mean a doubling of the manpower to man the two vessels, as well as doubling the investment, to provide the same service. This would of course result in increased rates to the disadvantage of the shipping public. (See attached charts 1 through 4, pp. 63–65.)

The other alternative is to wait until sufficient barges of either exempt or regulated cargoes are accumulated to make up an economical size tow. The effect of this would be to delay sailings and cause a deterioration in the service to the distant dissatisfaction of the shipper.

Any artificial increase such as described above would automatically dilute the value of low-cost barge service. The result would make it too costly for shippers who have geared their operations to low-cost barge transportation to continue to utilize barge services. The disadvantaged shippers and receivers would have to find either alternative sources, such as purchasing from foreign sources; increase their cost of operation, or change their methods of operation. In any event, the result may well be disastrous to existing industry as now constituted.

None of these, of course, are in the public interest.

Bill H. R. 7610 as submitted will maintain and improve the ability of the water carriers to provide the most economical efficient service.

Regulated carriers will be able to mix all cargoes in large tows. They will also be able to tow exempt cargoes for unregulated for-hire carriers in the same tow.

Exempt carriers will be able to add to their large exempt tows, barges of regulated carriers moving on the tariff rates and rights of the regulated carriers.

This will provide better service for the shipper in expediting the movement of regulated cargoes and at the same time keep down the unit cost of transporting all the cargoes in the same tow, by making full utilization of the technological developments, permitting the provision of efficient and economical service.

In short, this provides a complete flexibility of service for everyone involved in the movement of goods by water, to the total benefit of the shippers and ultimately the consumer.

One other feature of H.R. 7610 that modernizes the 1940 Act is the parenthetical clause dealing with commodities transported in the bulk prior to June 1, 1939.

Many new bulk commodities have been introduced to inland barge transportation since that date. Many other commodities, such as flour, sugar, etc., have switched to movement from bags or containers to bulk form for efficiency and economy of loading and unloading. The striking of this clause will update the law and be consistent with sound progress and development.

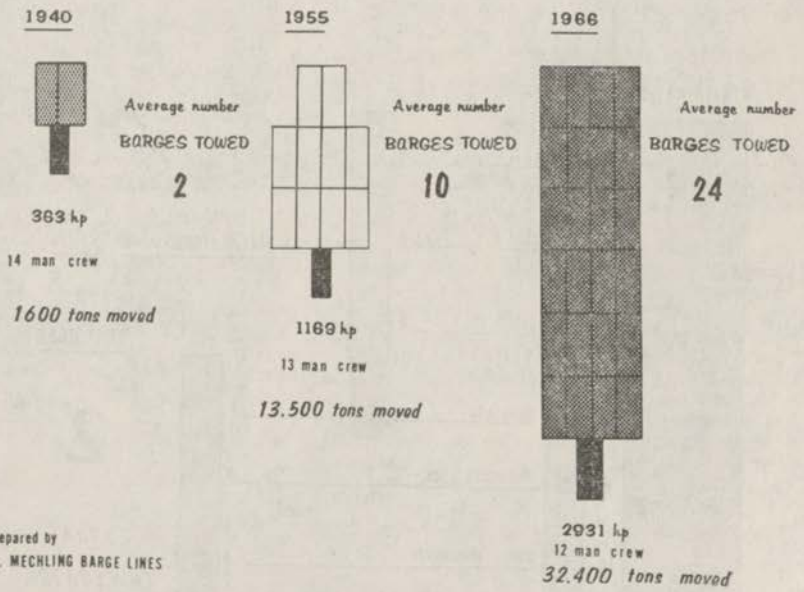
With the tremendous increase in transportation services which is going to be required, we must have as one of our national goals to make the best possible use of our transportation resources. This is the objective sought in H.R. 7610 with respect to the services of the towboat, tugboat, bargeline industry—the best possible utilization of vessel equipment, manpower and our network of navigation channels.

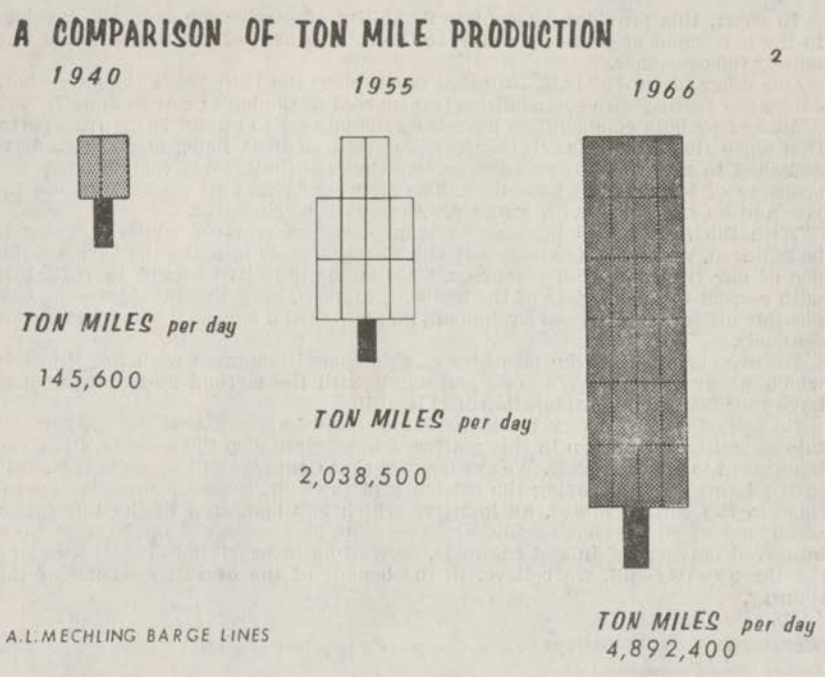
We are certain that the members of this committee agree with the objective which we are seeking. We hope you agree with the method and that we may have your favorable consideration of H.R. 7610.

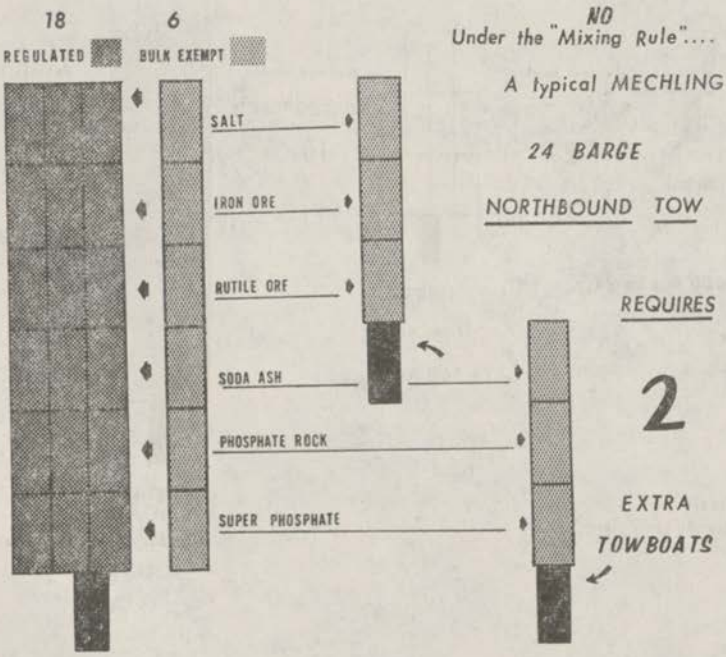
On behalf of AWO, may I express our members' appreciation for the interest this committee has taken in this matter. I appreciate also the consideration you have given to my testimony. We are hopeful that Congress will approve H.R. 7610 in the interest of improving the efficiency of towboat, tugboat, bargeline operations in the United States, an industry which has pioneered in the innovation of technology in the construction and operation of vessels and in the use of our improved network of inland channels, as well as in providing operations along the three coasts—all, we believe, to the benefit of the overall economy of the country.

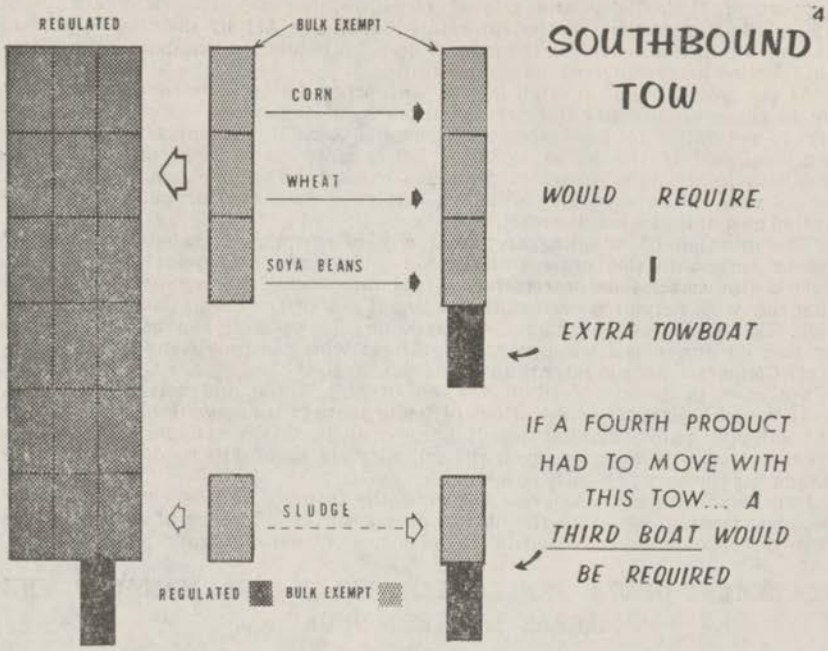
TECHNOLOGICAL ADVANCEMENT . . . *A Comparison of Barge Tows — 1940 · 1966* 1

Causing Changes in Operational Strategy




A COMPARISON OF TON MILE PRODUCTION
1940
1955
1966
2
TON MILES per day
145,600
TON MILES per day
2,038,500
TON MILES per day
4,892,400
A.L.MECHLING BARGE LINES


18
REGULATED
6
BULK EXEMPT
SALT
IRON ORE
RUTILE ORE
SODA ASH
PHOSPHATE ROCK
SUPER PHOSPHATE
3
NO
Under the "Mixing Rule"....
A typical MECHLING
24 BARGE
NORTHBOUND TOW
REQUIRES
2
EXTRA
TOWBOATS



Mr. FRIEDEL. Mr. Schwartz.

STATEMENT OF LOUIS A. SCHWARTZ, GENERAL MANAGER, NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU

Mr. SCHWARTZ. I am Louis A. Schwartz. I am general manager of New Orleans Traffic and Transportation Bureau at New Orleans.

Congressman Hale Boggs was here and he is from my district and we were scheduled to submit our statements yesterday but did not because of the complications that arose. So I talked to Congressman Hale Boggs and he suggested I bring my statement to the committee and that it be copied in the record.

Mr. FRIEDEL. All right.

Mr. SCHWARTZ. So my statement is in there and I want to say we are definitely in support of the bill.

Mr. FRIEDEL. Thank you.

(Mr. Schwartz' prepared statement follows:)

STATEMENT OF LOUIS A. SCHWARTZ, GENERAL MANAGER, NEW ORLEANS TRAFFIC & TRANSPORTATION BUREAU

I appear here on behalf of the New Orleans Traffic and Transportation Bureau, a non-profit organization representing the Port and City of New Orleans in all matters pertaining to transportation, the membership of which includes such organizations as the Board of Commissioners of the Port of New Orleans, New Orleans Board of Trade, Ltd., New Orleans Steamship Association, etc., in

support of H.R. 10659 and related measures, the objective of which is to amend Section 303(b) of the Interstate Commerce Act by deleting therefrom various limitations covering the exemption from regulation granted by the aforesaid section to certain dry bulk commodities.

At the present time Section 303(b) authorizes barge operators to transport up to three exempt dry bulk commodities in a single tow without being subject to regulation by the Interstate Commerce Act. This exemption, however, is not available if the barge operator hauls more than three dry bulk commodities in a single vessel or "mingles exempt and non-exempt traffic in a single vessel". Further, the aforesaid section defines two or more barges operated as a unit as a single vessel.

The question of mingling regulated and non-regulated traffic arose out of recent Interstate Commerce Commission and Court interpretation of Section 30(b). Under these interpretations dry bulk commodities cannot be mingled in a tow with regulated commodities without loss of the exemption from regulation. The Interstate Commerce Commission has ordered the barge lines operating on our inland waterways to conform with the provisions of the Interstate Commerce Act not later than January 1, 1968.

We wish to go on record in support of H.R. 10659 and related measures, as to revert to barge line operations of ten or more years ago will only mean that the shipping public making use of barge transportation and deriving benefits from low cost transportation on the inland waterways will be deprived of the economies they are presently enjoying.

It is important that Congress act upon the involved bill as expeditiously as possible, particularly since the outstanding enforcement order of the Interstate Commerce Commission is scheduled to become effective January 1, 1968.

STATEMENT OF J. C. JENSEN, GENERAL TRAFFIC MANAGER, THE GREAT WESTERN SUGAR CO.

Mr. JENSEN. I am J. C. Jensen. I am general traffic manager of the Great Western Sugar Co. I do not appear on your list of witnesses.

I am here on behalf of most of the U.S. beet sugar industry. We will oppose the bill and I would like to have permission to submit a statement to be copied in the record.

Mr. FRIEDEL. How soon can you get it?

Mr. JENSEN. I will have it here tomorrow. We are working on it right now.

Mr. FRIEDEL. All right.

Mr. WATSON. Do I understand you support or oppose the bill?

Mr. JENSEN. We oppose the bill.

(Mr. Jensen's prepared statement follows:)

STATEMENT OF J. C. JENSEN GENERAL TRAFFIC MANAGER, THE GREAT WESTERN SUGAR CO., DENVER, COLO.

My name is J. C. Jensen. I am General Traffic Manager of The Great Western Sugar Company with headquarters in Denver, Colorado. This statement is submitted in opposition to H.R. 7610 and H.R. 10315 on behalf of sugarbeet growers in 17 states and 10 beet sugar companies, representing nearly 90 per cent of the total United States beet sugar production. The organizations on whose behalf I appear include the following:

SUGARBEET GROWER ASSOCIATIONS

Name, Headquarters, Principal Officers	*States Represented*
National Sugarbeet Growers Federation, Greeley, Colorado; A. E. Olson, President; Richard W. Blake, Executive Vice President.	Colorado, Idaho, Kansas, Montana, Nebraska, Oregon, Utah, Washington, Wyoming.
Red River Valley Sugarbeet Growers Association, Inc., Fargo, North Dakota; Arnet O. Weinlaeder, President; Aldrich C. Bloomquist, Vice President.	Minnesota, North Dakota.
California Beet Growers Association, Stockton, California; Owen S. Rice, President; Malcolm Young, Executive Manager.	California.
Texas-New Mexico Sugar Beet Growers Association, Inc., Hereford, Texas; Jay Boston, President; James Witherspoon, Executive Secretary.	New Mexico, Texas.
Farmers and Manufacturers Beet Sugar Association, Saginaw, Michigan; Carl H. Yackle, President; Loren S. Armbruster, Director Grower Affairs.	Michigan, Ohio.

BEET SUGAR COMPANIES

Name and Headquarters	*States in Which Plants Are Located*
Amalgamated Sugar Company, Ogden, Utah.	Idaho, Oregon, Utah.
American Crystal Sugar Company, Denver, Colorado.	California, Colorado, Iowa, Minnesota, North Dakota.
Buckeye Sugars, Inc., Ottawa, Ohio.	Ohio.
The Great Western Sugar Company, Denver, Colorado.	Colorado, Kansas, Montana, Nebraska, Wyoming.
Holly Sugar Corporation, Colorado Springs, Colorado.	California, Colorado, Montana, Texas, Wyoming.
Michigan Sugar Company, Saginaw, Michigan.	Michigan.
Monitor Sugar Company, Bay City, Michigan.	Michigan.
Northern Ohio Sugar Company, Denver, Colorado.	Ohio.
Union Sugar Division, Consolidated Foods Corporation, San Francisco, California.	California.
Utah-Idaho Sugar Company, Salt Lake City, Utah.	Idaho, Utah, Washington.

These bills directly affect the welfare of the thousands of persons in 17 states involved in the growing of sugarbeets and the production of beet sugar.

The 17 states, listed alphabetically for convenience, are:

California	Minnesota	Oregon
Colorado	Montana	Texas
Idaho	Nebraska	Utah
Iowa	New Mexico	Washington
Kansas	North Dakota	Wyoming
Michigan	Ohio	

The bills propose to amend Section 303(b) of the Interstate Commerce Act so as to broaden exemptions from regulation now contained therein for the transportation of bulk commodities via water carriers. Enactment of these bills will permit the movement of refined sugar, in bulk, by barge completely free of regulation and without the necessity of rate publication of any kind. All bulk sugar moving via railroads or for-hire motor vehicles is subject to strict Interstate Commerce Commission regulations and all rates must be published and posted on not less than thirty days notice to the ICC and the general public. These bills would actually create still greater discrimination than now exists, not only among the different modes of transportation but also between competing shippers serving common markets. This is in direct contravention of the purpose of the Interstate Commerce Act and the National Transportation Policy.

Let me illustrate.

Some very important markets for bulk sugar, both beet and cane, are Chicago, St. Louis, Memphis, Cincinnati, and Cleveland. These points, and others along

the river and canal system of the mid-continent, are directly served by barge lines which carry refined cane sugar from the cane refineries along the Gulf of Mexico at rates that are much lower than the rates the beet sugar industry must pay for shipment by rail to the same markets. Let me emphasize: The Gulf cane refineries have access to barge shipment. The beet sugar producers, producing in the states I have enumerated, do not have access to barge shipment; they must ship by rail or truck, at higher cost.

The extent to which beet sugar shippers already must sell sugar under a severe rate handicap is illustrated by the following comparison of sugar rail rates from Colorado and Nebraska beet sugar processing plants to Chicago and St. Louis, with the sugar barge rates paid by the Gulf cane sugar refineries on shipments from New Orleans to the same Chicago and St. Louis markets.

	Rail rates from Colorado–Nebraska		Barge rates from New Orleans	
	Rate per net ton	Minimum weight (net tons)	Rate per net ton	Minimum weight (net tons)
To Chicago:				
Packaged sugar	$14.10	50	$6.55	600
Bulk sugar	11.50	95	6.00	1,000
To St. Louis:				
Packaged sugar	14.10	50	5.38	600
			[1] 8.13	600
Bulk sugar	11.50	95	4.93	1,000
			[1] 5.38	600

[1] Applies when placed in railroad cars, trucks, or warehouses at destination.

This is a typical example of the situation that exists for all the organizations for whom I speak. This discrimination, already severe, would be greatly increased if the proposed amendments are passed.

The avowed purpose of the proposed amendments is to reduce costs (rates) to shippers using the waterways. This alone will aggravate the present untenable competitive squeeze on beet sugar processors. In addition, however, if the proposed bills become law, foreign and domestic cane sugar refined in New Orleans and other Southern gulf locations will move to market in bulk at whatever barge rates the cane refiners can negotiate on a moment's notice. The public and the ICC will have no knowledge of what these rates are. On the other hand, and in direct competition, the beet sugar producers are required to pay the published railroad or truck line freight rates which, of course, cannot be changed except by 30 days notice to the public and the ICC. Obviously, such a situation is unfair and discriminatory.

It will be sincerely appreciated by the companies and beet growers for whom I speak, if the House Subcommittee on Transportation and Aeronautics will give serious consideration to the situation I have described. If the bills in question are to be reported out by this Subcommittee. I respectfully urge that they be amended so as to provide that shipments of sugar, in bulk, by water carriers will *not* be made exempt from regulation.

STATEMENT OF DALE MILLER, EXECUTIVE VICE PRESIDENT, GULF INTRACOASTAL CANAL ASSOCIATION

Mr. MILLER. I am Dale Miller, executive vice president of the Gulf Intracoastal Canal Association. I am on your list of witnesses. I have a very brief statement which I will submit.

Mr. FRIEDEL. Thank you very much.

(Mr. Miller's prepared statement follows:)

STATEMENT OF DALE MILLER, EXECUTIVE VICE PRESIDENT, GULF INTRACOASTAL CANAL ASSOCIATION

My name is Dale Miller, and I am Executive Vice President of the Gulf Intracoastal Canal Association, with principal offices in Houston—a 62-year-old association of civic and business leaders concerned with the economic development of all States bordering on the Gulf of Mexico.

The development of the Gulf Intracoastal Waterway is one of the most remarkable success stories of all time. When it was first authorized, the official prediction was that it would ultimately develop about 5,000,000 tons of commerce a year. Last year it transported more than 78,000,000 tons, and the increase alone from the previous year of 6,000,000 tons was more than had been predicted for an entire year.

Over a long period of years, the Gulf Intracoastal Waterway has been a major factor in the booming industrial development of the States along the Gulf Coast.

As the public demand has grown for more and more service, the barge lines serving the great Gulf ports from Mexico to Florida have responded with improvement in technology. Despite increasing costs of labor and material, barge rates have remained at a level which has proved highly stimulating to industrial growth.

The Intracoastal Canal connects at four points with the Mississippi River, and the tributaries of this vast system stretch eastward to the Alleghenies, north to the Great Lakes and Canada, and west to the head of navigation on the Missouri up in the Dakotas.

Much of the traffic that develops on this extensive system is destined for cities on the Gulf, and the raw materials and other products of the Gulf find a ready market in this enormous 26-State region which encompasses more than half of the nation.

Our concern with the obsolete wording of Section 303(b) of the Interstate Commerce Act is that, if the technological advance of barge lines of the past ten years is vitiated, the wholesome industrial development of the Gulf area will be adversely affected. Industry is highly dependent on economical and efficient barge service for the delivery of cargoes from the main stem of the Mississippi to Gulf ports, and for the delivery of Gulf products to the main stem of the Mississippi.

We appreciate this opportunity to present these views on this important subject.

STATEMENT OF C. A. POELKER, JR., SECRETARY-TREASURER, MERCHANTS EXCHANGE OF ST. LOUIS

Mr. POELKER. My name is C. A. Poelker, Jr., secretary-treasurer of the Merchants Exchange of St. Louis, and I have submitted a statement which is in the hands of the committee, and I would like to have it copied in the record.

Mr. FRIEDEL. All right.

(Mr. Poelker's prepared statement follows:)

STATEMENT OF C. A. POELKER, JR., SECRETARY-TREASURER, MERCHANTS EXCHANGE OF ST. LOUIS

Mr. Chairman, I appreciate this opportunity to appear today in support of H.R. 7610 which would modernize Section 303(b) of the Interstate Commerce Act, the so-called dry bulk exemption, so that full advantage can be taken of the most modern barge technology available.

The members of the Merchants Exchange of St. Louis fully endorse the passage of this bill. Our Exchange, the first grain exchange in the United States, is vitally interested in water transportation, and our members make full usage of the inland waterways system in moving the products of agriculture in interstate and foreign commerce.

The restrictions currently carried in Section 303(b), Part III of the Interstate Commerce Act can only act to increase the cost of barge transportation. This restriction would be comparable to a restriction that required rail carriers to operate two trains, one to carry State and the other to carry Interstate traffic. The only effect of the restriction in the Act is to restrain full usage of our inland waterway system.

Part III of the Interstate Commerce Act covering water carriers, together with Section 303(b), became effective in 1940, and many advances have been made in the past twenty-seven years in barge transportation. As an example, tows now include as many as forty (40) barges. This has enabled the barge lines to hold down the cost of barge movement. The restrictions in Section 303(b) can only

add to the cost of moving bulk agricultural commodities without serving any useful purpose.

The present wording of Section 303(b) which prevents the mixing of regulated and non-regulated commodities in a single tow has been made obsolete by the new barge technology. The courts have held that if transportation inefficiencies result from strict interpretation of the letter of the law, the remedy is with Congress. At a time of rising costs and prices, the shippers and consumers of this country cannot afford artificial transportation inefficiencies. We therefore urge this Committee to make possible the most efficient utilization of transportation resources by adopting H.R. 7610. The Department of Agriculture, in its statement to the Senate Commerce Committee, accurately stated our position when it said: "We believe the economy and efficiency likely to result from enactment of this proposed legislation would be beneficial to agriculture producers and shippers." Thank you.

STATEMENT OF CHARLES H. WULFF, GENERAL TRAFFIC MANAGER, FARMERS UNION GRAIN TERMINAL ASSOCIATION

Mr. WULFF. I am Charles H. Wulff, general traffic manager of the Farmers Union Grain Terminal Association, St. Paul, Minn.

I do appear as a witness. I would like to submit a statement to be copied into the record in support of the bill.

Mr. FRIEDEL. All right.

(Mr. Wulff's prepared statement follows:)

STATEMENT OF CHARLES H. WULFF, GENERAL TRAFFIC MANAGER, FARMERS UNION GRAIN TERMINAL ASSOCIATION

Mr. Chairman, my name is Charles H. Wulff. I am General Traffic Manager of Farmers Union Grain Terminal Association, a regional grain marketing cooperative with home offices located at 1667 North Snelling Avenue, St. Paul, Minnesota. My purpose in appearing before this committee is to express Farmers Union Grain Terminal's support of H.R. 7610 and companion bills.

GTA owns and operates a terminal elevator located on the banks of the Mississippi River at St. Paul, Minnesota, from which we ship grain by barge to many points located on our inland waterways. The grain we ship is that produced by our patron members located in the States of Minnesota, North Dakota, South Dakota, and Montana. We have found that our origin territory, because of its geographic location has become one of, if not the most, expensive origin territories in the country so far as transportation is concerned. GTA also has part interest in a river elevator located at St. Louis, Missouri. It is for this reason that we are vitally interested in good, dependable, low cost transportation.

Barge transportation is, as yet, the lowest cost transportation available at St. Paul today. We ship an ever increasing amount of our grain by barge even though they are only available to us during the summer months. Our increased use of barge transportation follows very closely the reduction in barge rates and we feel that we were able to sell, into export channels for instance, more grain because reduced barge rates made our grain more competitive.

GTA has watched the transition of the barge lines with great interest. They have increased the size of everything on the river except their rate per ton. The individual barges are all larger; they are being put together in greater numbers to make larger tows and the barge lines are building tow boats to match. In this respect they are not unlike any other mode of transportation in the trend to ever larger equipment.

Like other modes of transportation the economics of this trend dictates that maximum utilization of this equipment must be made or else the economics and efficiencies begin to break down. The story is the same with railroads and trucks. I am sure the committee is aware of what has happened to rail rates in some areas of the country when railroads have used large equipment and were able to improve the utilization of this equipment. Rates have been reduced and as a result both the shipping public and the carriers are better off. This has been possible because the railroads have been free to take advantage of technological advances in their industry. Similar cases are obvious in the trucking and airline industries.

The problem in the barge industry is that in Section 303(B) of the Interstate Commerce Act there is a parenthetical expression that defines, or actually limits, exempt bulk commodities to those being moved as of June 1, 1939. This is further restriced by another definition of the same vintage that make two or more vessels (barges) being navigated as a unit a single vessel. These two definitions made in 1939, based on 1939 experience and situations, may have been adequate for a time, but with the changes that have and are taking place such definitions are now unreasonably restrictive.

The problems presented by the present wording of Section 303(b) on the Commodity list is that full utilization is difficult to accomplish under the resulting mixing rule. For instance, each grain is now considered a separate commodity. GTA ships, by barge, corn, wheat, soybeans, rye and oats and could very easily load them in such a manner that all of them would be contained in a single tow. The present rule prohibits this and requires that at least two of these grains be held for another tow. Nothing is really accomplished execpt a costly delay for both GTA and a barge line.

The single vessel concept generates its delays in the same manner. Barges are often held for as long as a week or more until the owning barge line has another boat available, whereas the barge could have been moved by another barge line under some exchange basis except for the present wording of the Act.

These examples are not meant to be all inclusive but merely indicative of the expensive operating conditions created by definitions made in 1939.

GTA needs barge service that is now cost and efficient. It is our opinion that H.R. 7610 and companion bills, which propose to eliminate the two rather unique restrictions from Section 303(b) of the Act, will do much to permit barge lines to make use of technological advances that will permit them to continue and even improve their service at a low cost with no unreasonable adverse effect on any segment of our economy.

STATEMENT OF W. H. JOUBERT, GENERAL TRAFFIC MANAGER, BOWATERS SOUTHERN PAPER CORP.

Mr. JOUBERT. I am W. H. Joubert, Mr. Chairman. I am general traffic manager of the Bowaters Southern Paper Corp., of Calhoun, Tenn.

I am listed as a witness. I would like to present a statement and then give some testimony.

Mr. FRIEDEL. Thank you very much.

(Mr. Joubert's prepared statement follows:)

STATEMENT OF W. H. JOUBERT, GENERAL TRAFFIC MANAGER, BOWATERS SOUTHERN PAPER CORPORATION

I am General Traffic Manager of Bowaters Southern Paper Corporation, Calhoun, Tenn., and Bowaters Carolina Corporation, Catawba, S.C. Also, I am chairman of the Legislative Committee of the Southern Paper Manufacturers Traffic Conference.

I have been with Bowaters fourteen years. Prior to joining Bowaters, I served as transportation economist with the Tennessee Valley Authority for seven years, and instructor of economic subjects at Florida State College for Women, University of Florida, University of North Carolina, University of Tennessee, and Tennessee Wesleyan College.

In 1933 and 1935, respectively, I received bachelor's and master's degrees from the University of Florida, and in 1944 a doctor of philosophy degree from the University of North Carolina.

My publications include a book entitled, *Southern Freight Rates in Transition*, the transportation section of the 1947 Marshall Plan report, and other articles and government reports on transportation subjects.

Also, I have served as economic analyst with the U.S. Department of Commerce and as advisor on transportation matters for several other government agencies.

In the year 1966, Bowaters Southern Paper Corporation, which is located at Calhoun, Tenn. directly on the waterfront of the Hiwassee River, a tributary of the Tennessee River, shipped the following net tons of newsprint and ground-

wood paper and woodpulp: 377,000 by rail, 80,000 by barge, 52,000 by truck, and 18,000 by piggyback, or an aggregate total of 527,000 tons of outbound products.

During 1966 we received at the mill around 650,000 cords of pulpwood and woodchips, 100,000 of which moved inbound by barge. The mill also received many tons of other inbound supplies, including about 15,000 tons of fuel oil by barge delivery.

Our total annual freight bill at Calhoun is about $8,000,000, more than $1,000,000 of which is for barging. Bowater's Calhoun plant is the largest newsprint mill in the U.S., and one of the largest in the world.

Other corporate members of the Southern Paper Manufacturers Traffic Conference with a vital interest in barging include Champion Papers, Inc., which barges a substantial tonnage of woodpulp from Pasadena, Tex. to Knoxville, Tenn., and of printing paper from Pasadena to Chicago. Also, Southland Paper Mills, which has just completed a large newsprint plant at Sheldon, Tex. and intends to barge extensively.

The Conference also includes Union Bag-Camp Corporation at Savannah, Ga., which utilizes water transportation. In sum, the SPMTC includes forty-five paper mills producing 95 percent of paper produced in the Southeast and Southwest, with an annual freight bill of $750 million. These companies voted unanimously to support the restoration of barge mixing.

Major arguments in favor of the legislation now before this subcommittee are as follows:

1. The court decision upsetting the traditional practice of mixing barge tows states that Congress is the proper source of remedy for any injustice resulting from the court's ruling. (See Gulf Canal Lines Vs. U.S., 258 Federal Supplement 864, U.S. District Court, Southern District of Texas, October 26, 1966, affirmed by U.S. Supreme Court No. 947, March 20, 1967.) The affirmed decision rules that "if Congressional handiwork now produces unwanted results, it is for Congress, not the Judiciary, to right the machinery".

2. The fact that for many years barge lines mixed regulated and unregulated freight without serious objection by any government agency justifies continuance of that practice. In 1940, Congress adopted national regulation of water carriers including Section 303(b) of the IC Act, the so-called bulk exemption provision. From 1940 until 1967, the barge lines regularly mixed bulk exempt and non-exempt barges in the same tow. At the same time, they honored the provision exempting bulk freight from regulation. Both the barge lines and shippers felt the restrictive provision in 303(b) did not prevent mixing exempt and non-exempt barges. It was only when the U.S. Supreme Court rendered its March, 1967 decision that the barge lines and barge shippers realized that this type mixing is illegal. To abandon a practice which has been carried on for more than a quarter of a century, a practice in which everyone involved, including Bowaters, believed to be legal, would improse a crushing loss upon Bowaters and other shippers of paper products.

3. The present wording of Section 303(b), as recently interpreted, makes no sense to the paper industry, and if Congress does not change that section, the paper industry will be compelled to abandon for-hire barging. For example, the section, in effect, restricts the Section 303(b) bulk exemption to a "vessel" carrying a maximum of three different commodities. It then defines a "vessel" thus: "two or more vessels, while navigated as a unit, shall be considered to be a single vessel". In other words, under the law a tow of 35 barges is considered to be one vessel. A barge is a separate vessel, and the law should regard it so.

The only just and fair action is to strike the pertinent sentence, so that a single tow of barges can be made up of barges containing both bulk exempt and non-exempt or regulated freight. To limit a barge tow of 35 barges to only three bulk items, as the court decision would do, is not only illogical, but somewhat ridiculous. Under the court's ruling, a two of 40 barges can contain only three bulk-exempt commodities; say, sand, grain, and coal, and therefore cannot add another barge containing another commodity, not even an additional bulk commodity.

4. Inability to place regulated barges with tows of exempt barges will greatly increase freight costs on regulated barge commodities. For example, regulated freight constitutes only ten percent of the aggregate freight on the Tennessee River. The other ninety percent is bulk exempt, or unregulated. If bargeloads of paper cannot join barge tows of bulk freight, we would have to move paper from Calhoun to destinations in tows of one or two barges. That inefficient operation would be so costly that the barge lines would be compelled to hike our freight rates to impossible levels.

5. If the court decision stands, capital investments in paper mills, made in good faith, will be destroyed. Many paper plants locate on the waterfront to gain the advantages of navigation. To nullify those advantages by eliminating access to barge transportation would almost certainly reduce the tremendous capital investment in these facilities.

6. Modern navigation on the Tennessee River and other waterways of the U.S., particularly of regulated commodities, is in its infancy. The public interest demands that river commerce mature to full development. Mixing of barges is essential to attain growth to full capacity of the barge movement of regulated commodities.

7. Shipper, public, and carrier support of the barge mixing bills is overwhelming. The only opposition to amendment of Section 303(b) is the railroad industry. Every major shipper group which has spoken on the subject is for revision of the restrictions in that section.

Apparently the rail carriers seek to drive the high-revenue regulated freight from the inland waterways to the rail lines. This is typical of the railroad attitude towards water transportation throughout history. With rare exceptions the rail industry has eternally sought to destroy water transportation in this country. The federal government has invested billions of dollars to develop inland navigation. In addition, it has enacted numerous laws aimed to persuade the railroads to coordinate rail and water transportation, so that shippers will gain the maximum advantages of both modes. Several sections of the Transportation Act of 1940 seek that goal.

However, the railroads have thus far successfully evaded sections of the Interstate Commerce Act calling for coordination of the various modes of transportation. For example, we barge newsprint and groundwood paper from Calhoun to dry-land points west of the Mississippi River on joint barge-truck rates. The truck and barge lines long ago established such joint rates and service.

It is significant that, despite twelve years of negotiation we have not yet been able to persuade a single railroad to join the barge lines in establishing a barge-rail rate to any point west of the Mississippi or north of the Ohio rivers.

With few exceptions, the railroads refuse to see that efficient coordination with the waterways would benefit the rails, that the availability of navigation attracts industry, which in turn moves the overwhelming proportion of its freight by rail, and that shippers and the public in general must have greater transportation capacity via all modes of transportation to meet the growing needs of the economy.

The railroad attack upon the proposed amendment is short-sighted, because it reflects the railroads' unreasonable hostility to virtually all domestic navigation except that which specifically benefits the railroads. In this instance, that hostility is particularly unfortunate, because to leave Section 303(b) unchanged would do severe economic damage to the southern paper industry, which provides the southern railroads more *net* revenues than any other industry in the South.

I urge the honorable members of this subcommittee to adopt the proposed amendment to Section 303(b) of the Interstate Commerce Act.

STATEMENT OF WALTER G. BASKERVILLE, SR., PRESIDENT, UPPER MISSISSIPPI TOWING CORP., PRESENTED BY JOHN FLYNN

Mr. FLYNN. Mr. Chairman, I am John Flynn. I am here to testify for Mr. Baskerville of the Upper Mississippi Towing Corp. in Minneapolis. He was unable to be here so I will submit his statement for the record in support of the legislation.

Mr. FRIEDEL. We will submit questions to you and you can answer them for the record.

Mr. FLYNN. Yes.

(Mr. Baskerville's prepared statement follows:)

STATEMENT OF WALTER G. BASKERVILLE, SR., PRESIDENT, UPPER MISSISSIPPI TOWING CORP.

Mr. Chairman and members of this Subcommittee, my name is Walter G. Baskerville, Sr. I am President of the Upper Mississippi Towing Corporation of

Minneapolis, Minnesota. Our company has been in business since 1937 and we operate barges on the entire inland waterway system.

I am appearing today, Mr. Chairman, to indicate my wholehearted support for the legislation pending before this Subcommittee to bring up to date Section 303(b) of the Interstate Commerce Act.

I shall not repeat the able testimony which has already been presented at this hearing as to the growth of the inland water carrier industry and the technological advances that have been made which permit tows to handle larger tonnage at reduced costs.

Suffice it to say that as a result of the advances that have been made in the water carrier industry in terms of larger and more efficient equipment, and due to the development of our nation's inland waterway system, benefits have not only accrued to shippers but to consumers in our nation as a whole.

The fundamental issue before the Subcommittee is how to make the most advantageous use of our nation's great waterway resources so as to provide the best possible service at the lowest possible cost.

As a result of the Supreme Court's decision earlier this year upholding the Interstate Commerce Commission's previous ruling to prohibit the shipment of regulated and non-regulated commodities in the same tow, the efficiency of the inland water carrier industry is threatened.

There can be no doubt that the water carrier industry has played a major role in keeping transportation costs down. Unless remedial action is promptly taken by the Congress, the water carrier industry's ability to provide low cost transportation will be hampered, and the effects will be felt directly and indirectly throughout the entire country.

In conclusion, I want to thank this Subcommittee for permitting me the opportunity to make my views known on this important matter, and I respectfully urge that prompt and favorable action be taken on this pending legislation so as to (1) permit the mixing of regulated and bulk commodities in a single tow, (2) eliminate the June 1, 1939 "Custom of the Trade" clause which acts as an artificial limitation on shipments of bulk commodities, and (3) delete that sentence in Section 303(b) which treats two or more vessels in a single tow as being a single vessel.

(The following letter was subsequently submitted:)

UPPER MISSISSIPPI TOWING CORP.,
Minneapolis, Minn., October 10, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the October 4 hearing conducted by the House Subcommittee on Transportation and Aeronautics we were asked to submit to the Subcommittee a letter reconciling the opposition of our company in 1961 to H.R. 9046 and our testimony at the present hearing in favor of H.R. 7610 and companion bills.

The reason for our supporting H.R. 7610 is that the earlier legislation did not contain the following provisions:

(1) Elimination of the June 1, 1939 "Custom of the Trade" clause which acts as an artificial limit on shipments of bulk commodities, and

(2) Deletion of the sentence in Section 303(b) which treats two or more vessels in a single tow as being a single vessel.

If these two additions were not in the present bill we would be opposed to the bill as we were in 1961.

Yours very truly,

W. B. BASKERVILLE, Sr.,
President.

Mr. VESCELIUS. Mr. Chairman, my name is Clinton H. Vescelius and I represent the Manufacturing Chemists' Association, Inc.

I would like to ask a question.

Do you intend to hold further hearings on this?

Mr. FRIEDEL. Next Tuesday and probably next Wednesday.

Mr. VESCELIUS. The reason I ask, we have a prepared statement, but to be helpful to the committee, representing a shipper group, we might be in a position to shed some light on the chemical shippers' views on this and then answer questions if it is all right with you. We will be back.

Mr. FRIEDEL. Next Tuesday we will meet at 10 o'clock.

STATEMENT OF JERRY ROSS, GENERAL TRAFFIC MANAGER, CONSOLIDATED ALUMINUM CORP.

Mr. Ross. Mr. Chairman, I am Jerry Ross. I am general traffic manager of the Consolidated Aluminum Corp., Jackson, Tenn.

I have a prepared statement I would like to submit to the committee.

Mr. FRIEDEL. All right.

(Mr. Ross' prepared statement follows:)

STATEMENT OF JERRY ROSS, GENERAL TRAFFIC MANAGER, CONSOLIDATED ALUMINUM CORP.

My name is Jerry Ross. I am General Traffic Manager of Consolidated Aluminum Corporation located at 1100 Richmond Street, Jackson, Tennessee.

I am appearing here today in support of House Bills which were introduced to allow a continued efficient and economical utilization of our inland waterway system for the transportation of products. In order to do this it is essential that Section 303(b) of the Interstate Commerce Act be amended during this Session of Congress. Without this amendment, the barge carriers would lose the advantage of the modern technological development in their industry and likewise industry which has located on our inland waterway system would lose accordingly.

Naturally, it is always the taxpaying consumer who really is the loser when antiquated laws, rules or regulations of any Governmental Agency stand in the way of progressive economic development in any area of our expanding economy. Section 303(b) in its present form will diminish the ability of industry to continue to expand into the remote areas of our waterway system and place undue hardships upon those industries which have already located in these areas due to economical water transportation. Therefore, I urge your prompt execution of this matter at your earliest convenience.

(The following letter was subsequently submitted:)

CONSOLIDATED ALUMINUM CORP.,
Jackson, Tenn., October 6, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.

MY DEAR MR. FRIEDEL: I was in Washington October 3–4, 1967, to appear before your Subcommittee in support of HR 7610 and companion bills. Since time did not permit witnesses present to appear before your committee except to present their written statements and the fact that I may be unable to be present during the next scheduled hearing October 10–11, 1967, I would like to take this opportunity to more thoroughly inform you of our position in this matter.

We are a producer of primary aluminum, 140,000 short tons per year, with facilities located on the Tennessee River near New Johnsonville, Tennessee, and depend primarily on barge carriers for the transportation of our raw materials, 280,000 short tons of alumina and 100,000 short tons of carbon electrodes and related products per year; whereas at this time in 1963, the total quantity of these raw materials was 50,000 short tons. We also plan to start construction of facilities in Lake Charles, Louisiana, early 1968, to produce calcined coke, 200,000 short tons per year; carbon electrodes, 125,000 short tons per year and primary aluminum, 35,000 short tons per year. This operation will require raw materials, 240,000 short tons petroleum coke per year plus related products and 70,000 short tons of alumina per year. Therefore, you can understand and appre-

ciate our concern for the injury that might be inflicted upon us without the passage of this legislation during this Session of Congress.

In a matter of this magnitude, I do not believe the equality of exemptions or regulations of bulk commodities barge versus rail can afford to be an issue but should be considered individually on their own merits without jeopardizing the economy of industry and government derived from low cost water transportation. If barge cost had to be increased for lack of proper legislation during this Session of Congress, it would cost industry utilizing our costly waterway system many millions of dollars in profits and likewise deprive our government of taxes that otherwise would be collected. This to me is a matter of serious concern because if the barge carriers are placed in the position of having to operate small tows, it does not help anyone but will cost all concerned.

Regardless of the outcome of these hearings, it is not going to change the economic competitive position of the railroads because they are already handling bulk commodities as well as general commodities in mixed trains and unit trains so what other flexibility could they obtain? They are allowed to publish rates to whatever degree they desire based on their cost of operation and there is no relationship between their bulk and general commodity rates or their unit train rates. As an example: they transport most of the nation's alumina as well as the primary metal whereas I doubt that the barge carriers handle even five percent (5%), and I feel quite sure that the same will apply with most of our large national industry. I am not trying to indicate what the regulations should be because I feel quite sure that our distinguished Congressmen are very capable of determining this in due course without impairing the present status of operations which, apparently, has not tended to deter the growth within any mode of our transportation system to the detriment of our nation.

The other side of the coin is that we have invested many millions of dollars in our inland waterway system in order to promote industrial expansion into some of our more remote and low economy areas based upon low cost water transportation and are continuing to do so in expanding our waterways. Therefore, I do not believe that we could afford to let a quirk of an antiquated law prevail that would tend to cause question as to the wisdom of these many projects.

It appears to me from several years of experience in dealing with all modes of transportation that there is considerable room for a more cooperative spirit to coordinate their efforts to combine the advantages of each in order to promote a more sound and economical national transportation system. If their time and resources were concentrated to this end, I feel sure that private transportation would never have become what it is today. I appreciate the Senate Report concerning this matter because they made it clear that they were not willing to get caught in the middle of a controversy at a time when action is more important than words. If only the two modes were involved and time permitted, maybe it could be resolved simultaneously; but at a time like the present, I feel that our distinguished Congressmen deserve more respect and consideration than to be burdened with such a broad problem.

As far as equality is concerned, a man is only equal to the degree that he is willing to face the challenge of life, and the same, I believe, is true with business. How could any two modes of transportation be completely equal when they differ in so many respects; or if either had been completely sufficient, I doubt if the other would have come into existence. Therefore, I feel that both are dealing in the areas which they are best equipped to handle, and they certainly have the same opportunity to obtain support for properly prepared legislation if there are any injustices prevelent.

We are a very small company as compared to the aluminum industry and have developed our facilities in accordance with our needs for transportation based upon complete collaboration with the rail and barge industry to establish their abilities to serve our needs efficiently and economically. If we were placed in the position at this late date of having to absorb additional cost for the transportation of our raw materials, it could prove to be very detrimental to our future expansion plans in these areas. It might be pointed out that where we presently use rail transportation considerably for the transportation of our manufactured products; had it not been for the low cost water transportation of our raw materials, we might have been located in other areas with a need for rail transportation much less than what it is today. I know of no reason nor have I ever been advised of any reason by any railroad that would prohibit them from serving any part or all of our transportation needs except that if they reduced

a rate below the established level of rates for a given commodity for us they might be requested to reduce the rates accordingly for their inland receivers or shippers. There are many water compelled rail rates published which are lower than inland rates of comparable distance for the same commodities the same as there are depressed rates by motor carriers between various areas, so really there is no equality in this method of rate making. The extent of variance in rates between various commodities of the same characteristics tends to be unequal so really we in industry are hopefully looking forward to our Transportation Department through Congress to organize a more cooperative atmosphere in all areas of transportation that will enable more progressive methods than what we have today without all the controversial issues being involved.

If it would be permissible, I respectfully request that you submit a copy of my letter for the record. Your esteemed handling of this matter to a favorable conclusion will be greatly appreciated.

Very truly yours,

JERRY ROSS,
General Traffic Manager.

STATEMENT OF N. L. CARUTHERS, VICE PRESIDENT, CHOTIN TRANSPORTATION, INC.

Mr. CARUTHERS. Mr. Chairman, I am N. L. Caruthers from Chotin Transportation, Inc., of New Orleans. I am here in support of this bill.

We concur wholeheartedly in what the American Waterways Operators, Inc., have to say. I particularly tried to emphasize the fact there is a complete unanimity of opinion on this question.

One thing I have not heard mentioned here today is the incidental towage in which we are vitally interested. We tow for each other. This vitally affects the operation of the small operator.

Mr. FRIEDEL. Are they having difficulty?

Mr. CARUTHERS. They have no barges of their own. I do not happen to fall in that category, but I have a prepared statement I will submit.

Mr. FRIEDEL. All right.

(Mr. Caruthers' prepared statement follows:)

STATEMENT OF N. L. CARUTHERS, VICE PRESIDENT, CHOTIN TRANSPORTATION, INC.

My name is N. L. Caruthers. I am Vice President of Chotion Transportation, Inc. of New Orleans, Louisiana, which company is a non-certificated carrier of liquid and dry bulk cargo via barge on the Mississippi-Ohio River System, the Gulf Intracoastal Waterway and the Gulf of Mexico.

It is not my intention in appearing here today to burden the record with repetitious testimony but rather to attempt to emphasize the fact that all segments of the Inland Waterway Industry are united in support of the legislation which would modernize the phrasing of the antiquated 1940 I.C.C. Act with respect to the dry bulk extension provided for in Section 303(b). This unity came about after lengthy debate and careful deliberation on the part of all types of operators.

Our company is a member of the American Waterways Operators, Inc. and we subscribe to their statement in full support of the bills you are not considering. This association along with others will or already have discussed the technological innovation on the inland waterways as well as the legal history of the bulk exempt section.

In the final analysis, the interpretations of the meaning of Section 303(b) by the I.C.C. and affirmed by the Courts have given rise to serious problems within our industry.

The final decision as to the application of Section 303(b) drastically limits the ability of the water carrier to put to full use the means already available to us in providing maximum efficiency.

Section 303(f)(2) of the Act provides for "incidental towage" whereby towing is performed by one carrier for another, and there has been an impressive growth of this type of business through the years. Some of the smaller carriers

are engaged almost solely in this type of trade. Our company hires a considerable amount of towing from other water carriers and we perform a sizable amount of towing for others.

The interpretation of the Act as it applies to existing legislation means that if an exempt carrier such as ours has cargo in one tow consisting of wheat, corn and soybeans (different species of grain have been ruled as constituting separate commodities) we cannot add to this tow another species of grain nor any fourth bulk commodity such as coal. We are completely denied the right to perform incidental towing of a non-bulk commodity for a regulated carrier even though the lawfully prescribed tariff rate would be protected under the regulated carrier's bill of lading covering the movement. These artificial barriers to efficient operations are without logic.

The passage of the bills under consideration would simply update and modernize the outmoded and restrictive provision of the 27 year old act and we respectfully urge your Subcommittee to give prompt and favorable consideration to the enactment of the proposed legislation.

This legislation is of grave importance to our industry and I hope you will not conclude from the brevity of this statement that we consider it otherwise. I have simply attempted to avoid useless repetition.

STATEMENT OF JOHN J. CASTELLANO, GENERAL FREIGHT TRAFFIC MANAGER, ILLINOIS GRAIN CORP.

Mr. CASTELLANO. Mr. Chairman, I am John Castellano and I appear in support of the bill and submit my statement.

Mr. FRIEDEL. All right.

(Mr. Castellano's prepared statement follows:)

STATEMENT OF JOHN J. CASTELLANO, GENERAL FREIGHT TRAFFIC MANAGER, ILLINOIS GRAIN CORP.

Mr. Chairman, I am John J. Castellano, General Freight Traffic Manager of the Illinois Grain Corporation. I am appearing in support of H.R. 7610 and its identical companion bills.

The Illinois Grain Corporation is a regional or federated cooperative serving a membership of some 260 cooperative country elevators throughout Illinois. We also operate seven elevators on the Illinois River, one on the Tennessee River, one at Tampa, Florida, and have a controlling interest in a terminal at St. Louis, Missouri. With investments such as these on the inland waterways, we cannot afford to absorb a curtailment of service at an increase in cost. Since there have been considerable investments made on the inland waterways because of its economic costs for transportation and these lower costs are the result of the carriers' ability to move large tows unrestricted, we feel this legislation is necessary.

It is necessary for the continued success not only of the barge lines but of the people who are dependent upon the inherent advantage of water transportation's lower costs. If this bill is not passed we will experience, in addition to freight increases, extended equipment delays. It is in the interest of the general public that we maintain the economic and fluid movement that larger tow-boats have enabled us to enjoy. The grain industry can ill afford increased costs with less service, since it would only result in lower prices for the producers. As a company which uses in excess of 1,000 barges a year, our interest in passage of this bill becomes quite obvious.

STATEMENT OF MICHAEL CASSADY, EXECUTIVE VICE PRESIDENT, MISSISSIPPI VALLEY ASSOCIATION

Mr. CASSADY. I am Mike Cassady, executive vice president of the Mississippi Valley Association, St. Louis, Mo., I am on the witness list and I do have a prepared statement I would like to include in the record.

Mr. FRIEDEL. All right. Thank you very much.

(Mr. Cassady's prepared statement follows:)

STATEMENT OF E. MICHAEL CASSADY, EXECUTIVE VICE PRESIDENT, MISSISSIPPI VALLEY ASSOCIATION

Mr. Chairman, my name is E. Michael Cassady. I am Executive Vice President of the Mississippi Valley Association and office in St. Louis, Missouri. I appear here in support of HR 7610 and related Bills.

The Mississippi Valley Association is the Nation's largest water resource development organization. It is a voluntary, regional association of commerce, industry and agriculture, and, since 1919, has fostered the better and wiser use of the natural resources and productivity in the 23-state watershed of the Mississippi River and its tributaries and in contiguous waterways.

All of us, I am sure, recognize that conditions which existed in any field of transportation in 1939 or 1940 do not pertain today, and in no field of transportation are improvements in design, technological advances and greater efficiencies more apparent than in the towing industry on our inland waterways. At the time the restrictions were imposed by Section 303(b) of the Interstate Commerce Act, waterway transport by barge was conducted in relatively small tows, generally box barges, being pushed by towboats of 1500 horsepower or less. Today those tows are completely outmoded as are the propulsion vessels. With propulsion units ranging up to 9000 horsepower pushing tows of 40 or more barges which may aggregate more than 40,000 tons of cargo, it is apparent that the restrictions imposed by Section 303(b) of the Interstate Commerce Act are archaic and work to the disadvantage of virtually all shippers utilizing inland waterway transport.

The retention of 303(b) as a Section of the Interstate Commerce Act might have little effect on the very largest shippers since they could, by virtue of their financial resources, construct and operate their own inland waterway transport if they so desired. We know that many have already been forced to do so. However, the small shippers, without the financial resources which might permit a costly investment in expensive barges and towing equipment, would be at a definite disadvantage in availing themselves of the most effiecient and economical transport. For example, a small shipper who only moves one barge per month of his products or raw material could not move this barge in a tow already carrying three exempt commodities. His product or raw material might rest in a barge for some time before it could be moved to destination by water. The alternative would be to move the commodity by overland transport at rates far in excess of those by water. The benefits accruing to the small shippers with the enactment of this legislation are plainly apparent and obviously necessary.

This summer, the Maritime Subsidy Board of the Maritime Administration has authorized American flag line steamship companies to request bids on new barge-carrying type ships, and invitations are new out to shipbuilders to bid on the construction of these barge-carrying deep water vessels with their attendant barges.

An example of how the modernization of Section 303(b) of the Interstate Commerce Act is needed and would be beneficial is the authorized barge-carrying type ships of Lykes Bros. Steamship Company, Inc. called "Seabees". Each of their ships will carry 38 loaded barges on Lykes Bros. Essential Foreign Trade Route 21 Service, Gulf to United Kingdom and Continental Europe. In all, Lykes will build 266 barges to service the three ships authorized to them. It is anticipated that these Lykes barges will be accumulated from and distributed to many interior ports on the Ohio, Illinois, Missouri and Arkansas Rivers, and other tributaries of the Mississippi River. The same application applies to the "Lighter Aboard Ship" principal which has been authorized to be built by Prudential Lines, Inc. and Pacific Far East Lines, Inc. for operation in the U.S. Atlantic-Mediterranean Trade and the Trans-Pacific Trade, respectively. With the multiplicity of cargoes anticipated to be moved in these barges over the interior waterways of the country and then by ship to foreign destinations, and in the reverse movement, it would indeed be shortsighted to limit the number of commodities that could be moved in one tow whether they be exempt commodities or other.

Policies of the Mississippi Valley Association are reviewed and adopted at an annual meeting each February attended by more than 2,000 delegates. The policy statement on Section 303(b) of the Interstate Commerce Act was developed by the Association's Traffic Advisory Committee, approved by its Resolutions Committee and then adopted by the membership as a whole. I might add that this

policy statement was approved at all levels of consideration without a dissenting vote. It states:

INTERSTATE COMMERCE ACT AMENDMENT TO SECTION 303(b)

"The Association support proposed deletions in Section 303(b) of the Interstate Commerce Act to remove the parenthetical language applying to the custom of the trade as of June 1, 1939 and striking the sentence reading: 'For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.'

"These changes are required to promote and extend the economies and benefits of technological improvements in the inland water transportation industry."

I am taking the liberty of attaching to this statement the membership roster of the Traffic Advisory Committee of the Mississippi Valley Association. It may be seen from this roster that many of the large industries of the United States are represented as well as a number of the smaller companies. Additionally, representatives of common carrier barge line companies, contract carriers, and private carriers are represented. This is truly a representative group that possesses the knowledge and background to properly advise us in transportation matters.

We respectfully urge your favorable consideration and approval of this legislation and recommend its enactment at the earliest possible time.

MISSISSIPPI VALLEY ASSOCIATION, TRAFFIC ADVISORY COMMITTEE, FEBRUARY 1967

Co-Chairmen: A. C. Cocke, Maritime Consultant, New Orleans, La., and Gerald Franzen, Chicago Assn. of Commerce and Industry, Chicago, Illinois.
Secretary: Robert L. Shortle, Vice President, Mississippi Valley Association.
V. J. Angell, Mississippi Valley Barge Line, St. Louis, Missouri.
S. P. Baker, Oklahoma City Chamber of Commerce, Oklahoma City, Oklahoma.
Walter Baskerville, Upper Mississippi Towing Company, Minneapolis, Minnesota.
J. Clarke Berry, Canal Barge Company, Inc., New Orleans, Louisiana.
George Bicknell, Farmers Union Coop. Marketing, Kansas City, Missouri.
Donald Bidgood, Continental Grain Company, St. Louis, Missouri.
George Blohm, Cities Service Oil Company, New York, New York.
Iver Brecht, Grain Processing Corp., Muscatine, Iowa.
Jesse Brent, Brent Towing Company, Inc., Greenville, Mississippi.
Cletus A. Broecker, Ayrshire Collieries Corp., Indianapolis, Indiana.
Richard J. Brown, Jr., Missouri Valley Steel, Inc., Leavenworth, Kansas.
Bartley J. Burke, Monsanto Company, El Dorado, Arkansas.
Braxton B. Carr, American Waterways Operators, Inc., Washington, D.C.
Arthur C. Collins, Jr., Sioux City & New Orleans Barge Lines, Kansas City, Missouri.
James Collins, International Salt Company, Chicago, Illinois.
E. J. Davis, Caterpillar Tractor Company, Peoria, Illinois.
H. W. Dent, Shell Oil Company, New York, New York.
W. J. Edmonds, Granite City Steel Company, Granite City, Illinois.
W. N. Finch, Memphis Freight Bureau, Memphis, Tennessee.
E. Scott Finken, The Vendo Company, Kansas City, Missouri.
J. L. Gilbert, Board of Commissioners, New Orleans, Louisiana.
Saul Greenstein, Inland Molasses Company, Dubuque, Iowa.
T. M. Hogg, Greater Baton Rouge Port Commission, Port Allen, Louisiana.
M. E. Iten, Monsanto Company, St. Louis, Missouri.
William J. Hull, Water Resources Associated, Washington, D.C.
Sam L. Jackson, American Oil Company, Chicago, Illinois.
Gordon Jones, Alter Company, Davenport, Iowa.
E. Sam Jones, Peabody Coal Company, St. Louis, Missouri.
Elmer E. Kohlwes, Standard Milling Company, Kansas City, Missouri.
Rodney LaMothe, Mid-West Terminal Warehouse Co., Kansas City, Missouri.
Gary W. McKinney, C-G-F Grain Company, Atchison, Kansas.
William McNeal, Oil Transport Company, Inc., New Orleans, Louisiana.
J. O. Madgett, Mid-West Terminal Warehouse Co., Kansas City, Missouri.
Wayne C. Mann, North American Car Corporation, Chicago, Illinois.
Ben W. Martin, Bulk Terminals Corporation, Chicago, Illinois.
F. A. Mechling, A. L. Mechling Barge Line, Inc., Joliet, Illinois.

Raymond W. Meckfessel, Laclede Steel Company, St. Louis, Missouri.
M E. Midgley, Nilo Barge Lines, Inc., St. Louis, Missouri.
Ross E. Mortimer, The Great Lakes Towing Company, Cleveland, Ohio.
William K. Nestor, Arrow Transportation Company, Sheffield, Alabama.
Paul Newsome, Consolidated Blenders, Inc., Fremont, Nebraska.
P. Pella, Marquette Cement Mfg. Company, Chicago, Illinois.
Leonard Peterson, Northern States Power Company, Minneapolis, Minnesota.
Frank Rankin, Gold Proof Elevator Company, Louisville, Kentucky.
T. E. Richards, John Deere Dubuque Works, Dubuque, Iowa.
Cliff R. Rickel, Armco Steel Corporation, Kansas City, Missouri.
Louis A. Schwartz, New Orleans Traffic & Transp. Bureau, New Orleans, Louisiana.
D. T. Sheehy, Ohio River Company, Cincinnati, Ohio.
Darrell H. Smith, Jr., International Salt Company, Clark Summit, Pennsylvania.
Robert Strange, Consolidated Coal Company, Pittsburgh, Pennsylvania.
W. C. Theis, Simonds-Shields-Theis Grain Company, Kansas City, Missouri.
Donald Tidmore, Tulsa Chamber of Commerce, Tulsa, Oklahoma.
Fred Tinker, Big Soo Terminal, Sioux City, Iowa.
A. H. Vail, A. L. Mechling Barge Line, Inc., Chicago, Illinois.
C. H. Wager, Shell Oil Company, New York, New York.
Rolland Wages, Northern Natural Gas Company, Omaha, Nebraska.
James T. Wakley, Ohio River Sand & Gravel Company, Parkersburg, West Virginia.
Hugo Waninger, Anheuser-Busch, Inc., St. Louis, Missouri.
E. J. Weigel, Nebraska-Consolidated Mills, Omaha, Nebraska.
David A. Wright, National Marine Service, St. Louis, Missouri.

Mr. FRIEDEL. The meeting will stand in recess until Tuesday at 10 a.m., and at that time we will have the ICC before the committee.

(Off the record.)

Mr. MECHLING. Mr. Chairman, I am going to be about 5,000 or 6,000 miles away on Tuesday.

You said you had two questions to propose to me. Is there any way we could handle that by letter?

Mr. FRIEDEL. It will be in writing and you can analyze it a little better and then answer.

Thank you very much, sir.

Mr. WATSON. Might I say further, in responding to the specific questions propounded to these gentlemen, if you could help us out in this crucial issue and get really to the heart of the matter—I think all of you can easily see what the problem is so far as a number of us on the committee are concerned. I hope you can shed a little light on it and help get us over the hump.

Mr. MECHLING. We will try to.

Mr. FRIEDEL. I want to say, Mr. Mechling, I think while we had the Harris bill before us you were bitterly opposed to it. That is one of the questions we want to ask you—what made you change your mind and why are you for the bill now? We will have that in writing.

Mr. SCHWARTZ. Mr. Chairman, I have been sitting here listening to some of the questions of the Congressmen this morning and the responses by the bargeline operators. I think the committee and the full committee in their deliberations must give some consideration to the public interest in this matter in addition to this intermode and intramode competition. You have a broader aspect in here than just whether all of the commodities should be deregulated or should be regulated.

Mr. FRIEDEL. You can rest assured the committee will go into it very thoroughly.

Mr. SCHWARTZ. I hope so, because we went through this, Mr. Congressman, in connection with the Harris bill, and I think this com-

mittee is fully cognizant of what all of the contributing interests were that developed in connection with that.

As far as any position down at New Orleans is concerned, I think, and it is expressed in my statement, that before this committee at this time is the question of amending this bill to take care of an emergency. Later on the broad aspects of what should be involved or what should not be considered will come.

Mr. FRIEDEL. As was brought out today, they want this bill for an emergency, but they still want to reserve their right to oppose any other competition. It would not be fair to all the factors unless we consider this as one problem. I think we can probably do this in the session before January 1.

Mr. SCHWARTZ. Thank you.

Mr. FRIEDEL. The meeting stands adjourned.

(Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, October 10, 1967.)

WATER CARRIER MIXING RULE EXEMPTION

TUESDAY, OCTOBER 10, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting will now come to order.

This is a continuation of the hearings that we had last week on H.R. 7610 and other similar bills.

The first witness this morning will be the Honorable Lee Hamilton, sponsor of one of the bills under consideration. Please proceed as you see fit, Mr. Hamilton.

STATEMENT OF HON. LEE H. HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Mr. Chairman, I appreciate the opportunity to appear in support of H.R. 12452 and 11 other identical bills introduced by my colleagues which would modernize section 303(b) of the Interstate Commerce Act.

I introduced H.R. 12452 to provide relief to the inland water bargelines from an obsolete and restrictive interpretation of the so-called dry-bulk exemption section of the act.

As interpreted by the courts, the bargelines will not be able, as a practical matter, to mix regulated and unregulated commodities in a single tow. If they are required to separate regulated and unregulated commodities in different tows, they will be unable to accumulate sufficient volume to take advantage of the large towboats which have been developed in the last 10 years.

This requirement is, in effect, penalizing inland barge firms which are using improved technology.

The larger volume movements have permitted reductions in shipping costs which already have been passed along to consumers in the river valleys in the form of rate reductions. Costs have been reduced an average of 10 percent in the last 6 years.

Improvements in river transportation have been substantial in recent years. In the Ninth District of Indiana, Jeffboat, Inc., of Jeffersonville, Ind., together with shipyards in Pittsburgh and St. Louis have made important contributions to improved efficiency in river operations.

These shipyards and the bargelines have provided the private enterprise response to improved river transportation programs. The success

of the development of the Ohio River has been widely acclaimed. Since 1950, according to the Ohio Valley Improvement Association, more than $25 billion has been invested in new and industrial plants in the counties bordering the Ohio River and its navigable tributaries. These industries have been attracted to the Ohio Valley in large part by efficient, low-cost water transportation.

Regulations which artifically restrict the efficiency of bargelines operating in the Ohio Valley adversely affect the industries which depend on water transportation. Industries in the Ninth District of Indiana and throughout the river valleys need this legislation.

At a time of rising costs, it is in the public interest to encourage the kind of technological innovation which will provide the most economical transportation service possible.

I respectifully urge you to vote favorably on this legislation.

Thank you.

Mr. FRIEDEL. Thank you, Mr. Hamilton. Are there any questions? If not, we will hear next from another colleague, the Honorable James Fulton, who has also introduced similar legislation.

STATEMENT OF HON. JAMES G. FULTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. FULTON. Mr. Chairman, I join with my colleagues, members of labor and industry, trade and consumer organizations, the Interstate Commerce Commission, Dravo Corp. of Pittsburgh, Pa. and many others in urging swift passage of H.R. 12602, a bill to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

H.R. 12602 is simply a step to enable the water carrier industry to take advantage of recently developed economies of scale. Like every other economy of scale, the one envisioned here would simply enable the water carrier industry to better utilize their fixed costs. Plainly stated, this bill would make legally possible what now is technologically impossible.

Under the existing section 303(b) an entire barge tow can be regulated (*a*) if one barge in the tow is loaded with nonbulk commodities, things which can be marked and counted, such as steel pipe and packaged sugar or (*b*) if four barges are loaded with dry bulk commodities which cannot be marked or counted, such as grain, coal, or sand.

Such a standard of regulation as it now exists is an anarchronism The present law simply fails to recognize the fantastic technological change which has taken place in the water carrier industry since the law was passed. The typical 1940 barge tow had a towboat of 300 to 1,500 horsepower which could push 5,000 to 10,000 tons. Today's typical tow has a towboat of 6,000 to 9,000 horsepower and a capacity for pushing 40 barges or more than 40,000 tons. If section 303(b) remains unchanged, the bargelines would be unable to accumulate large tows. Regulated and unregulated traffic would have to be separated, the efficiencies of the large tows would be canceled out, and rates would go up.

There is simply nothing that would indicate that the authors of the Interstate Commerce Act intended their measure to frustrate improve-

ment and create artificially high prices. If section 303(b) remains unchanged it would be just as logical to impose competitive disadvantages on airplanes that carry more than 100 passengers or trains of more than 80 cars.

H.R. 12602 does not necessitate a debate on the general merits of regulation or nonregulation. It does not involve the question of possible predatory or monopolistic trade practices. It simply aims at rectifying an unjust, stupid anachronism and threat to our Nation's consumers.

Mr. FRIEDEL. Thank you for your views, Mr. Fulton.

Our next witness this morning will be the Honorable William H. Tucker, Chairman of the Interstate Commerce Commission.

I understand you are accompanied by some other members of the Commission, and for the record would you please introduce them?

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY PAUL J. TIERNEY, VICE CHAIRMAN; BERTRAM STILLWELL, DIRECTOR, OFFICE OF PROCEEDINGS; AND FRITZ R. KAHN, ASSOCIATE GENERAL COUNSEL

Mr. TUCKER. Thank you, Mr. Chairman.

Chairman Friedel and members of the committee, by name is William H. Tucker. I am the Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

I have with me this morning Vice Chairman Tierney, who testified on this bill in the Senate, Mr. Fritz R. Kahn, our Associate General Counsel, and Mr. Bertram Stillwell, of our Office of Proceedings.

On behalf of the Commission I wish to thank the subcommittee for the opportunity to express our views on these 12 similar bills which amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions on the application and scope of the exemption provided therein.

At the present time, section 303(b) provides an exemption from regulation of the transportation, by water carriers, of commodities, in bulk, when the cargo space of the vessel in which such commodities are transported is being used for carrying of not more than three such commodities. The exemption has several limitations, the pertinent ones being set forth in the second and third sentences of section 303(b). The second sentence, of course, contains a parenthetical expression which defines bulk commodities in terms of those—

> which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count.

On this point, Mr. Chairman, we would be happy to furnish the committee with a detailed list of present day bulk commodities which will show chronologically the development of those commodities that were not considered bulk 20 or 25 years ago.

Mr. FRIEDEL. I would appreciate that. It will be of considerable help to the committee that we have that submitted because a lot of times we ourselves don't know what are bulk commodities and it

might help us work out the definition. We would be glad to have you submit that for the record.

Mr. TUCKER. Yes, sir.

(The information referred to was not available at time of printing.)

Mr. TUCKER. The third sentence, referring to the present statute, provides "for the purposes of this subsecton two or more vessels which navigated as a unit shall be considered to be a single vessel."

The changes proposed by these bills would (1) strike from the second sentence the parenthetical expression, and (2) strike the third sentence entirely. The pertinent amended subsection 303(b) then would read:

"(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. * * *"

The definition of bulk commodities in terms of the custom of the trade as of June 1, 1939, has resulted in much confusion and some litigation. Many commodities, such as chemicals and sugar, were carried by water carriers in containers as of June 1, 1939, but because of efficiency and convenience are now carried in bulk in modern barges and tankers. By orders in WC–2, decided November 17, 1958, and WC–6, decided October 20, 1960, the Commission declined to review the issues presented, and denied petitions of certain barge carriers and other interests which requested the issuance of declaratory orders to remove uncertainty respecting whether or not the transportation by water of various commodities, in bulk, is exempt under section 303(b) by reason of the custom of the trade clause.

Considerable litigation has also arisen over the second limitation in section 303(b).

Common carriers on inland waterways engaged in towing and affreightment are subject to regulation by the Commission under part III of the Interstate Commerce Act. Unless expressly exempted, they are required to possess certificates of convenience and necessity for the routes on which they operate; maintain reasonable rates, charges, and practices; publish and adhere to tariffs; file reports and comply with other regulatory requirements.

Under section 303(b), transportation of not more than three bulk commodities in a single vessel or vessels being navigated as a unit (a flotilla) is exempted from regulation and may be performed without regard to certificated route authority or of published tariff rates. Since 1941, the Commission, in a number of proceedings, has considered the scope of this exemption as applied to tows which "mix" bulk cargoes and nonbulk cargoes.

Although section 303(b) exempts bulk cargoes from economic regulation, the Commission has consistently held that this exemption does no apply when exempt bulk commodities are "mixed" or carried in the same tow with nonbulk (and nonexempt) commodities. In these circumstances, the entire movement is and always has been subject to regulation.

Although it has been argued that this so-called "no mixing" rule applies only to the water carrier actually towing the mixed load, the

Commission has held otherwise in Mississippi Valley Barge Co., exemption, section 303(b), 311 I.C.C. 105, which, as the committee is aware, was sustained in *Gulf Canal Lines, Inc.* v. *United States*, 258 F. Supp. 864 (1966), affirmed per curiam by the Supreme Court on March 20, 1967.

This proceeding, Mr. Chairman, arose in 1959 on a petition for a declaratory order by a number of certificated water carriers having noncertificated affiliates, which handle exempt bulk commodities under so-called contracts of affreightment. After entering into such a contract with a shipper, a noncertificated barge line may engage the certificated carrier to tow the shipment from an intermediate point to its ultimate destination, where the noncertificated carrier then takes possession again and delivers the barge to the consignee. The question involved here arises when, in performing its contract of towage, the certificated carrier combines bulk with nonbulk commodities in a single tow.

The net effect of this decision, which would be overturned by these bills before the committee here, is to require the carriers involved to cease the transportation of "mixed" tows or, in the alternative, subject the transportation of otherwise exempt bulk cargoes to economic regulation by the Commission when such commodities are transported with nonexempt cargoes. Because of the need for additional time to comply with the Commission's order and because of the pendency of this legislation, the Commission, at the request of the parties in this proceeding, that is the W–5 proceeding, has stayed the effective date for compliance with its order until January 1, 1968.

The effect of this legislation on the described portions of present section 303(b) will be to simplify, but simultaneously broaden and extend the scope of the exemption as presently interpreted by the Commission. The transportation by water of all commodities in bulk (except in intercoastal commerce) irrespective of whether they were so handled during June 1939, will be within the scope of the exemption. Further, by deletion of the third sentence in present section 303(b), this bill would broaden the scope of the exemption in two ways. First, it would overturn the Commission's determination that the mixing of exempt and nonexempt commodities subjects the entire movement to regulation. Second, because this deletion would eliminate the present standard that two or more vessels (that is barges) operated as a single unit shall be considered as a "single vessel," the present limits of three bulk commodities in a tow would be eliminated and, for example, as many as 60 separate bulk commodities could be carried in a tow of 20 barges.

Since the railroads, which are the water carriers' principal competitors for bulk commodity traffic, have always been subject to full economic regulation by the Commission, we have recommended to the Congress on a number of occasions that the exemption provided by section 303(b) be repealed in its entirety in the interest of providing equality of competitive opportunity and regulatory treatment among the several modes of transportation. No action has ever been taken on these proposals by Congress.

Although we continue to believe that the present exemption is neither conducive to fair and effective regulation nor to effectuation of the goals of the national transportation policy, we also recognize that there

is substantial congressional sentiment for the retention of this exemption in section 303.

In these circumstances, the present situation is inequitable and unfair to substantial segments of the water carrier industry. As I have noted previously, the Commission's order in the Mississippi Valley proceeding requires that the carriers either cease towing mixed shipments or file tariffs and rates on otherwise exempt commodities. The first alternative would preclude the carriers from making efficient and economical use of their equipment and facilities while the second would place carriers in a poor competitive position vis-a-vis other competing water carriers who tow only bulk cargoes and thus would be fully within the exemption afforded by present section 303(b).

Our conclusion, Mr. Chairman, in review of this entire matter is simply this: We have no objection to this proposed legislation if Congress as a matter of policy and on the findings that may be warranted from the record before the several committees of Congress hearing this matter feels that the inequitable effects of this exemption as between water carriers should be eliminated.

However, we continue to believe that repeal of the exemption will ultimately be required as a necessary step toward elimination of inequities between carriers of different modes.

That concludes my prepared statement, and we would be happy to answer any questions, Mr. Chairman.

Mr. FRIEDEL. I want to thank you for your very short and informative statement. I have some questions that I am going to submit in writing, and then they will be answered so that we may have them in our record.

Mr. TUCKER. We will do it promptly, sir.

(The information requested appears in letter to Chairman Friedel, dated October 31, 1967, p. 98.)

Mr. FRIEDEL. On page 4 you say, "The Commission, at the request of the parties in this proceeding, has stayed the effective date for compliance" to January 1, 1968.

Mr. TUCKER. Yes, sir.

Mr. FRIEDEL. I was under the impression that this was a court order, that unless Congress changed its view or enacted new legislation, that the courts had ruled that they would have to comply with the ICC ruling.

Mr. TUCKER. That is right, sir.

Mr. FRIEDEL. Now, reading your statement, I thought you said that the Commission has notified the parties that it shall not be effective until January 1, 1968.

Mr. TUCKER. That is right, Mr. Chairman. It was not the courts which stayed the effective date. The parties were before us for declaratory orders. We issued the orders. The orders were stayed subject to court review for many, many years. The court reviewed the orders and as a result we get the case back and usually issue an order within a reasonable time requiring the parties to do whatever the decision should make them do.

Just to finish my answer briefly, in this case where the parties had alleged that they would need additional time to change their existing practices, we extended the date for compliance to January 1, 1968. We have to take similar action in other cases as for example in *Ex Parte No. 230* the so-called *Piggyback* case. In that proceding we have

extended the date for compliance with the Commission's order to sometime early next year.

Mr. FRIEDEL. What I want to ask is this: I concur with your statement that if we do exempt the water carriers, we should exempt the railroads and truckers and other commodities. But if we cannot pass the legislation at the end of this session, would your Commission, at the request of the committee, then extend it for a little longer time so that we could act on the legislation properly at the next session?

Mr. TUCKER. I don't think we would, Mr. Chairman, unless we received a formal request from both committees of Congress.

Mr. FRIEDEL. The Senate and the House?

Mr. TUCKER. If we received a formal request, the matter would be decided by the 11 members of the Commission. We believe we have set a reasonable time for compliance with the present law. However, if the Congress gave us a formal request, we would have a basis for further action.

To clarify our position, let me say that the Commission is very much opposed to extending any of these exemptions. We would like to see all of these exemptions, generally speaking, done away with or rolled back. We don't see any basis for a good, solid transportation system by extending exemptions.

Mr. FRIEDEL. What I refer to is a comprehensive bill that would contain all modes of transportation and that the committee might ask the Commission to extend their effective date so that we can orderly prepare the proper bill. That is all I referred to.

Thank you very much.

Mr. TUCKER. I understand, sir.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I would ask permission to ask questions at the completion of the other members' questions. I have just come in and have not had a chance to read all the testimony. If it is satisfactory, I would ask that.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Mr. Chairman, I think your position is quite clear in your fine, brief statement. Is this the unanimous feeling of all the members of the Commission or is it your personal judgment?

Mr. TUCKER. My testimony represents the views of the Commission collectively. Most of these statements are voted on by all 11 members. Sometimes in the interests of time we are only able to obtain approval of our legislative committee. However, my best recollection is that this statement was approved by all 11 members of the Commission.

Mr. DEVINE. I think it should be made clear for the record.

Mr. TUCKER. I will check and reconfirm that, sir.

(The information requested appears in letter to Chairman Friedel, dated October 31, 1967, on p. 98.)

Mr. FRIEDEL. Mr. Cunningham.

Mr. CUNNINGHAM. I have no questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Chairman, thank you for a very informative statement. However, let me give you the impression I have gotten here and if my impression is wrong, correct me.

You have basically stated opposition to the different bills, one of which happens to be mine, as I am sure you are aware, concerning this particular problem.

However, in the closing part of your statement, you say, and let me see if I understand you correctly here, that if the Congress in its intent stated that it was our overall intent to liberalize and make more flexible the entire transportation system, in a continuing act, that you would have no opposition to this particular legislation.

Am I understanding you correctly?

Mr. TUCKER. You are not incorrect if you will permit me to enlarge a bit on what you suggested.

Mr. KUYKENDALL. Yes.

Mr. TUCKER. Our position is not one for or against this bill, and I realize that sometimes that sounds rather bland, but we have been given that privilege by the various congressional committees over the years. We do not object to this bill. Neither are we for it. We did not propose it in any legislation we have recommended to this committee. We are simply saying that on grounds of policy this bill is not within the viewpoint we have of what should be done.

Mr. KUYKENDALL. If it had to stand alone.

Mr. TUCKER. We understand that on what we might say is a prima facie showning, based on what we have heard and what we have seen, that the water carrier industry has a real problem here. Notwithstanding our view that the exemption should be repealed, we feel that if the water carrier industry can make out a case of hardship with respect to this particular problem so that the Congress could make findings in that regard then we have no objection to the passage of this bill.

Mr. KUYKENDALL. That was very much of a clarifying statement, Mr. Tucker, and we sincerely appreciate it. I don't know whether you had a staff member here in our hearings last week or not.

Mr. TUCKER. No, sir. I did not.

Mr. KUYKENDALL. I think that anyone who was here could have told you that it seems to be the unanimous feeling of this committee that our goals are very much the same as yours, to increase the effectiveness and flexibility of the overall system, and that we have recognized here a hardship situation pertaining more so to one industry than the other, and actually what we are asking for is a continuation of a present way of doing business.

Even though it has been under suspension for a while, that is the way they are doing business now, and I think without exception the witnesses were asked, "Would you support other means of achieving flexibility?"

When my friends the barge people first asked me to consider introducing this bill my first question was, "Does it improve the flexibility of the transportation system?"

I have asked the witnesses if they either acquiesce or support measures of this type in the future. I am glad that you verified in the closing part of your statement that under these circumstances which have already been stated by the members of this committee as being our goals that your feeling was as it is.

Thank you, Mr. Chairman.

Mr. TUCKER. Thank you, sir.

Mr. FRIEDEL. Mr. Chairman, would you like to be recognized?

Mr. STAGGERS. Yes.

Mr. Chairman, I just had one question I would like to ask Mr. Tucker.

Did you appear before the Senate committee about the bill?

Mr. TUCKER. No, sir. I had an illness in the family and Vice Chairman Tierney appeared at that time.

Mr. STAGGERS. What was their stand on the bill in the Senate?

Mr. TUCKER. I believe that they reported the bill out favorably.

Mr. STAGGERS. I don't mean that. I mean what was the official stand of the Commission?

Mr. TUCKER. It was the same position, sir. My testimony today is exactly the same as that given by Vice Chairman Tierney before the Senate Committee.

Mr. STAGGERS. You were neither for nor against the bill?

Mr. TUCKER. That is correct, sir. We took the same position in the Senate to the effect that we were not for or against the bill, but we had no objection to its passage provided that a case was presented of hardship for which the Congress determined that some remedy should be effectuated.

Mr. STAGGERS. That kind of confuses me a little bit when you talk about a remedy. Do you mean to put it all into this bill, to remedy the whole transportation thing in one bill?

Mr. TUCKER. In a general sense, it is our policy point of view that exemptions should be rolled back, should be taken away. We believe that that would present the best basis for equality of opportunity. We are not here today to press that viewpoint, merely to indicate that that has been the viewpoint of the Commission over the years. We certainly would be happy, Mr. Chairman, at an appropriate time to press that viewpoint at whatever hearing might be developed on the general issue of the equality of competitive opportunity and whether or not that goal can be obtained by extending exemptions or rolling them back.

Mr. STAGGERS. Then you are in favor of a bill which takes in all of transportation. That is what you are talking about?

Mr. TUCKER. On the question of exemptions, sir, we are definitely in favor of a bill that would generally speaking roll back all the exemptions. There may be a few minor caveats to that point of view, but that is the kind of a bill we would like to see.

We are not here suggesting that that bill be brought up and discussed right now. We are responding to the bill that is before the committee. But we would be prepared at any time to discuss the broader problems of exemptions.

Mr. STAGGERS. That is what I gathered, that you were talking about another phase that is not in this bill.

I believe I heard something about the railroads deregulation there. If we have deregulation, would you be in favor then of discontinuing the mergers that are taking place in the railroads?

Mr. TUCKER. I don't know as the Commission has taken a position on the relationship between deregulation and rail mergers. I would say that in the event that railroads became the subject of deregulation, more exemptions, then we ought to study the relationship of this to the rail unification movement. While I am not prepared to comment further right now, I do agree with the thrust of your question, Mr. Chairman, that there would be a relationship there that should be studied.

Mr. STAGGERS. That is all.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. I would like to ask one question.

In your statement, page 5, in line with Mr. Staggers' question, you say (to assist the railroads) :

> We have recommended on a number of occasions that the exemption provided by section 303(b) be repealed in its entirety in the interest of providing equality of competitive opportunity and regulatory treatment among the several modes of transportation.

In other words, I gather that the Commission takes the stand that you are not opposed to this piece of legislation because it is an emergency with the deadline of January 1, but you still are in favor of giving equal competition among all modes of transportation.

Mr. TUCKER. Equal opportunity to compete by rolling back all the exemptions, sir.

Mr. FRIEDEL. That is what I gathered. I am just trying to pursue your thought there.

Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Tucker, I think we all agree, and I recall that you made the statement that the water carriers are facing a serious problem at this time.

Mr. TUCKER. I think that the severity of their problem, Mr. Watson, is something that will be determined with some precision in this hearing.

Mr. WATSON. I see. That would point to the next question. Your statement that they have a rather serious problem is not based upon any study that the Commission has made in reference to the possible effects of the failure to continue this exemption or is it based upon such a study?

Mr. TUCKER. No, we have not made such a study, sir.

Mr. WATSON. In other words, your position is purely based upon the statements that have been made by the water carriers?

Mr. TUCKER. That is exactly why I qualified it, sir, by using the term "prima facie showing" in general. We have not made that study and from what I have seen of the record here, the committee will have a lot more information before it than we have right now at the Commission.

Mr. WATSON. Of course, one thing that disturbs me is that the Commission has more expertise in this field than the committee does, although we try to do the best we can. So that we can have this thing in proper context, what is the percentage of bulk cargo carried by the water, rail, and truck carriers?

Mr. TUCKER. I wonder if I could respond to that in writing, sir, so that I can give you the precise figures.

Mr. WATSON. I think that would be helpful.

Mr. TUCKER. I can ask Mr. Stillwell for his general reaction.

Mr. STILLWELL. My recollection is 95 percent.

Mr. WATSON. Perhaps you didn't understand my question. What percentages now of bulk cargoes are carried by the various freight carriers, individually what would be the percentage?

Mr. STILLWATER. I don't have that information.

Mr. WATSON. Water carriers, railroads, and trucks, so that we know what we are dealing with here.

Mr. TUCKER. We will submit the precise figures.

(The information referred to appears in the letter to Chairman Friedel, dated October 31, 1967, on p. 98.)

Mr. WATSON. I believe you are aware of the fact that the motor transport association or the truckers have recommended that if this legislation passed, that there be a provision bringing the carriers under the antitrust provisions. Do you recommend that?

Mr. TUCKER. I don't know as I recommend it. We don't feel that the antitrust provisions are effective regulatory, if I can use that term, safeguards where transportation is exempted from regulation. It is our view that when transportation is exempt it is subject to the antitrust laws.

Mr. WATSON. One final question. There was much apprehension last week, and I think justified, on the part of the water carriers that should we extend this exemption to all modes of transportation, that the railroads very well could force them out of business by reducing their rates on these bulk commodities and then in another field, another area, increasing their rates for such period as might be necessary in order to force the water carriers out of business.

Are there any regulations presently which would prevent such as this?

Mr. TUCKER. I don't think that there are, sir. I know that there was some reference here to the Robinson-Patman Act. We don't think that that applies in this situation you referred to.

Mr. WATSON. So then the fear on the part of the water carriers is a justified one; in your opinion, should we extend this exemption to all of the carriers?

Mr. TUCKER. I don't know as I would want to relate my answer to what the water carriers have represented, because I have read the transcript, and I can agree with some representations and not with others. I would say this: That destructive competitive practices could come about if the exemption were extended here and in the railroad area as well.

Mr. WATSON. Do you really favor the inclusion of the other carriers under this exemption, or do you feel that all should be removed from the exemption?

Mr. TUCKER. Well, we feel very strongly that the exemptions should be removed and that the exemptions should not be extended.

Mr. WATSON. Thank you very much, Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. I thank the chairman for his recognition, though his look was misdirected. Mr. Chairman, I have a question that is somewhat ancillary to this general problem of barges but it is still relevant to some of this morning's discussion. It grows out of the possibilities that would exist if equality were provided to this transportaton problem. There has been considerable discussion on whether the railroads should be given any exemptions such as those already granted for agriculture to trucks and for bulk goods to water carriers and, furthermore, if the railroads are to be given such an exemption, whether they would be covered by the antitrust laws.

Recently there was a case before the ICC concerning an allowance, or a rebate, which was paid by a railroad to certain truckers. The lowered freight rates caused by this allowance resulted in a flow of

cotton from the compresses and warehouses in my district to those elsewhere, and the opinion of the ICC was that these rebates were legal.

I was wondering then if the railroads were made subject to all antitrust laws, including the Robinson-Patman Act, whether this opinion would still be valid. For your information, the opinion that you gave was docket No. 8008, decided on July 31, 1967, entitled "Allowances for Trucking Baled Cotton, Arkansas and Texas and Oklahoma."

The net effect of it was that by granting rebates the ICC allowed for shipment of cotton to distances far from Austin, such as Lubbock and Corpus Christi, and it affected cotton which would normally go from my gin to the warehouse 10 miles away. With rebates it now goes to the gulf coast, so my cotton is getting away from us.

If you granted the exemption subject to the Antitrust and the Robinson-Patman Acts, it seems to me that this might have some effect on that opinion.

I would like to have your written answer or would you comment now, either way?

Mr. TUCKER. I would like to make a brief comment, sir.

If this transportation was exempted, we believe it would be subject to the antitrust law. We do not believe it would be subject to the Robinson-Patman Act without an amendment to that act which would extend coverage from commodities to transportation services. It is conceivable to me, without a close study, that the form of rebate which we found lawful might not be lawful under operations of the Antitrust Act. I wonder if Mr. Kahn has a comment.

Mr. PICKLE. Are you saying that if we did have equality under this act that it should be made subject both to the Sherman Antitrust and the Robinson-Patman, if the Robinson-Patman were amended in certain respects?

Mr. TUCKER. No, sir; that is not our testimony. Our testimony is that we do not consider the antitrust acts as presently constituted adequate safeguards for the necessary regulatory basis that we need for equality of competition if there were full exemptions. We feel that can only be achieved constructively by rolling back all of the exemptions, but we would like to respond further and to give you our view on that rebate case in the event that there were exemptions and the antitrust laws applied.

Mr. KUYKENDALL. Will the gentleman yield for a question at that point?

Mr. PICKLE. Yes.

Mr. KUYKENDALL. To further clarify the statement you just made, saying that you did not consider the antitrust laws adequate, is the reason for your opinion that most antitrust prosecution is after the fact?

Mr. TUCKER. That would be one of a great many reasons. I am not prepared to make a case on that today except to venture this testimony. Perhaps Mr. Kahn could add a little bit to what I have said here today.

Mr. KAHN. On the question posed by Congressman Pickle, I don't believe that the subject matter of this morning's hearing, to wit, the bulk commodities exemption, would in any way relate to the problem of the transportation of cotton which was before the Commission in the proceeding to which he has referred, the transportation of cotton, not being deemed bulk commodities transportation.

With reference to the Congressman's question as to the applicability of the antitrust laws, I believe it is the view of the Interstate Commerce Commission that the most effective of the antitrust laws in this discriminatory pricing situation, to wit, the Robinson-Patman Act, would be inapplicable to transportation, and that the Robinson-Patman provisions very specifically being directed at commodities and pricing techniques of commodities rather than services the only one of the presently constituted antitrust laws that would apply would be the Sherman Act and the burden of proof under the Sherman Act, of conspiracy in restraint of trade or a monopolization would be exceedingly difficult to meet in transportation situations.

Mr. PICKLE. Mr. Chairman, I am not a lawyer and certainly am not qualified to talk at great length about this question, but I do think that if you talk about apples and oranges here, Sherman Antitrust is with respect to restraint of trade. Now, whether it is after the fact, as Mr. Kuykendall said, or just a restraint practice, Robinson-Patman definitely says one organization, one company can't take the profits of one section and put it into a losing section of their company that would offer advantage to a particular merchant in opposition to competition to someone else in the business.

Now, it would seem to me that, if you made, in establishing equality, all exempt activities subject to the Robinson-Patman Act, and certainly if you got into the field of rebates, I think you would, where you have this cotton example, then it seems to me that you would be giving special consideration to a big organization.

This ties in with the next question I was going to ask. You have not given us any figures this morning about the percentage of business that barges have in bulk commodities. I think it would be safe to say, though, and I speak only now with respect to generalities, that for the water carriers that would constitute some 95 percent of their business, wouldn't it?

Mr. TUCKER. I believe it does.

Mr. PICKLE. In that neighborhood. Just in very general terms, what percent would the railroads carry with respect to bulk commodities, the same type of bulk commodities?

Mr. TUCKER. Mr. Kahn is suggesting 40 percent. My estimate would be about 50 percent, but we will furnish the precise figures.

Mr. PICKLE. You are talking about 40 percent?

Mr. TUCKER. Yes, sir.

Mr. PICKLE. That is higher than I would have thought it might be. Of course, the water carriers' potential is limited to three or four or, maybe, five, and that is about it. If the railroads carry 40 percent, it is not just 40 percent of those three commodities, but of any number of bulk commodities; is that not correct?

Mr. TUCKER. I would tend to agree that they would carry more varied kinds of bulk commodities than the water carriers transport.

Mr. PICKLE. I don't want to prolong this, but I would just like to ask one or two questions briefly.

The carriers do have a problem, and we all recognize it, and it was so stated during these hearings, and you do not like extending the stay. You have set the time of January 1, 1968.

In fairness to the water carriers, it seems to me that they have done their best to get remedial action by legislation and for 6 months or

more they have tried to get hearings, and we have just now gotten underway, and this is mid-October.

It may be a little difficult for them or for the Congress to get legislation enacted. Hopefully, we could. If I understand your position, you would be agreeable to extend that stay if both committees requested the Commission to do so and if the Commission agreed?

Mr. TUCKER. Yes, sir. That is exactly the case. Personally, I would be agreeable if I was satisfied that the committees wanted to continue with the handling of this problem and they hadn't reached a decision, but it would be up to the Commission. My recommendation would be for further extension if the committees advise us that they wanted to keep going on this.

Mr. PICKLE. And the Commission otherwise, as I understand it, favors granting the exemption, that is this legislation, primarily to establish equality between water carriers, domestic common, is that correct, and between water carriers themselves rather than as between other modes of transportation?

Mr. TUCKER. The thrust of the legislation as we see it is to gain better quality between the water carriers. Our feeling is that we don't object to it if the water carriers make out a case of hardship that would warrant a favorable decision.

Mr. PICKLE. One last point. If we were to allow equality for all modes, which has a certain strong appeal of fairness to it, this might constitute a rather exhaustive, extensive study into just what the legal wording might be because this is a pesty problem we have had here about the water problem. It has been hanging over us for 4 or 5 years. Therefore, if we took the latter approach, it might take a little more time.

Mr. TUCKER. I can well understand that, Mr. Pickle.

Mr. WATSON. Will the gentleman yield for a quick question on that point.

Mr. PICKLE. I have no more time.

Mr. WATSON. This section 303 has had a judicial interpretation, has it not, in the court?

Mr. TUCKER. Yes, sir.

Mr. WATSON. Yet you feel as a Commission you would still have the authority to postpone the effective date.

Of course, I am not familiar with the legal action taken, but it seems if you have had a judicial determination, your hands are pretty well tied.

Mr. TUCKER. Yes. We can reasonably postpone the effective date, particularly when they are in the rulemaking or declaratory judgment area. We do that quite a bit where there has to be a change of practices, and where there is good faith involved.

Mr. FRIEDEL. Mr. Springer.

Mr. SPRINGER. Thank you, Mr. Chairman. I have just a short question.

Mr. Chairman, I would like to see if I could get this reduced to the irreducible so that we can understand exactly what your position is.

I take it that this list of 12 bills which has been introduced and is on page 1 of your statement would do the following things: This bill first would broaden the scope of the exemption, that is one, and it would do this in two ways. First, it would overturn the Commission's determination that the mixing of exempt and nonexempt commodities subjects

the particular movement to regulation. It would remove that particularly, would it not?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. That is one.

Second, because this deletion would eliminate the present standards, each of two or more vessels operated as a single unit should be considered a single vessel?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. And the present limits of three bulk commodities in tow would be eliminated, and you could have as many as 60 separate bulk commodities which could be carried in a tow of 20 barges?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. That is the meat of this whole thing, of what you are talking about?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. So that we can understand simply that this is why you believe this legislation is unwise. Is that right?

Mr. TUCKER. I don't know as I have used the term "unwise," because the wisdom of this legislation is now before the committee here.

Mr. SPRINGER. But this is the reason for your objection to the legislation?

Mr. TUCKER. The reason is that we would be extending an exemption, sir, that we don't think should exist in the first place.

Mr. SPRINGER. Let me come now to your major thesis. I am talking about in what I have said already, objection to this bill, those two reasons?

Mr. TUCKER. Generally; yes, sir.

Mr. SPRINGER. Now, I think your thesis, however, before this committee, at least, is:

> However, we continue to believe that repeal of the exemption will ultimately be required as a necessary step toward the elimination of inequalities between carriers of different modes.

That is what you really believe, is it not?

Mr. TUCKER. That is the fundamental policy that underlies our testimony here today; yes, sir.

Mr. SPRINGER. Now I take it that we go one step further, that you believe all modes of carriage ought to be regulated. Is that right?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. That is your main thesis?

Mr. TUCKER. Yes, sir.

Mr. SPRINGER. I just want to be sure that we understand in two or three sentences what you are talking about.

Thank you very much.

Mr. TUCKER. Yes, sir. Thank you.

Mr. DINGELL. Mr. Chairman, I have been detained in a hearing of another subcommittee of this committee. I have some questions that I would like to have directed by letter to the Interstate Commerce Commission regarding certain facts of the legislation presently pending before the committee, and would like to have leave to direct questions to that agency by letter, and to receive appropriate response at an early time, and also thereby to insert those responses and the questions into the record, if I may, please.

Mr. FRIEDEL. So granted.

(Questions and answers to be furnished follow:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., October 31, 1967.

Hon. JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: This responds to your letter of October 16, 1967, enclosing an outline of questions relating to H.R. 7610, a bill that would amend the bulk-commodities exemption of section 303(b) of the Interstate Commerce Act.

Specifically, your questions deal with the relationship of the exemption and the incidental towing exemption of section 303(f)(2) of the Act. Before responding to your questions, it might be well to observe that a distinction is made between carriers performing water operations by barge and towboat, a service called "freighting" which includes the furnishing of both barge and motive power, and a general towage operation which merely contemplates the furnishing of towboats to haul shippers' barges. Specific Commission authorization is required to conduct both operations where non-bulk commodities, or bulk commodities exceeding three in number are involved, or where bulk and non-bulk commodities are intermixed in a single tow. A general towage authority does not permit a carrier to furnish a complete service, *i.e.*, furnishing barges, not does a barge and towboat authority (freighting) permit general towage service (merely motive power) of regulated commodities, except to the extent allowed in section 303(f)(2).

"Incidental towing", as contemplated by section 303(f)(2) of the Act, relates to the furnishing of motive power (a tugboat) by any person either as agent or under contractual agreement to a regulated water carrier to move that carrier's equipment (barges). No authority from the Commission is necessary to conduct this service, provided the tow is completely made up of the regulated carrier's barges, or there are not more than three bulk commodities in the tow. Accordingly, the Commission is without power to control reciprocal towing by common carrier barge lines when performed as "incidental towing" within the meaning of section 303(f)(2) of the Act.

You ask further whether such transportation falls within the antitrust laws. So long as the arrangement is for incidental towing only, it is not within the purview of the Interstate Commerce Act and subject to the prohibitions therein contained against pooling and, presumably, would be subject to the antitrust laws.

You ask finally what the effect of the proposed legislation might be upon the competitive relationships between the water carriers. By broadening the exemption it would appear evident that the larger certificated carriers will be able to operate more efficiently than they presently would and, hence, unquestionably will be able to compete more vigorously with smaller carriers, regardless of their status in the regulatory scheme.

I hope this information will be of assistance to you in your consideration of this legislation.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman.

Mr. FRIEDEL. Thank you very much, Mr. Chairman.

Mr. TUCKER. Thank you, Mr. Chairman, for letting us come up here and join you today.

Mr. FRIEDEL. It has been our pleasure.

(The following letter was received by the committee:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., October 31, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House of Representatives, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: In the course of my testimony before the Subcommittee on October 10, 1967, on H.R. 7610 and eleven similar bills which amend section 303(b) of the Interstate Commerce Act, you and several other members of the Committee posed a number of questions to me, the replies to which were to

be submitted subsequently for the record. Since many of these questions and the replies to them are closely related to one another, we have included all of the material requested in this letter. For convenience, each question has been restated below in the order in which it appears in the transcript and is followed by the answer to each question.

On page 115 of the transcript, you indicated that a number of questions would be submitted by you in writing. These questions were subsequently transmitted to the Commission by a letter to me dated October 16, 1967. Our replies to these questions are set out below:

You ask the question what is "incidental towing" within the meaning of section 303(f)(2) of the Interstate Commerce Act and ask for illustrations of such "incidental towing". Before responding, it may be well to note that a distinction is made between carriers performing water operations by barge and towboat, a service called "freighting" which includes the furnishing of both barge and motive power, and a general towage operation which merely contemplates the furnishing of towboats to haul shippers' barges. Specific Commission authorization is required to conduct both operations where non-bulk commodities, or bulk commodities exceeding three in number are involved, or where bulk and non-bulk commodities are intermixed in a single tow. A general towage authority does not permit a carrier to furnish a complete service, i.e., furnishing barges, nor does a barge and towboat authority (freighting) permit general towage service (merely motive power) of regulated commodities, except to the extent allowed in section 303(f)(2).

"Incidental towing", as contemplated by section 303(f)(2) of the Act, relates to the furnishing of motive power (a tugboat) by any person either as agent or under contractual agreement to a regulated water carrier to move that carrier's equipment (barges). No authority from the Commission is necessary to conduct this service, provided the tow is completely made up of the regulated carrier's barges, or there are not more than three bulk commodities in the tow. Example: (1) Regulated Carrier A contracts with a tugboat operator to haul 20 of its barges from Memphis to New Orleans and there are no other barges in the tow. (2) Regulated Carrier A contracts with a tugboat operator to haul 20 of its barges of bulk grain which are incorporated into a tow consisting entirely of bulk commodities not exceeding three in number.

Complications arise, however, when an unregulated carrier with, say, five barges of bulk grain which are being freighted by it for a shipper, is called upon by a regulated carrier to tow several barge loads of non-bulk commodities. If the unregulated carrier attempts to combine the two types of cargo, the bulk commodities exemption no longer obtains, because the "not more than three bulk commodities" exemption in section 303(b) is not observed. *Commercial Trans. Corp., Exemption, Sec. 303(b) and 303(f)(2)*, 300 I.C.C. 66 (1957), sustained, *Commercial Barge Lines, Inc.* v. *United States*, 166 F. Supp. 867 (E.D. Mich. 1958), aff'd mem., 359 U.S. 342 (1959).

You ask whether towing the length of the Mississippi River might be "incidental towing". The length of haul has no relation to the determination of an "incidental tow" which might be likened to an owner-operator providing line-haul tractor service for a certificated motor carrier. Towing the length of the Mississippi River could certainly be considered "incidental".

You ask what jurisdiction the Commission has over the towing charges under a variety of arrangements between carriers of exempt and non-exempt freight and ask whether towing charges must be uniform and non-discriminatory. So long as the carrier for which the towing is performed is a regulated water carrier, the Commission has no control over these towing charges, because section 303(f)(2) states that:

> Notwithstanding any provisions of this section or of section 302, the provisions of this part shall not apply. * * *

and further states that:

> such transportation shall be considered to be performed by such carrier * * * and shall be regulated in the same manner as, the transportation by * * * water to which such services are incidental.

From the foregoing it can be seen that the Act gives the Commission no control over the provider of the incidental towing. Its towing charges may well be discriminatory even though arrived at through "arms length" bargaining, but such charges are not subject to the provisions of section 305(c).

The incidental towage exemption, however, obtains only when the towage is for a carrier subject to Part III of the Act.

You ask whether the antitrust laws apply to transportation not subject to Commission regulation under sections 303(b) or 303(f)(2). Insofar as such transportation is not subject to Commission regulation, it would appear that it might be subject to the antitrust laws. However, in regard to your question relating to the lack of protection from the antitrust laws in the event the present exemptions in section 303(b) were broadened, it is my opinion that the limited regulation under section 5a of the Act (The Reed-Bulwinkle Act) carrier parties to agreements relating to charges, etc., and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof if such agreement has been approved by the Commission, are relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement. Section 5a affords protection only as to agreements between two or more regulated carriers of the same class. Section 303(f)(2) deals with incidental towage supplied by "any person". Most "incidental towing" providers are not carriers subject to regulation under the Interstate Commerce Act, and could not, therefore, be parties to an approved section 5a agreement. Hence, protection from the antitrust laws under the proposed amended section 303(b) would still be minimal.

On pages 113–19 of the transcript, Congressman Devine asked if the views expressed in my testimony reflected the views of the entire Commission or only my personal judgment. While I indicated that my testimony represented the collective views of the Commission, I indicated that I would like to check and confirm this. Since it is our practice to determine our position on legislation promptly so that we will be able to respond to request from Congress without undue delay, we considered this matter and our position on it earlier this year in advance of the hearings. Our position on these bills represents the unanimous views of all the present members of the Commission except for two members who were not members of the Commission at the time our position was formulated and who, therefore, did not participate in this matter.

On pages 127–28 of the transcript, Congressman Watson requested us to provide a breakdown of the percentage of bulk commodity traffic carried by each mode of transportation. This information is set forth in the following table: "

ESTIMATED PERCENTAGES OF BULK AND OTHER TRAFFIC, BY CARRIER MODES REPORTING TO ICC, FOR THE YEAR 1964

Carrier mode	Bulk	Other	Total
Rail [1]	79	21	100
Motor [2 3]	43	57	100
Water	81	19	100
Pipeline	100	0	100
Total	77	23	100
Total, less pipeline	69	31	100

[1] Tons originated are used for railroads to avoid undue duplication of tonnage. This is not possible in the case of other carriers.

[2] Includes TL and LTL traffic. For TL traffic only, as reported by class I common and contract carriers filing commodity statistics, bulk traffic was estimated to be 60 percent.

[3] Applies the percent of bulk commodities from 1963 commodity reports, the latest compiled by the Commission, to 1964 tonnages.

Total traffic was divided into bulk and other on the basis of commodity statistics reported to the ICC by the larger carriers. From modal summaries, all tonnage for each commodity class was assigned either to bulk or other according to our understanding of how such traffic usually moves. The percentages so obtained were then applied to total traffic for that mode. All LCL and LTL were assigned to other.

Bulk commodities are shown in the table as percentages of 1964 totals of tons carried by class A, B, and C water carriers, class I, II, and III motor carriers, and petroleum pipelines, and of tons originated by railroads. Data are limited to carriers regulated by the Commission. Since a considerable volume of inland water carrier tonnage is totally exempt from Commission regulation because it is made up of bulk commodities moving under the exemption afforded these carriers by section 303(b), the data reported to the Commission and shown in the table understates the volume of bulk commodities carried by such carriers considered as a percentage of all inland water transportation whether regulated or exempt. To develop this latter figure, we have checked Part 5 of *Waterbourne Commerce of the United States*, issued by the U.S. Army Corps of Engineers

for 1964 which indicates that 96.9 percent of the commodities moving through inland waterways maintained by the Corps of Engineers is bulk in nature.

I hope this information will be of assistance to the Subcommittee in its consideration of this legislation.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman.

Mr. FRIEDEL. Our next witness is a gentleman who has already submitted his statement, and we will hear his further statement.

Mr. F. A. Mechling, chairman, Legislative Committee, American Waterways Operators, Inc.

I hope you will be very brief, because we have quite a few other witnesses and will not be able to meet this afternoon.

FURTHER STATEMENT OF F. A. MECHLING, CHAIRMAN, LEGISLATIVE COMMITTEE, AMERICAN WATERWAYS OPERATORS, INC.; ACCOMPANIED BY BRAXTON B. CARR, PRESIDENT, AMERICAN WATERWAYS OPERATORS, INC.; AND JESSE E. BRENT, PRESIDENT, BRENT TOWING CO.

Mr. MECHLING. Thank you, Mr. Chairman, for hearing me again this morning. I was here a week ago and presented my direct statement in the record, and only would like to elaborate just very briefly at your request on a couple of the items to help perhaps clarify what we think may need to be said from the standpoint of the water carriers on certain phases of the discussions that have been underway since the hearing last Wednesday.

I have with me at the witness table Mr. Braxton Carr, president of the American Waterways Operators, and Mr. Jesse Brent, who was also with me at the witness stand last Wednesday.

To get into the substance of it, I will briefly state that Commission Chairman Tucker put it very well when he said that this legislation endeavors to eliminate the inequality between the water carriers.

This is an inequality that has been in existence since the 1940 act was passed, when certain bulk commodities were exempted from regulation, and in the wisdom of Congress have continued in that status since 1940.

So that there has really been no change in the number of commodities, the commodities so identified, that are subject to the bulk exemption. Of course, it has been explained in quite lengthy detail by previous witnesses that the problem comes about beacuse of the inability to move those exempt commodities in with regulated tows.

It is on that particular point that we want to stress our interest this morning as members of the American Waterways Operators, an association that has within its framework both exempt operators and regulated operators.

When Mr. Brent said that they came to this table united in this problem, the water carriers united in the problem, the scope of it is really limited, as we see it, to the mere mechanical and technical problem of operating efficiently on the rivers, and does not go beyond the framework of the Mississippi River system, and is only limited to what the water carriers themselves are doing, and does not change any of the competitive situations that do exist because of the 1940 act insofar as the railroad competitiors are concerned.

So that I wanted just to again clarify that, if I could, Mr. Chairman.

Mr. FRIEDEL. That is one of the questions I submitted to you.

Mr. MECHLING. If I may then turn to the questions, sir, that you asked, after explaining that situation, the question I think goes to the point.

Mr. FRIEDEL. In other words, my qustion was: When we considered H.R. 9903, you opposed that legislation?

Mr. MECHLING. Yes.

Mr. FRIEDEL. Now I want to know why you are in favor of it.

Mr. MECHLING. We are not in favor of 9903. I don't believe there is anything in my testimony that says we have changed our mind, and now support the legislation pending in 9903.

Mr. FRIEDEL. As I understand, there are two types of water carriers, regulated and nonregulated. Which did you represent at that time?

Mr. MECHLING. I represented American Waterways Operators, in that hearing, and opposed H.R. 9903.

Mr. FRIEDEL. Were they regulated or nonregulated?

Mr. MECHLING. They were both. Our company is a regulated common carrier by water.

Mr. FRIEDEL. And you disapproved of that legislation? You were not in favor of that legislation?

Mr. MECHLING. That is correct, sir. We are not.

Mr. FRIEDEL. Now you are in favor of it because it is taking care of both the regulated and unregulated water carriers?

Mr. MECHLING. H.R. 9903 went to deregulation of bulk commodities by rail, and actually tightened up the bulk exemptions by water, restricting them to one commodity.

Mr. FRIEDEL. In other words, you are opposed to giving the railroads and truckers the same treatment that you are asking for the water carriers?

Mr. MECHLING. Here again, in 9903, that was our position. We were opposed, sir, to granting that exemption because of the many reasons that we cited in our testimony at that time.

Mr. FRIEDEL. Only because it would give the other modes of transportation more competitive treatment?

Mr. MECHLING. No, we felt that it would add to the inequality of treatment by granting that exemption to the railroads.

Mr. FRIEDEL. In other words, if this committee decided to take a comprehensive bill and bring in the other modes of transportation then you would take the same stand—you would be opposed to it?

Mr. MECHLING. If it were in the same framework. If there were safeguards in any proposed legislation that we felt would be adequate to protect the discriminatory pricing structures, then we certainly have an open mind, at this point.

Mr. FRIEDEL. If it came under the antitrust laws, would you favor it then?

Mr. MECHLING. Providing that those provisions would add the protection that we are concerned with.

I think it was well put by the chairman here this morning, that under the present antitrust laws we would have no protection.

Mr. FRIEDEL. If we amended the antitrust laws?

Mr. MECHLING. That would be a different matter, and we would certainly look at this, Mr. Chairman.

Mr. WATSON. Mr. Chairman?

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Could we explore the questioning that you were embarking on a moment ago? I was not privy to all of the discussions on 9903, but I gather here last week that there was a direct indictment of your industry, saying that apparently you were in support of that bill, and subsequently, when it went over to the Rules Committee, you opposed it.

I am sure that it caused a number of us some concern about it, because you are honorable men.

I think you should have an opportunity to clarify that. Did you oppose it initially, or did you support it? Give us a briefing on what your position was.

Mr. MECHLING. We opposed that legislation from the outset, and at no point, to my knowledge, did we ever enter into any agreement that we withdrew our opposition.

We opposed it from the outset because the way the bill was designed, we could see only the fears that we have stressed, that would come about to our industry, so we opposed it from the outset, and never changed our mind at any point throughout the whole proceeding.

Mr. WATSON. Did the opposition extend to both the regulated and nonregulated carriers?

Mr. MECHLING. The water carriers were completely united.

Mr. WATSON. In opposition to 9903?

Mr. MECHLING. Yes, sir.

Mr. WATSON. And you made that opposition manifest to this committee prior to taking it over to the Rules Committee?

Mr. MECHLING. Yes, sir. Yes, sir.

Mr. WATSON. There was no question about that at all?

Mr. MECHLING. No question.

Mr. WATSON. But as the chairman stated, you were opposed to the general deregulation for all carriers, but now you support the continuance of the exemption for your carriers, the water carriers?

Mr. MECHLING. Well, we have always been opposed to deregulation of rates on bulk commodities by rail. There has never been a change of position in our industry, or in my personal view, on that subject.

Mr. WATSON. And you think that to allow this exemption to continue for your carriers, and not give the other modes of transportation the same exemption, is equitable?

Mr. MECHLING. Primarily because this boils down to a simple problem that involves water transportation only.

There is nothing in this exemption—if I could clarify this one point, if this same exemption that we are here seeking were given to the railroads, it is my point that the railroads have this exemption inherent because they have no limitations on the commodities they can mix on a train. The water carriers do.

So, just from a strictly operating standpoint, there is nothing that is inequitable about this permission that we are seeking here by this legislation, to be able to transport a multiple number of different cargoes on the same tow.

The railroads can, and do, do that every day.

Mr. WATSON. But, of course, you recognize your position is in conflict with the position taken by the Chairman of the ICC a moment ago. He certainly stated that this exemption should be eliminated, apparently—not apparently, but directly stating that it gave you an unfair competitive advantage.

Mr. MECHLING. This, as he said, has been the consistent Commission position over the years, and all we are trying to do is seek to operate under the ground rules that Congress in its wisdom establishes for us to operate within. We are only seeking to operate as efficiently as we can within those ground rules, which are set down by Congress.

We had nothing to do with the complete establishment of the 1940 act, for example, and, as was stated, no one knew in 1940 we would be running 5,000- and 6,000-horsepower boats with 30 barges on a tow in the Mississippi.

Mr. WATSON. I am sure that that is why the exemption was granted to you at that time, but the facts and circumstances have changed, and generally laws change with the change of the facts and circumstances. That is why we are wrestling with this problem now.

I asked the Commissioner earlier whether or not they had made a study of what adverse effect failure to pass this legislation would have upon the water carriers, and they have not studied it.

Have you made a study, or is yours speculative?

Mr. MECHLING. No, sir, it is not speculative. Our typical operation is a departure from Chicago to New Orleans in our common carrier operation. On that tow we have articles of iron and steel and down through the Illinois Corn Belt we pick up cargoes of corn.

Under the compliance date of January 1, 1968, we will no longer be able to pick up those cargoes of corns with the cargoes of steel moving on that same tow, which results in, for all practical purposes, doubling the cost of our providing transportation for those shippers, or in the alternative, so delay it so that we accumulate enough cargoes of regulated to move in a solid tow of regulated commodities, and then accummulate a solid tow of bulk commodities to move separately.

Of course this results in such inferior service that we would be out of business in either event.

Mr. WATSON. One final question.

If 95 percent of your cargo were bulk, it really would constitute a serious problem for you to separate and wait to accumulate enough regulated items to ship?

Mr. MECHLING. It certainly would.

It is actually about 90 percent of the cargoes moving on the inland system is your bulk exempt, so the public interest comes from the 1,000-ton shipper who moves once a week. This is the shipper and the public interest that is injured by failure to make this correction we are seeking.

Mr. WATSON. Thank you, sir.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. I think you were here when it was indicated by the Chairman of the ICC a few moments ago, and I believe it was brought out in subsequent testimony that if the intent of this committee was to continue toward the area of more flexibiliy and deregulation, that they would consider this particular bill an emergency measure, and not oppose it on that basis.

Now, it would seem to me that it would be wise, if we began here today to get some legislative history, so that there will not be a misunderstanding 6 months from now as exists from 3 years ago, because as Congressman Watson pointed out, those who are new on this committee might have difficulty with that misunderstanding 3 years ago.

I think we had better get to the bottom of that for the future. This is not to place any guilt.

Am I to understand from your statement of a few moments ago that with the proper placing of all modes of transportation and areas of deregulation under both the Robinson-Patman and Sherman Antitrust Acts that you would consider that adequate protection for the area of deregulation?

Let's see that you and I are talking about apples and apples, and not apples and oranges, here.

It is my understanding that if you were deregulated on wheat up and down the Mississippi, and the railroads would be deregulated on wheat up and down the Mississippi, that it would be illegal for the railroad or you, either one, but since your primary selling point is rate and price, and not service, and you certainly don't have great speed, since that is your primary selling point, it is my understanding that if Robinson-Patman were amended to include services as well as commodities, that it would be illegal for them to sell a service up and down the Mississippi on wheat at less than cost, and obviously their cost is higher than yours, therefore they could not be directly competitive on price alone, legally.

This is my understanding of the ramifications of antitrust and Robinson-Patman as it applies to this situation. Is that your understanding?

Mr. MECHLING. Sir, first of all, I am not a lawyer, but I would like to state, sir, that we did examine this very point very exhaustively, and under our association employed an expert antitrust lawyer to advise us in this field that you speak of, whether or not this would be possible to accomplish, and the advice of that counsel at that time was that this would be impossible of accomplishment as you put it, that we would not be able to nail this down and provide the protection under the antitrust laws that we thought would be reasonable.

I am not saying we are trying to be unreasonable or hardnosed about it, but he was no convinced, and his advice was that he did not see how we could be protected under the antitrust laws.

Mr. KUYKENDALL. I have asked the Secretary a while ago to get at this point, and did not have time to develop it further.

Is it your feeling that antitrust laws, including Robinson-Patman, if amended, would not give you adequate protection for this reason, that prosecution after the fact means that a half dozen small barge lines may be out of business before the assessment of a penalty by the law itself? Is this your objection?

Mr. MECHLING. Yes, sir. You put your finger on one point in our objection, that we would be dead before any remedy could be assessed.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Mechling, I submitted a statement to you containing questions. I just want to refer to one thing.

It is my recollection that in 1962, when we had hearings on H.R. 9046, which then would have eliminated the mixing rules, you were

a member of the Waterways Bulk Transportation Council, which opposed the bill, and then I mentioned A, B, C, D, and E.

I wish you would answer that for the record.

Mr. MECHLING. I would be happy to, sir.

Mr. Chairman, I think I can handle these very briefly.

No. 1, we were a member of that council at that time. We had a minority position with respect to our opposing correction of the mixing rule, even though that was a limited correction at that time.

So I want to clear the record, that we as a company did not support that position of the Waterways Bulk Transportation Council, and we are members of many associations where there are policies taken, or positions taken that we do not exactly agree with, but we don't abdicate and resign from those associations for that reason, sir, so we did not resign from that association because they took an opposite view to what we think was in the best longrun carrier interest.

I think the proof of the pudding is that today the industry comes forward united to attempt to correct the inequity, and bring it up to date.

Mr. FRIEDEL. Submit it for the record, because we have to proceed.

Mr. MECHLING. All right, sir.

Mr. FRIEDEL. I gave the questions in writing. We want the questions and answers submitted for the record.

Mr. MECHLING. We can do it.

(The questions and answers referred to follow:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., October 4, 1967.

Mr. F. A. MECHLING,
Executive Vice President, A. L. Mechling Barge Lines, Inc.
Joliet, Ill.

DEAR MR. MECHLING: I appreciate your helpfulness in expediting our hearings, and readiness to reply to some questions by letter for inclusion in the record on H.R. 7610 and companion bills amending section 303(b) of the Interstate Commerce Act, relating to the mixing rule.

I had two lines of questions which I think are pertinent to our understanding of the situation. These I enclose in draft form as I had them for refreshing my memory in interrogating you during the course of the hearings. You will recognize that they are not couched in the nicety of expression which addressing you by letter ordinarily would entail, but I think in the interests of time I shall simply send along these drafts for you will recognize their purport and I know be able to discuss them fully.

One has to do with the reasons why now you are in support of the repeal of the mixing rule whereas in 1962 you were a member of the Waterways Bulk Transportation Council, which opposed the repeal of this rule.

The other question or line of questions has to do with the towing by exempt carriers of barges of regulated carriers, that is the control over such towing lines or contracts and the position of these towing arrangements under the antitrust laws or under section 5a of the Interstate Commerce Act.

With every good wish to you,

Sincerely yours,

SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics.

Mr. Mechling, there has been a great deal of attention in the hearings over the years to the big common carriers having advanced the art of technology to the stage where the mixing of nonregulated and regulated commodities in the same tow were necessary in order to achieve operating efficiency. I think all of our attention has been directed to the elimination of the mixing rule resulting in a situation where your regulated or certificated carriers could combine both bulk commodities and nonbulk commodities in the same tow.

Question. Mr. Mechling, in your testimony you advanced your support of this bill on the ground that "exempt carriers will be able to add to their large exempt tows, barges of regulated carriers moving on the tariff rates and rights of the regulated carriers."

This is the reverse of the other situation but I am not clear just what it means. You state that exempt carriers can add barges of regulated carriers. If they do, will they continue to be exempt, that is, this addition I take it is by reason of their hauling under a towing contract. Is this contract regulated or is it not?

Question. In this situation, is the towing by exempt carriers of the barges of regulated carriers subject to the jurisdiction of the antitrust laws or section 5a of the Interstate Commerce Act? It is my understanding that section 5a applies only to common carriers and I take it that the exempt carriers are not common carriers in the situation I have given.

Mr. Mechling, it is my recollection that in 1962 when we had hearings on H.R. 9046, a bill which then would have eliminated the mixing rule, you were a member of the Waterways Bulk Transportation Council, which opposed that bill.

Mr. Gale Chapman, speaking for that Council, in summarization said:

"We are strongly opposed to the bill because—

(*a*) The decision in WC–5 has not given rise to any emergency.

(*b*) Suspension of the mixing rule would give an unfair competitive advantage to one class of carriers the regulated carriers, over another, the unregulated carriers.

(*c*) Shippers and the public would be injured by the destruction of competition following the proposed amendment.

(*d*) The bill's special treatment of the Mississippi system is discriminatory.

(*e*) Even the recommendation of the legislation by this subcommittee would injure the interests of the unregulated carriers by encouraging further delay in the enforcement of the Commission's decision in WC–5.

Question. Why have you changed your mind and now support the repeal of the mixing rule?

THE AMERICAN WATERWAYS OPERATORS, INC.,
Washington, D.C., October 16, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn Office Building, Washington, D.C.

DEAR MR. FRIEDEL: In answer to the questions raised in your letter of October 4 to me, I will answer them in the order in which they were set forth.

Question No. 1. If exempt carriers add barges of regulated carriers will they continue to be exempt?

Answer. Yes! By eliminating the sentence that treats "all vessels as a single vessel" each barge (vessel) in the tow (flotilla) will stand either on its own exemption under the act, or if a regulated commodity is in the vessel, will stand regulated under the act as a separate vessel. In effect what this means is the flexibility for all carriers to tow for each other will be permitted under H.R. 7610. Exempt carriers however would not be allowed to transport regulated commodities under their own bill of lading but would tow the regulated commodity in a barge furnished by the regulated carrier under the rights and tariffs properly on file with the ICC for such transportation.

The answer to part two of that question is the exempt tower in this case would tow for the regulated carrier at a certain rate per ton-mile or some other mutually agreed to charge for the service performed by the tower. This charge for towage would not be subject to regulation.

Question No. 2. In this situation, is the towing by exempt carriers of the barges of regulated carriers subject to the jurisdiction of the anti-trust laws or Section 5a of the Interstate Commerce Act?

Answer. The towing service in this instance would be subject to anti-trust laws. You are correct that Section 5a applies only to common carriers.

The entire services of the regulated carrier for providing a service on traffic regulated by the ICC would come within the Section 5a Bulwinkle Act as to that regulated traffic.

Question No. 3. Why have you changed your mind and now support repeal of the mixing rule? (Your question relates to testimony on H.R. 9046, a bill that would have corrected the problem temporarily at that time; and we were a member of the Waterway Bulk Transportation Council which opposed the bill.)

Answer. While Mechling Barge Line was a member of the Council at the time of the hearings, I did not personally nor did my company take an active part in testimony before Congress in opposition. As a matter of fact, in meetings with this group I expressed our desire to have this legislation become law; and although we were a minority in that group, this legislation would have helped correct the existing problems we have today.

I also answered this question orally in my testimony before your committee on October 10, 1967 stating that we had not changed our mind on this issue. This legislation however did not do the complete job that the present bill before your committee accomplishes, such as permitting the use of the many vessels of exempt towers on the inland rivers to help in accumulating large tows and in expediting cargoes on any towing vessel that can handle the movement. The present legislation does provide more flexibility and better service in the public interest than was proposed in H.R. 9046. And as we stated, the water carrier industry is united in support of H.R. 7610.

Mr. Chairman, I hope that my answers clear up the questions you propounded in your letter. If there is still any doubt on the answers to your questions I will be happy to elaborate further to clear them up either by letter or in person.

It is sometimes difficult to cover in letters the complete understanding and explanation to the satisfaction of the interrogator, so as I said I will be happy to follow up if there are still any questions unanswered on this subject.

My personal thanks again to you and your committee for permitting me to appear and supplement my statement on October 10 and to be able personally to answer the questions asked by the committee.

With best regards, I remain,

Very truly yours,

F. A. MECHLING,
Chairman, Legislative Committee.

Mr. FRIEDEL. Our next witness will be Mr. Robert W. Sanders, president of Red Star Towing & Transportation Co. of New York.

He had to leave, so his statement will be included in the record.

(Mr. Sanders' statement follows:)

STATEMENT OF ROBERT W. SANDERS, PRESIDENT, RED STAR TOWING & TRANSPORTATION CO.

My name is Robert W. Sanders, I am president of the Red Star Towing and Transportation Company, a certificated common carrier, using barges and tugs in operation along the Atlantic Coast. New York Harbor is our base of operations. We support H.R. 7610 and related bills, but since we feel there will be many appearing before your Committee to offer general support, we would like to confine our remarks specifically to the effect these bills will have on small water carriers.

In our area of operation private carriage has been the largest competitive factor faced by the small water carrier industry. The vast majority of tonnage available for water transportation consists of bulk commodities and this transportation has been controlled by the producers of the commodities. Regulated business is small due primarily to the construction of modern high speed highways, and competition from rail carriers, both of which parallel the water routes in the northeastern portion of the United States.

The unregulated commodities which move in our area and our rough estimates of quantities are as follows: crushed stone 5,000,000 tons annually; sand 5,000,000 annually; cement 10,000,000 barrels annually; bituminous coal 8,000,000 tons annually. The crushed stone produced in the area moves on fleets of scows owned by the producers. These fleets are augmented by seasonally chartered equipment. Some of these producers also own their tugs, while others charter tugs and conduct their own operations. The sand producers are even more self-sufficient, and are substantial operators of marine equipment, including barges and tugs. Cement producers have recently invested large sums in modern barge equipment for the transportation of their own products. Coal producers also move great quantities of their own products in vessels they own, and some public utilities have

recently purchased their own barge equipment for the transportation of bituminous coal. We do not feel that the trend toward private carriage instituted by these large producers of bulk commodities will substantially change. The quantities are large and the producers are reluctant to grant long-term contracts to private water carriers. Such long-term contracts would be required in order for an independent carrier to have available the required financial support needed to properly handle this volume of business.

The total transportation system in our area, therefore, has developed around the bulk commodities, the movement of which is controlled by the producers. The small water carrier is able to work as a subcontractor, either in the chartering of scows to the producers or rendering limited towage service. The small carrier who at the same time is attempting to handle regulated transportation finds that his attempts to combine regulated business with unregulated business is discouraged by the bulk commodity producers, who desire their transportation costs be kept as private as possible. Since under the present regulations the inclusion of regulated commodities into the tow of the unregulated bulk producer would require the carrier to publish his rates on bulk material, the tendency has been to avoid such mixing.

This specialization has not affected the bulk transportation costs substantially since the bulk shippers are providing the vast majority of volume in any event and since they control their own transportation systems, they are able to create volume when it is required in order to reduce their costs.

The shipper of regulated commodities, on the other hand, does not have this volume. In this case the shipper's commodity cannot be given in volume nor can it be intermingled with bulk without disclosing transportation costs the bulk shippers would rather keep to themselves. The result of all this is that the tows of regulated commodities are smaller in size, therefore, which will inevitably lead to higher transportation costs.

Passage of H.R. 7610 will enable the small water carrier to combine regulated and unregulated commodities, as well as combining more than three bulk commodities without disclosure of rates affecting the bulk commodities. For the small tower, therefore, this proposed legislation will stimulate business by allowing the small water carrier to combine various types of business. It may also lead to a simplification of tariffs, and to a reduction in the amount of tariff changes which now occasionally plague the Interstate Commerce Commission. In addition to being helpful to the small water carrier, we also feel that economic advantages to the shipping public will ensue, since the creation of larger tows and a combination of more commodities in a single tow will result in opportunities to reduce costs.

Mr. FRIEDEL. Our next witness will be Mr. Clinton H. Vescelius, Manufacturing Chemists Association, Washington, D.C.

Do you have a statement that you would like to have submitted for the record?

STATEMENT OF CLINTON H. VESCELIUS, MANUFACTURING CHEMISTS ASSOCIATION

Mr. VESCELIUS. Yes, sir. I understand our statement has been submitted. As it is short, I would like to read it, if I may.

Mr. Chairman and members of the subcommittee, my name is Clinton H. Vescelius. I am appearing in behalf of the Manufacturing Chemists Association, a nonprofit trade association of 186 U.S. corporations, both large and small, that collectively represent more than 90 percent of the productive capacity of the basic chemical manufacturing industry in this country.

I am professionally employed by a major chemical company as its director of transportation and am currently serving as a member of the Manufacturing Chemists Association's Transportation and Distribution Committee.

The association's members have nearly 2,000 plants in the United States, with a representation in almost every State. Many of these

plants are located on navigable waterways and make use of the inland waterway system in connection with the assembly of raw materials to be used in manufacturing processes and in the distribution of manufactured products.

All agencies of transportation are used by them for the movement of numerous commodities inbound to and outbound from their plants and warehouses.

The purpose of H.R. 7610, reduced to a single statement, is to make lawful the practice of mixing unregulated bulk and regulated nonbulk commodities in a single tow on the inland waterways, a practice which has been followed for 27 years, but which is now unlawful as a result of a recent U.S. Supreme Court decision.

The bill will benefit water carriers. It will benefit shippers. Also, it is in the public interest, in that it will continue the policy and practices that have brought prosperity to localities and regions, to other industries, and to competing modes of transportation.

First, the benefits to the water carriers are produced from the efficiency and profitability of the mixed tow, which utilizes high-powered boats to push large tows, and consequently reduces unit cost.

The alternatives, which include private carriage, are more costly.

Secondly, shippers, including chemical shippers, benefit from the effect on transportation charges of the reduced unit costs.

A historical comparison will show the need that the chemical industry has for the waterways, and also will measure the tremendous increase in their use by the chemical industry.

Domestic barge transportation of chemicals and related products increased by 120 percent between 1957 and 1964, the last year for which statistics are available, as indicated on the table herewith submitted.

(Table referred to follows:)

DOMESTIC BARGE TRAFFIC OF CHEMICAL AND RELATED PRODUCTS

[In tons of 2,000 pounds]

	1957	1964	Increase
Coal tar products	1,844,050	3,584,448	1,740,398
Medicinal and pharmaceutical preparations	150	242	92
Sulfuric acid	1,669,720	3,111,403	1,441,683
Industrial chemicals (except sulfuric acid)	3,436,705	8,286,276	4,849,571
Pigments, paints, and varnishes	16,354	60,469	44,115
Nitrogenous fertilizers and fertilizer materials	174,328	698,931	524,603
Phosphate fertilizer materials	1,234,461	2,983,346	1,748,885
Potash fertilizer materials	36,641	84,719	48,078
Fertilizer and fertilizer materials not elsewhere classified	242,058	337,483	95,425
Miscellaneous chemical products	18,404	9,893	(8,511)
Total	8,672,871	19,157,210	10,484,339

Mr. VESCELIUS. For the record, Mr. Chairman, I would like to correct the bottom line of the statistics for the chemical industry.

We do have now the 1965 statistics, and the total for 1965 is 19,822,460, and the increase becomes 11,145,589.

This reflects a 129-percent increase, 1965 versus 1957, as opposed to the 120 percent we showed above.

This dynamic growth in water transportation of chemical products has not been at the expense of other modes of transportation. Quite to the contrary, railroad shipments of chemical products from the

Baton Rouge-New Orleans area, for example, have grown in the past 10 years from almost nothing to daily trainloads.

Shippers of chemical products have chosen to locate many of their plants along the rivers because of the low cost and the efficiency of water transportation. Along the Mississippi River between Baton Rouge and New Orleans, 44 such plants, representing a $2 billion investment in facilities and land, have been established in a little more than 10 years.

The presence of the river, which provides access to domestic and world markets and raw materials, was an indispensable factor in the choice of those plant locations.

Elsewhere in the Nation, wherever rail and river meet, industrial wealth is produced. The chemical companies of this association, to main the healthy growth which has occurred during the life of the mixed-towing practice, urge its continuance.

To end it now would, in the view of the chemical industry, serve no constructive purpose. Rather, it would place an impediment on the ability of water carriers to provide efficient transportation.

Approval of this bill will insure the continuation of efficient practices that benefit the economy and the consumer.

Sound economic conditions have been fostered by the mixed towing practice, and this is in the public interest. The water carriers have demonstrated, by the adoption of the practice, the sound economy of it. Shippers would suffer higher costs and transportation delays if it were to continue to be unlawful.

Chemical products which did not exist 10 years ago are today produced at riverside plants and move in trainload volume, and the railroads have benefited. These are precisely the sound economic conditions which are sought in the national transportation policy of the Congress.

A second portion of the bill would repeal the June 1, 1939, grandfather date. This provision has been difficult to interpret, appears to serve no useful purpose, and chemical shippers strongly recommend its removal.

In closing, H.R. 7610 appears to be that happy rarity which will benefit all and injure none.

We strongly endorse its adoption.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you.

Are there any questions?

Mr. DINGELL. Yes, sir.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. I am interested in your testimony in support of this legislation. I am wondering if you would support what I understand is an amendment proposed to come before this committee eliminating the minimum on bulk shipments by rail.

Mr. VESCELIUS. You mean deregulation?

Mr. DINGELL. Deregulation of bulk shipments, and insofar as the minimums are concerned.

Mr. VESCELIUS. I am going to have to answer this in this way, sir. The Manufacturing Chemists Association, which I am representing here today, has no position on that matter, and it would have to be studied by them in order for them to come up with a position.

Mr. DINGELL. I would suggest to you, sir, that it would be very well for you to commence a very intensive study of that particular proposition, because that amendment, I understand, is coming before this committee.

I think that you should be well aware of the impact of that kind of amendment on your constituency. I think that you ought to also be aware not only of the impact of that, but of the position that you will take thereon.

Mr. VESCELIUS. That is true.

Mr. DINGELL. Particularly on the bill if it is amended that way.

Mr. VESCELIUS. But you understand, I am sure, that the matter of deregulating the railroads is an extremely complex one, and we would have to, for example, see exactly how it would be worded, and interpreted, as to what safeguards we might have as shippers, and where we stand.

If that is made public to us, why, we would take a position on it, I am sure.

Mr. DINGELL. Now let's explore this a bit, if we may. If we were to deregulate the minimums on railroads on bulk, and eliminate the mixing rule, and for all intents and purposes eliminate the minimums on bulk carriage by water, which is what this bill would do, what protection would your constituency and the members of the Manufacturing Chemists Association have against price discrimination, a lower rate being afforded to one shipper in the same position as opposed to his competitor?

Mr. VESCELIUS. We would have to know the answer to that question before we could take a position.

Mr. DINGELL. I think you had better be scrutinizing that question, because that question is going to be before this committee in connection with the legislation which you have just endorsed, and it is a matter which you have indicated that the Manufacturing Chemists Association has not studied.

Mr. VESCELIUS. We have not seen this amendment, sir, and have no idea how it is worded, or how it will apply.

Some of the Congressmen mentioned the other bill (H.R. 9903) that was before you some years ago. A lot of work went into that. There were many drafts of it. It was worked over for a long time.

Mr. DINGELL. Is it not a fact that once you eliminate the minimums, you do afford tremendous opportunity for price discriminations, and unfair preference for one carrier over another?

Mr. VESCELIUS. Speaking as an individual transportation manager for an individual chemical company, I would say yes, that is true. There is that threat.

For example, one of the provisions in the past has been that these rates by railroad would not be published in any way, and this would make a difficult situation for chemical shippers. We equalize freight in the chemical industry with competing points, producing points, and it is done on the basis that we know what prices exist.

Mr. DINGELL. This is really a matter of utmost competitive importance to manufacturing chemists, indeed to any industry that happens to use large bulk shipments of commodities. Am I correct?

Mr. VESCELIUS. It certainly is.

Mr. DINGELL. Thank you.

I have no further questions.

Mr. FRIEDEL. Mr. Devine?
Mr. DEVINE. I have no questions.
Mr. FRIEDEL. Mr. Kuykendall?
Mr. KUYKENDALL. I have no questions.
Mr. FRIEDEL. Mr. Watson.
Mr. WATSON. I have a brief question.

On page 2 you make a statement—and I am sure that we would all agree with it—that this bill would benefit the water carriers and benefit the shippers, and also benefit the consumers, but you are aware of the fact that Congress has to look at the overall effect of these things on all modes of transportation, rather than the effect on only one, and I am afraid that that statement is not a well-thought-out one, so far as its possible effect on other carriers.

Have you looked into that?

Mr. VESCELIUS. Well, sir, I can only refer you to other parts of my statement, in which we bring out the fact that wherever the river and the railroads meet, that the rails are prosperous.

Some of our most prosperous railroads, and the railroads we do business with every day, seem to be most prosperous where they have river ports, or where they parallel the river, and one of the reasons for that, sir, is in the chemical industry, at least, that a lot of our low-cost bulk raw materials move into producing chemical plants on the river, which were placed on the rivers and billions of dollars were spent for this purpose, and pouring out of these plants are the finished products, which are higher rated, and on which we pay more freight. They move out in thousands of hopper cars, tank cars, and boxcars by railroad.

It is a kind of happy combination. The low-cost raw materials, like phosphate rock, move long distances over water at a low unit cost, and we will turn phosphate rock into a number of detergents which move out in carloads and truckloads out of this plant.

We think about the other modes, and could not exist without them, and the chemical industry here today is not prejudiced one way or the other. Our industry uses all forms of transportation, as you know.

Mr. WATSON. Thank you very much.
Mr. FRIEDEL. Thank you very much.

Our next witness will be Mr. J. A. Griffin, assistant general traffic manager, Swift & Co.

You appear for the National Plant Food Institute. Is that correct?

STATEMENT OF J. A. GRIFFIN ON BEHALF OF THE NATIONAL PLANT FOOD INSTITUTE

Mr. GRIFFIN. Yes.

Mr. FRIEDEL. Mr. Griffin, if you would like to have your full statement included in the record and briefly summarize it, since we have one other witness, we would appreciate it very much.

Mr. GRIFFIN. Yes, sir. It is quite short, and if I may read it, it will take no more time than to summarize it.

My name is J. A. Griffin. I am assistant general traffic manager, Swift & Co., with principal offices in Chicago.

I have been authorized by Paul T. Truitt, president of the National Plant Food Institute, headquartered in Washington, D.C., to appear and present this statement on behalf of the institute.

The National Plant Food Institute is a voluntary nonprofit trade association of the fertilizer industry. It has 125 members and 30 affiliated regional or State fertilizer associations, lists of which are attached hereto.

(The membership list referred to is in committee files.)

Mr. GRIFFIN. Institute members and members of the affiliated associations produce and market approximately 75 percent of the fertilizer used on American farms.

The institute's members are major shippers by barge of fertilizer and fertilizer materials. Members of the National Plant Food Institute depend upon efficient, frequent, low-cost water transportation to move the plant food, which increases the food supply of the Nation.

Enactment of bill, H.R. 7610, or like bills would permit the operation on the inland waterways of mixed tows of unregulated bulk commodities and regulated nonbulk commodities.

The importance of the inland waterways to the plant food industry can be surmised from the statistics of domestic barge traffic shown on the submitted table.

With your permission, I will not read those, but the authority is given, and I would like to say that all of the commodities listed are either fertilizers or fertilizer materials.

(The table referred to follows:)

DOMESTIC BARGE TRAFFIC,[1] CALENDAR YEAR 1965

[In tons of 2,000 pounds]

Code No.	Commodity	Coastwise	Lakewise	Internal	Local	Intraterritory	Total
1493	Sulfur, liquid	190,360	.....	4,610,319	200,248	.....	5,000,927
1492	Sulfur, dry	11,424	.....	144,858	34	.....	156,316
2814	Sulfuric acid	104,808	.....	2,030,025	792,362	.....	2,927,195
1471	Phosphate rock	2,438,812	.....	632,960	23,678	.....	3,095,450
2873	Superphosphate	257,337	.....	397,986	.....	.....	655,323
2874	Phosphatic fertilizer and fertilizer materials, not elsewhere classified	127,737	.....	67,977	.....	.....	195,714
2875	Ammonium sulfate	18,055	.....	75,848	.....	27,770	121,673
2871	Nitrogenous fertilizer and fertilizer materials manufactured	42,692	.....	151,270	15	.....	193,977
2872	Potassic fertilizer materials	49,439	.....	31,141	.....	.....	80,580
2879	Fertilizer and fertilizer materials, not elsewhere classified	33,083	.....	259,452	1,925	.....	294,460
	Total	.....	.....	.....	.....	.....	12,721,615

[1] Non-self-propelled vessels.

Source: Table 10, "Domestic Barge Traffic, Commodity by Type of Traffic, Waterborne Commerce of the United States, Calendar Year 1965, Pt. 5, Department of the Army, Corps of Engineers."

Mr. GRIFFIN. These are the latest available statistics. The plant food industry has been growing steadily, and later figures would be even higher than those of 1965.

The mixing of regulated and unregulated freight in a single tow on the inland waterways has been practiced since the passage of part III of the Interstate Commerce Act in 1940.

On March 20, 1967, the Supreme Court issued a per curiam order in No. 947, *Gulf Canal Lines, Inc., et al.* v. *United States and Interstate Commerce Commission*, affirming a lower court's decision (258 F. Supp. 864 (1966)) that in order to retain its exemption from regulation under section 303(b) of the Interstate Commerce Act, the water

carrier must not only comply with the three-bulk cargo restriction, but must be certain that anyone it hires to do towing also complies with the restriction, that if an operator engaged by a bulk water carrier claiming exemption under section 303(b) transports more than three bulk commodities at once, or transports bulk and nonbulk commodities together, the carrier which hired it automaticlly loses its exemption and comes under ICC economic regulations.

Thus House bill 7610 and like bills assumed even greater importance to the plant food industry.

The Interstate Commerce Commission, in response to a plea of the water carriers, and in view of the proposed legislation here being discussed, has postponed compliance until January 1, 1968.

Should House bill 7610 and like bills fail to become law, water carriers will have to split large tows into smaller tows, powerful towboats will operate below their optimum efficiency, either as a result of pushing smaller tows or because of delays waiting for larger tows to be assembled, and the higher cost of the less efficient operations will affect the transportation charges to be paid by the plant food industry.

These are the immediate results. The inevitable further consequence, however, is that the American consumer will pay more for food, as higher transportation costs find their way into the cost and price structure of the food industry.

If these undesirable consequences were to be offset by other benefits, opposition to the bills might be justifiable. But no countervailing benefits are assured, or even likely.

Failure to pass the bill or like bills would increase water costs, without reducing rail costs. It would not cause the diversion of plant food shipments from barge to any other mode of transportation, but it would produce higher costs on the waterways.

Certainly no countervailing benefit can be found for the farmer, whose costs are made higher, and for the consumer, whose prices are increased.

We also support the portion of the bills which will remove the so-called grandfather date of June 1, 1939. This parenthetical clause is contrary to progress, precluding the advantages of lower costing transportation from newly developed bulk commodities or from commodities that advancements in methods of handling would now permit movement in bulk.

We respectfully request the committee to approve bill H.R. 7610.

Mr. Chairman, on behalf of the institute, I wish to express my appreciation for the opportunity to present the position.

Mr. FRIEDEL. I want to thank you for your very brief statement, Mr. Griffin.

Are there any questions?

Mr. DINGELL. Yes, Mr. Chairman.

Mr. FRIEDEL. Be brief.

Mr. DINGELL. I am always brief, Mr. Chairman.

What would be your position on the legislation, sir, if it were to eliminate the minimums on bulk shipment by rail?

Mr. GRIFFIN. Well, here again we have not seen the legislation, and we would have to take the legislation and work with our counsel and arrive at a conclusion.

I am not in a position to say.

Mr. FRIEDEL. Will the gentleman yield?

Mr. DINGELL. I would be happy to yield.

Mr. FRIEDEL. Were you familiar with the last bill that we had, where we took in all modes of transportation? I believe it was H.R. 9903.

Mr. GRIFFIN. Yes.

Mr. FRIEDEL. Were you opposed to it then?

Mr. GRIFFIN. The institute took no position.

Mr. FRIEDEL. Would that benefit, make it more competitive for the shippers to choose their mode of transportation?

Mr. GRIFFIN. Well, Mr. Chairman, that particular legislation was given due consideration by the institute, and the institute members were unable to arrive at a uniform position.

Mr. DINGELL. On this question of the deregulation of bulk carriage minimums by rail, would this afford substantial opportunity for very real discriminations between shippers, areas in this country, by the recipients of those exemptions?

Mr. GRIFFIN. I can give you an opinion on that, sir.

Mr. DINGELL. I would like to have your thoughts.

Mr. GRIFFIN. I have seen the agricultural exemption operate for many years on livestock in motor carriage.

Mr. DINGELL. You are talking about hauling by truck, not by rail?

Mr. GRIFFIN. That is right, yes; livestock by rail is regulated.

Mr. DINGELL. That is right.

Mr. GRIFFIN. And I have not seen any evidence of discrimination.

Mr. DINGELL. Well, do you remember way back when the ICC Act was set up?

Mr. GRIFFIN. Yes, sir.

Mr. DINGELL. Do you remember they had the long haul and short haul; shippers would pay much less for long hauls sometimes than for short hauls?

Mr. GRIFFIN. Yes.

Mr. DINGELL. All right. Now, the ICC and the minimums in the Interstate Commerce Commission Act were set up to halt that kind of discrimination. Is that correct?

Mr. GRIFFIN. Yes.

Mr. DINGELL. If we were to eliminate the minimums on bulk carriers, we would be right back at that point, would we not?

Mr. GRIFFIN. I don't know, sir. There are many areas of exemption embraced by the Interstate Commerce Act, and I happen to be involved in many of those areas.

Mr. DINGELL. The purpose of the minimums is to prevent price discrimination; is it not? Is that not what it is there for, to prevent the carrier from favoring one shipper or one area over the other?

Mr. GRIFFIN. The purpose of the regulation is; yes, sir.

Mr. DINGELL. That is the purpose of the minimum, to eliminate discrimination between shippers, areas, consignees, and consignors. Is that right?

Mr. GRIFFIN. That is the purpose of the regulation.

Mr. DINGELL. If you eliminate the minimums, you will eliminate an important protection against discrimination on rates. Is that not correct?

Mr. GRIFFIN. Well, it does not necessarily follow.

Mr. DINGELL. Well, at least it is so in theory; is it not? The minimum is set in there to prevent price discrimination between areas and shippers and consignees?

Mrs. GRIFFIN. That was the purpose of the Interstate Commerce Act; yes, sir.

Mr. DINGELL. And the minimums were set up to establish that purpose, were they not, the minimum regulation?

You must have some experience on that.

Mr. GRIFFIN. Certainly, I have experience in the movement of livestock. I have experience in the movement of dressed poultry.

Mr. DINGELL. Do you remember the whole movement was set up by this discrimination between areas and shippers as to minimum prices?

Mr. GRIFFIN. In my experience, we have not noted the discrimination.

Mr. DINGELL. You are not answering my question. I am sure you are intelligent and know what question I have asked you. I just asked you a very simple question.

If you eliminate the minimums, you make price discrimination possible; don't you?

Mr. GRIFFIN. If you remove regulation.

Mr. DINGELL. Of the minimums?

Mr. GRIFFIN. The possibility of discrimination is there; yes, sir.

Mr. DINGELL. Yes, you do.

All right. Have you noticed any particular advantage which comes to the person who ships unregulated in terms of charges to him?

Mr. GRIFFIN. Yes, sir.

Mr. DINGELL. All right. What is the advantage? Is there a monetary advantage? Does he get a better rate?

Mr. GRIFFIN. Yes.

Mr. DINGELL. Why does he get a better rate when he ships without regulation and minimums than when he ships with regulation and minimums?

Mr. GRIFFIN. Generally it is a specialized carrier.

Mr. DINGELL. If I were to ship specialized carriage bulk, and I were conforming with fair practices, and so forth, would it not indicate to you that if I were shipping either regulated or unregulated I would afford approximately the same prices, if I were to charge a fair rate?

Mr. GRIFFIN. Generally a contract carrier is able to operate at lower cost.

Mr. DINGELL. Why? Why is he any more able to operate at low cost than a common carrier?

Mr. GRIFFIN. Because he is specialized, and does not hold himself out to the general public, and therefore does not have the additional costs that the common carrier does have.

Mr. DINGELL. Thank you.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Griffin, as a businessman representing, we hope, a profitmaking organization, I do not hold you suspect in wanting to cut costs. There may be other people in this Congress who may feel this way. I don't happen to be one of them.

I cannot see that you could take any other position except to want to cut costs in every area, both for yourself as a company and for your overall industry. Is this not true?

Mr. GRIFFIN. Yes, sir. We have an obligation to stockholders. We have an obligation to agricultural industry, and we have an obligation to the consuming public, to keep costs down.

Mr. KUYKENDALL. Now, secondly, what percent of your overall delivered product, not speaking of the overall company, but strictly your agrochemical operation, what percent of the cost of your finished product is transportation? What percent of your delivered product is transportation?

Mr. GRIFFIN. I am sorry. I don't have that figure.

Mr. KUYKENDALL. Could you get that figure for us?

Mr. GRIFFIN. Yes, sir.

(The information requested follows:)

SWIFT & COMPANY,
GENERAL TRANSPORTATION DEPARTMENT,
Chicago, Ill., October 19, 1967.

Hon. DAN KUYKENDALL,
Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. KUYKENDALL: I am replying herewith to your request for the following information, during my testimony before your committee on October 10, 1967.

A survey of eight members of the National Plant Food Institute, all of whom have substantial operations, indicates the percentage of transportation cost to the cost of the finished product ranges from 8% to 35%, with the simple average being 19%. This range is probably due to differences in analyses of finished product and to geographical locations.

If I can be of further assistance, please call upon me.

Yours very truly,

J. A. GRIFFIN,
Assistant General Traffic manager.

Mr. KUYKENDALL. Would you consider it an appreciable part of your cost?

Mr. GRIFFIN. I would say it would be very substantial.

Mr. KUYKENDALL. So that anything that would appreciably increase your cost of transportation would increase the cost of your delivered product?

Mr. GRIFFIN. That is correct.

Mr. KUYKENDALL. Therefore increasing the cost to the consumer and/or decreasing the profits to your stockholders. Is this correct?

Mr. GRIFFIN. Yes.

Mr. KUYKENDALL. That is all.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. I have no questions.

Mr. FRIEDEL. Thank you.

Mr. GRIFFIN. Thank you.

Mr. FRIEDEL. Our next witness is Mr. Roy F. Hendrickson, executive secretary of the National Federation of Grain Cooperatives.

STATEMENT OF ROY F. HENDRICKSON, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF GRAIN COOPERATIVES

Mr. HENDRICKSON. Mr. Chairman, copies of my statement are distributed, I believe, and I will simply summarize and try to save time.

Mr. FRIEDEL. Your whole statement will be included in the record.

(Mr. Hendrickson's prepared statement follows:)

STATEMENT OF ROY F. HENDRICKSON, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF GRAIN COOPERATIVES

Mr. Chairman, my name is Roy F. Hendrickson, Executive Secretary of the National Federation of Grain Cooperatives. I am appearing here to express for our membership support of H.R. 7610.

Under existing law, Section 303(b) of the Interstate Commerce Act extends an exemption from economic regulation to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. Such exemption is applicable only in the case of commodities in bulk which are "(in accordance with the existing custom of trade in the handling and transportation of such commodities as of June 1, 1939)" loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. In the application of Section 303(b), two or more vessels while navigated as a unit are considered to be a single vessel.

H.R. 7610 would, if enacted into law, strike the parenthetical clause quoted above.

Additionally, H.R. 7610 would eliminate the requirement that two or more vessels while navigated as a unit be considered to be a single vessel. The effect of this would permit the regulatory exemption to be applied to each vessel in a multi-vessel tow rather than to the tow itself.

The Federation consists of 26 regional or federated grain marketing cooperative associations owned, in turn, by some 2,700 local grain marketing cooperatives associations. These operate in all of the principal grain and oilseed producing areas of the nation from Delaware, Maryland, Virginia, New York, and Ohio west to the Pacific Coast.

A substantial number of members of this Federation have barge-loading facilities on the Mississippi-Missouri-Illinois river system. They originate large quantities of grain which is then moved by barges down river for both domestic use and export. They also are large shippers of grain by rail and truck.

At St. Paul, Minnesota, is located the Farmers Union Grain Terminal Association which has, among other major facilities, a large terminal elevator on the Mississippi River in St. Paul. Grain from there is shipped via barge to many points on the inland waterways and for export via the Gulf. This federated cooperative serves some 450 local and about 175 line elevators in Montana, North and South Dakota, and Minnesota. Shipped via barge are winter, spring, and drum wheats, oats, barley, corn, soybeans, and flaxseed.

Mr. Charles H. Wulff, General Traffic Manager for that association, asked to testify before this Committee, and he filed a statement at last week's abbreviated hearing in which he stated his support of this legislation.

Another member which was also represented here last week is the Illinois Grain Corporation which has headquarters at Chicago, Illinois. It serves some 260 local cooperative elevators in the State of Illinois, owned by the local cooperatives which are in turn owned by the farmers of the territory served. It has elevators on the Illinois, Mississippi, and Tennessee Rivers.

Mr. John J. Castellano, who is General Freight Traffic Manager for the Illinois cooperative, was here last week to state the reasons why that cooperative organization supports this legislation. His statement was filed and is a part of your record.

Third is the Missouri Farmers Association, with headquarters at Columbia, Missouri, which has river-connected elevators at Louisiana, Missouri, Kansas City, and at numerous other points on both the Mississippi and Missouri Rivers.

It also owns, together with the Illinois Grain Corporation and the Farmers Union Grain Terminal Association, both referred to above, a large elevator at St. Louis, Missouri, operated by a separate corporate institution—the St. Louis Grain Corporation—from which substantial barge shipments are also made.

Other members which are river-connected and favor this legislation include:

1. The Farmers Grain Dealers Association of Iowa, a federated cooperative based at Des Moines. It has barge-loading houses at McGregor and Meeker's Landing, Iowa.

2. The Westcentral Cooperative Grain Company of Omaha, Nebraska, which serves local cooperative associations in western Iowa, most of Nebraska, and parts

of Wyoming and Colorado and which has a barge-loading elevator that is rail-connected at Omaha.

3. The Equity Union Grain Company of Lincoln, Nebraska, a federated cooperative serving farmers and cooperative associations in Nebraska, Colorado, Kansas, and Wyoming, which has a river-loading facility a short distance below Omaha and which is also a part owner with the Missouri Farmers Association of a cooperative elevator at Kansas City that ships via barge.

4. The Farmers Union Cooperative Marketing Association of Kansas City, Missouri, which serves numerous elevators in Kansas, Missouri, Nebraska, and Colorado and which has a barge-loading facility in connection with its large elevator in the Fairfax district of Kansas City, Kansas.

It is indicative of the degree of interest and involvement in water transportation that currently the above-mentioned regional or federated grain marketing cooperative associations, through a new corporation they organized and financed—the Farmers Export Company—are now engaged in the construction of a large, efficient export elevator near Ama, Louisiana, which is on the west bank of the Mississippi River a short distance above New Orleans. This is a $20 million project.

Another member of this Federation deeply interested in water transportation is the Arkansas Grain Corporation of Stuttgart, Arkansas. This cooperative operates soybean processing plants at Stuttgart and Helena, Arkansas, and ships via water, especially from Helena, substantial quantities of soybeans and soybean products, as well as oats, wheat, and other grains.

Another cooperative far distant from these also supports this legislation—the North Pacific Grain Growers of Portland, Oregon, serving cooperative associations marketing grain in Washington State, Oregon, and northern Idaho. This cooperative, which operates elevators at Spokane, Kennewick, Vancouver, and Kalama (all in Washington State), ships a considerable volume of grain on the Columbia River and expects to make even greater use of this river once development now underway is completed.

Members of the National Federation of Grain Cooperatives favor the proposed modernization of the exemption from regulation of inland water carriers transporting dry bulk commodities.

We believe that elimination of the present limitation, as proposed under this bill, would be in the interest of farmers and the public. Its enactment would enable the inland water carriers to continue the remarkable progress made to date of providing at low cost vital water transportation services for our member-shippers and the thousands of farmers that they serve.

This freight bill, borne in large part by farmers, in moving their products to markets is large. They have benefited from the services provided by barge lines, especially in reaching overseas markets.

As marketing agencies for farmers, these cooperatives seek to enlarge and expand sales both here and abroad. Exports of grain, which were relatively small immediately prior to enactment of Section 303(b) in 1940, are substantial today.

In recent years we have seen both the volume and value of these grain exports increase sharply. The expansion of overseas markets is one of the chief hopes in providing relief from the economic pressures arising out of excess productive capacity on United States farms.

Figures compiled by the U.S. Census Bureau for the fiscal years 1965–67 reveal the significance of these exports not only to farmers but for the major assistance they have provided in meeting the Nation's balance of payments problem.

The following table illustrates this well:

SELECTED GRAIN EXPORTS: VALUE AND QUANTITIES, FISCAL YEARS 1965-67

Commodity and unit	Value (in millions)			Quantity (million units)		
	1965	1966	1967	1965	1966	1967
Wheat.....bushels..	$10,098	$1,273	$1,181	635.7	785.5	665.8
Feed grains.....metric tons..	973	1,378	1,192	18.1	25.9	21.4
Soybeans.....bushels..	598	734	767	208.7	256.6	247.3
Oil.....pounds..	176	140	144	1,382.0	1,090.0	1,043.0
Meal.....short tons..	163	197	225	2.1	2.5	2.5
Corn.....bushels..	727	931	728	521.0	674.0	495.0

Source: Tabulated from "Foreign Agricultural Trade of the United States," Economic Research Service, U.S. Department of Agriculture.

Barge transportation is one of the major reasons that it has been possible to expand these exports. We look for further expansion, providing we can compete price-wise with a growing volume of market offerings from other nations. In our ability to so compete, inland transportation is a major cost factor.

Mr. HENDRICKSON. I am executive secretary of the National Federation of Grain Cooperatives, and I am here to express the views of a number of water-connected members on the Mississippi, Missouri, and other rivers who have asked me to communicate their support for this bill.

I will underline two points.

One, as farmer-owned institutions they represent farm interests in the marketing field and in a substantial area: Minnesota; South and North Dakota; Montana; Illinois, which is very, very large in the use of barges because of The Illinois River connections; Missouri; Kansas; Nebraska; Iowa, and so on.

The first point that I would like to underline is this: Transportation cost is a major factor in being able to compete internationally in the highly competitive current export markets for grains and oil seeds. Transportation costs are therefore extremely important.

Secondly, these members, seven of them, are currently investing some $20 million in an export facility just north of New Orleans, so as to enable them to compete better in world markets. You will find a table toward the latter part of my statement which indicates the substantial increase we have had in exports until very recently of grains and oil seeds.

That is all I have to say. I think my statement speaks for itself, Mr. Chairman.

Thank you.

Mr. DINGELL (presiding). Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Hendrickson, you and the two gentleman preceding you are shippers, and I can appreciate your position, and I think it is rather axiomatic that any shipper is going to use the most economical means commensurate with his timetable in the delivery of his commodity.

That is a pretty fair statement, is it not?

Mr. HENDRICKSON. Yes, it is.

Mr. WATSON. And you want the best possible price that you can get, and any legislation which would tend to lower the price of transportation, you would be in favor of, would you not?

Mr. HENDRICKSON. Well, price plus service.

Mr. WATSON. Yes, sir. But earlier, I believe the gentleman from Michigan questioned the two gentlemen, and now I will put the question to you as to whether or not you would favor extending this exemption under section 303(b) to rail and truck carriers.

Mr. HENDRICKSON. I am not in a position to answer that question, because I have not seen precisely a proposition, a proposal.

Mr. WATSON. I don't want to cut you off, and I rather imagined that that would be your answer, and if I were sitting there, I no doubt would give the same answer, but since he asked the question, I have been sitting back here and just trying to figure out what possible adverse effect it would have upon you and the other gentlemen as shippers if we should extend this exemption to all carriers, with adequate safeguards in reference to antitrust provisions and such as that,

and I have not come up with any immediate objection or any adverse effect that it might have, and of course I think perhaps we are making too much over the statement that, "I don't know what the language would be that would be included in the bill."

It would be rather simple. It would be simply the exemption extended to all carriers.

I don't think you would have any difficulty in interpreting the language.

Would you point out any possible adverse effect it might have?

Mr. HENDRICKSON. I cannot say that I can. I am sure that we would look at this with a very open mind.

In general, we support the trend, and we believe there is a trend toward less regulation, and we believe that a good deal has been achieved in this area, but each proposition should be looked at, we believe, on its merits.

Mr. WATSON. Thank you very much, sir.

Mr. DINGELL. Mr. Pickle?

Mr. PICKLE. Mr. Hendrickson, if they did grant the exemption to include railroads, as a grain hauler, do you ship by private carrier, or by common carrier, or on the railroads?

Mr. HENDRICKSON. We are very substantial shippers by rail, and in fact many of our members have had to buy or lease substantial numbers of boxcars in order to provide the service.

I noticed in the annual report of one of my members in Lincoln, Nebr., the other day that their ownership or leasing now totals 260 cars.

I think that we are very large shippers by rail and by trucks as well as barge.

Mr. PICKLE. I don't believe you answered my question. Let me restate it.

If the exemptions were enlarged to include rail, and thus we had equality, would that traffic go by common carrier, or would it go by private carrier, or to the rails?

Mr. HENDRICKSON. I think it would be common carrier, rail, and truck.

Mr. PICKLE. Or do you anticipate it might be by private carrier?

Mr. HENDRICKSON. In the case of trucks, it might be so. I don't have figures which indicate.

Of course, the agricultural exemption applies to a great deal of transportation by truck, particularly with the Texas-Gulf movement. That has been very, very substantially increased by truck in recent years.

Mr. PICKLE. You cannot speak for the railroads, but would you venture an opinion as to whether the railroads, if the exemption were enlarged, would be willing to accept the provisions of the Robinson-Patman Act, as well as the Sherman Antitrust?

Mr. HENDRICKSON. No; I would not be prepared to answer that at this time. I would have to study, and I would want to refer it to my membership.

Mr. PICKLE. But your testimony is in favor of the legislation?

Mr. HENDRICKSON. In favor of this particular bill; yes.

Mr. FRIEDEL (presiding). Mr. Dingell?

Mr. DINGELL. Just very briefly, sir, you discussed with my good friend and colleague Mr. Watson the question of extending the exemption to bulk carriage on railroads. You indicated you have no position on that.

Mr. HENDRICKSON. The point is that I have not seen the matter expressed, and I would certainly have to refer a matter of policy with respect to legislation of this kind to my membership.

Mr. DINGELL. You represent the National Federation of Grain Cooperatives?

Mr. HENDRICKSON. Right.

Mr. DINGELL. Your membership, I assume, is well aware of the reason why the Interstate Commerce Commission was established, and the ICC Act was established.

Mr. HENDRICKSON. Indeed.

Mr. DINGELL. One was the reprehensible and predatory practices in the long haul and short haul in the railroads. Is that correct?

Mr. HENDRICKSON. Right.

Mr. DINGELL. Would you look with favor on a situation which would eliminate the protections against long-haul and short-haul discrimination?

Mr. HENDRICKSON. No. I am sure that there are situations where regulation is necessary, and where we certainly support regulation.

Mr. DINGELL. If you eliminate minimums on bulk carriage by rail, don't you make possible circumstances where you could have this same kind of discrimination between shippers and areas?

Mr. HENDRICKSON. We believe there are some situations that might very well develop in that direction, so that we would have to look at them very, very carefully.

Mr. DINGELL. Would you want further hearings on this legislation to afford you an opportunity to present your views, in this kind of amendment were to be adopted by this committee?

Mr. HENDRICKSON. Yes; I believe so. If there is an amendment along that line. I would like very much to have an opportunity to study it, and I am sure our members would.

Remember this: That in the case of marketing of grain, the factor of transportation cost is major. These commodities are marketed with very, very small margins, and the direction, the flow, the distribution pattern is very largely determined by transportation costs.

Mr. DINGELL. It is almost entirely dependent upon transportation costs?

Mr. HENDRICKSON. Right.

Mr. DINGELL. This is true in the case of most of the bulk commodities; is it not?

Mr. HENDRICKSON. I think it is.

Mr. FRIEDEL. The meeting will now stand adjourned, and tomorrow we will hear from the railroads, and on Thursday we will hear from the truckers.

(Whereupon, at 12 o'clock noon, the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, October 11, 1967.)

85-465—67——9

WATER CARRIER MIXING RULE EXEMPTION

WEDNESDAY, OCTOBER 11, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting will now come to order.

This is a continuation of the hearings we had last week and this week on H.R. 7610 and similar bills.

Our first witness today is Mr. Harry J. Breithaupt, Jr., general attorney for the Association of American Railroads here in Washington. Mr. Breithaupt.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS

Mr. BREITHAUPT. Good morning, Mr. Chairman and Mr. Devine.

Mr. Chairman, my name is Harry J. Breithaupt, Jr. I am general attorney of the Association of American Railroads, with headquarters at Washington, D.C. My appearance here today is by authority of the board of directors of the association and is for the purpose of expressing the views of the association and its members on H.R. 7610 and a number of identical bills introduced at the request, I judge, of the common carrier conference of domestic water carriers.

The Association of American Railroads, speaking for its member railroads, opposes these bills unless they be so amended as to extend to the railroads an exemption from regulation in the transportation of bulk commodities comparable to that enjoyed—and to be enjoyed—by the water carriers.

It does not seem to me, gentlemen, that it would serve any particularly useful purpose for me to trace and recount the long history of the Commission proceedings and court decisions which have brought the bargelines to their present pass. Stripped of all complexities and lengthy reasoning, and reduced to bare bones, the situation is as you have heretofore been told, that the Interstate Commerce Commission and now the courts (including the Supreme Court) have said that section 303(b) of the Interstate Commerce Act means just what it says: that is, that in order to avail themselves of the exemption from regulation contained in section 303(b) water carriers must transport not more than three bulk commodities in a single tow and must refrain from mixing bulk and nonbulk commodities in the same tow.

And shorn of all complicated explanation and statements of justification, the bargelines' clear objective simply stated is to remove these statutory limitations so that they may enjoy exemption from regulation in the carriage of bulk commodities irrespective of whether more than three such commodities are transported in a single tow and without regard to the mixture of bulk and nonbulk commodities in the same tow.

The heart of the matter, Mr. Chairman, is that this proposed liberalization of the regulatory exemption afforded water carriers in the transportation of bulk commodities would have a most adverse competitive effect upon the railroads unless the railroads are, at the same time, given a similar exemption.

The present exemption, unamended, discriminates against the railroads. To broaden the scope of that exemption by removing the existing limitations upon its applicability, without simultaneously extending an exemption to the railroads, would aggravate what is already a blatant discrimination against the railroads.

It has been pointed out to you that, as the law now stands, bargelines may transport bulk commodities free of any economic regulation whatsoever, provided only that not more than three such commodities are carried in a single tow and that the bulk commodities so carried are not mixed in the same tow with nonbulk commodities.

I want to point out, however, and emphasize that the railroads on the other hand, in their competition for the same traffic, are required to establish rates that meet statutory standards of justness and reasonableness; to file and publish them for all the world (including competing water carriers) to see; to adhere strictly to those rates; to forgo any changes in them (absent special circumstances) except upon 30 days' notice; to observe the prohibitions and requirements of the long- and short-haul clause, and the aggregate of intermediates clause, in section 4 of the Interstate Commerce Act; and to avoid unjust or undue discrimination, preference, or prejudice in their rates on these commodities.

Furthermore, rail rates on these commodities are subject to protest and complaint, and to suspension pending investigation and determination of their lawfulness. Such protests and complaints may, indeed, be made by the competing bargelines themselves.

The bargelines, when performing transportation exempt under section 303(b) of the act, are subject to none of these restraints and are privileged to make whatever rates they choose to make, at any time, secretly and without notice to anyone, and without publication, on whatever basis they regard as necessary to obtain the traffic.

Certainly the members of the subcommittee can see the competitive disabilities to which the railroads are subjected by reason of this freedom the bargelines have.

Mr. Hershey and other spokesmen for the bargelines were at pains to point out to the subcommittee the competitive disabilities under which the bargelines would labor as among themselves if some of them had to publish rates and others did not. Their argument on that score, Mr. Chairman and Mr. Devine, is equally applicable to the situation that already exists as between the bargelines and the railroads.

It is an intolerable competitive situation for the railroads. During the course of hearings conducted by the Senate Surface Transporta-

tion Subcommittee on S. 1314 (the Senate counterpart of the bills now being considered by this subcommittee) earlier this session, the chief spokesman for the water carriers, Mr. J. W. Hershey, quoted with approval remarks attributed to Everett Hutchinson (then Chairman of the Interstate Commerce Commission; now Under Secretary of Transportation) in 1961 as follows:

> If we (the common carrier barge lines) published all our rates, he said, the advantage thus gained by the unregulated carriers becomes readily apparent. They need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. This is a one-way street for the regulated carriers have no way of ascertaining the rates charged by the exempt carriers, who are not required to publish rates.

What he said about the impossible position in which publication of their rates would put the regulated water carriers is equally descriptive of the impossible situation in which the railroads already find themselves in their competition with the water carriers for bulk traffic.

Publication, moreover, is only a part of the railroads' handicap. Not only must the railroads publish their rates for the bargelines to see; those rates, as I have pointed out, are subject to comprehensive and rigid regulation.

Surely the railroads have just cause for complaint; and they have even greater cause for concern when faced, as they are faced, with this proposal to enlarge the scope of the exemption and thus increase and heighten the preferred position already occupied by the water carriers vis-a-vis the railroads in competition for bulk traffic.

Bulk commodities constitute a very important part of railroad traffic, and substantial quantities of this traffic are the subject of intense competition between the two modes. To prefer the water carriers, and give them a regulatory advantage, in the competitive effort to obtain and retain this business is manifestly unjust.

Mr. Chairman, even apart and aside from the matter of regulatory preference—the subject about which I have just been speaking—I must note in passing, the competitive advantage of the bargelines in another important respect is already considerable. This is by reason of the fact—which I shall not labor on this particular occasion—that neither the waterway operators nor their shipper-users pay anything for their use of waterway facilities provided at great taxpayer expense.

As you well know, there are no user charges whatsoever on the waterways despite the expenditure of tremendous sums of public moneys for the construction, improvement, operation, and maintenance of these facilities. Railroads, on the other hand, must pay for the acquisition, construction, and maintenance of their rights-of-way and must indeed pay heavy taxes on them.

Mr. Chairman, the bargelines are hardly in a position to assert, in connection with the bills you are now considering, that they have been suddenly and catastrophically surprised by an unexpected and unforeseen turn of events.

They come to the Congress asserting that theirs is an "emergency situation," and it is true that they may have hoped that the Supreme Court would reverse the lower court and the Commission, which had both condemned the practices that the proponents of this legislation are now intent upon perpetuating.

But the fact is that ever since those practices were first instituted the bargelines have proceeded under a cloud, and they have known full well that they were proceeding under a cloud. They cannot very well allege surprise.

The method of bargeline operation now no longer available to the water carriers by reason of the Supreme Court's per curiam order of March 20, 1967 (No. 947, October Term 1966, *Gulf Canal Lines* v. *United States*), affirming a decision of the U.S. District Court for the Southern District of Texas reported at 258 F. Supp. 864 (1966), was condemned by an order of the Interstate Commerce Commission entered in 1960, 7 years ago (*Mississippi Valley Barge Line Company Exemption*, sec. 303(b), 311 I.C.C. 103).

Let me make it plain that it was this 1960 Commission order (administratively final in 1961) that was sustained by the district court at Houston and, ultimately, by the Supreme Court 6 months ago.

So the bargelines have known for a long time indeed that what they were doing was highly unquestionable, in terms of statutory law, and that they might well have to reform their methods of operation.

Even beyond that, however, the lawfulness of the operating practices now struck down by the court of last resort was called into question at their very inception. If my understanding is correct, the manner of operations in question was first proposed in a tariff (Agent E. H. Strobel's ICC No. A–1) issued June 12, 1959, to become effective July 16, 1959; and less than 2 months after the effective date of that tariff, in late August 1959, petitions were filed with the Commission by two groups of common carrier bargelines, one supporting and one attacking the legality of the proposed operations.

Out of these petitions in 1959 grew the Commission proceeding and lengthy litigation which, upon final resolution, now occasions consideration of the legislation to which this hearing is directed.

With this history, the water carriers cannot convincingly claim surprise. They gave it a good try; but they have been knowingly operating at their own peril all along, since the outset. Yet they now say to this subcommittee, "Ours is indeed an emergency situation."

The railroads cannot sit silently by and, without protest, hear it said as an argument, as it is said as an argument, for enactment of these bills that "the proposal would maintain the status quo and hence would not change present intermodal competitive relationships."

The railroads are not content that the "status quo" be maintained and that "present intermodal competitive relationships" be preserved. The railroads take the position that they have been harmed, and that they are harmed, by what has now judicially determined to be—and from the outset to have been—an unauthorized course of conduct on the part of their bargeline competitors. We do not believe it would be the exercise of either sound or fair legislative judgment for the Congress to enact this proposed legislation in its present form and thus legitimatize for the future a method of bargeline operation that has heretofore been unlawful, and do so just because the bargelines conducting those operations have become accustomed to that way of performing their services, when the result would be to continue and perpetuate the adverse competitive effect such operations have upon the railroads.

The railroads, I want to make it plain, have never acquiesced either expressly or impliedly in those practices of the water carriers now

finally found to violate the "mixing rule." On the contrary the railroads have consistently, and from the outset, argued against the lawfulness of those practices.

Numerous railroads were parties to the original proceeding before the Commission out of which came the order that now, having been sustained in the courts, occasions the proposal the subcommittee is now considering; and those railroads took the position that the Commission should—as the Commission did—hold that the exemption in section 303(b) of the Interstate Commerce Act (the bulk commodity exemption) does not apply in the circumstances there presented.

Gentlemen, after the Commission had reached its decision, the Senate Commerce Committee—at the instance of some of the bargelines—held hearings on a proposal the effect of which would have been to suspend the operation of the "mixing rule" for a temporary period of 1 year. This was in 1961.

The railroads vigorously resisted that proposal at that time. I myself appeared in opposition, as did another witness for the Association of American Railroads. And time after time, beginning long before the water carriers embarked upon the particular method of operation they now say they must have legislative sanction to continue so that their business will not be disrupted, and continuing right up to the present, we have expressed to committees of the Congress including this committee of the Congress, our deep-seated dissatisfaction with the discrimination against the railroads that exists by reason of the water carrier bulk commodity exemption itself—without any broadening of that exemption.

We certainly object to, and take issue with, the argument that the scope of the water carrier bulk commodity exemption should be substantially enlarged in order to make lawful methods of bargeline operation that are now unlawful, on the stated justification that to do so "would maintain the status quo and hence would not change present intermodal competitive relationships."

The "status quo," let it be clearly understood, is an unlawful "status quo." We say, as a matter of simple equity, that the statute should not be adapted to the water carriers' unauthorized practices, but, rather, that the water carriers' operations should be made to conform to the existing statute unless at the same time—and in the same bill—the Congress extends to the railroads the same exemption from regulation that the water carriers have, and are to have, in the transportation of bulk commodities.

At this juncture I wish to point out, furthermore, that the legislative proposal embodied in the bills you are now considering goes far beyond what would be needed to overcome the Commission's 1960 order upon which, as upheld by the courts, the proponents of the bill principally base their case for relief.

In the interest of avoiding lengthy elaboration on this aspect of the matter, I shall merely suggest to the subcommittee that if it decides to report H.R. 7610 or similar legislation without having amended the bill in such a way as to provide a bulk commodity exemption for the railroads too—and naturally I hope the subcommittee does not determine upon that course of action—then consideration ought to be given to an amendment that would at least restrict the effect of the bill to overturning the ICC order in question.

As drafted and introduced these bills are far reaching and would, in fact, do much more than maintain the status quo. Mr. Chairman, I should not like for the brevity of my comment on this feature of the bills to be taken as an indication that I attach little importance to it. On the contrary, I attach a great deal of importance to it.

I suspect the bargelines are being overly pessimistic when they contend that their technological development will be impeded and stifled, and even that their present technology will be rendered largely useless and meaningless, if this legislation is not passed. I think they exaggerate on that score, for the real issue—and I want to emphasize this, gentlemen—the real issue presented by the bills as they were introduced is not whether the bargelines are to be permitted to perform certain transportation services or prevented from performing those services.

It is, rather, whether those particular services are to be performed by the bargelines under regulation or free of regulation. It has been said to you by other witnesses who have appeared before you yesterday and last week that if this bill is not passed the bargelines really have only two alternatives since they can't mix bulk and nonbulk commodities in the same tow.

It is said they will have to delay the gathering together of tows until the can get these much longer tows of unmixed bulk commodities made up; or that the will have to institute much shorter tows and run them at more frequent intervals at great cost and expense and loss efficiency. They overlook the third alternative, and the third alternative is to transport the tows just as they transport them today, operationally, but to do it subject to regulation.

The services in question, if they are needed, would continue to be performed—performed under regulation; and my guess is that the river technology of which the water carriers are understandably proud would find full utilization in the absence of any legislation at all.

It is at this point, however, that those who favor these bills advance what I take to be their principal argument. They say that the enactment of this legislation is needed in order to allow the bargelines to realize greater efficiencies and economies in their operations than they would be able to realize without its enactment.

They say, indeed, that its enactment is needed in order to permit the bargelines to retain operating efficiences and economies that they have—through unauthorized methods of operation—already attained.

As to this let me say that it would be a rare and exceptional thing, indeed, as you know from your own observation, for any regulated industry not to entertain the view that it could accomplish a great deal by way of increased efficiences and economies if only it could be freed from some of the shackles, burdens, and inhibitions of regulation.

The railroads feel that way about certain aspects of their own regulation. In the case of the bills before you, however, there is more at stake than the mere better of efficiences and economies in bargelines operation. At stake are the statutory rules under which the water carriers and the railroads conduct their intermodal competition for a great deal of bulk commodity traffic that is critically important to them both.

Under the present statute the bargelines are preferred and the railroads are disadvantaged. The bills you are considering would increase

the advantage already enjoyed by the bargelines and intensify the discrimination suffered by the railroads.

That being so, the railroads vigorously oppose H.R. 7610 and the other bills on this subject unless so amended as to provide for deregulation of the railroads in the transportation of bulk commodities, thus giving them equality of competitive opportunity with the water carries in this respect.

Gentlemen of the subcommittee, if such an amendment is adopted and made a part of the bill, the railroads will withdraw their opposition, and indeed—upon reading my statement I realize it is not clear—the railroads will not only withdraw their opposition to the pending bills, but if properly amended will support that legislation.

I want to make that clear. That concludes my prepared statement, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. Breithaupt, for your very fine statement. I note that the railroads take the position that they have no objection to this bill if the railroads receive the same exemption in the transportation of bulk commodities which is possessed by the water carriers.

When you say same, do you mean the same, that is, do you accept the position of H.R. 9903 that the transportation of these exempt commodities falls under the antitrust laws, and reject the contention that you advanced at the time of the consideration of that bill?

Mr. BREITHAUPT. You present two questions, Mr. Chairman. In the first place there has been just a little bit of confusion about what the provisions of H.R. 9903 were. I am quite familiar with that legislation, and in the case of bulk commodities the proposal in H.R. 9903 was not to afford an exemption to the railroads.

It was to reduce the number of bulk commodities that the bargelines might carry in an exempt status. I think what you have in mind, Mr. Chairman, is that H.R. 9903 of the 88th Congress did provide, in the case of agricultural commodities, that the railroads would have an exemption identical with the exempton beng offered to the motor carriers and other carriers.

Mr. FRIEDEL. Is that No. 5a?

Mr. BREITHAUPT. Yes, sir. Section 5a would have been written off the books. At that time, during one course of the legislative process, we had thought that we ought to have retention of section 5a; but I make it plain to you now, if I may, Mr. Chairman, that when we say we want the same exemption as the bargelines we are willing in this instance to sacrifice the immunity from the antitrust laws we enjoy at present in the case of bulk commodities. To put it another way so there will be no doubt about it: If you see fit to extend the bulk commodity exemption to the railroads, then we agree that the immunity provided in section 5a should be withdrawn as to those rates, if that is the way you see it.

Mr. FRIEDEL. And would be covered under the Sherman antitrust law?

Mr. BREITHAUPT. There would be absolutely no immunity whatsoever and the antitrust laws, to the extent that they are applicable, would apply, including sections 1, 2, and 3 of the Sherman Act.

Mr. FRIEDEL. Thank you very much. Mr. Chairman?

Mr. STAGGERS. No, I have no questions.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. I want to say that your statement is an outstanding one, Mr. Breithaupt. As you say in the statement, you take all the meat off the bones and get right to the heart of what the issue is.

Mr. BREITHAUPT. Thank you, sir.

Mr. DEVINE. Apparently the American Association of Railroads takes a rather defensive position. Do you think this is bad legislation unless railroads enjoy the same courtesies extended to the bargelines under H.R. 7610 and if that provision is not included you would oppose the bill but if it were included you wouldn't necessarily be pushing?

You are not promoting legislation; merely protecting yourselves. Is that the attitude of the railroads?

Mr. BREITHAUPT. I endeavored to clear that up previously. I think my written statement is deficient in that regard and I added to it during the course of my direct presentation. Not only would we withdraw our opposition to the bargelines' proposal; but if the bill is amended in the way I suggest we would support the legislation.

Mr. DEVINE. Thank you.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. Mr. Chairman, yesterday I made the request that I be allowed to return. If I don't get to finish here I will again because I have been called out of the room twice and I didn't get to hear all of Mr. Breithaupt's testimony, but the question arose yesterday about the request of the railroads wanting equality and were we in a position to, in effect, put all segments in agreement. I noticed in reading the testimony over in the Senate where the Senate Commerce Committee posed that question to officials who had testified, primarily the Department of Transportation and the ICC, and on page 9 of that report—I have just now placed my hands on it—they make this statement:

"The committee"—this is the Senate Commerce Committee, about one-third of the page down—"requests the Secretary of Transportation, and the Interstate Commerce Commission, and the Civil Aeronautics Board to promptly prepare and submit legislation providing for uniformity and equality of treatment of all modes of transportation carrying bulk commodities."

And they ask that priority be given on this kind of study. This was made, I would estimate 30, 45 days ago.

It seems to me that this constitutes a real problem. If we were in agreement that equality should be given this would necessitate the submission of legislation affecting this approach. That would be complicated and there may be some difficulty in arriving at it.

At least neither the DOT nor the ICC nor CAB and all those agencies which are in a position to say are saying what kind of bill we ought to have and if you are in this committee saying that we should have equality, I doubt that we could put it into effect for some time because this may take a very prolonged study.

I would hope it wouldn't be long or prolonged, but as a practical matter how can we say that we could give you equality as of this hearing when we can't as a matter of practice put it into effect?

I guess what I am saying is that the equality may have certain appeal, but I don't see how we can put it into effect now and thus it looks to me like some kind of stay of execution of the order that the ICC

was going to put in effect on January 1 might be in order at this time pending the report of the DOT, ICC, and others.

Now, what is your feeling on that?

Mr. BREITHAUPT. On the stay of the order, Mr. Pickle? What is my feeling on that aspect of it?

I have some other feelings, too. In the first place, let me refer to the testimony of Mr. Hershey, who was the chief spokesman for the bargelines. In colloquy with members of the subcommittee he said directly that he would have to reserve judgment on any subsequent legislation, and then he finally got down to saying he would have to oppose it.

Mr. PICKLE. I didn't ask you about Mr. Hershey and his testimony. I am asking you as a practical matter how can we give you equality when I don't think we are prepared to do it.

Mr. BREITHAUPT. I referred to Mr. Hershey because I wanted to say that from our point of view it would be most unsatisfactory for you to report this bill favorably and deal with the other situation later.

That is the only reason I injected that. I am inclined to believe there might be laches on the part of the largelines in applying for this relief, But that is water over the dam. They are faced with the conformity date of January 1, 1968.

I was present at the hearing yesterday in this room and the Chairman of the Interstate Commerce Commission was queried by members of this subcommittee, I believe the chairman and perhaps others, as to how the Commission might feel about extending the compliance date with its order in the W–C–5 proceeding, in the event that this committee and the Congress had not by the end of the year found it possible to deal with this problem.

This is a practical problem, I take it, Mr. Pickle, that you are asking me about. Chairman Tucker of the Commission, as I recall his testimony and if I heard him correctly—the record will bear me out, I think—said that if he received a formal request from the House Committee on Interstate and Foreign Commerce and a like formal request from the Senate Committee on Commerce for a further stay of the compliance date, that he then would take up with the 10 other members of the Interstate Commerce Commission—in their conclave—the question of extending the compliance date.

I don't know that it is really appropriate for me to comment as to whether or not the Commission should extend it. I have a feeling that when something has been litigated for 7 years and when the Supreme Court of the United States has confirmed and affirmed the action of a lower court that a certain practice is unlawful, there ought to come a time when that practice be stopped or else formally, by statute, legitimized. I don't feel it would be appropriate for me to say that I would object to an extension. I was not a party to the proceeding. I am not a party to the proceeding.

I think I might look with disfavor on it, but I understand the practicality.

Mr. PICKLE. If you understand the practicality then you can understand why we would be concerned. You may not want to comment upon whether we should possibly put such law into effect, but we as members of the committee have to because these barge people now have 60 days, we will say, to either be granted this exemption or this legislation or be given a stay of execution.

What I am asking is how can we give, we will say, the railroads the relief you want when we don't have any kind of bill before us and the ICC has not submitted any bill and they admit that it is going to be difficult and will take a great deal of study.

I think enough time should be given. The question is how much. I am assuming you don't oppose it, or do you want to comment whether you think a stay would be in order or not?

Mr. BREITHAUPT. If the circumstances described by Chairman Tucker came to pass and if these requests from the Congress are made to the Commission for a stay of the conformity date, I would undertake to say that the Association of Railroads would offer no opposition.

Mr. PICKLE. If I may ask one more question just for the record, in reading the hearings of the Senate committee I noticed that Senator Pearson asked you this question:

> Is it your position that the railroad industry would suffer a loss of traffic unless a change is also made in the railroad economic regulatory statutes? Or is your position that as a matter of philosophy the railroad regulatory statutes should be changed whenever the economic regulatory statutes affecting other modes are also changed?

You attempted an answer to that and I would like you to answer the question for us. I read your answer and I am not just quite sure of your answer to it.

Mr. BREITHAUPT. I have read it myself since that time, Mr. Pickle.

Mr. PICKLE. It is on page 88 of the hearings.

Mr. BREITHAUPT. I remember it. I say that I have since read it, too.

Mr. PICKLE. Then it would be interesting to see what your answer is to the question at this time.

Mr. BREITHAUPT. As I understood Senator Pearson's question, and in the circumstances of a hearing such as this you don't always get the full import or sense of a question, but as I understood his question at that time he was asking me whether we were opposing the bargelines here, because as a matter of principle and without regard to actual competitive effect, we thought it was a bad bill; or whether we were opposing the bill because we thought its enactment would hurt us economically. I told Senator Pearson, I think in these words, that I rejected the suggestion that we were doing it merely as a matter of principle; that we really and honestly felt that enactment of this bill would constitute an aggravation of an economic handicap under which the railroads labor, and I stand on that answer, Mr. Pickle.

Mr. PICKLE. I think you said you feel that your own self-interest might be furthered by holding the bargelines down.

Mr. BREITHAUPT. To borrow a phrase from Mr. Hershey's testimony, we are not trying to be a dog in the manger about this bill. We are trying to protect our economic interest.

Mr. PICKLE. Mr. Chairman, those are all the questions I have.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. I like a candid answer like that because I see nothing wrong with a person being interested in his own economic interest. Some people may object to that but I don't.

For the clarification of the testimony for the nonmembers of the committee that I am sure will read it if this legislation comes to the floor, we have used in this committee over the past few days the term "to return to" a way of doing business by the bargelines unless this legislation or a stay is granted by January 1.

Don't you feel that in all honesty to say "return" is really a misnomer because the bargelines have never really operated under what is now the law?

Mr. BREITHAUPT. As I understand your statement or question, sir, from the very beginning—when I say from the beginning, I suppose after World War II, but from an early time—the bargelines on the basis of research that I have done, have employed one gimmick after another in an effort to avoid the prohibition, the limitations on this exemption, and one by one those gimmicks or devices—I don't use the word disparagingly; it is in their best interest——

Mr. KUYKENDALL. You use the same ones legally.

Mr. BREITHAUPT. No; they use one after another, and one by one these devices have been stricken down by the Commission, stricken down by the courts. I think Mr. Hershey was trying to say last week that finally they had come to the end of the rope; the last gimmick has been stricken down.

Mr. KUYKENDALL. There is a point I want to make, and this is not a probarge point, but I thought for the clarification of the record we should make this, for a clear understanding, and you certainly have not tried to mislead anybody with your attitude.

I admired your answer that you were looking at self-interest first and I like that, but I did want to clarify the point.

You see, when you tell the Congress if we should get this bill to Congress that all we are doing if we don't pass this bill is to return, this would imply to return to a way they used to do business.

Well, they have never done business this way. As you say, one appeal after the other has been taken and we are finally down to the end of our rope, so I think it is neither pro nor con. I wanted to clarify the point.

Let me ask you this: Generally speaking in these bulk commodities that are the primary source of our concern here, how much cheaper are your rates as allowed by ICC in areas where you have direct barge-line competition as compared to areas where you do not have direct bargeline competition? How much relief does the ICC give you in these areas, generally speaking?

Mr. BREITHAUPT. It is impossible to do any more than generalize.

Mr. KUYKENDALL. Could you possibly pick one out of the air and use it as an example? I don't know that you can. I am curious.

Mr. BREITHAUPT. I personally cannot, I will be frank to say, because I am not engaged, nor is the Association of American Railroads engaged, in ratemaking, but that is not a satisfactory answer. I will undertake to try to find some one or two examples and supply them for the record.

Mr. KUYKENDALL. I would appreciate this very much.

Mr. BREITHAUPT. But to answer you in generalities, there are of course what are called water-compelled rates and I don't have to explain that.

Mr. KUYKENDALL. Sure, but again for the sake of testimony I want to make it clear that ICC does not totally ignore your predicament when you have severe barge competition and until I began to get into this case I didn't know that they didn't ignore your predicament, and I would like to have a couple of examples for the record to show what relief—I am sure you don't think it is enough—they give you as a means of meeting this competition.

Mr. BREITHAUPT. I would rather you said the act than the ICC. The Congress drafted the Interstate Commerce Act in such a way as to enable that relief to be accorded. Congress recognized the problem.

Mr. ADAMS. Would the gentleman yield? Would you supply to the committee in terms of a specific answer to Mr. Kuykendall's questions whether or not this is true: That on the Columbia River in the past 30 years the all-rail rates from towns on the river, such as Shutler, Mikkalo, Speece, Condon, Wasco, in that period 1930 to 1952, had their rates cut from 1.2 percent to 16 percent—that is on the river—and yet at the same time the all-rail rates from Pendelton, LaCrosse, Winona, Colfax, those towns that are not on the river and therefore not affected by water competition, have had their rates increased from 72½ percent at Pendleton to 79 percent at LaCrosse.

Can you give to Mr. Kuykendall and ourselves a confirmation or a rejection of those figures please?

Mr. BREITHAUPT. After consulting with those in possession of the facts I will undertake to answer your question to the best of our ability, yes, sir.

(The information referred to was not available at time of printing.)

Mr. ADAMS. Thank you. Thank you, Mr. Kuykendall.

Mr. DINGELL. Would the gentleman yield for a question here?

Are you referring to rates by rail?

Mr. KUYKENDALL. I will yield.

Mr. DINGELL. Were you referring to rates by rail which have been cut where barge lines are competing with rail.

Mr. ADAMS. What I was referring to was that the rail rates have been cut where there is barge competition and raised where there is no barge competition for identical commodities.

Mr. BREITHAUPT. That is the way I understood your question.

Mr. ADAMS. Yes.

Mr. KUYKENDALL. Thank you, Brock. I welcome your getting a little bit more to the point than my question did. I asked you for a general observation. Mr. Adams gave you a specific case and maybe that is better. The subject of antitrust has come up here as a means of regulation that you are willing to accept in lieu of what you now have in overall liberalization of transportation policy.

Now, let me say this. It is quite interesting for the Congressman in the Ninth District of Tennessee to stand in a certain spot out in the middle of the Mississippi River and within 150 feet of me I have one railroad going this way, and a barge line going this way, and a highway going right by me, so I have trucks, barges, and railroads all within 150 feet of one spot in my district, and two of them object to the antitrust as an alternative and one of them does think it is the proper alternative.

Now, personally before I began to get into this thing I felt that antitrust was a logical alternative, and let me say that possibly in setting the format of this question I mean antitrust and also an amendment to Robinson-Patman. Robinson-Patman is the prevention of unfair competitive practices on commodities, and the amendment if I recommend it would include an extension of that to include services in this area, transportation services.

Now, the charge has been made, which I haven't gotten a satisfactory answer to, and maybe you can be of help here because this is

the area that you all seem to want as the alternative, the charge has been made that the enforcement of antitrust is made ineffective for one reason and that is it is after the fact and that generally speaking the offended person is already out of business before intervention takes place.

Let me give you one example that I have personally observed from very close quarters. Knowing about my history you know I spent many years in the food business. A large national food chain that operated in the Southwest, oh, 12, 15 years ago, was convicted and severely penalized under Robinson-Patman, but several hundred grocers had already been run out of business and they are not in business today, so this has been the fear that has been thrown back to me when I have suggested antitrust.

I would like to have your answer to that.

Mr. BREITHAUPT. I have heard the allegation made that competitors of railroads would have insufficient protection under the antitrust laws because they would be out of business or the river would be dried up, so to speak, before they could obtain judicial relief.

I would only point out, sir, that among the antitrust laws to which the railroads would become subject if they sacrified the immunity that they now enjoy, there is provision for injunctive relief either at the suit of the Government or at the suit of a private person; and if the proper showing is made to the Federal court about some pending disaster of which you speak, on account of some act of the roalroad in violation of the prohibitions of antitrust laws, then presumably the injunctive relief ought to suffice.

I have no other answer.

Mr. KUYKENDALL. One other question, Mr. Chairman. I think this is a terribly important point because this may very well be the key as to whether or not there is any acceptable compromise in this whole area. The whole thing would hinge on cost and how you project cost and I would hope that there might be some agreeable way to arrive at this and to speed up a possible injunctive process because I happen to think that in the long run that has to be the protection we are going to offer if we are going to liberalize the overall transportation system. Thank you, Mr. Chairman.

Mr. BREITHAUPT. I feel I should say something here because I would not like the record to show by implication that I have acquiesced in an amendment of the Robinson-Patman Act in connection with this legislation.

I heard with some surprise, minor surprise, as this hearing developed in colloquy between witnesses and members of the subcommittee, including you, sir, and others, the question to the witness, "What would your reaction be if we gave the bargelines what they seek, but also provided an exemption for the railroads and at the same time applied the antitrust laws to the railroads and amended the Robinson-Patman Act in such a way as to make that applicable in these circumstances?"

I think it would be unfair for me to let the colloquy cease at this point without interposing some comment or other about the Robinson-Patman Act so there won't be any misunderstanding about that.

I have heard you say, sir, that you have some familiarity with it as a result of your past business experience and the like. I am no expert on the Robinson-Patman Act, but I have given some thought

to it and I confess to a great deal of uncertainty as to just how the principles which are said to be concepts of Robinson-Patman would operate in the area of transportation pricing. I don't know just how its principles could be translated in such a way that they would fit transportation pricing, be appropriate and meaningful and yet be reasonable and rational when applied to transportation pricing.

The railroads, as I have indicated, are prepared to surrender the immunity they now enjoy under section 5a and they are willing to accept the full thrust of those antitrust laws that would thus be made applicable to them; but I must say for the record that I am not, at least now, prepared to acquiesce in any suggestion that there be imposed on the railroads in this regard what might be called the principles of the Robinson-Patman Act, which I would consider to be a totally new departure and indeed an unprecedented concept in the regulation of services, and particularly transportation services.

As you know and as other members of the subcommittee unquestionably know, it has heretofore been judicially determined that the Robinson-Patman Act does not apply to services; it applies only to sales of commodities and goods. It has not heretofore been thought appropriate that the Robinson-Patman Act be extended to services and it seems to me that it is asking a good bit—of course it is the railroads that are doing the asking here, but at the same time when you say maybe we will give the railroads what they sek but we are going to write some new antitrust laws to cover the situation—it may be that we get into a scheme of regulation at the hands of the Federal Trade Commission and the Department of Justice that would have even more rigid restrictions than the scheme of regulation employed under the Interstate Commerce Act.

I would like to point out, also, a couple of specifics about the Robinson-Patman Act that I think would be most appropriate if its concept were extended to transportation pricing.

While price differences under the Robinson-Patman Act, as you undoubtedly know, sir, may be justified where necessary to meet the competition of another seller, for instance—this is a defense against the charge of what is called price discrimination—they may not under the Robinson-Patman Act be justified on the basis of what we call market competition; that is, competition found by the buyer in his own market. Market competition, including—for the benefit of you, sir, and other members of the subcommittee—including equalization of rates to ports, is a very important factor in railroad and other transportation pricing.

It is not recognized in the Robinson-Patman Act.

Furthermore, perhaps the most striking difference between our present scheme of regulation, regulation in transportation as we have always known it in the conduct of transportation business, the striking difference between that and what the application of the Robinson-Patman principles would bring about, is that under the Robinson-Patman Act, contrary to what all of us have understood and have known to be the situation heretofore, competing carriers would be able to complain about price differences instituted by the seller of transportation services.

As it is now and as it always has been, the matter of protection against differences in transportation prices is a matter of the adverse

competitive effect upon the user or the buyer of the services, not upon a competitor.

That would be an entirely new departure in transportation.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. ADAMS. Would the gentleman yield for a question at this point?

Mr. DINGELL. I would be happy to yield.

Mr. ADAMS. I have tried Robinson-Patman Act cases both for the Government and in private industry and I agree with your analysis that the Robinson-Patman Act will not protect the parties involved even if the exemption were removed. I will take as a fact—and you can answer my question by sending the information to the chairman in answer to my question—what has happened is that the railroads are able through a monopoly situation of controlling their own lines to raise the inland rates and to lower the rates where they are in competition with the bargelines, thus creating for identical shippers competing in the same market two different types of rates, and this is perfectly legal under the present system.

It can't be attacked under the Sherman Act because we recognize the present monopoly situation in the railroads as being the only carrier serving an area.

It doesn't come under the Clayon Act. It can't come under the Robinson-Patman Act because I agree with you it applies to services only.

Mr. BREITHAUPT. Goods only.

Mr. ADAMS. Goods, not services, and a second point is that it wouldn't be protective, anyway, because you can drop charges to cost. As long as you don't go below cost you are allowed to do it under the Robinson-Patman Act.

Mr. DINGELL. Will the gentleman yield? You can go below cost to meet competition in good faith. That is well established. That is the loophole that has literally made the Robinson-Patman Act unworkable in most instances.

Mr. ADAMS. You and I will discuss it later, as to how far you can go, and I have some question about it, John, but it has been done in one or two cases.

The other thing is in terms of discrimination between shippers to meet competition as long as you do not go below cost you can do it. Therefore, if we deregulate you completely in this area you could go to cost or perhaps below.

What many members of the committee are worried about is what will you do in the nonbarge competitive areas on bulk commodities in order to meet a cost-cutting competition with the bargelines on the river. What will you do?

Mr. BREITHAUPT. Let me say that the obvious answer, which I am sure you won't find satisfactory, is that this is already the situation. Lack of regulation in this regard is a situation that has prevailed under your aegis with respect to exempt transportation by motor carrier and exempt transportation by barge lo these many years.

Secondly, I may say that things aren't what they used to be in connection with your assertion about the monopoly position of the railroads. Today there is pervasive competition. There is no longer any such thing as captive traffic of the railroads.

Mr. ADAMS. On bulk commodities for inland ports that are served by only one carrier.

Mr. DINGELL. Will the gentleman yield?

Mr. ADAMS. I am sorry. I will yield.

Mr. DINGELL. I want to be gracious but I have little time left.

Mr. ADAMS. I will yield my time.

Mr. DINGELL. Mr. Chairman, I want to thank the gentleman from Washington. He has raised some questions and I think you do deserve an answer. I must confess some parts have not been answered.

You have suggested that the railroads want certain exemptions if this legislation goes through. I have been inquiring of witnesses their position with regard to that but have not been able to get their position because the railroads' statement of position and the railroads' suggested amendment, and I assume you have one, has not been available to the committee.

Will you, at an early time, submit to the committee for the record the language that you seek in the way of exemption so that the committee can have that matter before it so it can appropriately query on this matter?

Mr. BREITHAUPT. Yes, sir.

(The information requested follows:)

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., October 19, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: When I appeared before the Subcommittee on Transportation and Aeronautics on October 11, 1967, to express the views of the Association of American Railroads on H.R. 7610 (90th Congress) and a number of companion bills then the subject of hearing by the Subcommittee, I stated that the *Association opposes these bills unless they be so amended as to extend to the railroads an exemption from regulation in the transportation of bulk commodities comparable to that enjoyed—and to be enjoyed—by the water carriers.* I was subsequently asked by Mr. Dingell to submit for the record ". . . the language that . . . [the railroads] seek in the way of exemption so that the Committee can have that matter before it . . ." (Tr., p. 223).

A draft of statutory language that would accomplish our objective in this regard (by way of a proposed amendment to H.R. 7610) is enclosed."

Respectfully yours,

HARRY J. BREITHAUPT, Jr.

PROPOSED AMENDMENT TO H.R. 7610

Add to H.R. 7610 a new section, as follows:

SEC. 2. Section 1 of the Interstate Commerce Act (49 U.S.C. 1) is amended by adding at the end thereof a new paragraph as follows:

"(23) Nothing in this part, except the provisions of paragraphs (10) to (17), both inclusive, of this section relative to car service, joint or common use of terminals, directions for preference or priority in transportation, embargoes, movement of traffic under permits, and preference or priority of traffic essential to the national defense, and directions with respect to the handling, routing, and movement of traffic and its distribution over other lines; paragraph (8) of section 6 relative to preference, precedence, facilitation and expedition of military traffic and the delivery of shipments consigned to agents of the United States for its use; and section 25 relative to safety appliances, methods and systems, shall apply to the transportation by a railroad of commodities in bulk when the car in or on which such commodities are transported is being used for the transportation of not more than three such commodities. This paragraph shall apply only in the case of commodities in bulk which are loaded and carried without wrappers or packaging and received and delivered by the carrer without transportation mark or count."

Mr. DINGELL. I would like to continue, if I may, going into this. What are the exemptions that the railroads seek? Do you seek exemp-

tion as to all bulk commodities, anything which is or may be hauled in bulk, or do you seek exemption as to those same things which bargelines are able to have exemptions for?

Mr. BREITHAUPT. The latter.

Mr. DINGELL. The latter.

Mr. BREITHAUPT. Yes, sir.

Mr. DINGELL. And not all bulk commodities, just those which would be extended to the bargelines.

Mr. BREITHAUPT. Those which are exempt under section 303(b), which is the bargeline exemption.

Mr. DINGELL. There are other bulk items which would not necessarily be included therein.

Mr. BREITHAUPT. No, sir; I don't know that there are. Section 303(b), which is the section of the Interstate Commerce Act here in question, contains a statutory definition of bulk commodities.

Mr. DINGELL. It also contains a broad grandfather clause according to usage in 1939, isn't that true?

Mr. BREITHAUPT. They seek to remove that in this bill.

Mr. DINGELL. Yes, sir. What I am trying to get a picture of is where you now are. I am concerned here about the same point that our friend Mr. Adams from Washington raised. Before I get into that I would like to ask you, here a few years ago, as you recall, there was an attempt made to deregulate bulk carriage by the railroads and there was a major fight that took place here in this committee.

I would like to know what protections the shippers in different areas in the country will have against discriminatory pricing if that kind of exemption goes through? How will they be able to protect themselves? How will you avoid, let's say, discrimination between ports? How would, for example, the Great Lakes ports protect themselves against discrimination, moving the shipments to the eastern seaboard or to the Gulf ports? How would, for example, Baltimore protect itself against discriminations that might tend to move the carriage into New York or Boston or down to Savannah?

Mr. BREITHAUPT. Frankly, Mr. Dingell, the protection of the ports and the protection of the other shippers under the proposal that the rialroads now advance would depend upon the railroads acting in their own self-interest to take care of the shippers.

Mr. DINGELL. That is precisely it, in their own self-interest. Now, let's take a case in point, one which happened under section 22, involving the Chrysler Tank Arsenal. It cost less under railroad rates, under section 22, to shop from the Chrysler Tank Arsenal to New York than it did from the Chrysler Tank Arsenal to the Port of Detroit, with the result that the carriage went not by way of water, which logic would indicate would be the cheapest way to ship it from the city of Detroit or from the Chrysler Tank Arsenal there, but it went by rail to New York or to the east coast port and then went out by water from there.

What protection would the city of Detroit or the shipper or the port authorities in the city of Detroit or the people of the city of Detroit have against this kind of discrimination which is already practiced under an exemption which exists under the law?

Mr. BREITHAUPT. I wouldn't want you to misunderstand the answer I gave before when I said "the railroads in their own self-interest." I

didn't stop there. I said "in their own self-interest would protect their shippers." I can't speak for the managements of the railroads that serve Detroit or the railroads that serve New York or any other port, but it obviously would be in the best interest of the railroads that serve those ports to endeavor to protect their shippers.

I mean to protect those ports.

Mr. DINGELL. Historically the record is such that it has not happened in the case of the tank shipments to which I allude. What protection would they have in the law? Would you say that the antitrust laws would protect them? Not without an amendment certainly to the legislation.

Mr. BREITHAUPT. Not unless there was a violation of the Sherman Act, which generally doesn't run to discrimination of the type that you mention.

Mr. DINGELL. That is right.

Mr. BREITHAUPT. I am not familiar with the tank case to which you are referring.

Mr. DINGELL. That was a very, very celebrated affair in my district, one which caused me rather considerable grief, which obviously the antitrust laws aren't going to protect against.

Mr. BREITHAUPT. The Sherman Act won't protect against that unless, Mr. Dingell, the purpose is to practice predatory conduct against one's competitor.

Mr. DINGELL. If it were to tend toward monopoly or if it were to create a monopoly or if it were to be a discrimination accompanied by some other circumstance, would tend to injure or destroy some other competition, conceivably this would come into play, so actually even if this exemption that we are talking about, let's say were converted to grain or some bulk commodity like pig iron, or scrap, or something of this kind, the city of Detroit would not achieve protection under the antitrust laws absent some showing of predatory practices or something of this kind.

What I am trying to find out is if we give the railroads the exemption that you are talking about how are my people in the Great Lakes area going to be protected against this kind of discriminatory practice by the railroads.

Mr. BREITHAUPT. By differences in rates?

Mr. DINGELL. Yes.

Mr. BREITHAUPT. We seek the same exemption, Mr. Dingell.

Mr. DINGELL. I understand, but you have to remember I have a limited amount of time and I am trying to get to the very narrow point; how are we going to be protected. We have already decided that the antitrust laws don't protect my people.

Mr. BREITHAUPT. Under the proposal that I am directed to present to you the protection presently afforded by certain sections of the Interstate Commerce Act, notably sections 2 and 3, would no longer be available to shippers.

Mr. DINGELL. That is right.

Mr. BREITHAUPT. The Sherman Act, in the circumstances that you have described as I understand them, would not be applicable.

Mr. DINGELL. That is right. Robinson-Patman would not be available.

Mr. BREITHAUPT. Because it is not applicable.

Mr. DINGELL. That is right.

Mr. BREITHAUPT. And so only in the conduct of the railroads own affairs in their own self-interest to protect their shippers would there be protection for shippers.

Mr. DINGELL. You are saying then that we should entrust the fate and importance of important decisions right to the good faith of the railroads, but the practical problem is we have already had one very, very bad experience with the railroads in connection with this.

I want you to know that I am not critical. I am sympathetic with the problems the folks in railroads have, but I have to protect my people against the railroads acting in what is their enlightened self-interest and that is, by golly, to haul goods, and which I applaud and I expect them to, but I recognize in controlling that intention and their determination to compete we have to somewhat protect the others and some of the railroads against some of the railroads own natural inclination.

Mr. BREITHAUPT. Let me say, Mr. Dingell, while I am not authorized in behalf of my principals to advance any affirmative suggestion for the application of all or any part of the Robinson-Patman Act, it might be that there is room for consideration of the application of certain provisions of the Robinson-Patman Act to the end that the situation you mention might be taken care of.

Mr. DINGELL. The chairman has been very generous. I would like to go into this matter at a later time, if I may, Mr. Chairman, because the question of antitrust application is something I think this committee should very well have in mind before it reports out legislation.

Indeed, I would suggest before we go into this question of antitrust matters in this legislation we should have the Antitrust Division up here to discuss antitrust principles with this committee, which are highly complex, very, very technical, and which I am sure very few of us, including myself have a full competence and understanding.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman. Mr. Breithaupt, I apologize for not being here and hearing your direct testimony as well as the other questions that have been propounded to you and I might repeat some of them.

So that we might clearly understand the position of the railroads, first, do you feel that if there is retention of the exemption found in 303(b) it should be extended to include rail carriers?

Mr. BREITHAUPT. If there is retention of the exemption?

Mr. WATSON. Yes, sir.

Mr. BREITHAUPT. Yes, sir.

Mr. WATSON. I assume that you would have no objection to extending that exemption to motor carriers as well.

Mr. BREITHAUPT. I would not understake to express my views as to whether it should or should not.

Mr. WATSON. I have misgivings as to whether or not they would be protected, but you would not object to the exemption to all modes of transportation.

Mr. BREITHAUPT. I would not object.

Mr. WATSON. Is that your primary position, or secondly would you be amenable to just removing the exemption in 303(b) all together and then all would be treated alike?

Mr. BREITHAUPT. A good many years ago, Mr. Watson, over a course of a good many years, the railroad industry was virtually unanimous in its desire to have this exemption repealed.

Unfortunately, experience before committees of the Congress and otherwise taught us that it didn't appear to be politically feasible to remove the exemption. Other witnesses before the subcommittee during the course of this hearing have recognized that there is a large public sentiment, and a sentiment reflected in the Congress, against repeal of the exemption; so as an alternative to what we have suggested it doesn't appear, at least for the present, to offer any practical possibility.

Mr. WATSON. I can understand that. It is a basic proposition. You would generally like to make the rules a little more flexible in favor of deregulation rather than adding to it, but assuming that such should be possible, you know people change their minds and we have a problem on our hands now which I don't know how we are going to resolve, but if you are unable to get all included under the exemption your second position would be to remove the exemption which now applies.

Mr. BREITHAUPT. No, sir, I can't say that we have considered that in recent years and I would not be authorized to say that.

Mr. WATSON. Well, it is a basic matter. That is a fair proposition, all be excluded or all be included. That is a fair proposition.

Mr. BREITHAUPT. Equality is the basic proposition, but I cannot say that.

Mr. WATSON. Apparently now your principal thrust and argument is that the railroads should be included under this exemption.

Mr. BREITHAUPT. That is correct.

Mr. WATSON. Did you press that particular position over before the Senate?

Mr. BREITHAUPT. I brought their attention to the inequalities that do exist. I called attention to our historic position seeking equality of competitive opportunity.

Mr. WATSON. My question is whether or not you pressed the position.

Mr. BREITHAUPT. I did not press it.

Mr. WATSON. You did not. That is a recently established position?

Mr. BREITHAUPT. It has been pressed recently.

Mr. WATSON. Pressed recently, but not before the Senate.

Mr. BREITHAUPT. It was not pressed before the Senate.

Mr. WATSON. I understand from page 8, and I hastily perused your testimony or at least your prepared testimony, that as a third idea you say at least we should limit the scope of the effectiveness of this legislation to simply "overturning the ICC order in question."

Is that your third position?

Mr. BREITHAUPT. It is pretty hard for me to put them in chronology. What I am trying to say——

Mr. WATSON. I am not speaking in order of priorities, but it is a third position that you are taking, failing in the first one.

Mr. BREITHAUPT. My position in that regard is that if the subcommatter of competitive opportunity, at least limit the relief for the barge lines to what appears to be justified.

Mr. WATSON. Obviously you are a very outstanding lawyer. I wonder if, Mr. Chairman, we might ask the gentleman who is now testifying to submit to the committee specific language which might accomplish the objective that he has in mind, to wit, limiting the effectiveness of this legislation to purely overturning the ICC order in question.

Mr. BREITHAUPT. I will be very happy to undertake to do that, pro-

vided, however, Mr. Watson, it is understood that I don't suggest that as an alternative to what we are really seeking.

(The information requested follows:)

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., October 24, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: When I appeared before the Subcommittee on Transportation and Aeronautics on October 11, 1967, to express the views of the Association of American Railroads on H.R. 7610 (90th Congress) and a number of companion bills then the subject of hearings by the Subcommittee, I stated that the Association opposes these bills unless they be so amended as to provide also for deregulation of the railroads in the transportation of bulk commodities. I took occasion to point out, however, that—

"The legislative proposal embodied in the bills you are now considering goes far beyond what would be needed to overcome the Commission's 1960 order upon which, as upheld by the courts, the proponents of the bill principally base their case for relief. In the interest of avoiding lengthy elaboration on this aspect of the matter, I shall merely suggest to the Subcommittee that if it decides to report H.R. 7610 or similar legislation without having amended the bill in such a way as to provide a bulk commodity exemption for the railroads too—and naturally I hope the Subcommittee does not determine upon that course of action—then consideration ought to be given to an amendment that would at least restrict the effect of the bill to overturning the ICC order in question.

"As drafted and introduced these bills are far-reaching and would, in fact, do much more than "maintain the status quo".

Mr. Watson subsequently asked me to submit to the Committee ". . . specific language which might accomplish the objective . . . in mind, to wit, limiting the effectiveness of this legislation to overturning the ICC order in question". My reply was that "I will be very happy to undertake to do that, *provided it is understood that I don't suggest that as an alternative to what we are really seeking*" (Tr., pp. 233–4).

I have attempted to devise language for an amendment to section 303(b) of the Interstate Commerce Act that would have as its limited purpose overturn of the order of the Interstate Commerce Commission in W–C–5, *Mississippi Valley Barge Line Company Exemption, Section 303(b)*, 311 I.C.C. 103 (1960), and that would thus appear to be more appropriate than the broad-brush approach contained in H.R. 7610. The result of my preliminary thinking is this—

Strike all after the enacting clause in H.R. 7610, and substitute the following:

"Subsection (b) of section 303 of the Interstate Commerce Act (49 U.S.C. 903(b)) is amended by inserting after the third sentence thereof the following new sentence: 'The towage, subject to the provisions of this part, of commodities in bulk for a portion of a through movement of such commodities under a contract of affreightment, performed concurrently with the transportation of other commodities in bulk or commodities not in bulk, or both, shall not prevent the application of this subsection to a prior portion of the said through movement of such commodities in bulk during which the cargo space of the vessel in which they are transported is being used for the carrying of not more than three such commodities.'"

I shall continue to give thought to this matter; and if I find that I am able to improve upon the language suggested above, I shall advise the Subcommittee.

To make certain that there will be no misunderstanding let me emphasize that the substitute language I have suggested in this letter, and am submitting at Mr. Watson's request, is not an acceptable alternative to the basic position of the Association of American Railroads on the pending bills. Our firm position, for the reasons stated and elaborated upon at the time of the hearing, is one of vigorous opposition to H.R. 7610 and the other bills on this subject unless so amended as to extend to the railroads an exemption from regulation in the transportation of bulk commodities comparable to that enjoyed, and to be enjoyed, by the water carriers—thus giving the railroads equality of competitive opportunity with the water carriers in this respect.

Respectfully yours,

HARRY J. BREITHAUPT, Jr.,
General Attorney.

Mr. WATSON. Well, then, perhaps we can agree in language. I don't want to play on words here. You did discuss that and it was an aspect of discussion that you would recommend that we try to limit the effectiveness of it.

Mr. BREITHAUPT. That is correct.

Mr. WATSON. Thank you very much.

Mr. BREITHAUPT. That is correct.

Mr. ADAMS. Will the gentleman yield?

Mr. WATSON. Yes.

Mr. ADAMS. I want to echo Mr. Watson's request. At the bottom of page 8 you have suggested this and in looking over the language, and I refer now to the Senate report on S. 1314 on pages 2 and 3. They have listed the suggested language which is to drop the requirement that the existing custom of 1939 be used as a defintion of handling and transportation of commodities, and also to drop the section that says two or more vessels shall be considered a single vessel.

That seems to me about as simple and as barebones as you can go to overturn the ICC decision. Do you have any statement that you could make now as to an alternative? Prior to the subcommittee deliberation on the bill we are asking—both Mr. Watson and myself—that you submit in writing your proposal. Do you have a suggestion as to how it could be any more barebones than that?

All this does is simply say we are going to go from 1939 to 1967 and we are going to treat two vessels as two vessels even if they are in one unit.

Mr. BREITHAUPT. Yes, sir. The 1939 limitation did not enter into the litigation at all, but that is not the important thing. The important thing is that in the practices of the bargelines stricken down by the Commission, the Commission being affirmed by the Federal courts including the Supreme Court, the bargelines have never thought—so far as I know—that it would be lawful for them to disregard completely the flat language of the statute that two or more vessels being transported as a unit should be considered one vessel.

That is quite clear. What they did, and what was stricken down in this particular litigation and this particular proceeding before the Commission, what was involved there was this, and I had thought that Mr. Hershey described this, but perhaps he didn't:

Noncertificated bargelines, bargelines not holding operating authority from the Interstate Commerce Commission, may at certain points along the river gather some bulk commodity, let us say it is grain. And they undertake what is called a contract of affreightment, as I understand it, in the barge business, undertaking to transport grain for the shipper from point A to point C on the river.

The uncertificated bargeline holding no operating authority from the Interstate Commerce Commission and having no published rates, and having no rates that are subject to regulation, hauls or tows that grain and nothing else, from A to an intermediate point on this through trip, intermediate point B. There isn't any mixing up to that point.

At point B the uncertificated bargeline turns over this grain to a certificated bargeline which then incorporates the grain into a long tow, of which you saw a graphic depiction, which may include more

than three bulk commodities and it may include manufactured articles, for example, and commodities that are not bulk commodities at all.

The certificated bargeline has a published tariff towage rate, which it charges the uncertificated bargeline for performing the towage of the grain from point B to the ultimate destination C.

At that point, theoretically at least, at point C, the grain is returned to the uncertificated bargeline which then undertakes to make delivery to the consignee of the grain. What the Commission has said in this litigation is that in these circumstances there no longer is an exemption from point A to point B because the contract of affreightment contemplates mixing at some stage of the journey.

Mr. ADAMS. And that is because of the language of the statute in the parenthesis which says that you are going to define bulk commodities in terms of the existing custom of trade in handling such commodities as of June 1, 1939.

Mr. BREITHAUPT. No, sir, that parenthetical expression to which you refer goes to what is a bulk commodity.

Mr. ADAMS. Right. If they find it is bulk commodity under that, then the carriage which you have just described becomes subject to regulations. If that were not in there then it would not.

Mr. DINGELL. Will the gentleman yield?

Mr. ADAMS. Yes.

Mr. DINGELL. What really are the circumstances? You are talking about a situation dealing with the manner of carriage rather than the substance or commodity carried.

Mr. BREITHAUPT. That is correct. The parenthetical expression goes to whether or not grain is a bulk commodity.

Mr. DINGELL. The parenthetical expression deals with the type of commodities which were bulk commodities.

Mr. BREITHAUPT. Yes.

Mr. DINGELL. As opposed to the practice which the ICC and courts have established.

Mr. BREITHAUPT. You put it very well, Mr. Dingell.

Mr. ADAMS. If that was so, then what would your objection be to the bill, to the provision which is in H.R. 7610, and drop the parenthetical expression and strike the words in the third sentence?

Mr. BREITHAUPT. If you strike that third sentence, from that time on the carriage from B to C to which I have referred today and which is now done under regulation under a towage charge would no longer have to be under regulation. A certificated bargeline could mix all these commodities at will.

Mr. ADAMS. So it does have an effect?

Mr. BREITHAUPT. It has an effect far beyond the practice that is condemned.

Mr. ADAMS. That is what I am getting to. It does have an effect and what we are asking you is do you have some alternative language.

Mr. FREIDEL. Please limit your questions because we have three other witnesses.

Mr. ADAMS. I will be 3 more minutes.

Mr. FREIDEL. Mr. Adams.

Mr. ADAMS. What we want is if this language is not the sort of language that you believe is fair and equitable here, we want your alternative language. As I understand from your colloquy with Mr.

Dingell, it is your position that the specific ICC decision is very narrow in scope but the overall practice which has been developed in the ICC is broader.

Is that correct?

Mr. BREITHAUPT. The practices which would be legitimatized by the enactment of this bill go far beyond the practices that were condemned in the ICC proceeding and, to answer your question briefly, I will be happy to submit to the committee language which I think will limit the legislation here proposed to overcoming this particular ICC decision, provided it be understood that I don't say that it is agreeable to us that you enact that legislation.

Mr. ADAMS. I understand. I understand that. I will close with just this one question. The committee has been very indulgent and I appreciate it, Mr. Chairman. What our problem is is that we are very respectful of the fact that the railroads should and will act in their own enlightened self-interest to make a profit and my questions to you are not critical of what they are going to do, but go to the point that has been argued to this committee against granting this, which is that you have to provide equity in the intermodal competition, truckers, water, and railroads.

What you haven't gotten through to me and if you want to submit something further I know I would be appreciative of it, is that you cannot compare water carriers and truckers with railroads in terms of a straight across-the-board intermodal competition because it is like comparing apples and oranges.

Railroads have their own right-of-way, control it, control their own rolling stock. Water carriers are on a river, for example, and anybody that wants to go on that river, some unregulated completely, some regulated, can go on that river and can compete whereas no one can go on your rail line.

And the same with truckers. Almost anybody that wants to can get into this field with the regulated truckers in between because they are limited with certificates of necessity and so on.

But basically people can go on highways and deliver goods because highways and waterways are supplied by the public. We know that competition can exist then. If these men get too far out of line somebody else can go on the river or somebody else can go on the highway, but in the rail situation we have had to regulate because that isn't absolutely true.

So we are searching for a system as to how we handle these apples and oranges and we don't want to be unfair to the railroads and we know that your problems are great ones, but you can help us with that by not just saying equity is just to do the same thing to everybody because at least in my opinion, and I know in the opinion of some of the other members of the committee, to do exactly the same thing to everybody isn't exactly right.

Have I made my point?

Mr. BREITHAUPT. You have made your point, sir.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Breithaupt.

Mr. DINGELL. Mr. Chairman, may I ask the witness several questions? I have problems in understanding some points raised.

Mr. FRIEDEL. Very briefly because we have three other witnesses.

Mr. DINGELL. I want to cooperate fully with the Chair but I am interested in four questions here. I would like to ask you about how regulations under antitrust would be accomplished even assuming that we were to arrive at a situation where it could be done. First of all, we have agreed generally that under the antitrust laws many situations involving discrimination could not possibly be reached. If we were to find that situations could be reached under antitrust laws, it would first involve the filing of a civil or a criminal complaint with the appropriate court and it is a fact, is it not, that the completion of an antitrust case takes between 4 and 7 years. Isn't that so?

Mr. BREITHAUPT. I have heard that statement made. I don't know.

Mr. DINGELL. So this would be a very cumbersome and very time-consuming procedure would it not?

Mr. BREITHAUPT. Like all litigation.

Mr. DINGELL. From the standpoint of the carrier afflicted with this antitrust proceeding, antitrust relief is equitable relief, is it not, and it would be in the language of the courts as broad as the ocean and as high as the sky. So that for all intents and purposes the relief given could even include such extraordinary things as changes in directors, broad changes in management policy affecting not only the substance of the particular litigation but going far more broadly into totally new areas; am I correct?

Mr. BREITHAUPT. You say "as a matter of equity." Antitrust law is a matter of statute, and relief may be given by the courts as spelled out in the statute.

Mr. DINGELL. Well, it includes injunction.

Mr. BREITHAUPT. That is correct.

Mr. DINGELL. And injunctions can be mandatory and prohibitory.

Mr. BREITHAUPT. Yes.

Mr. DINGELL. And they can go to the appointment of receivers. They can go to the establishment of changes in management policy affecting not just the matter before the court, but any other matter which relates to that circumstance.

Am I correct?

Mr. BREITHAUPT. You may well be.

Mr. DINGELL. The reason I am asking you the question is that I want you to see what you are getting into when you go into the antitrust regulation.

Thank you very much, Mr. Chairman.

Mr. FRIEDEL. Thank you very much. Thank you, Mr. Breithaupt.

Mr. BREITHAUPT. Thank you.

Mr. FRIEDEL. Our next witness is a gentleman I have heard a lot about, Mr. D. W. Brosnan, president, Southern Railway System.

Mr. WATSON. Mr. Chairman, you say you heard a lot about the gentleman who is going to testify.

Mr. FRIEDEL. I heard a lot of good things about him.

Mr. WATSON. Good things about him—and I want to say so personally—because they are justified and the great Southern Railroad is one of the most efficiently operated railroads in the country.

STATEMENT OF D. W. BROSNAN, PRESIDENT, SOUTHERN RAILWAY SYSTEM

Mr. BROSNAN. Thank you very much, Mr. Watson and Mr. Chairman. I appreciate your kind remarks. I thank you for inviting me here today.

Mr. Chairman and members of the committee, my name is D. W. Brosnan and I am chairman of the board and chief executive officer of the Southern Railway System.

My appearance here is in connection with H.R. 7610 which would amend section 303(b) of the Interstate Commerce Act to expand the existing exemption from regulation which the water carriers now enjoy in the transportation of bulk commodities.

I am not appearing here in opposition to the bill but in support of an amendment to the bill which would provide for the railroads a similar exemption with respect to the haulage of bulk commodities which would put them on a parity with the water carriers. The proposed legislation would considerably expand the present exemption for the water carriers and this expanded exemption is what the railroads should also have as a matter of equity and also as a matter of the public interest.

Under present law the transportation of commodities in bulk by inland water carriers is generally exempt from regulation. The proposed legislation would expand this exemption, and would free the barge operators from the present restriction which limits them to hauling without regulation not more than three bulk commodities in one tow.

The exemption in present law with respect to water transportation of bulk commodities discriminates against the railroads in that the latter are now fully regulated with respect to the transportation of these commodities, just as they are with respect to the transportation of all other commodities.

The proposed legislation, without amendment, would further enlarge the existing discrimination against railroads and I might also add against the public.

For many years Southern Railway has followed a policy of not opposing legislation designed to help our competitors, including proposals to provide additional inland waterways on which the barges operate and proposals for adding additional miles to and upgrading our highway system which are, of course, of immense benefit to the truckers.

Instead, Southern's efforts have been directed to freeing the railroads from excessive regulation so as to put us in a position to compete with other modes on a more equal basis and thereby provide the public with the benefits which come from increased competition in transportation.

Inland waterways have been built at tremendous cost to the taxpayers, including Southern, and yet the barge operators do not pay 1 cent for the use of these waterways. These barge operators have in the past attempted to justify this tremendous public investment in waterways on the grounds that the public will benefit from lower transportation costs and thus realize more benefits in transportation savings than the cost to them of providing these toll-free canals.

Experience has shown, however, that these barge operators are not truly interested in providing lower transportation costs to the public but that their real interest lies in maintaining a level of rates which will insure a profit for themselves.

Their real interest is revealed in the many, many instances in which they have sought to prevent the railroads from lowering their rates for the transportation of competitive traffic—which, incidentally, consists almost entirely of bulk commodities—to a level with or below the charges which the barge operators themselves collect.

A case in point involved Southern Railway's efforts to put into effect a 60-percent reduction in rail rates for the transportation of grain into and within the Southeast. It took us over 4 years to get these rates approved, including 7 months of hearings before the Interstate Commerce Commission and 15 appearances in court, including two appearances in the U.S. Supreme Court. The principal opposition to Southern's rates came from the barge operators, and particularly those barge lines hauling grain on the Tennessee River. Their basic complaint was that Southern's rates would produce less revenue for us than the cost to us, that is, Southern, of providing the service.

This has a queer ring to it. Clearly they were not interested in our profits, and it is equally clear that they were not interested in savings to the public.

Instead, their real interest lay in protecting their own level of charges without regard to the interests of the public.

Southern finally succeeded in putting its lowered grain rates into effect and their legality has now been finally determined. The result has been that other railroads have provided similar service at reduced rates and the South now gets grain at lower cost to satisfy its large grain deficit.

New impetus has been provided throughout the South to grain-consuming industries, including substantial growth in the broiler- and cattle-raising industries. This has given a tremendous boost to the entire economy of the South and has helped the midwestern grain farmers by providing a larger outlet for their grain.

Notwithstanding their prophecies of doom, the barge operators continue to handle increasing amounts of traffic on the Tennessee River, including large quantities of grain. I am happy to say that the lower rates have also proved profitable for my company.

I think this one example is sufficient to demonstrate my point that lower rail rates on bulk commodities provide a boost to the entire economy and at the same time do not put the railroads' competitors out of business. There are many other instances which can be cited to support this conclusion.

However, the reduction in rail rates under present law is not easy. Because of the regulatory powers given the Interstate Commerce Commission with respect to rail rates, it is possible for the railroads' competitors to delay for substantial periods of time or completely thwart the railroads' efforts to publish lower rates on competitive traffic.

In contrast, barge operators are free to charge what they will without any possibility of interference by the Commission or the courts. In a free economy the law of competition should control bulk commodity transportation charges for both railroads and barges, and for that matter all other public agencies.

The public interest demands that railroads be given the same freedom to compete as the barges now enjoy, for it is only in this way that the public is sure to realize the full benefit of competitively established rates.

Furthermore, fairness alone requires that the railroads be given a more equal chance to compete with the barge operators in the transportation of this important traffic. Railroads do not enjoy the toll-free rights-of-way now enjoyed by the barges and they are not asking for a similar privilege.

They only ask that they be freed from the shackles of outmoded economic regulation which put them at an unfair and damaging disadvantage in providing competitive rates in the transportation of bulk commodities.

It is for these reasons that I support an amendment to the bill to exempt railroads from regulation in the carriage of bulk commodities, and with this amendment I would support the legislative proposal.

Thank you, Mr. Chairman, for giving me the opportunity to testify here today with respect to this important legislation.

Mr. FRIEDEL. I want to thank you, Mr. Brosnan, for your very short and informative statement.

Mr. BROSNAN. Thank you, sir.

Mr. FRIEDEL. It had a lot of meat in it. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Mr. Brosnan, it is a real pleasure to welcome you to the committee this morning. The committee has had an opportunity to observe over a period of years the very fine work that you and your company have done in the transportation field, innovations to better serve the American public and I think we are privileged to have your testimony this morning.

Mr. BROSNAN. I thank you, sir.

Mr. DINGELL. I would note that I see two old friends in the room with you, both the former very valuable member of this committee whose presence I used to enjoy, Mr. Peter Mack, and also Mr. Wilbanks, who is very, very highly regarded by the membership of this committee. No further questions, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. I appreciate your appearing here. We have been helped over the years by some of the associates of your company like Mr. Ehringhaus and Mr. Wilbanks, and your statement here today again demonstrates that Southern has been, I would say, unique in the position of being an efficiently operated railroad and making money when others fail to do so.

I think a lot of credit goes to you, Mr. Brosnan. We are happy to have your views this morning on this legislation.

Mr. BROSNAN. Thank you, sir.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I want to likewise associate myself with the chairman's statement about your fine testimony and welcome my good friend to this committee. I was particularly impressed with your example that you gave that you made an application for a 60-percent reduction in rail rates with respect to shipment of grain which took sometime but you finally got it.

Did I understand you to say that the barges protested these rate reductions?

Mr. BROSNAN. Yes, sir. They fought us through the Interstate Commerce Commission and through the courts over a period of 4 years.

Mr. PICKLE. The net result was that you got the reduction in grain rates and it helped the Southeast. I was particularly interested in that because as I recall the situation the grain rate into the State of Texas is higher than it is in other States of the South. I am not sure of the figure, but there is considerable controversy that we still have some discrimination. I think the example is a good one.

Now, surely we can't have any objection to lower rates. The question would be is it unfair to any other mode of transporation. In your judgment you are saying that it is not and that we ought to have competition and just open the door and let the lowest rates prevail.

Mr. BROSNAN. Well, sir, that is exactly what you have now with respect to the bargeline haulage of bulk commodities. The only regulation with respect to them is the mixing of these barges in certain tows. While these people come here arguing that they want to justify something they have been doing, according to the Interstate Commerce Commission they have been violating the law for all these many years and now they hustle in and want quick action by the Congress to make what they have done legal.

Well, I could draw some pretty good comparisons of other people who violated the laws and who would like to have the laws amended so as to make what they have been doing or what they would like to continue to do legal. I won't do it because some of them could be pretty sorry examples, but the principle of violating the law is the same no matter who does it.

Mr. PICKLE. Well, I agree with that, although I had anticipated this approach and in fairness you said you do have this position, but now you are saying it is a violation of law but you want to have it also now.

Mr. BROSNAN. What I said went to the great speed with which the bargelines want this thing changed by the committee and I say this:

> If you change it, then the Congress recognizes that it wants to change the law, which has been done on many matters over the years.

I don't know that they have done it too often in order to protect somebody who has been violating the law, but aside from that, if it is to be amended then we think we should be included because if we continue to make these exceptions that further deregulate our competition while still keeping us under regulation, very frankly the day is going to come when you won't have railroads.

Mr. PICKLE. None of us hopes that will continue because we ought to keep all modes of transportation as strong as possible in the public interest.

Mr. BROSNAN. Well, sir, it is just a matter of counting money, outgo against the ingo.

Mr. PICKLE. It seems to me that the idea of open competition would be a good thing or at least in reverse regulate everything. I think there is a certain amount of fairness to that and I agree with your general approach. I think, though, that we have to consider if one mode of transportation is in a position to take advantage of another mode of transportation and we have to consider the various aspects of these modes of transportation as I see it and that is why I think we need

to look into the antitrust provisions and with respect to the Robinson-Patman.

Mr. BROSNAN. Could I say something to that?

Mr. PICKLE. Yes, sir.

Mr. BROSNAN. The trucks and railroads are certainly fully competitive because they both go everywhere. If anything the trucks go some places the railroads don't go. Competition by bargeline is limited to a river and if there be any unfairness or inequity toward the public, as far as protecting the public is concerned, it is that cities along the river have been helped at the expense of inland cities.

Now, what we did with our grain rates was to extend to inland cities benefits that cities alongside rivers already had and this very principle was fought tooth and nail for 4 years by the bargelines by every means that they could come by.

Now, while they talk about discrimination, they are here badly discriminating against the inland towns and I must say it would seem to me that there are a great deal more inland cities in America than there are cities located along navigable streams.

Mr. PICKLE. One question, Mr. Chairman. Would you express your own position, that of your company, on the problem we have with respect to a stay of execution of this particular order passed January 1, say approximately 6 months or a year.

You have not submitted your amendment. We have not gotten any kind of recommendation from the ICC or any other regulatory agencies. We have a time element. We are trying to be fair to the various modes.

Would you express your own position about the possible stay or do you think we ought to act on this legislation now?

Mr. BROSNAN. I think it should be acted on across the board rather than to deregulate one of our competitors even more than they are presently deregulated. I think as far as further deregulating them without deregulating us, even trying to protect some time limit which they put in here to keep them from violating the law, there is no need for it since they are making money, all of them, and they are not candidates for the poorhouse.

They can well afford to allow this committee and this Congress time to give this matter the necessary deliberation without trying to draw a deadline here in an attempt to force you gentlemen and the Congress to work under some pressure to pass something that is purely for their benefit.

This isn't going to help the shippers any. This will only add money to the barge operators' and pockets and worsen our ability to compete.

Mr. PICKLE. I would imagine that you are right that they are not candidates for the poorhouse.

Mr. BROSNAN. No, sir; they are not.

Mr. PICKLE. And neither do I imagine that the railroads are candidates for the poorhouse. Are you a candidate for the poorhouse?

Mr. BROSNAN. My railroad is not. There are some that are. However, I will say this. Well, I won't say it either. I was going to pay some further respect to the accounting methods followed by some of the bargelines in the way in which they are able to hide their operations

and money in the various businesses that are not necessarily tied into the barge operation.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. As a Congressman I also welcome you and it is good to receive the chairman of one of America's most successful railroads.

I want to particularly compliment you on the part that you have played in the building of our livestock feeding and poultry industry in the vicinity of our city. As you well know, in west Tennessee and northern Mississippi it has become a rather fabulous business. Mr. Brosnan, we need your help, and I am sincere about this, to try to pull the ends together here and see what we are all trying to do.

As you know, I have one of the bills in on this particular problem. When the people approached me—and I repeat this every time anyone testifies here—when the people approached me and asked me to help them here I said, "Let me make something clear. That I am going to be for the same thing for the railroads."

Now, I don't think my attitude iis any different from the rest of the people. We are seeking fairness. We don't want to come out of this thing as being pro or anti anybody. It is probably impossible not to be, but this is not our intent.

So basically our problem is this: We would like to give you some sort of deregulation or more flexibility. I think there are also old skeletons in the closet, and some of them are 75 and 80 years old, about the fear of this big massive monster, the railroads—you have heard it all your life and I have heard it all mine, not as much as you have I am sure—being able to lower the boom on the independent operator and run him out of business.

Now, you know in your own mind this is mostly an illusion but we as people who face the public are faced with thousands of people who do not know that this is an illusion, so what we need are some suggestions from your industry, and whether or not you have them here today is probably beside the point. We want some suggestions from your industry as to this one thing, and that is the danger of not just meeting competition, but, well, to give an example, the only things the bargeline really has to offer are quantity and price. They can't beat you on service. They can't beat you on speed. They can't beat you on convenience. They can't beat you on anything but the quantity they can haul and the price they charge, so to be competitive with them you don't have to meet them dollar for dollar and no one expects you to.

They have some advantages over you in that they don't have to meet you dollar for dollar because they can offer other services so the competition I know is not always dollar for dollar.

If it was, you would have to meet it right down the line, but what we want is some suggestion, maybe part of the amendment that you are going to propose, that will somehow make the antitrust thing, or whatever you are going to propose as a guarantee to the public, a meaningful thing.

I want to give all of you flexibility, but I also want to guard against that one remote possibility, and I will grant in my opinion it is remote, but it is still there, and this is the reason things like Robinson-Patman have come up. They haven't come up in the sense of a direct sugges-

tion. They have come up as how efficient they are, Mr. Brosnan, to try to come up with a compromise solution for everybody.

Mr. BROSNAN. May I answer?

Mr. KUYKENDALL. Yes.

Mr. BROSNAN. Well, sir, in the first place in the railroads we have had our skeletons and no doubt about that and I can't be responsible for the things that the so-called railroad barons did any more than the present oil people can be responsible for what their predecessors did or the steel companies for theirs or a dozen other industries.

That was the time in which they lived. We live in different times today and all business has a deeper sense of responsibility or should have toward the consumer and the public of America.

If they don't they are certainly out of step.

My judgment is that the only way you can prosper in business today is to serve the needs of the public and do it at a low price, the lowest price you can generate and make a profit. As far as size, it is true that way back in those days the railroads were the largest business around. Today we are pretty small potatoes in the American business picture. Certainly there was no competition in transportation in that era.

Today there is all kinds of competition. There is the common carrier truck. The shipper can buy and use his own truck to haul his own goods so he goes into a do-it-yourself operation to compete. These things are fine. They represent progress.

As Mr. Truman is alleged to have said once, "If you can't stand the heat don't go into the kitchen." Something like that. We can take the heat, but we don't want our competitors having more heat supplied to them than they themselves can generate which is the effect of help through subsidy or through regulation that penalizes us in actually competing with them.

The point, sir, is that we are much smaller potatoes in the market today, transportation market, than we were when most of these outmoded laws were enacted. They may have been needed then. They are not needed today. We are perfectly willing to take the same regulations the bargelines have in all respects, just exactly what they have.

We will be glad to take that. We are on record as having said in the much larger case of a few years ago where we were seeking deregulation in a much broader range of commodities that we would take antitrust regulation and we would forgo the Bulwinkle Act. We certainly would, speaking for my company, and, since the railroads agreed to this at that time, 2 years ago, I see no reason why they wouldn't agree today as a group. We would be willing to take whatever regulations today you put on the bargelines, either what they have now or what you may put on them and we think that this as a matter of equity would be fair.

Now, simply because we run on a track and a truck runs on a highway and a barge runs on a river that is provided free of cost for them to use, that is not the meat in the coconut. The meat in the coconut is what does it cost the public to buy transportation.

No matter how it gets there, whether it comes in a wheelbarrow or by an airplane, what does it cost the public. It is not a question of the mode primarily as far as the public interest or public welfare are concerned. It is what it will cost the public.

Certainly I don't know anything we could say that would be fairer than to say we would like equal treatment with respect to punitive laws such as antitrust or what have you.

Mr. KUYKENDALL. Thank you, sir.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Thank you. Mr. Brosnan, it is nice to have you here and we appreciate the fact that the other gentlemen are here with you and in many ways you represent enlightened management in the railroad field so I have several questions that will deal with operation and with cost.

First, I think that at inland points there is no waterway. That is true throughout a great portion of the United States. Do the trucklines—and I will ask them when they testify—compete with you on bulk commodities such as grain, coal, and other bulk commodities to any significant degree?

Mr. BROSNAN. Yes, sir; they do.

Mr. ADAMS. You say there do compete. Now I would like to ask you this, and again I don't want you to give any trade secrets.

On flat cost from an inland point to a coastal port is your cost—I am not talking about profit or anything, just cost—more or less than the trucklines?

Mr. BROSNAN. Our cost is less than the trucklines and that goes with all commodities.

Mr. ADAMS. Between a point on any major river such as the Mississippi, and a port such as New Orleans, is your cost more or less than the barge?

Mr. BROSNAN. It depends on the volume, sir. If we haul an equal volume with them our cost can be as low or may be lower than theirs.

Mr. ADAMS. Now, you say volume.

Mr. BROSNAN. Our actual cost.

Mr. ADAMS. Is it that they can carry a greater volume per unit and thus have a lower cost if they have sufficient bulk? Is that what you mean by it depends on quantity.

Mr. BROSNAN. Well, you can ship 50 tons or so by rail. It would be very seldom that anyone would ship as little as 50 tons by one shipment by barge. They usually would haul 500 tons or 5,000 tons or so. Now we have a scale of rates that are based on carload rates, carload shipments, and multicarload shipments and, of course, the more quantity you ship at one time the less our cost is to handle the material, and our cost of owning cars available for hauling it is less, and our price slides off and is reduced.

Mr. ADAMS. And your time period elapsed is less than for water carriers, is it not?

Mr. BROSNAN. Yes; it is less. It is one of the inherent advantages.

Mr. ADAMS. All right, now, you mentioned in your testimony just a moment ago in answer to Mr. Kuykendall's question that it didn't make any difference whether you ran on rails or on highways or on water.

Do you believe that the same type of exemption would produce equity if the same regulation were applied to each of the three modes of transportation?

Mr. BROSNAN. I do.

Mr. ADAMS. Now, I don't.

Mr. BROSNAN. May I add to that?

Mr. ADAMS. And I would like to have you tell me why you believe highways and waterways, where anyone can come in or go off those public facilities, are the same in terms of applying regulations as the railroad net which is already established, already merged, and serves certain points that the others cannot serve economically?

Mr. BROSNAN. Yes, sir. In answer to these questions the railroads, of course, don't serve as many cities and towns as the trucks do. They serve a great many more, far many more, than the water carriers do.

So there is a scaling off in the number of cities reached by the three modes. But as I said a moment ago, sir, the controlling thing is the cost to the public and not the cost to an individual carrier. The barge lines, for example, had a mighty cheap rate to Chattanooga, Tenn., but they couldn't haul grain to Atlanta, Ga., or Gainesville, Ga., and they fought us when we attempted to extend in effect, really the same scale of rates that we proposed to Chattanooga, to Atlanta, Ga., Gainesville, Ga., and Columbia, S.C., and other places in the Southeast, the same scale of rates that applied by water up to Chattanooga or other so-called river ports.

We thought that these inland cities were entitled to the same sort of treatment that the towns along the river had and we fought for 4 years over that very matter as I said in my testimony.

Mr. ADAMS. I have no other questions.

Mr. FRIEDEL. Thank you very much.

Mr. PICKLE. Mr. Chairman, may I just ask him one question?

Mr. FRIEDEL. Just a minute. Mr. Watson hasn't spoken yet.

Mr. WATSON. I will be happy to yield to my colleague.

Mr. PICKLE. The 60-percent reduction you got, was it just along the points where your river traffic would flow, or was it across all the inland places likewise?

Mr. BROSNAN. It was across the entire railroad. It applied to Chattanooga, which is a river point, all river points. It applied also to inland points like Atlanta, Columbia, S.C., Charlotte, N.C., hundreds of inland cities.

Mr. PICKLE. And to a Texas town, 60-percent reduction to ship grain from Atlanta we will say to Dallas, Tex.

Mr. BROSNAN. Unfortunately for us we don't serve the great State of Texas. I wish we did.

Mr. PICKLE. Well, it is only your rates then, only your own railroad rates.

Mr. BROSNAN. Well, these rates apply in the Southeast.

Mr. PICKLE. Does the some deal apply to the Southeast?

Mr. BROSNAN. I can't answer that, sir. I don't know what their scale of rates is.

Mr. PICKLE. You mean only South, not into the Southwest.

Mr. BROSNAN. No, sir. I am speaking of the territory that we serve.

Mr. WATSON. We might say in connection with that I am sure that other railroads have followed the practice. Once you were successful after this long and hard battle I am sure that the railroads that are serving the great State of Texas followed your lead in that regard and made very substantial reductions.

Mr. PICKLE. I don't know that they have, Mr. Watson. I am sure going to check.

Mr. WATSON. I am sure they have.

Mr. BROSNAN. I will say this. They can make mighty good money out of it if they will do it, if they are not doing it already.

Mr. WATSON. Mr. Chairman, I only want to second the sentiment expressed by so many of my colleagues commending Mr. Brosnan. I am just sorry that they upstaged me because you have more voters in my area than perhaps in some of the others. I don't want to take anything away from you, but the mark of a real executive is the ability to surround himself with outstanding associates and you have done a good job in that regard there.

Mr. BROSNAN. Thank you, sir.

Mr. WATSON. Certainly I think you made a very good statement, and you put some of the interested parties in this legislation in a rather embarrassing position at this particular point, but I do thank you for coming over and giving us the benefit of your sage and sound advice on this matter.

Mr. BROSNAN. Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Brosnan.

Mr. BROSNAN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. John E. Gross. He has a statement for the record.

(The statement referred to follows:)

STATEMENT OF JOHN E. GROSS, CHAIRMAN, INLAND WATERWAY COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman, Members of the Subcommittee, my name is John E. Gross. I appear in behalf of The National Industrial Traffic League in my capacity as Chairman of its Inland Waterways Committee. I am General Traffic Manager of Inland Steel Company, Chicago, Illinois. I am also a member of the Executive Committee of The National Industrial Traffic League.

IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League (which I shall sometimes refer to as the League) is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation. The members of The National Industrial Traffic League are located throughout the United States, consist of enterprises large, medium and small, and use all modes of transportation, by land, sea and air. Carriers are ineligible for membership in the League.

For over more than 60 years of its existence, The National Industrial Traffic League has been dedicated to the development and maintenance of sound conditions in transportation, having in mind the needs of the nation, the carriers and shippers. To that end the members, committees and officers are constantly studying and acting upon policies with respect to transportation. Among other things the League has frequently presented its views to the Congress on proposed transportation legislation. We appreciate very much the opportunity afforded us to do so today.

LEGISLATIVE PROPOSAL HERE UNDER DISCUSSION

The Subcommittee is here considering amendments to Section 303(b) of the Interstate Commerce Act which presently provides as follows:

"(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this part

takes effect, to the provisions of the Inercoastal Shipping Act, 1933, as amended."

H.R. 7610 contains two amendments to Section 303(b). The first would delete from the above language the phrase: "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)."

The second amendment would strike the following sentence in its entirety: ". . . For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. . ."

The National Industrial Traffic League has for many years had a very clear-cut policy on the matter here involved. That policy is quoted below:

"*Water Carrier Exemptions.* The League approves retention of the bulk commodity exemptions appearing in Section 303(b) and (c) of the Interstate Commerce Act, modified or amended by elimination, first of the present 'three commodity' restrictions, and second, of the present 'as of June 1, 1939' restriction, retaining however the present nonapplication of the exemption to transportation subject to the provisions of the Intercoastal Shipping Act, 1933, as amended."

It will be observed that H.R. 7610 is quite compatible with the above established policy of the League. The League here appears in support of the enactment of H.R. 7610.

ELIMINATION OF THE JUNE 1, 1939 STATUTORY DATE

Since there are basically two amendments to Section 303(b) contained in H.R. 7610, I shall discuss them in consecutive order. As above indicated the second sentence of Section 303(b) would be amended by deletion of the present benchmark in time as to what are "commodities in bulk." At present this is determined "in accordance with existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939." In other words, definition of bulk commodities is being governed by practices in vogue and products being produced almost 30 years ago. This implies an assumption, or conclusion, that no further progress will be made subsequent to that date. Events have proved this wrong.

Therefore, the League strongly endorses the deletion of the quoted phraseology, and our reason is in two parts: First, there are many new commodities which have been developed since June 1, 1939, and many more will be developed in the future, which are truly commodities in bulk and which can be conveniently, efficiently and safely transported in bulk. The chemical industry, and the petroleum industry are notable for having developed such new commodities.

Second, many commodities which existed prior to June 1, 1939, but which, for some reason, had not been transported in bulk may now be so transported, because of technological improvements in handling methods or improvements in transport equipment and accessorial facilities. Illustrative of these changes are the advances in the technology of transportation whereby bags, barrels or packages have been eliminated in order to utilize the vehicle itself as the container in achieving the benefits of maximum quantity and economy in the transport of commodities in bulk.

I do not have to tell the members of this Subcommittee that transportation is one of the most dynamic segments of our economy. The shipping public has every right to expect that the transportation industry, and the laws applicable to the transportation industry, shall keep pace with technological change, new developments, and should in every way be able to adapt to the developments with respect to old commodities. The League is strongly opposed to any such magic date as June 1, 1939, as obstructive of the kind of progress both the Congress and the shipping public expect and desire. In our judgment there is no justification or need in Section 303(b) for the date June 1, 1939, or any other date, for that matter.

ELIMINATION OF THE SO-CALLED "MIXING" RULE

This brings me to the second amendment contained in H.R. 7610, which calls for the deletion in Section 303(b) of the following sentence: ". . . For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel . . ."

Th League is strongly in favor of this amendment, because it will enable the barge lines to assemble tows of optimum size within a minimum time span. This benefit is achieved, because the amendment would permit carriers to assemble tows without regard to how many individual commodities are contained in the various barges, and without regard to whether any of the barges contain non-

bulk commodities. (I have, of course, in mind that in any single barge there could not be more than three commodities in bulk at one time.)

If this amendment is not passed, it is our firm conviction that the shipping public will be deprived of important economies and efficiencies in barge transportation. Put another way, the shipping public will ultimately be compelled to bear the buden of inefficient, more costly, barge transportation.

To explain this further, we know that barge transportation is conducted most efficiently when the maximum number of barges can be assigned to individual tows. Over the years the maximum quantity of barges per tow has increased dramatically; we understand that this has been particularly true within the last ten years.

Unless the law is changed in accordance with this amendment, logic tells us that the water carriers have only two courses of action: they may either (1) delay the accumulation of tows in order to achieve optimum size while still avoiding the inclusion of more than three separate bulk commodities within a tow, or (2) release tows with less than the optimum number of barges. Should the first alternate be selected, lengthy delays in the transportation service would result, to the detriment of the shipping public. Such delays would cause a longer and a more erratic time in transit between given ports. It would be only realistic to state that such unpredictable and slower service could very well cause barge service to be useless in those trades where transit time is an important consideration.

The other alternate would be to operate with smaller and, therefore, less efficient tows. This would minimize transit time but would drive the carriers' cost up. This cost increase would inevitably be reflected in the rates structures, to the detriment of the shipping public.

Obviously, neither alternate would be satisfactory, and a combination of the alternates would only compound the disadvantages of each.

CONCLUSION

Consequently, The Nationaly Industrial Traffic League strongly supports H.R. 7610 as a major advance in the field of interstate transportation. As indicated, failure to enact this legislation will not serve the public interest; in fact, failure to pass this legislation will operate most adversely to the interests of the shipping public. We strongly endorse passage of this bill.

May I thank the Chairman and the members of the Subcommittee for the opportunity to present these views in behalf of The National Industrial Traffic League.

Mr. FRIEDEL. Then we have Dr. L. L. Waters, professor of transportation, Indiana University. Mr. Waters, would you be willing to submit your statement for the record?

STATEMENT OF DR. L. L. WATERS, PROFESSOR OF TRANSPORTATION, INDIANA UNIVERSITY

Mr. WATERS. Yes. I only had a limited number of copies. It is quite brief.

Mr. FRIEDEL. Oh, all right, you may proceed.

Mr. WATERS. All right, fine. Mr. Chairman, I have been asked by representatives of the water carrier industry to comment upon the subject of uniform regulations on the various modes of transportation. The testimony which follows may be a surprise to waterway operators.

My comments have not been reviewed by the industry and represent my own views, which may be at variance with those of the industry in details if not in essential substance. All of you appreciate that changing technology in inland water transport has made for much larger aggregations of barges. This has caused some difficulties in the three-commodity rule. There is no need for me to extend the record with regard to this.

Question has been raised as to whether or not extension of the exemption beyond three commodities should be applied to other modes of transportation—specifically, the railroads.

The remark "What is sauce for the goose is sauce for the gander" is not original with me and there is certainly some merit in this. My considered view is that the issue of removal of controls over bulk commodities by rail is a worthy topic of investigation toward the goal of less regulation in the industry as a whole. It is relevant to this issue but should not be controlling.

I would go ahead and recommend the removal of the limitation in the barge industry and then get on with straightening out other inequities or obsolete arrangements in all parts of transportation. Long experience has demonstrated that attempts to straighten out all the problems of transportation at one fell swoop have not been particularly fruitful, as evidenced by the Department of Commerce report of a few years ago, with which I was well acquainted as a member of the Transportation Council.

The same is also true of the so-called Weeks report and the so-called Doyle report. I do not think that a very good judgment can be made at the moment on the issue of removal with regard to the railroads without extensive study and hearings and, I frankly, would hope that members of the committee would take the initiative to see whether or not this is also in the public interest.

Two points should be observed. First, to an increasing degree, transportation by rail is in bulk commodities. The discontinuance of LCL service and, parenthetically, passenger service has shifted the railroads more and more into bulk movement.

Exempting three-quarters of rail movement, depending upon the section of the country, from rate control may make rather meaningless controls over nonbulk commodities. Indeed, there may be something to be said for removing all controls but before going this far, I would hope that extensive study on your part would establish the extent of safeguards which might be necessary to promote efficient transportation for producers of goods and to promote the health of carriers by road, rail, water, and air.

The second point that I would like to make is quite simple. There is nothing at all holy about uniform regulations on different modes of transportation. I would regard it as a great coincidence if the identical controls would promote equity, justice, or anything else which sounds good.

Transportation is offered under different circumstances by some of the different modes. Their opportunities, their temptations, and their costs differ markedly. Rather, we should have controls that are appropriate to each so that our economy is fostered best.

Without meaning to be impertinent, I would say that a group of six girls in the third grade in the country school need different rules for conduct than six women in the red light district of one of our major cities. Both groups of girls belong to the human race, and indeed, may even have certain features in common, but I think that the regulation of their conduct need not be the same.

This analogy is not offered facetiously; I simply want this committee to use its collective wisdom to make some progress on the instant bill and then to proceed with consideration of other measures which

will minimize any deterrents to efficient transport offerings by each of the modes, including the railroads.

The latter are in a distressed financial condition and the results of 1967 do not promise well for a satisfactory rate of return measured by any standards. This, however, is not adequate cause for hesitating to take a proper forward step.

Thank you.

Mr. FRIEDEL. I want to thank you very much, Mr. Waters, for your very short statement of your own views. Any questions?

Mr. DINGELL. Mr. Chairman.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. We have heard a great deal of testimony about the reason for deregulation. Now, you, I assume, as a professor of transportation are familiar with the underlying theory. In theory why should not every mode be regulated? What is the advantage in theory to deregulation?

Mr. WATERS. Well, presumably if there are no conditions of monopoly or conditions of power that may be exercised by a particular mode and if the conditions of offering the service suggest fairly pervasive competition then there is no reason why we can't rely upon competition to get us the best service and the lowest price in this sphere just as we might in the production of pickled pigs' feet or any other commodity.

Mr. DINGELL. Your statement is that if there is competition there is no need for regulation; is that right?

Mr. WATERS. That is right, or put another way, if there is no likelihood of being victimized.

Mr. DINGELL. Yes, sir. Now, if, however, there is an absence of competition then regulation becomes necessary does it not?

Mr. WATERS. That is right.

Mr. DINGELL. If there is also monopoly regulation becomes necessary; am I correct?

Mr. WATERS. That is right.

Mr. DINGELL. If we have situations where there might be discriminatory practices which would be hurtful to other modes, or which might be harmful to shippers or to consignees or to the public interest generally then again regulation becomes necessary; am I correct?

Mr. WATERS. That is correct.

Mr. DINGELL. So it is for this reason that the historical pattern of maximums and minimums has evolved; am I correct?

Mr. WATERS. That is right.

Mr. DINGELL. Let's put it this way. Isn't it a fact that there are many areas where there are entire monopolies in charge of certain kinds of commodities?

Mr. WATERS. Oh, yes. You still have the presence of what I would term many pockets of near monopoly.

Mr. DINGELL. That is right.

Mr. WATERS. I can illustrate many of them.

Mr. DINGELL. Many situations where through the clever use of the economic powers of a particular mode of transportation other modes can be eliminated so as to create a situation of monopoly and so as to eliminate other modes.

Mr. WATERS. Yes.

Mr. DINGELL. So again regulation is required in the public interest.

Mr. WATERS. That is right.

Mr. DINGELL. Is it your opinion that the antitrust laws are a workable substitute for ICC regulations?

Mr. WATERS. Not very. I think if we relied upon the antitrust laws we would probably have the most full employment act ever passed for the legal profession.

Mr. DINGELL. Probably for economists too.

Mr. WATERS. That is right, for economists. You would have an enormous timelag just in processing the cases.

Mr. DINGELL. What would happen there would be that a lot of times the operation would be a success but because of the passage of time the patient would die.

Mr. WATERS. That is right. There isn't much doubt about that and I suspect that if we eliminated the particular types of controls that we now have through the Commission that we would have to develop others and it would take a long time to figure out what would be the optimal type of machinery to cope with the problems. I don't think that tinkering with the Robinson-Patman Act or the Clayton Act or the Sherman Act would take care of it.

Mr. DINGELL. Isn't it a fact, however, that in theory at least regulated carriage should be at least as cheap in bulk as unregulated?

Mr. WATERS. In theory it ought to approximate it, that is right.

Mr. DINGELL. And in practice it is very generally so. It is usually so, is it not?

Mr. WATERS. Oh, sometimes it gets close to it, but it doesn't get there. I could give you an example.

Mr. DINGELL. But in practice unregulated doesn't necessarily get right to that highly desirable point of being the cheapest possible mode of transportation, does it?

Mr. WATERS. That is right.

Mr. DINGELL. Because from time to time the transportation system will be operated to that the bulk shipment in one area and under one set of circumstances will subsidize another shipment.

Mr. WATERS. That is quite true.

Mr. DINGELL. You have been very helpful. Thank you, sir.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Mr. Chairman, Professor Waters, two or three questions. In paragraph 1 of your prepared statement you say that we appreciate the dramatic change that has been made in water transportation and it has been dramatic over the past 27 years.

Mr. WATERS. That is right.

Mr. WATSON. So as a consequence we could logically follow that preferential treatment or exemption once afforded this growing industry would not necessarily be warranted at this time since they have made such dramatic progress.

Mr. WATERS. That is right.

Mr. WATSON. In the next paragraph you state that you would "go ahead and recommend the removal of the limitation in the barge industry and then get on with straightening out other inequities or obsolete arrangements in all parts of transportation."

Are you aware of the fact, sir, that this committee labored long and hard to try to clear up the inequities as applying to the law and one of the parties that is now seeking relief and you here in their behalf objected to and refused to support it?

Mr. WATERS. I am well aware of that.

Mr. WATSON. So obviously there is not some effort being made on the part of some carriers to straighten out all the inequities.

Mr. WATERS. Yes, sir. For example, I would say that if you went ahead you might make the next priority to what extent you can alter the onbulk commodities of the railroads, rather than tackling simultaneously the problem of section 22 rates or the problem of co-op trucks.

Mr. WATSON. Yes, sir; but of course the purpose and point of the question that I gave to you was that the very party that you are here representing was the one that scuttled or among those that scuttled the efforts earlier to do what you advise being done and that is to——

Mr. WATERS. I would be prepared to disagree with them if you tried it again and they asked me to testify.

Mr. WATSON. Then on page 2 you say "There is nothing at all holy about uniform regulations on different modes of transportation," and so forth, but you would agree as the varying modes of transportation become more competitive that there would be the desirability on the part of representatives who are to look at the interest of all of the modes of transportation to make them as uniform and equitable as possible.

Mr. WATERS. To make them as equitable.

Mr. WATSON. That is correct.

Mr. WATERS. Not necessarily as uniform.

Mr. WATSON. Now, we do encounter a lot of difficulties when we have one law for one group and another for another group and I was rather amazed at your example here of the six girls in the country school would need a different set of regulations from the six in the red-light district. I believe what you really meant to tell us is that it would be easier for the six girls in the country school to live up to an accepted standard of conduct than for the ones in the red-light district.

Mr. WATERS. Yes.

Mr. WATSON. You would not suggest that we have different standards for those in the red-light district than for those in the country school. You didn't mean to tell this committee that?

Mr. WATERS. No.

Mr. WATSON. You meant that all the standards should apply to all of them.

Thank you very much. You have been helpful.

Mr. FRIEDEL. The gentleman from Texas.

Mr. PICKLE. I just want to see if this is a correct version of your testimony: That you would recommend the approval of this legislation or something in this neighborhood at this time.

Mr. WATERS. That is right.

Mr. PICKLE. And then hopefully next year get into the problem of granting the exemption to railroads.

Mr. WATERS. Of examining to what extent you can do it and what safeguards.

Mr. PICKLE. Each horse, each transportation horse, whether it is railroads or trucks or barges, after you give them some kind of a handicap then you start the horserace then.

Mr. WATERS. No, I wouldn't necessarily say that. Any time I can improve——

Mr. PICKLE. Not uniformity. I just am trying to say in this parlance that you would have a horserace but each one would probably be given some kind of a handicap before the race starts.

Mr. WATERS. No, I don't suppose I would want to put a handicap on any of them because I want each horse to get there just as fast as it can and the exact order in which they finish is not of great concern to me. I want the least aggregate time for all.

Mr. FRIEDEL. Mr. Waters, I have served in a legislative body since 1935 and I have always found that you can get the best sort of legislation by compromise.

Mr. WATERS. That is quite true.

Mr. FRIEDEL. And if we were to act on this bill separately I am afraid we would have them in opposition to any future legislation that would be beneficial to the railroads and to the truckers, and personally I feel that if we are going to do anything we should do it in one package.

It is pretty hard to do it and it is a lot of work but it should be done that way. Otherwise we will have opposition. As this one gets it, the other one will oppose this one and then the next one that comes along and the one that got his will oppose the next one's legislation.

Mr. WATERS. I can be very sympathetic.

Mr. FRIEDEL. I have seen it back since 1935. We did the same thing with taxes, "Oh, that is a good tax, but don't tax me. It is wrong. Can't you tax this." Then we get the other people in and they say, "Don't tax me. I know we need the money. We need more schools. We need better roads and all that, but don't tax me. You are going to ruin me."

So I found out we have to take it in a package and we will get a better bill.

Mr. WATERS. I can be extremely sympathetic to your position.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Professor, those of us in the West and in the South are worried about the fact that we country girls may be in a position of becoming the Red Light girls. Isn't it true that these pockets of near monopoly that you refer to are in the areas where you have the long overland hauls in the country?

Mr. WATERS. Generally that is right.

Mr. ADAMS. In other words, when you move off the waterways and into long haul areas on bulk commodities such as grain or petrochemicals, you move into a situation where the railroads have the virtual monopoly in this area.

Mr. WATERS. On dry bulk. Oil, for example, the pipelines.

Mr. ADAMS. I didn't ask the other parties because they are directly interested, but isn't it true as a matter of cost that you cannot economically carry grain over a long haul by truck in competition with rail?

Mr. WATERS. I happen to be a grain producer in the State of Kansas and it is rather interesting that my manager tells me that of all of my wheat in the last few years goes by truck. He can't remember how long it has been since a bushel of my wheat moving to gulf markets, which is about 800 miles, has gone by rail.

Mr. ADAMS. Does it flow by barge down the river, with a truck operation in between?

Mr. WATERS. No; it goes by truck, by exempt haulers.

Mr. ADAMS. You are telling me that you don't have the problem that we had in the past, and this is important for us because we might determine, as Mr. Friedel pointed out, some type of compromise or perhaps deregulating where you have true competition.

We need to know as a fact whether you now have a competitive situation on bulk commodities in the inland areas? If you do it changes our whole perspective.

Mr. WATERS. In certain parts. It is surprising with the exemption on some of the agricultural products that a great many of them move a surprising distance, particularly in some cases where it is backhaul movement. But in this it is not even a backhaul movement.

Mr. ADAMS. That is what I want to know. Our truckers in the West tell us that the only time they haul grain from the eastern part of the State of Washington to the coast is where they have a load to the East and they don't want to come back empty, so instead of deadheading back they backhaul grain.

Mr. WATERS. Yes. Those are primarily common carriers.

Mr. ADAMS. This is for wheat and bulk commodities.

Mr. WATERS. That is right.

Mr. ADAMS. If this is competitive out in these areas then our perspective changes and maybe the railroad case is a valid one.

Mr. WATERS. But they won't go two ways on that. That is usually a backhaul deal.

Mr. ADAMS. Yes. Thank you, Mr. Chairman. I would like to pursue it further, but I know you are in a hurry. We would appreciate anything you would like to submit to us, sir, on these so-called pockets of monopoly. Maybe we are behind the times and if so, bring us up to date, would you please.

Mr. FRIEDEL. Mr. Dingell has a brief question.

Mr. DINGELL. Isn't the problem that we have in the transportation industry with everybody trying to get out from under regulation one which deals less with the fact of regulation which achieves a fair result, but the fact that it is unduly cumbersome and unduly time consuming and expensive to undergo? Isn't that the real heart of our problem?

Mr. WATERS. I think that is right. That is right.

Mr. DINGELL. And a real resolution of this tussle to get out from under regulation really is to assure that regulation is fair, expeditious, and that it arrives at a fair result with the minimum amount of time, expenditure, and so forth.

Isn't that right?

Mr. WATERS. I couldn't agree with the statement any more completely and our real effort should be directed in this direction rather than referring to this constant battle of who is going to be regulated.

Mr. DINGELL. Thank you.

Mr. WATERS. I certainly agree with you.

Mr. FRIEDEL. Thank you very much. We will meet again tomorrow morning at 10 o'clock at which time the truckers will appear.

The meeting now stands adjourned.

(Whereupon, at 12:36 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, October 12, 1967.)

WATER CARRIER MIXING RULE EXEMPTION

THURSDAY, OCTOBER 12, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting will now come to order for the continuation of the hearings on H.R. 7610 and other similar bills.

Our first witness this morning will be Mr. James F. Pinkney, chief counsel, public affairs, of American Trucking Associations. Mr. Pinkney.

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL, PUBLIC AFFAIRS; ACCOMPANIED BY PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. PINKNEY. Thank you, Mr. Chairman.

Mr. Chairman, gentlemen of the committee, my name is James F. Pinkney and I am chief counsel, public affairs of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. 20036. You are probably familiar with our organization, but for the record let me say that ATA is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia.

Our presentation will be in two parts.

Following me will be Mr. Peter T. Beardsley, our general counsel, who is here at the table with me, sir, who will present in detail our feelings about the present competitive situation in the transportation industry and the proposal of the railroads that rate controls on their bulk traffic be removed.

When this matter—the revision of section 303(b) of the Interstate Commerce Act—first came up on the Senate side (S. 1314) we did not appear, even though the firm and longstanding policy of the trucking industry is broadly in favor of the repeal or sharp restriction of the exemptions in the Interstate Commerce Act.

We studied the proposal and found that its purpose was simply to overcome the adverse effect of a court decision without changing a longstanding practice of the barge operators—a practice which had not materially affected the trucking industry.

Therefore, we were not in a position to come before the Congress and demonstrate any adverse effect on our industry if H.R. 7610 and the related bills were enacted.

On the other hand, the new and extremely far-reaching suggestion that the rate controls on railroad bulk traffic be repealed is a horse of a far different color. If adopted, it could do irreparable damage to motor carriers—and I use the word "irreparable" advisedly—and would have a long-range adverse effect upon the shippers, and ports, and places and regions of the United States, and on many particular descriptions of traffic.

Bear in mind that we are here dealing with over 65 percent of all railroad tonnage and over 40 percent of all regulated truckload tonnage—all of which is presently regulated.

We urge this subcommittee to take a very long and hard look at this suggestion which would so drastically change the regulatory pattern of this country.

The Interstate Commerce Act has often been referred to as obsolete and archaic. It is neither. Down through the years it has been amended and changed scores of times. It has been carefully interrelated with our antitrust laws dealing with restraint of trade, mergers and monopolies, and predatory pricing, our securities laws, our agricultural policy, and so forth.

At all times its heart has been the power given the Interstate Commerce Commission to insure just and reasonable rates. It is this power you are being asked to destroy with respect to over 65 percent of all railroad tonnage.

The basic reason for the Interstate Commerce Act in the very first place was to prevent unjust discrimination between persons, places, commodities, and particular descriptions of traffic. The Interstate Commerce Commission cannot do this without the power to fix reasonable and just minimum and maximum rates. You may be told that if you do what the railroads ask, the problem of discrimination could still be dealt with by the Commission.

In our opinion, that simply is not so. The only effective weapon to control discrimination is the weapon of rate control. To correct discrimination someone must have the power to order carriers either to raise or to lower their rates. It is our opinion that—

> Without that power the Interstate Commerce Commission could not have brought about the adjustment between freight rates in the North and in the South that was made in the so-called *Southern Governors* case.
>
> Without that power there would be no one to referee the very sensitive disputes between ports for inland traffic.
>
> Without that power cutthroat rate warfare would again be the order of the day. Such rate warfare can only lead to a weakening of our common carrier service—which brings about poorer service, less safe operations, inefficiency, and the dissipation of revenues needed to advance the art of transportation, and to provide a total and effective common carrier system for the United States.

And in this competitive battle there will be many casualties among the smaller carriers of all modes. How many of the existing bargelines and specialized trucklines can stand up against a determined rate war waged by giants such as the New York Central and Pennsylvania Railroads.

On this point let me say that someone has to pay the bill when a rate war takes place. Assuming that more than 65 percent of rail

tonnage and the corresponding more than 40 percent of motor carrier truckload tonnage is thrown up for grabs, the other 35 percent and 60 percent, respectively, will have to make up the loss.

That means that the shippers of products which would continue subject to regulation will find their freight rates up if a common carrier system of transportation is to survive. The piecemeal regulation that would be left would also lend itself to secret practices by which shippers dealing in both regulated and unregulated traffic would be able to obtain advantages over their competitors dealing only in regulated freight.

Another factor that must be given careful consideration is that if better than 65 percent of the rails tonnage is freed from rate regulation, it seems to us that it will be impossible to prevent the balance of the rail traffic from following the same path. It is not possible to have an orderly transportation pattern if, so to speak, traffic regulations are in effect on 17th Street but not on 16th Street.

I might add there if I am correct on this point what we have before us at the moment is the issue of whether there shall be regulation of transportation or not in a broad sense in the rate hearing.

In our opinion, if such deregulation were to take place we would not only have chaos in our transportation system but also in our total economy. Application of antitrust-type statutes might help the situation but in their application, requiring long periods of time, many casualties would occur long before any remedies could be obtained in the courts.

It seems to me that this committee should give careful study to the history of transportation regulation in this country as I am sure it has and will continue to do.

Let me briefly outline it—and point out that my statement from here on follows my testimony before this committee in September 1955 when a similar attempt was being made to do away with the Commission's rate power. The hearings which followed lasted over a period of several years and produced many thousands of page of record as you will recall.

Cutthroat competition, not transportation monopoly, was the reason for the enactment in 1887 of the first act to regulate commerce.

In 1885, Mr. Charles Francis Adams, president of the United Pacific Railroad, speaking on the subject of the effects of railroad competition, had this to say:

May I state at this point I think you could forget rail transportation and just use the word transportation in what he had to say. But here he was speaking specifically of the effects of the rail competition at that time, they being the only rail carriers in the United States generally speaking.

> It may produce good in the end; but railroad competition, as necessarily practiced, causes for the time being the wildest discrimination and utmost individual hardship. That is, under its operation you will always find certain points when there is a war of rates going on, which have enormous advantages conferred upon them, which advantages are not and cannot be extended to other points.
>
> The point, therefore, which is not influenced by the war of rates suffers terribly. Its business is destroyed. How the business community, under the full working of railroad competition, can carry on its affairs I cannot understand. I had not been able to understand how it could do it before I became president of a railroad and I do not understand it now.

The businessman never knows what railroad rates are going to be at other places, or at different times. He cannot sit down and say, "I can count upon such a transportation rate for such a period of time, and make arrangements accordingly."

He has to say, "I cannot tell today what the transportation rate is going to be tomorrow, either for me or for my competitor." This must be so just as long as uncontrolled competition exists. It cannot be avoided.

The next year a Senate committee reported on the situation and in its report of 1886, known as the Cullan report, stated:

The paramount evil chargeable against the operation of the transportation system of the United States, as now conducted, is unjust discrimination between persons, places commodities, and particular descriptions of traffic. The evidence is conclusive that personal favoritism between rival shippers first too place * * *. The indiscriminate and cutthroat competition of the carriers * * * offered a golden opportunity to those in search of secret and preferential rates.

Then, in April 1953, Commissioner Splawn of the Interstate Commerce Commission in an appearance before this committee said:

I wonder, Mr. Chairman, if the Interstate Commerce Act was passed to regulate the railroads as a monopoly? Back in 1887 when the railroads were cutting each others throats, were they not competing for traffic inadequate to sustain the mileage that had been constructed; were not their promoters bringing into being new railroads; additional mileage, in competition with that which was already overcompetitive?

Out of this overcompetition had there not come secret rebates; discrimination between persons; undue preference and prejudice as between territories and groups?

In 1931 in his book "The Federal Trust Policy," John D. Clark, a professor of economics, concluded his chapter on the origin of railroad regulation as follows:

The Interstate Commerce Act was a wholly appropriate (although for a long time an ineffective) measure for the control of the competitive practices of industries and responded exactly to those unfair practices which were shown to exist in a dangerous degree.

Up to the very time of its final enactment there were no other practices of such widespread character as to attract attention and of course railroad rebating was of importance to the public principally because its indirect result was a suppression of competition which might lead to price exploitation of the public by an industrial monopoly after all competitors had been driven from the field.

Note that the monopoly problem was industrial monopoly made possible by cutthroat competition in transportation.

I might add at that point or comment on the statement that the Interstate Commerce Act was for a long time ineffective. At the outset inadequate power was given the Commission to control rates and the principal concern was on the high side, the maximum rate situation.

Consequently, industrial monopolies—the Standard Oil trust was the best example of it—came into being and during the early Roosevelt days the first antitrust acts I believe were passed—if my memory serves me correctly, the Clayton Act came along a few years later in the early days of Wilson's administration—and those were designed to help correct the situation that had grown up through the use, largely, of discriminatory freight rates.

That is the way these industrial monopolies were able to be created. They had the advantage. The carriers favored the larger shippers, as they still do today, given no control by the Interstate Commerce Commission.

Mr. FRIEDEL. Speaking of the Roosevelt administration—are you speaking of Franklin Roosevelt or Theodore?

Mr. PINKNEY. I am speaking of the first Roosevelt, Theodore Roosevelt.

Mr. FRIEDEL. All right.

Mr. PINKNEY. So that the attempts then made were to do away, as I say, with the evils created by the discrimination in transportation and they took the form of the antitrust laws to control the rest of the economy, not the transportation part of it.

Now, between the first law enacted in 1887 and 1920, the Congress continuously reexamined its legislation to regulate commerce and made many changes. These changes were to strengthen the original concept of the act. In 1920 a major reexamination was made by Congress, and the Transportation Act of 1920 resulted.

Before 1920 the act concerned itself with maximum rates as I stated a few minutes ago, but in that year it was extended so that the Commission might prohibit rates which were unreasonably low, as well as those which were unreasonably high.

Commissioner Atchison, speaking before the transportation officials of 11 European nations in Washington in March 1952, said of this development:

> This was a distinct breakaway from the policy of freedom of competition, based on a realization that cutthroat competition in rates in the long run is a disservice to the public, and that to this public interest any private and selfish individual temporary gains must give way. Nevertheless, the minimum rate-making power has been exercised but sparingly, and with much circumspection.

One of the salutary effects of giving the Commission minimum rate power in 1920 was to bring about the restoration of coastal and intercoastal water carriage which had been the victim not only of World War I but of railroad selective ratecutting practices.

By selective ratecutting practices I mean the practice of sharply reducing rates on selected competitive traffic for the purpose of driving out of business a competition whose existence depends on the movement of the selected traffic.

Whereas in 1887 regulation was designed to prevent industrial monopoly made possible by the big shipper exploitation of competition between railroads, the act of 1920 was designed in this respect to protect a competing mode of transportation against unfair rate cutting by the railroads and promote the solvency of the railroads themselves.

During the 1920's air and highway transportation appeared on the scene. By 1935 the highway transportation situation had become acute as truck rates were not regulated, and there was no control over the entry of persons into motor carriage.

This unrestrained competition within the trucking industry was proving to be injurious not only to the public but to the carriers as well. Both the railroads and the motor carriers favored Federal regulation, and in 1935 the Motor Carrier Act was passed. This act brought the motor carriers under a very comprehensive system of regulation.

In 1940 similar action was taken to bring water carriers under Federal regulation, and at that time our present national transportation policy was adopted.

Let me now add one final thought about the present situation.

We in the trucking industry want no part of this so-called privilege, as the dry bulk exemption has been called during this hearing. Our

people well remember the transportation jungle in which they operated prior to the enactment of the Motor Carrier Act of 1935.

They are painfully aware of the blight on the common carrier system caused by exemptions of all kinds. Each was designed to help some particular interest—such as agriculture—but nearly all of them have been used by other persons as a means of evading the law—and I used the word "evade" advisedly. Like the common carrier barge people and many railroads, we would welcome the repeal or, where repeal is not feasible, the sharp restriction of their present scope.

It seems to us that is the only safe course today to provide equality.

And now, Mr. Chairman, our general counsel, Mr. Peter T. Beardsley, will deal more precisely with the issue involved, unless you would prefer to ask me questions at this point.

Mr. FRIEDEL. Mr. Pinkney, what was the American Trucking Associations' position in I think it was 1964 when the House considered H.R. 9903?

Mr. PINKNEY. We supported that bill, Mr. Chairman. I talked to Mr. Harris some time before that clean bill was introduced, together with some of our people. He asked us whether we could go along with an exemption for the railroads, not on bulk commodities—the bulk commodities were not involved, except grain—but our stand was on extending to the railroads the agricultural exemption which is to be found in the Motor Carrier Act.

Now, our position at that time, as it is now, was more in favor of rolling back the exemption, rather than broadening it, but in the circumstances of the situation we told Mr. Harris that we would go along with that bill and we did go along with that bill.

Mr. FRIEDEL. That was my understanding.

Mr. PINKNEY. Yes, sir.

Mr. FRIEDEL. You have proposed an amendment to the bill in the event the subcommittee thinks it is desirable that the bill be considered favorably; namely, that the bulk commodity exemption from regulation which is accorded by the bill to the water carriers be continued upon an affirmative statement of the applicability of the antitrust laws.

Now, my question is just how far do you feel that the same amendment which you here propose should be made to the exemption for agricultural commodities which is enjoyed by the motor carriers under section 203(b) of the act?

Mr. PINKNEY. Mr. Chairman, Mr. Beardsley is going to discuss the antitrust phase of this situation. May I have him answer this question now or later?

Mr. FRIEDEL. If you wish, would you answer it now, Mr. Beardsley?

Mr. BEARDSLEY. Surely, Mr. Chairman. I don't want to be picayunish about this, but I wish you wouldn't say that we enjoy the agricultural exemption. We despise it. As far as any application of the antitrust laws are concerned we would have no objection to it, and when I say antitrust laws I am talking about more than simply removing the Reed-Bulwinkle exemption which is contained in 5(a) of the act.

I am talking about the full sweep of the Sherman and Clayton Acts, for example.

Mr. WATSON. Mr. Chairman, may we ask a question in that regard?

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Am I to understand that the position given in your letter to the subcommittee chairman and copies to the members is the same today as it was then? I was led to understand that the thrust of that letter was directed at the initial bill and not toward the possible extended exemption. Perhaps you would have another thought on that and you do not think that that would be adequate at this time?

Mr. BEARDSLEY. You have hit the nail on the head, Mr. Watson. That is exactly the situation. At the time that letter was written we were thinking only of the proposal to somewhat broaden the existing water carrier exemption to take care of the Supreme Court decision about which so much has been said here.

We were not at that time giving any consideration to the question of extending this same exemption in a technical sense to the railroads.

Mr. WATSON. May I ask you this? At that time, and looking at it in its narrowest context, if you thought that the antitrust provisions would be adequate in taking care of the water carriers why do you not think that they would be adequate to take care of any conditions that might exist, I mean that exist as a result of the extension of these exemptions.

Mr. BEARDSLEY. The real short answer to that, Mr. Watson—I go into some detail of it in my prepared testimony—is simply that we are looking at the practicalities of the situation as against the technical aspects of it.

As a practical matter we have had no occasion over the years to be concerned with the water carriers, for example, putting the motor carriers out of business under almost any stated set of circumstances. That is not the situation with respect to our railroad competitors.

Mr. WATSON. So actually your competition is not with the water carriers, and as a consequence you really were not too concerned about that initially, but you did want to have this antitrust provision for whatever it might be worth.

Mr. BEARDSLEY. Yes. We were more concerned there with principle as against the practical necessities of the situation. Let's put it that way.

Mr. WATSON. Let me ask you one further thing and nail down your position as of today.

First, you would prefer elimination of all exemptions under 303(b)?

Mr. BEARDSLEY. Yes, we would.

Mr. WATSON. That is your position?

Mr. PINKNEY. That is right.

Mr. WATSON. Under 303(b) you are in favor of removing all exemptions whatsoever?

Mr. BEARDSLEY. Yes.

Mr. WATSON. And, secondly, failing therein you would like to see a bill that would be very narrow and strict and purely go to the point of overcoming the interpretation of the Supreme Court? Is that your second line?

Mr. BEARDSLEY. If, Mr. Watson, that is another way of saying that we are in any event violently opposed to the extension of this exemption to the railroads, that is correct.

Mr. WATSON. Is your second line having a bill which would narrowly provide for the mere offsetting of the effect of the Supreme Court decision and its interpretation of 303(b)?

Mr. BEARDSLEY. I don't want to avoid your question, Mr. Watson. The best way I can answer is this. We are not overly concerned about what the committee does insofar as the technical exemption or technical amendment to the existing language of 303(b).

Our primary concern, our major concern, is to see that this does not become extended to the railroads for the practical reasons that I cited earlier.

Mr. WATSON. I see. Thank you, Mr. Chairman.

Mr. FRIEDEL. I don't know who will answer this question, but in 1963 Mr. Bresnahan testified that the exempt motor and water carriers came under the provisions of the antitrust laws. Now it appears that you have some reservations regarding the Robinson-Patman Act, and I think that we should have a clear explanation from you as to just what antitrust laws do apply to the carriage of agricultural commodities.

Mr. BEARDSLEY. There is no application presently in the area that we are talking about of the antitrust laws except the Sherman Act itself. The provisions of the Clayton Act, as amended by the Robinson-Patman Act, in the area that I think you are thinking of, Mr. Friedel, apply only to the sale of goods and not to the sale of services, and unless you change that language in, I believe it is title 15, United States Code, section 13, unless you change that language to make it apply to services such as transportation it would have no applicability to predatory pricing in the transportation field.

Mr. FRIEDEL. Well, how about the carriage of agricultural commodities?

Mr. BEARDSLEY. Yes. I don't really know what you mean by that, Mr. Friedel.

Mr. FRIEDEL. I say it now appears that you have some reservation with regard to the Robinson-Patman Act, and I think we should have a clear explanation from you as to just what antitrust laws do apply to the carriage of agricultural commodities.

Mr. BEARDSLEY. Well, let's put it this way. For example, to get down to the Reed-Bulwinkle exemption, since there has never been a court case I don't even know, for example, whether haulers of agricultural commodities are allowed to make collective rates. I am not positive of it.

I think when you read section 5a of the act it refers to carriers, subject to parts 1, 2, 3, and 4 of this act. Now, because agricultural commodity carriers are still subject to the safety provisions of the Interstate Commerce Act, I am not sure, I am not positive in my own mind, that they are prevented from collective ratemaking.

I think the general assumption is that they are. I think it was the intention of Congress to make sure that the exempt carriers were, but there has never been any prosecution, for example, by the Department of Justice in this area and so we have really no litigative history, if I may use that term, to rely on as a precedent to give you what I would like to call a positive answer.

I just think it is a situation that is frought with doubt.

Now, as far as the provisions of the Sherman Act are concerned, I feel fairly certain, other than the collective ratemaking area, that they do apply to the agricultural carriers and to some extent they apply to the railroads too and us, the regulated carriers.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. Kuykendall. Mr. Beardsley——

Mr. FRIEDEL. Mr. Beardsley has a statement. I thought you might want to ask a question of Mr. Pinkney.

Mr. KUYKENDALL. Let me ask both you gentlemen you would not request any specific amendments to H.R. 7610, which is the legislation before us at this moment, or do you have specific amendments you wish to request to H.R. 7610?

Mr. BEARDSLEY. The chairman has referred to the letter that we originally wrote at the time that we were considering this bill only within the narrow confines of the language of the bill itself.

To that extent we would like to see H.R. 7610 amended.

Mr. KUYKENDALL. Would you put what you would like done to H.R. 7610 in layman's terms? You know, these hearings are so technical and are so filled with titles and numbers that a Member of the House reading the testimony who is not a member of this committee might not fully understand.

Would you put in layman's terms what you would like done to H.R. 7610 before it is passed.

Mr. BEARDSLEY. I did not write that letter and I don't have it before me. We sent it to the chairman of the subcommittee and I would like to see that language that we suggested a couple of weeks ago in order to put it in layman's terms if I may.

Mr. KUYKENDALL. Mr. Chairman, do you have a copy?

Mr. FRIEDEL. No, I haven't. We have a copy right there. Off the record.

(Off the record.)

Mr. BEARDSLEY. Mr. Kuykendall, the first thing we suggested is that the carriers exempted by this language shouldn't do any of these things that are prohibited, engage in any act, practice, conduct, or be a party to any arrangement, contract, combination, conspiracy, et cetera, in violation of the provisions of the antitrust laws, as designated in section 1 of the act of October 15, 1914.

That section was No. 1 of the Clayton Act I believe which simply defines the antitrust acts as those included in sections 1 to 27 of title 15, which is the Sherman Act, and the Clayton Act, all of the Robinson-Patman Act except section 3 of the Robinson-Patman Act, and the only reason that is not included is because the Supreme Court has held that that section is not a part of the antitrust laws as defined in section 1 of the Clayton Act.

So that we are saying that that should apply; further, that we recognize the fact that it is still necessary to have consideration of rates applicable to through routes by two or more carriers and we put a provision in here saying that that would not be disallowed, and finally we suggest that section 5a relief be withdrawn with respect to transportation which would be exempted under the amended section 303(b).

Mr. KUYKENDALL. Let me get something straight here, and I think you are probably aware of how much confusion seems to exist here on the subject. The matter of antitrust has come before every witness that we have had and it has been discussed I guess, Mr. Chairman, by every single member of this committee over and over again.

Now, are we not being somewhat contradictory here? I believe the gentleman to your right said in his testimony, that he was not particu-

larly concerned by any sort of predatory practices on the part of the barge people.

I would assume, sir, that the reason you made that statement was because you did not feel there were any corporate giants in the business who were capable of predatory practices. This is basically the fact of the matter, I am sure.

Now, this I believe, if I am not wrong, has been a part of your testimony of the last few moments.

Now, you also stated in your statement, and I am sure of this, that you did not feel that because most of the prosecution was after the fact of the elimination of competition, that antitrust was not satisfactory protection against predatory practices of the railroads. Is this correct, sir?

Mr. PINKNEY. That is correct.

Mr. KUYKENDALL. All right. Now, I can't understand why you want anything even referring to antitrust put in this legislation if you say, No. 1, if it were a railroad it wouldn't be effective and with the barge-lines not necessary.

Would you explain this, sir?

Mr. PINKNEY. Let me answer you this way, Mr. Kuykendall. Our position is much the same I think as that of the Interstate Commerce Commission, that if your committee is concerned with correcting an intramodal inequality as between the water carriers, then this bill as it is presented to you is a way of doing that.

The broader question of inequality between the water carriers, on the one hand, and the railroads and the motor carriers, on the other hand, is something entirely different, and that can only be corrected by doing away with the exemption, so let me state our basic position is that yould should do away with the exemption.

My personal feeling on the antitrust laws is that they would not be effective. I think the situation would be as you yourself have described it in connection with the national food chain being prosecuted successfully under the antitrust laws but after it was all over there were several hundred small grocers who would never be back in business again.

On the other hand, we say this: That if you should by any chance decide to deregulate, deregulate us, deregulate the water carriers further, deregulate the railroads, you certainly should at least put in the maximum amount of antitrust-type protection.

Mr. KUYKENDALL. I think I understand now your position. You want us to make the very best of a bad situation.

Mr. PINKNEY. That is what you would have to do. Otherwise, you would have a terrible situation in the total economy. In my opinion, you would undo the salutary effects of all of the work that has been done down through the last 67 years in trying to counter the problem that was created by discrimination in freight rates back at the turn of the century.

Let me hasten to add, if I said something a moment ago indicating that we would be interested in being deregulated in this regard, I want to correct that impression.

Mr. KUYKENDALL. I don't imply this. I hope I didn't.

Mr. PINKNEY. We are satisfied that the present regulatory scheme is a sound one and necessary in our interest and in the public interest.

Mr. KUYKENDALL. You are the only group that has appeared before us that is satisfied, so we will remember this. Let me ask you one question.

I am not trying to be too blunt and yet the question is a fairly blunt one because your answer here can be helpful.

If you had your choice, sir, and had to make this choice, about whether you think it would be wiser to pass H.R. 7610 as it is written now or to request the ICC for a 6-, 9-, 12-month stay or extension with the stated purpose on the part of this committee of getting into a comprehensive act, which would you say you would prefer?

Mr. PINKNEY. May I have a consultation with my colleague on that particular question?

Mr. KUYKENDALL. Certainly.

Mr. PINKNEY. Mr. Kuykendall, we hardly see how we can answer that question.

Mr. KUYKENDALL. Well, I shan't press you on it. The reason I am asking you is that is a question we may very well have to answer here.

Mr. PINKNEY. I understand. It is a hard question to answer. We, as I say, have not objected up to this point, and in a sense don't object now, to this bill as it stands. I just don't feel competent to answer that particular question.

Mr. KUYKENDALL. I shan't press you, and thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Beardsley, will you give us your statement.

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. BEARDSLEY. Yes, Mr. Chairman. I point out that a good bit of the bulk of my statement, no pun intended, is in appendixes to the statement.

Mr. Chairman and members of the subcommittee, by name is Peter T. Beardsley and I am general counsel of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C.

We appreciate the opportunity to present our views with respect to H.R. 7610 and other similar bills. These bills, as we understand them, would amend the water-carrier bulk exemption contained in section 303(b) of the Interstate Commerce Act to allow the transportation in one tow of exempt and regulated commodities without losing the exemption for the bulk commodities.

This would be accomplished by eliminating from the subsection the sentence which presently requires that all "vessels while navigated as a unit shall be considered to be a single vessel."

The proposed legislation would also, for all practical purposes, remove the three-commodity bulk limitation. Finally, the bills would remove the requirement that the exemption applies only in the case of commodities in bulk which are transported "in accordance with the existing custom of the trade * * * as of June 1, 1939."

Over the years, the regulated motor and water carriers have, to a large extent, cooperated with each other in their legislative objectives, if for no other reason than that in most such instances we shared the same interest in attempting to protect our respective industries from one or another railroad onslaught.

We are not sure whether the proposed broadening of the water carrier bulk exemption, standing alone, poses a real competitive threat to

regulated motor carriers. But even so, the breadth of the proposal concerns us. The regulated motor carrier industry has always stood for repeal of existing exemptions in the law.

We have, for example, time and again, sought rollback of the so-called agricultural exemption contained in section 203(b)(6) of the Interstate Commerce Act, which is a prime source of much of the plainly illegal motor carriage being performed today, often referred to by the euphemism "gray area" transportation.

Much more alarming to us than the specific proposal before you, however, is the clear indication that this broadened exemption, if granted the water carriers, would be extended to the railroads. It is impossible to arrive at an exact figure as to the precise percentage of rail traffic which would thus be exempted from rate regulation.

But the figure, nevertheless, is a very substantial one. Our department of research and transport economics, using freight commodity statistics published by the ICC, estimates the figure to be upward of 65 percent. Exemption of this proportion of rail traffic would threaten the very existence of regulated motor carriers of bulk traffic.

Mr. WATSON. Mr. Chairman, may I interrupt the gentleman at this point? Sixty-five percent is about half again as high or higher than the ICC estimates so far as the rail transportation of bulk commodities are concerned. Upon what do you base your 65 percent?

Mr. BEARDSLEY. First of all, Mr. Watson, I believe that the ICC gave you a figure off the top of their head at the time of the hearing and I will be rather surprised if when they come in with the information, which I understand they are going to submit for the record, their figure isn't a good bit higher.

Mr. WATSON. That concerns me. I am afraid we are getting a lot of figures off the top of our heads from various people.

Mr. BEARDSLEY. I would say this. We did not take the figures off the top of our heads.

Mr. WATSON. No; I was not directing it at you. I am afraid we got a lot of figures off the top of the head.

Mr. BEARDSLEY. Let me point out, first of all, that in his testimony in 1963—I believe it was Mr. Walrath then—we were then talking about both agricultural and bulk and they used the figure of 76.7 percent of rail tonnage in their testimony.

Now, bear in mind that a very substantial portion of the agricultural commodities move in bulk in the sense of grains and things of that kind. That is the vast—I hate to use that word again—bulk of the total agricultural tonnage.

So that our figure is really not as far from that as it might first seem. Our people went through the various categories—and I won't read all of them to you—of traffic published in "American Trucking Trends" and dealt with the freight commodity statistics published by the Commission and took all of the commodities that Chairman Walrath had referred to in his 1963 testimony, which would fit in this category of bulk traffic, such things as grain, cement, flour, et cetera, et cetera, and our figure on bulk as a percentage of total rail traffic actually shows a figure of 69.12 percent, but we say upwards of 65 percent to be on what we think is the conservative side.

I may be wrong about this, but I undestand that the rail testimony before the Senate committee indicated some 68 percent.

Mr. PINKNEY. I think that is correct.

Mr. BEARDSLEY. We just think that is the statement. If that is true—I am not certain of that—if that is a fact, then their figure is very close to ours.

Mr. WATSON. Thank you. It appears that we need a study of this and that is based upon fact and, Mr. Chairman, if we might have some other figures right at this point, I don't believe we have ever gotten in the record what is the relative percentage of all freight, both bulk and regulated, carried by the respective carriers, that is, rail, motor, and water.

Could you give it to me?

Mr. BEARDSLEY. I don't think that figure is available for this reason. Particularly in the motor field, these motor carriers who handle the vask bulk of these agricultural commodities don't report to anybody now.

Let me doublecheck that with one of our people here.

I am shown a so-called ton-mile distribution among interstate freight carriers. Apparently that is the only way that the two things have been put together. The figures for motor trucks are shown as 23.36 percent of the total ton-miles. Inland waterways are shown as 15.73 percent.

Mr. WATSON. Water 15.73 percent, and motor how much?

Mr. BEARDSLEY. That has to be wrong on waterways. Well, I find now that I am talking about, and perhaps you were too, Mr. Watson—you mean putting the combined things together how much do the railroads handle, how much do the trucks?

Mr. WATSON. Two sets of figures, the comparisons in total tonnage between and among the various carriers, and, secondly, the comparisons in percentages on bulk traffic. Then I think that we can see this in a little better perspective and just see what the competitive situation is, and if you could get it later on and supply it for the record I think it would be helpful.

Mr. BEARDSLEY. This is our publication. Again these are taken from an ICC statement. When you put the whole bundle together here is the way the figures break down: 42.49 percent for the railroads, 23.29 percent for trucks, 15.73 percent waterways. That is their respective share of the total pie. That is on a ton-mile basis, not a tonnage basis. That is the only thing that we have, the only figures we have.

Mr. WATSON. That includes all freight, bulk as well as regulated?

Mr. BEARDSLEY. Yes, but I didn't give you the pipeline figure, which is 18.37 percent, and the air figure is so insignificant it is hardly worth citing.

Mr. WATSON. And you do not have a breakdown on bulk, exclusively bulk commodities.

Mr. BEARDSLEY. Again our own department that I referred to earlier has made a breakdown to the best of their ability, considering the imponderables that are inherent in the situation, and have come up with figures for the percentage of the bulk tonnage of the various categories, share of the various modes of traffic that would be involved, and, as I stated awhile ago, the figure for the railroads is 69.12 percent.

The figure for the class I motor carriers is 50.54 percent. This is the respective shares of their traffic, and not the total pie which I gave you a moment ago on a ton-mile basis.

And the figures for the water carriers that we figure are 84.48 percent.

Mr. WATSON. If you could get us the figures on bulk and I know it would be difficult——

Mr. BEARDSLEY. The last figures were bulk figures, Mr. Watson.

Mr. WATSON. Well, your percentages total much more than 100 percent.

Mr. BEARDSLEY. Yes, but the first figures I gave you reading from "American Trucking Trends" were the figures of the share of the total movement. These last figures that I gave you are the percentages of the individual carriers.

Mr. PINKNEY. Within each mode.

Mr. BEARDSLEY. Within each mode. In other words, the bulk traffic the railroads handle constitute 69.12 percent of their traffic. The bulk the motor carriers handle constitutes 50.54 percent of their motor carrier traffic, et cetera.

Mr. WATSON. Perhaps I am not getting through to you. Certainly you can read into my question what I am driving at. I don't want to know the percentage of rail traffic that is bulk. I want to know the percentage of the bulk traffic that is rail of the total bulk picture.

Mr. BEARDSLEY. Yes, sir, and that is what I read to you awhile ago when I pointed out that those are ton-mile figures.

Mr. WATSON. What is the percentage of the total of bulk traffic that is carried by rail?

Mr. BEARDSLEY. I am wrong about that.

Mr. WATSON. Well, I don't want to delay, but if you could get them I think it would be helpful.

Mr. FRIEDEL. Could you get them?

Mr. BEARDSLEY. If we can, Mr. Watson, we will and we will furnish them for the record.

(The information referred to was not available at time of printing.)

Mr. WATSON. Thank you.

Mr. BEARDSLEY. Federal regulation of railroads preceded enactment of the antitrust laws. Because regulation of competition in transportation has always been handled by the Interstate Commerce Commission, which was created for that purpose Congress has traditionally excluded carriers regulated by that agency from most of the provisions of the antitrust laws.

A well-recognized separation of jurisdiction has resulted. In the business field generally, the antitrust laws are applied to assure fair pricing of goods and services in order to protect against unfair or destructive competition and monopolistic excesses which result from great concentrations of economic power in any area of the economy.

But the principles underlying the antitrust laws are equally important in the transportation industry, which touches almost every aspect of our national life. That is, indeed, the primary reason for the existence of the Interstate Commerce Act and the agency which administers it, or at least now its all-important economic provisions.

The act and the agency serve the primary purpose of assuring that competition is conducted on a fair and sound basis, and that never again should a dominant agency of transport subject its competitors and the public to the abuses of monopoly and the discrimination, preference, and prejudice inherent in unrestricted and uncontrolled competition among carriers.

It is now being seriously proposed that the bills before you should be amended to provide similar treatment for the railroads, which, in turn, would exempt greater than 65 percent of all rail traffic from regulation. The question of extension of the bulk commodity exemption was given serious consideration by the Special Study Group on Transportation Policies in the United States, which acted pursuant to Senate Resolutions 29, 151, and 244 of the 86th Congress. The results of the study were published in January 1961. It is more familiarly known as the Doyle report.

The Doyle report concluded that there is already too much exemption from regulation. It also concluded that regulation is required to insure adequate service to the great majority of shippers. In discussing the railroad efforts to deregulate bulk and agricultural commodities moving by rail, the Doyle report concluded that to deregulate approximately 70 percent of their (railroad) tonnage would make regulation of transportation so generally ineffective that it would be, of necessity, abandoned.

The Doyle report (p. 533) summed up its position in the following words:

> Equality of treatment of the several modes is a sound objective of our national transportation policy to which this entire study has been dedicated. We have, however, also established the position that the national interest must take precedence over any other, more limited interest. If regulation is rendered ineffective by large-scale exemption therefrom, and if regulation is essential, then any extension of exemption, even in the interests of equity, is contrary to the public interest.

A good deal has been said recently, including during these hearings, about "competitive equality." But those words are nothing more than a catch phrase unless they are considered in the context of the realities involved. The regulated motor carrier industry cannot afford to overlook those realities, and I would next like to discuss them.

RAIL MERGER MOVEMENT

We have reached today, for all practical purposes, a monopoly position in rail transportation. With the rail merger movement in full blossom, the monopoly power in rail transport becomes more intensified as it is settled into the hands of fewer and fewer rail executives.

Although there are 76 class I railroads in the country, no one should make the mistake of assuming that there is any significant quantum of competition between railroads insofar as the general run of commodities is concerned.

It should be noted that many of the class I railroads are wholly owned (or such a significant percentage of their stock is held by) other railroads that these 76 class I carriers break down into only 40 railroad "families."

In addition, the largest rail merger so far authorized (Pennsylvania and New York Central) while not yet consummated, is certain to come about in the next few years. Then, too, the so-called northern lines merger, involving a melding of the Great Northern, Northern Pacific, Burlington, and several other lesser class I roads, one which missed the first time by the vote of only a single Commissioner, is still very much alive, and pending before the Commission on reconsideration.

I have attached to my statement (app. 1) a listing of railroad "families" now in existence together with one (app. 2) showing merger proposals not yet consummated, but quite likely to come to fruition in the not too distant future. And in order to show the awesome economic power possessed by the major railroads and railroad systems, I am attaching (app. 3) a listing of the 10 largest railroads showing their net investment in railroad property and gross operating revenue, contrasted with similar figures for the 10 largest class I line haul motor carriers of general freight.

Also attached as appendix 4 is a showing of the contrast between the average capitalization and gross operating revenues of all class I line haul railroads, on the one hand, and all class I trucking companies, on the other.

Efforts by the railroad industry to seek freedom from regulation for 65 percent or more of their traffic must also be considered in the light of the serious questions being raised as to who really owns the railroads.

The extreme liberality with which the Interstate Commerce Commission has allowed the railroads to move forward with their merger plans, resulting in the creation of giant rail transportation complexes, make the question of actual ownership more serious than ever.

The Commission itself has indicated extreme interest in the ownership proposition. This was recently shown by its concern with the extent to which the name of Cede & Co. appeared as major stockholder in the annual reports of some of the Nation's largest railroads.

Cede & Co. apparently is a "street" name for several brokerage houses which are dealing in blocks of railroad stocks. A check of the annual reports for 1966 of some of the Nation's largest railroads indicates that Cede & Co. has significant holdings in 12. Assuming it is true, as indicated, that Cede & Co., is a "street" name for some brokerage houses which, in turn, are holding the stock for sale or for trusts, the question arises as to what extent other brokerage houses might be holding similar blocks of railroad stock.

These holdings, which are indicated in the rail annual reports in the name of the brokerage house, are hidden to the extent that the true owner of the stock is not revealed. A check of the same railroads, in 12 of which Cede & Co. had significant holdings, indicates that the Nations leading brokerage houses in the aggregate hold a heavy proportion of rail stocks.

Therefore, the question of who really owns the railroads is one of far more than passing interest. Since railroad ownership is often thus effectively hidden, a serious question is raised as to the base from which railroad "policy" on transportation regulation and other matters of public concern is being determined.

The Interstate Commerce Commission, in view of its apparent concern because of the Cede & Co. holdings, and possibly that of similar organizations, is reported as considering asking Congress for new laws aimed at making public the actual owners of the Nation's railroads. This is a sound and prudent step and certainly should precede any consideration given to the railroads' efforts to seek deregulation in any form or degree.

Insofar as general business is concerned, section 7 of the Clayton Act (15 U.S.C. 18) prohibits one corporation engaged in commerce from acquiring the stock of another such corporation "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, to to tend to create a monopoly."

This provision specifically exempts transactions "duly consummated pursuant to authority given by the * * * Interstate Commerce Commission."

Literally hundreds of proposed business mergers have fallen by the wayside by virtue of this provision of the antitrust laws in industries ranging from banks to breweries, as a result of action by the Federal Trade Commission or the Department of Justice, or both.

There can be little doubt that most, if not all, of the railroad mergers approved by the ICC over recent years would have failed to pass muster under this provision of the antitrust laws, had it applied to them.

In view of the tremendous and growing concentration of economic power in the hands of an ever-declining number of railroads and rail systems, and in the light of the mystery as to the real ownership of this oligarchy, the time has surely come when Congress, in the event there is to be deregulation of the magnitude under discussion, should seriously consider taking positive steps to remove the umbrella of antitrust protection from rail merger activities.

Mr. WATSON. May we interrupt at this point for one comment.

Of course no one can deny that there are mergers taking place and are in process right now, but that isn't restricted to the railroad industry. We have had so much Government interference with business and so many problems we find a lot of mergers in the total industrial complex, don't we?

Mr. BEARDSLEY. No, of course the mergers are not restricted to the railroad industry. I am simply trying to point out, Mr. Watson, that a lot of other mergers which don't begin to approach the magnitude of some of the rail mergers have been prohibited by virtue of this provision of the law I referred to.

Mr. WATSON. Isn't it pretty much a customary practice now with companies getting bigger and bigger as a result of mergers? Isn't that a normal process taking place now?

Mr. BEARDSLEY. Yes.

Mr. WATSON. In order to economize and make the operation more efficient and provide the public with better service and cheaper products.

Mr. BEARDSLEY. Well, that is one way of putting it and one way of looking at it. I keep forgetting my Federal Trade Commission definitions of horizontal and vertical and things of that nature, but particularly where you get to trying to merge with companies in the same field very relatively small percentages are enough to defeat them. I have in mind, for example, the recent attempt by I guess it was Schlitz—I can't remember, and I don't mean to slander either brewing—either Schlitz or Pabst to buy a west coast brewery, which would have given the major brewer involved a very insignificant

additional percentage of the total brewing business, and yet that was thrown out by the courts because of something like 1 or 2 percentage points.

When you take that kind of situation, and talking about merger of the Pennsy and New York Central on the other hand, the comparison is a relatively small thing in the brewery field and very big thing in the rail field. That is all I am trying to point out.

RAILROAD RATEMAKING PHILOSOPHY

By and large, as already noted, there is little significant rate competition within the railroad industry. But when it comes to railroads as a class, in their competition with our industry, their position is that they should have the widest managerial discretion to reduce their rates to a barebones minimum in order to divert our traffic.

Their attitude is clearly revealed in the recent *Ingot Molds* case. Without going into great detail regarding that case, it was established that the water-carrier rate ($5 per gross ton) returned all but 8 cents of the fully distributed cost of performing the service involved, while the reduced rail rate of the same figure was significantly below ($2.48) the rail full cost.

In view of these circumstances, the Commission found that the barge service possessed the "inherent advantage" of lower cost, that the national transportation policy required it to "recognize and preserve" this inherent advantage, and that the rail rate "unlawfully impinged" upon the inherent cost advantage of the barge service. I should add that the barge service was supplemented by motor carriage for a very small portion (3½ miles) of the through movement.

A district court in Kentucky set aside the ICC's order, and the matter will soon be taken to the Supreme Court in an attempt to secure review of the district court's decision. But in any event, the case serves to illustrate the point I wish to make, that is, that if railroads are allowed to base rates on out-of-pocket cost as a matter of right, they are in a position, whenever they choose, to divert any traffic they select from their water or motor carrier competitors.

This is so because the railroads, by virtue of their capital structure, their method of operation, their great financial power, and their ability to transport every kind of traffic, can, on the basis of out-of-pocket cost, deprive competing motor or water carriers of important segments of their traffic, and, ultimately, drive them into bankruptcy.

If such a diversion were accomplished by virtue of inherent advantages possessed by the railroads, their competitors would have no just cause to complain. But, as in the *Ingot Molds* case, that is often not the situation.

I do not mean to suggest that the Commission has, or should have—as a matter of policy—rigidly limited carrier ratemaking discretion to a return based on full cost. As a matter of fact, in numerous cases, the Commission has allowed railroads to make rates which return little, if anything, more than their out-of-pocket costs. What I am trying to say is that acceptance of the railroad position would place

the Commission in a veritable straitjacket, without any power, regardless of the circumstances involved in a particular case, to hold a rail rate which returns at least out-of-pocket cost, to be unreasonably low.

Of course, I have been speaking only of the railroad position in intermodal competitive rate cases.

Where in the rare instance the competition is between railroads, they sing quite a different tune. In the recent *Paper* case, in which the B. & O. proposed lower rates to the ports it serves than the rates its rail competitors—for example, the New York Central—charged to the so-called northern tier ports, including New York, the rail protestants there took a significantly different position than they do in intermodal rate cases.

There, they argued that it was not enough that the rates proposed by the B. & O. be compensatory but, in addition, that they also "must not precipitate changes in the rate structure, or traffic, detrimental to the public interest. Essentially, it is urged that the rates * * * are unreasonable * * * because they constitute an unfair and destructive competitive practice, would be disruptive of the rate structure, and would needlessly dissipate carrier revenues". 329 ICC at 298.

If I may just add very briefly to what I said in my prepared statement, we are having a tough enough time as it is under regulation. You remove this upward of 65 percent of rail tonnage from any rate regulation at all by the Commission and Lord knows where we will be.

Again, insofar as general business is concerned, our antitrust laws—for example, section 2 of the Clayton Act, 15 U.S.C. 13—prohibit discrimination in pricing where the effect "may be substantially to lessen competition or tend to create a monopoly in any line of commerce."

This protection against predatory pricing, however, applies only with respect to commodities, and not to a service such as transportation.

Certainly, any proposal to remove as much as 65 percent of rail tonnage from ICC regulation should be unthinkable. Even more unthinkable would be to remove ICC regulation without at least at the same time subjecting the railroads to application of the same antitrust provisions which apply to business generally.

To sum up this phase of my discussion, it is clear that the railroads seek to utilize every avenue, including that of cutthroat rate competition, to divert as much desirable traffic as they can from their motor and water competitors.

We suggest that the last thing Congress should do—if it really wants to preserve a healthy transportation system in the public interest—would be to approve any proposal to tie the hands of the very agency that for almost a century it has entrusted with the delicate and complex task of regulation of transportation.

But if, nevertheless, what seems to us this extremely unsound approach is taken, then the railroads must be subjected to the same antitrust laws which prohibit predatory pricing of goods in commerce.

85-465—67——13

(The appendixes referred to follow:)

THE FOLLOWING APPENDIXES ARE SUBMITTED BY THE AMERICAN TRUCKING ASSOCIATIONS, INC.

APPENDIX 1.—*Class I line-haul railroads and rail families*

INDIVIDUAL RAILROADS

1. Atchison, Topeka & Santa Fe
2. Bangor & Aroostook
3. Boston & Maine Corp.
4. Chicago Great Western
5. Chicago & Illinois Midland
6. Chicago, Milwaukee, St. Paul & Pacific
7. Chicago & North Western
8. Chicago, Rock Island & Pacific
9. Delaware & Hudson
10. Denver & Rio Grande Western
11. Erie-Lackawanna
12. Florida East Coast
13. Great Northern
14. Gulf, Mobile & Ohio
15. Illinois Central
16. Lake Superior & Ishpeming
17. Long Island
18. Maine Central
19. Missouri-Kansas-Texas
20. Monon
21. New York, New Haven & Hartford
22. Norfolk Southern
23. Northern Pacific
24. Piedmont & Northern
25. St. Louis-San Francisco
26. Union Pacific
27. Western Pacific

RAIL FAMILIES

28. Canadian Pacific (No U.S. operation)—
    Controls: Canadian Pacific Lines in Maine.
    Soo Line.
29. Canadian National (No U.S. operation)—
    Controls: Central Vermont.
    Grand Trunk Western.
    Duluth, Winnipeg & Pacific.
30. Chesapeake & Ohio—
    Controls: Baltimore & Ohio.
    Western Maryland.
    Reading.
    Central of New Jersey.
31. Chicago, Burlington and Quincy—
    Controls: Colorado & Southern.
    Ft. Worth & Denver.
32. Kansas City Southern Industries—
    Controls: Kansas City Southern.
    Louisiana & Arkansas.
33. Missouri Pacific—
    Controls: Texas & Pacific.
    Chicago & Eastern Illinois.
34. New York Central—
    Controls: Pittsburgh & Lake Erie.
35. Norfolk & Western—
    Controls: Akron, Canton & Youngstown.
36. Pennsylvania—
    Controls: Pennsylvania-Reading Seashore Lines.
    Detroit, Toledo & Ironton.
    Lehigh Valley.
    Ann Arbor.
37. Seaboard Coast Line—
    Controls: Seaboard Air Line.
    Atlantic Coast Line.
    Clinchfield.
    Georgia.
    Louisville & Nashville.

RAIL FAMILIES—continued

38. Southern Pacific—
    Controls: Northwestern Pacific.
    St. Louis Southwestern.
    Pacific Electric.
39. Southern—
    Controls: Alabama Great Southern.
    Central of Georgia.
    Cincinnati, New Orleans & Texas Pacific.
    Georgia Southern & Florida.
    New Orleans & Northeastern.
40. United States Steel Corp.—
    Controls: Bessemer & Lake Erie.
    Elgin, Joliet & Eastern.
    Duluth, Missabe & Iron Range.

RAILROADS JOINTLY CONTROLLED

1. Detroit & Toledo Shoreline—
   Controlled by: Norfolk & Western and Grand Trunk Western.
2. Illinois Terminal—
   Controlled by: Baltimore & Ohio, Chicago & Eastern Illinois, Chicago, Burlington & Quincy, Chicago & North Western, Chicago, Rock Island & Pacific, Gulf, Mobile & Ohio, Mississippi Valley Corp., New York Central, Norfolk & Western and St. Louis-San Francisco.
3. Richmond, Fredericksburg & Potomac—
   Controlled by: Seaboard Coast Line, Baltimore & Ohio, Chesapeake & Ohio, and Pennsylvania (State of Virginia also owns substantial interest).
4. Spokane, Portland & Seattle—
   Controlled by: Great Northern and Northern Pacific.
5. Toledo, Peoria & Western—
   Controlled by: Atchison, Topeka & Santa Fe, and Pennsylvania.

Source: ICC Transport Statistics in the United States, 1965, and appropriate ICC decisions since.

APPENDIX 2.—MAJOR RAIL MERGER PROPOSALS PENDING BEFORE ICC

System	Roads that will come under common control	Present status
1. Penn-Central system	Ann Arbor, Detroit, Toledo & Ironton, Lehigh Valley, New York Central, New York, New Haven & Hartford, Pennsylvania, Pennsylvania-Reading Seashore Lines, Pittsburgh & Lake Erie.	Granted Apr. 6, 1966; reopened, awaiting decision.
2. Great Northern Pacific & Burlington Lines.	Chicago, Burlington & Quincy, Colorado & Southern, Fort Worth & Denver, Great Northern, Northern Pacific, Spokane, Portland & Seattle.	Originally denied; reopened Jan. 4, 1967; pending final report.
3. Chesapeake & Ohio, Baltimore & Ohio, Norfolk & Western.	Akron, Canton & Youngstown, Baltimore & Ohio, Boston & Maine Corp., Chesapeake & Ohio, Delaware & Hudson, Erie-Lackawanna, Norfolk & Western, Reading, Central of New Jersey, Western Maryland.	Hearings in progress.
4. Chicago, Milwaukee & Northwestern Transportation Co.	Chicago Great Western, Chicago, Milwaukee, St. Paul & Pacific, Chicago & North Western.	Do.
5. Union Pacific-Rock Island	Chicago, Rock Island & Pacific, Union Pacific	Do.

Source: ICC Section of Finance.

APPENDIX 3.—TOTAL OPERATING REVENUE AND NET INVESTMENT OF THE 10 LARGEST CLASS I LINE-HAUL RAILROADS AND THE 10 LARGEST CLASS I GENERAL FREIGHT MOTOR CARRIERS, 1964

[Dollar amounts in thousands]

Name of company	Net investment [1]	Gross operating revenue
Pennsylvania RR. Co	$1,144,692	$873,240
Southern Pacific Co	1,788,262	728,578
New York Central RR. Co	1,274,606	641,520
Atchison, Topeka & Santa Fe Ry. Co	1,441,866	637,772
Union Pacific RR. Co	1,319,539	529,079
Baltimore & Ohio RR. Co	689,313	381,889
Chesapeake & Ohio RR. Co	845,553	372,894
Norfolk & Western Ry. Co	1,250,933	339,090
Missouri Pacific RR. Co	775,420	306,999
Southern Ry. Co	686,775	291,913
Total, 10 largest railroads	11,216,959	5,102,974
Total class I line-haul railroads	22,917,836	9,856,527
Percent, 10 largest of total	48.9	51.8
Consolidated Freightways Corp	$33,542	$124,922
Roadway Express, Inc	23,893	109,660
Associated Transport, Inc	21,116	79,120
Pacific Intermountain Express	17,045	69,579
Interstate Motor Freight System	14,373	63,745
McLean Trucking Co	13,512	59,370
Spector Freight System, Inc	1,459	56,524
Transamerican Freight Lines, Inc	1,952	50,691
Denver Chicago Trucking Co., Inc	12,701	48,481
Pacific Motor Trucking Co	19,695	46,406
Total, 10 largest intercity general freight motor carriers	159,288	708,498
Total class I intercity general freight motor carriers	948,974	4,341,774
Percent, 10 largest of total	16.8	16.3

[1] Tangible operating property less depreciation and amortization.

Source: Transport Statistics in the United States, 1964, Interstate Commerce Commission, Motor Carrier Annual Reports for 1964 on file at the Interstate Commerce Commission.

APPENDIX 4.—COMPARISON OF OPERATING REVENUES AND NET INVESTMENT, CLASS I LINE-HAUL RAILROADS AND CLASS I INTERCITY MOTOR CARRIERS, 1964

	Class I line-haul railroads	Class I intercity trucking companies
Number of companies	[1] 101	1,025
Net investment in operating property	$22,917,836,000	$1,275,198,000
Gross operating revenues	9,856,527,000	6,199,465,000
Average net investment per company	226,910,000	1,244,000
Average gross operating revenue	97,589,000	6,048,000

[1] 1964 is the last year for which comparable ICC statistics are available. The number of class I line-haul railroads is currently 76, 25 roads having been eliminated by reclassification and merger.

Source: Transport Statistics in the United States, 1964, Interstate Commerce Commission.

Mr. BEARDSLEY. Thank you, Mr. Chairman and members of the committee.

Mr. FRIEDEL. Thank you, Mr. Beardsley. What are the major objections to the bill as proposed and in the discussion we have had about the amendment to include the railroads and truckers?

What I am trying to bring out is that you agreed to H.R. 9903 and now you are opposed to any lifting of the regulations of the railroads. I want to know what is the difference between this bill and what was in H.R. 9903.

Mr. BEARDSLEY. The significant difference it seems to me is the fact that in H.R. 9903 the exemption that was being considered was the so-called agricultural exemption. As far as the regulated motor carrier industry is concerned it would like to see the exemption, as has already been stated, repealed, but for practical reasons it was not nearly as interested in those provisions simply because they had been exempt for so many years they were really by and large outside of the scope of the operations of the regulated carriers.

The bulk commodities, no matter how they may be exempted in the water field, are by no means exempted in the truck field and that is the difference in the approach, and Mr. Sutherland who will follow me, will deal specifically I think with that aspect of the case insofar as motor carriers of bulk commodities are concerned.

Mr. FRIEDEL. Any questions, Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman. I take it that the testimony of you, Mr. Beardsley, and Mr. Pinkney, is that you would as a basic principle oppose deregulation, that you think that perhaps all of them ought to be regulated and left to the control of primarily the Interstate Commerce Commission, that this would be a healthy approach.

Generally speaking, if that is so, then am I to assume that you are opposed to this bill, to the exemption being asked?

Mr. PINKNEY. Mr. Pickle, as I stated in the early part of my statement, I think in theory certainly we must answer yes to your question. We have been opposed to the extension of exemptions. We would like to see all of them either repealed—not all of them, but almost all of them—either repealed or rolled back.

I say "almost" because some of them, like the exemption on taxicabs, probably would remain necessary. We did not, however, come into this case because, as Mr. Beardsley pointed out, the practicalities of the situation were such that we are not in competition with the water carriers on their movement of bulk commodities.

We could not come in and demonstrate that there was any damage to the trucking industry of any substantial nature and therefore we did not appear on this matter on the Senate side.

We further feel, as does the Interstate Commerce Commission, or at least I personally feel, that if your concern is with inequalities within the water carrier industry, intramodal inequalities, this bill makes sense because it would equalize the competitive situation as I see it within the water carrier industry, but if your major concern is inequality as among the carriers, then of course you should go in the other direction and remove the exemption.

Mr. PICKLE. Then to restate it, you would be for regulation as a general principle, but in this particular instance with reference to the barge traffic you could live with it if this measure were passed, but that you would not want comparable equality to rail transportation.

Mr. PINKNEY. That is correct.

Mr. PICKLE. You would not want them to have deregulation?

Mr. PINKNEY. That becomes an entirely different situation.

Mr. PICKLE. Well, I think that is a very fair position.

Mr. FRIEDEL. Will the gentleman yield?

Mr. PICKLE. Yes, I yield.

Mr. FRIEDEL. Mr. Pinkney, you take the stand that you wouldn't oppose H.R. 7610 if it just refers to the bargelines because you feel that it would not be unfair competition to the truckers; is that correct?

Mr. PINKNEY. That is correct.

Mr. FRIEDEL. In other words, on the other hand, by lifting this exemption from the bargelines would this be unfair competition to the railroads?

Mr. PINKNEY. You mean if you removed the exemption the bargelines presently have? That would be the way to eliminate any injustice there may be in the present situation.

Mr. FRIEDEL. Yes; but would this create competition for the railroads by letting them move mixed cargoes unregulated.

Mr. PINKNEY. I can't answer that. I have listened to the testimony here and as I see the picture it certainly might increase it somewhat, but we are dealing with a situation that has been prevailing for many years and I doubt that there would be much change in the competitive picture if you pass this bill because the water carriers have been doing this or practically doing this already down through the years.

Mr. FRIEDEL. Based on the chart here they can carry up to 40,000 tons I think in one tow.

Mr. PINKNEY. And they have been doing it, and they are mixing these commodities you see.

Mr. FRIEDEL. And they have been violating the law?

Mr. PINKNEY. They have been doing it—yes, under the protection of appeals in the courts. I can see that, but I don't know the answer to that question, sir. I think only the railroads and water carriers can answer that one.

Mr. FRIEDEL. You say they have been doing that to date, 40,000 tons?

Mr. PINKNEY. It is my understanding that the practice that has prevailed down through the years will not be changed if you pass this bill.

Mr. FRIEDEL. I understand that. Mr. Pickle.

Mr. PICKLE. As a practical matter, though, I think it is understood how this probably has developed from the time they passed this act. In 1939 and 1940 there really wasn't much need except for three commodities. They have added one or two more commodities, and I think the industry as a whole has pretty much accepted it and I don't find any great fault toward the barge people that they are coming in now and trying to do something about what has been said to be illegal.

I notice that the rail people testified in the Senate that they thought it was an illegal matter and they are asking Congress to just make legal something which is illegal, but there was a different tune when they were included in it themselves.

It wasn't so illegal if they could be brought into it. As a practical matter this was developed and they have exhausted all their legal remedies and we are faced with the situation of finding out now what is a fair solution.

The question I want to ask you then is it seems to me that, though this has been going on for years, there has been no hue and cry about it as such and it probably needs to be brought to a head. As a practical matter, though, we have no bill before us to provide equality.

How can we in the committee take action now when the ICC has not recommended any legislation to us? I think perhaps we may reach

a point when we will need regulation on the entire commodities, but until we can see the bill before us I personally think that the barge people may need additional time, not for their operation, but for us to come up with a measure that would be reasonable.

If such a stay order were considered would the trucking industry think that would be reasonable?

Mr. PINKNEY. We would certainly not object. That is I think as far as I can go in answering the question, Mr. Pickle.

Mr. PICKLE. One other question. All through these discussions it seems to me like the questioning has been between the rails and the barges, and only to a very relatively minor degree the trucking industry. The exemption that was granted originally was to the bulk hauling of water carriers and to the carriers by truck of agricultural commodities.

What would this do to the agricultural hauler, the trucker, if this exemption were granted? I am not talking so much the common carrier, for instance, because regulation is modest.

Mr. PINKNEY. I can't see that it would have any effect. There might be some minor effects, but I think we are talking about two different areas here and I doubt it.

Mr. PICKLE. You would get into a problem if you entered into full regulation of the barges and agricultural haulers.

Mr. PINKNEY. That is the position we would advocate, as does the Commission, that there should be regulation across the board in both of these areas.

Mr. PICKLE. For agricultural commodities also.

Mr. PINKNEY. Yes, sir.

Mr. PICKLE. By truck.

Mr. PINKNEY. Yes, sir.

Mr. PICKLE. I think that poses a very interesting question for the future, whether that would not operate as an inconvenience to the small hauler, but that is for another time.

The main thing is I would not want to see legislation passed that would put him out of business, so to speak.

Mr. PINKNEY. I would say this on the agricultural exemption. I don't think that there should be total abandonment of that exemption because there should be some provision for moving the crops out of the field, but the trouble is nobody has said how far out of the field they can be moved and after how much processing, and that of course is causing a tremendous amount of trouble.

It has really been a cancer in the regulated transportation system, but subject to minor qualifications like I have just mentioned, we strongly favor the repeal of these exemptions.

Mr. PICKLE. I thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman. I want to say again that I think you have been very helpful here, Mr. Pinkney. I believe I stated to you privately, and I make the statement publicly because I would not want to be making any statement privately that I would not want to state openly to any and everyone, that you are in a rather difficult position and you are the one caught in the vise here, in the squeeze.

I don't want to overly simplify the situation, but reducing it to its lowest common denominator, basically you could not oppose this bill

as it is, or did not oppose it because water carriers with this exemption really constitute no competition to the motor carriers.

Mr. PINKNEY. That is correct.

Mr. WATSON. And now with the prospect of extending this exemption to the railroads, you would really be in a bind because the railroads naturally are your prime competitors?

Mr. PINKNEY. That is correct.

Mr. WATSON. But one step further. As a regulated certificated motor carrier, your real problem is with the nonregulated exempt motor carriers, isn't it, more than perhaps even with the railroads?

Mr. PINKNEY. No; because we have long since learned to live with that nonregulated motor carrier, and our regulated carriers have just gone out of the business of attempting to compete with them. They can't compete with them because these people come in and out as a result of uneconomically low rates.

Our major competition, of course, is on the manufactured-type freight, including the bulk.

Now, I am speaking of cement; I am speaking of petroleum products; I am speaking of chemicals; I am speaking of all those things that move in bulk. I am also, of course, speaking of all the nonbulk manufactured-type traffic, and that is over in an area all by itself as compared to the sand- and gravel-type bulk traffic, and it is in that area that we are vitally concerned and pray that there will not be deregulation which will take us back to where we were many years ago in a cutthroat competitive situation.

As the gentleman who will follow me on the stand here this morning will tell you, we have made great strides forward in the area, for example, of coordination between the motor carriers and the rail carriers, the regulated carriers.

This will all go down the drain if you deregulate this for reasons which he will state.

Mr. WATSON. What is the percentage of tonnage carried by the regulated and nonregulated motor carriers? I am sure it would be difficult and that would probably be just an estimate, because you have figures on the regulated and on the nonregulated; you probably would just have to pull it out of the air, but do you have any ideas in that regard?

Mr. PINKNEY. Our research department advises me that there is no way of telling; and let me give you a minor example of why not.

At the present time there has been a court decision which has permitted the farmer co-op trucks to go into the business of hauling general commodities where incidental and necessary to their primary purpose of running a farmer co-op. We now find them hauling munitions for the Department of Defense, but we can get no figures on how much, or where. We find there is no statistical data to indicate the amount of nonregulated traffic that moves in this country.

The Interstate Commerce Commission has no way of getting it and doesn't have it, and so we have a total void in the area of deregulated traffic as far as motor carriage is concerned.

Someone may have the figures on the water carriage. I don't know. But we just can't say.

Mr. WATSON. Thank you.

Mr. FRIEDEL. I want to thank you very much.

Mr. PINKNEY. Thank you.

Mr. BEARDSLEY. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. C. Austin Sutherland, managing director of National Tank Truck Carriers, Inc.

STATEMENT OF C. AUSTIN SUTHERLAND, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.; ACCOMPANIED BY CLIFFORD HARVISON, ASSISTANT MANAGING DIRECTOR

Mr. SUTHERLAND. Mr. Chairman, before I begin may I introduce my assistant, Mr. Clifford J. Harvison, same address. I, too, am interested in the world series and will try to make it short.

My name is C. Austin Sutherland. I am managing director of National Tank Truck Carriers, Inc., 1616 P Street NW., Washington, D.C., a conference of the American trucking associations. I have held that position since the association's founding in 1945.

Overall, I have been associated with the for-hire tank truck industry for over 30 years. During World War II, I was Assistant Director of the Tank Truck Division of the Office of Defense Transportation.

I am admitted to practice before the Interstate Commerce Commission and have appeared in many cases before that body, both as counsel and as a witness.

National Tank Truck Carriers is a voluntary trade association, the members of which are engaged exclusively in the for-hire tank truck transportation of liquid and dry commodities in bulk.

Our membership is composed of carriers in all of the 48 continental United States. We also have member carriers in several foreign countries, including Canada, Mexico, Australia, Great Britain, Switzerland, and South Africa.

As an industry, for-hire tank truck carriers are responsible for the movement of approximately 33 percent of the tonnage hauled by all class I and class II motor common carriers. I am saying tonnage, not ton-miles.

Additionally, of the total tonnage hauled by the motor common carriers of "General Freight" and the tank truck carriers—we account for 45 percent of that tonnage which consists of commodities in bulk. All of our tonnage consists of commodities in bulk. The general freight tonnage I refer to here is all of our tonnage.

Mr. Chairman, our position on H.R. 7610 and its companion bills is clear. While we have no objection to the water carriers solving the judicial problems caused by the so-called "mixing rule" by way of remedial legislation, we must object, most stringently, to any legislative action which would extend to the railroads or to the trucking industry any form of deregulation of bulk commodities.

Should these bills be used as a vehilcle for deregulation we would oppose them with all the power at our command.

The for-hire tank truck industry is not in competition with the water carriers. We are, however, in constant and vigorous competition with the railroads (and, of course private carriage.)

In preparing my testimony for this committee session, I have reviewed the transcript of prior hearings on these proposals.

In reading some of the statements of the committee members, I have been disturbed to find that many are concerned with the preservation of so-called equality in bulk transportation, and feel that this equality can best be fostered by extending bulk commodity deregulation to the trucking industry and the railroads.

While I thank the committee for its concern, please be assured that any such extension would sound the death-knell of the for-hire tank truck industry.

Basically, equality in transportation is a reality today. It has been created by the wisdom of Congress in passing various regulatory measures and promulgated by its regulatory agencies—for instance the Interstate Commerce Commission.

Competition in transportation—particularly in bulk commodity transportation—is also a reality today. Competitive factors in our business are cost and service. All transportation modes use these factors to gain a competitive edge. The tank truck industry has some cost and service advantages over the railroads, and conversely, so do the railroads have some advantages over us.

The barrier between use and misuse of these cost and service factors is regulation. It is, in short, the "referee" in an intensely competitive battle. The Congress recognized this situation when they included the phase "inherent advantage" in the national transportation policy.

Equality in transportation is not simply granting advantages to all modes. This would be self-defeating.

Equality in transportation is, rather, the proper regulation of all modes so that the advantages brought about by cost and service may benefit the shipping public.

Mr. Chairman, transportation legislation passed by the Congress has created a delicate balance between all modes based on solid competition. As I have attempted to point out, transportation regulation is the key to this balance.

The for-hire tank truck industry has made heavy capital investments on the premise that regulatory safeguards would never be removed.

The railroads, however, have long cried for the deregulation of bulk commodities. The reasons for this are simple. First of all, they realize that, after the chaotic rate war brought about by any deregulation, they alone would emerge the victors—bloodied, but victors just the same.

Secondly, and in a more practical sense, the railroads really have nothing to lose.

The for-hire tank truck carrier, as I said, has invested millions in sophisticated vehicles, highly specialized terminal facilities, cleaning racks, pumps, compressors, et cetera. By contrast, the railroads have a negligible investment in bulk handling equipment.

It may come as a surprise to many members of this committee to learn that virtually every railroad tank car in the United States is either privately owned by the shipper or leased to the shippers by tank car manufacturers. I might add that a great percentage of the other bulk types of equipment such as hopper cars, socalled flexiflow—a great percentage of those cars is not owned by the railroad, but leased from leasing companies or privately owned.

Mr. WATSON. Mr. Sutherland, would you yield for a question at that point?

Mr. SUTHERLAND. Yes, sir.

Mr. WATSON. Do you not have much equipment that is leased yourself?

Mr. SUTHERLAND. Yes, indeed.

Mr. WATSON. Yes, sir; so it certainly would apply both ways.

Mr. SUTHERLAND. Not in the same degree. We lease a lot of equipment from each other.

Mr. WATSON. Yes, sir; but you have what percentage of leased equipment?

Mr. SUTHERLAND. Well, you have to divide that question between power units and trailer units.

Mr. WATSON. That is a significant percentage of leased equipment?

Mr. SUTHERLAND. On the power unit side, not on the trailer side, and the trailer is the one that quite often is the most expensive unit, up as high as $75,000 apiece.

Mr. WATSON. Yes, sir.

Mr. SUTHERLAND. I want to make it clear that these are not leased from the vehicle manufacturer. They are leased from either other carriers or owner-operators. The driver owns it.

Mr. WATSON. Yes, of course, the motor carrier industry is now going more and more into leasing of tractors. Companies prefer to lease the tractors privately and just own the trailers, and so forth. Isn't that pretty much the trend?

Mr. SUTHERLAND. There is a trend in that direction, but you must bear in mind that when we talk about leased equipment quite often the motor carrier owns the leasing company.

Mr. WATSON. I am sure that you have a number of individuals who own the tractors.

Mr. SUTHERLAND. You are correct.

Mr. WATSON. At least a number of them, and in fact it appears that the companies are more interested in developing that particular arrangement than ever before. Is that a fair statement?

Mr. SUTHERLAND. No, that is not quite true. I may point out that the price of a tractor as used in the tank truck industry, due to the fact that we are in a position to take advantage of the maximum weight law; namely, 73,280, and that we haul full loads all the time, is getting so high, $15,000 to $25,000 that the owner-operator is beginning to find it is more to his advantage to work for a salary or wages than it is to make that investment.

Mr. WATSON. I apologize for interrupting, but I wanted to make this point.

Mr. SUTHERLAND. No apology is necessary. I am glad you brought the point out.

Indeed, in a report to the ICC the report of the ICC Investigation and Suspension Docket No. 8135, which was a case involving car mileage allowance, an examiner noted that as of 1965 the total privately owned tank car fleet numbered about 175,000 vessels. He also pointed out that the railroads owned only about 6,000 tank cars which are employed mainly in the transportation of liquid commodities needed in the performance of their own operations as carriers.

Mr. Watson, I want to go back to that question of leasing as long as we are on that point. In the tank truck industry, the matter of leasing is considerably different than in the leasing of cars in the railroad industry, in that this equipment is leased generally and in most cases on percentage of revenue.

The shipper loads his own tank car and the consignee unloads it. It is as simple as that. All the railroads supply is a power source and

a set of rails. The railroads would have much to gain, however, by deregulation. After a debilitating rate war, the railroads would have no competition for this bulk business, and, as we saw in the early 1900's bulk commodities would be moved at whatever rate the railroads so choose.

I might also insert here that it was the abuse in the early 1900's of the transportation of petroleum products as the petroleum industry began to grow that brought about a great deal of the antitrust laws and the strengthening of the Interstate Commerce Act governing the transportation of those commodities.

Gentlemen, this is not the first time that I have opposed a deregulation measure before Congress. In May 1963, I testified before this committee in opposition to that portion of H.R. 4700, which was the grandfather of H.R. 9903, which would have deprived the Interstate Commerce Commission of the right to establish minimum rates on commodities transported in bulk.

At that time, I felt it necessary to include in the record numerous cases which demonstrated attempts by the railroads to erase tank truck competition in several selected geographic areas by the simple tactic of cutting their rates below their own full cost, a tactic, which, by the way, has been repudiated by the Interstate Commerce Commission time and time again. I do not feel that it is necessary to recount those cases here.

In the 10 years prior to that testimony, National Tank Truck Carriers had been involved, as a party of record, in many of these cases. It has cost our industry thousands of dollars but it appears as if the money was well spent.

Suffice to say, the Congress did not choose to deregulate bulk commodities, and the ICC has decided these cases in favor of the low-cost carrier and the traffic was so moved since then—service considered.

Since the time of that testimony, in 1963 I believe, we have not been involved in one major incident of rate litigation with the railroads. As a matter of fact, the past 4 years have seen the beginning of an unprecedented era of intermodal cooperation—between the motor carrier and the railroads—in the transportation of regulated bulk commodities.

I just received this morning from one of our member carriers a brochure showing the joint line through rate operation of the railroad industry and the tank truck industry in the transportation of these bulk commodities, primarily the commodities in bulk that are dry commodities like flour, cement, et cetera, and with the chairman's permission I would like to have this brochure placed in the file. I have sufficient copies for the present members of the committee and if you so desire I can get them for all members of the committee.

Mr. FRIEDEL. Yes, I would like to have copies for all the members.

Mr. SUTHERLAND. I will do that. I am not asking that it be placed in the record because I recognize as a prior printer the cost of reproducing something of this nature.

Mr. WATSON. Mr. Chairman, if I might interrupt, is this the so-called piggyback operation?

Mr. SUTHERLAND. No.

Mr. WATSON. Of course you are engaging in that.

Mr. SUTHERLAND. No, we are not. As tank truck carriers we are not engaged in piggyback so far.

Mr. WATSON. The general motor carriers?

Mr. SUTHERLAND. Yes, they are. The reason we are not, Mr. Watson, is that we have experimented in piggyback operation, primarily in the transportation of nondangerous commodities or nonflammable or noncorrosive, such as Coca-Cola as an example.

We are in a different position. We have a problem of research and so far we haven't been able to develop a piece of equipment that would withstand the impact on switching cars such as that. They would be busted open, in other words. That is all there is to it.

Mr. WATSON. I applaud you for your effort. I am a great believer in the old adage you can catch more flies with honey than you can with vinegar. I have been concerned that we would have representatives of bulk carriers come in here accusing one another of various practices that are anything but businesslike and I think if you work together perhaps all modes of transportation might in the long run fare a lot better economically, so I applaud you for that effort.

Mr. SUTHERLAND. Thank you, sir. We feel there is a tremendous field opening up in this joint intermodal cooperation between ourselves and the railroads and that the same seems to be true with the bargelines. They have been our friends anyway. We have been hauling barge traffic from river ports for years and years the same as pipelines. We see no difference in hauling from a pipeline terminal or a barge terminal or a rail terminal where we own either through route joint rates or combination of locals.

Many of our carriers have entered into formal agreements with the major railroads to provide a through service for various types of commodities. The railroads and the motor carrier have shared the cost of building specialized terminal and siding facilities that utilize the advantages of each mode.

Admittedly, this type of cooperation is now at a small scale, however, it is ample proof that the proper regulatory climate can benefit the public.

It is because—not in spite of—these advances that the tank truck industry will always be ready to fight to the death against any form of deregulation. We feel that this deregulation of bulk commodities would just put a kiss of death on this intermodal transportation that we are now developing.

It is also important to note that our industry would not accept mere application of various antitrust statutes in lieu of bulk commodity regulation. Such a switch would set mode against mode, and, in the tank truck industry, carrier against carrier. By the time the courts had concluded due process there would be no for-hire tank truck industry fit for survival.

I might ad lib there—and no one to pay the legal bills.

Regulation has fostered keen competition in transportation. This competition is the essence of any healthy free enterprise system. Right here, I would like to quote from a distinguished member of the Interstate Commerce Commission, the Honorable John W. Bush. He made these remarks in April of this year:

> Competition has been an important factor in the development of our transportation system. Nevertheless, transportation history teaches us that while competitive forces generally are effective in reducing prices and improving standards of service, these very same competitive forces, if totally unchecked would result in eliminating competition and in disrupting reasonable and fair rate

regulations between competing shippers, geographical areas, and territories. Unregulated or inadequately regulated competition can be as much an evil as unregulated monopoly.

In summary, Mr. Chairman, I have spent most of my entire adult life watching the for-hire industry grow and prosper. This has been made possible by fair and effective regulation.

I feel certain that this committee shares our enthusiasm for success and wants to see it continue.

I realize that the legislation now before you contains no specific proposal regarding modes other than the water carrier. We have no objection to the present languages. However, I do want to assure the committee that extension of the proposed exemption to modes other than the water carriers would achieve not equality but chaos.

I would like to add here, to give you some idea of the size of our industry, we have about 50,000 of these bulk transport units on the road today. There is another 30,000 operated by the private carrier industry—shipper owned, shipper operated.

As a result any deregulation would probably shift that other 50,000 over to private carriers. Thank you.

Mr. FRIEDEL. Thank you, Mr. Sutherland, for your statement.

Any questions, Mr. Watson?

Mr. WATSON. I have no further questions.

Mr. FRIEDEL. Thank you very much.

Mr. SUTHERLAND. Thank you.

Mr. FRIEDEL. We have one other witness who has a very brief statement, Matt Triggs, American Farm Bureau Federation.

Mr. TRIGGS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Triggs.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. We certainly welcome the opportunity to present the views of the American Farm Bureau Federation with respect to bills to modernize the exemption from regulation of inland water carriers transporting dry bulk commodities.

At the last annual meeting of the American Farm Bureau Federation the official voting delegates of the member State farm bureaus approved the following policy:

> We support the present exemption from economic regulation of inland water carriage of bulk commodities and recommend that the dry bulk exemption be applicable to all dry bulk cargo, irrespective of other cargo in the same vessel or tow.

We therefore support the enactment of H.R. 7610 or any similar bill.

We believe that regulation of transportation should be limited to that which "is clearly in the public interest."

The enactment of H.R. 7610 would eliminate limitations on the exemption which, in our opinion, serve no adequate public purpose, and, in fact, limit the ability of water carriers to provide the most efficient service.

Such enactment would implement the national transportation policy of the Interstate Commerce Act in that it would "recognize and pre-

serve the inherent advantage" of water carriers in the shipment of bulk commodities and would "promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation * * *."

We appreciate the opportunity to state our support for the enactment of legislation to modernize the provisions of section 303(b) of the Interstate Commerce Act.

Mr. FRIEDEL. I want to thank you very much, Mr. Triggs, for your very brief and to the point statement. I have no questions. Mr. Pickle?

Mr. PICKLE. No; I have no questions, Mr. Chairman, other than to compliment the witness for his very concise statement.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Mr. Chairman, I should like to thank Mr. Triggs also. I happen to be a member of the Farm Bureau in South Carolina. I think we have an excellent organization down there. Of course, I make no pretence of being a real farmer. I am just one who has a few acres down there, but you do realize that when you extend an exemption to one mode of transportation, when you open the door there, it is an invitation for the other modes to come in and request the same exemption.

Mr. TRIGGS. Yes, sir.

Mr. WATSON. That is axiomatic, isn't it?

Mr. TRIGGS. Yes, sir.

Mr. WATSON. But you are willing to forego that possibility in support of this bill that we have before us?

Mr. TRIGGS. Well, at the time the question of exemptions was before this committee several years ago and the committee did report H.R. 9903——

Mr. WATSON. What was your position on that?

Mr. TRIGGS. We supported the committee's bill although it went beyond what we had specifically recommended to the committee, so that we are on record as favoring an extension of exemption from regulation for railroads and would welcome the opportunity to testify in support of this general principle.

Mr. WATSON. Fine. I thank you. I think you have made a very fine statement and I think it is a fair statement that you have presented here and I hope the committee will be able to extricate itself from this involvement that we have and everybody will end up happy, the water carriers, farm bureau, and motor and rail carriers.

Mr. FRIEDEL. This concludes the hearings on H.R. 7610 and similar bills and we will keep the record open for 5 days so we can get other statements in and the figures we asked for. I hope we can have them in by 5 days. Then the subcommittee will meet in executive session and determine what it is going to do.

Thank you very much.

The meeting is now adjourned.

(The following material was submitted for the record:)

STATEMENT OF HOYT S. HADDOCK, EXECUTIVE SECRETARY, AFL–CIO MARITIME COMMITTEE

I am Hoyt S. Haddock, Executive Secretary, AFL–CIO Maritime Committee. The Maritime workers on the inland river barge lines have an obvious personal stake in the success of the companies for which they work.

It is in defense of the livelihood of these men who work on the towboats and barges that we urge you to report favorably on H.R. 7610.

In the past 10 years labor and management have worked together to increase the efficiency of the inland towboats. Contrary to much irresponsible propaganda against labor, trade unions in general and the Maritime Unions in particular, do not oppose better and more efficient ways of getting a job done. On the inland waterways a towboat of one of the major barge lines in 1967 produces twice as much work as it did 10 years ago. Pay and working conditions have improved substantialy over the same period and freight rates have been reduced.

All this improvement is now threatened by an obsolete law adopted in 1940. Unless the law is modified as proposed in H.R. 7610, the barge lines will be saddled with severe artificial cost increases.

To those who work on the towboats, it has never made any sense that exemptions from regulation should be restricted by the number of commodities or by whether regulated and unregulated commodities are physically transported in a single tow. All these technicalities should be swept aside the moment they threaten continued application of the increased efficiency which has been the common achievement of management and labor.

Carriers not subject to the Interstate Commerce Act typically do not deal with unions; their wage rates are far below those of the regulated carriers and their conditions of work can only be described in many instances as reminiscent of sweat shops long since outlawed on the shore. If the Transportation Policy means what it says, it is not in the public interest to reward such behavior by obstructing the ability of the regulated carriers to compete for business.

We have followed the complicated reversals of policy of the I.C.C. on the mixing rule. I will not go into the technical details of this legal problem. It is plain, however, that if a solution is not found, the regulated carriers will be most severely damaged. We urge you, therefore, to find a solution that will permit the certified carriers to continue to mix dry bulk and so-called non-bulk commodities in the same tow.

We respectfully urge the adoption of H.R. 7610.

STATEMENT OF ELWOOD MOFFETT, PRESIDENT, INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA

My name is Elwood Moffett and I am President of the International Union of District 50, United Mine Workers of America, and on behalf thereof support H.R. 7610 and its companion bills, which would modernize the language of Section 303(b) of the Interstate Commerce Act so that available modern technology may be fully applied to inland river operations.

The present 1940 statute has been described as "archaic and restrictive" by Senator Warren G. Magnuson, chairman of the Senate Committee on Commerce. Senator Magnuson's committee has recently adopted the present proposal without amendemnt and recommended that it be passed by the Senate.

The members of District 50 who work on the inland rivers have a very large stake in the passage of this measure through the Congress. Over the past decade, management and labor have worked together to increase productivity of inland river tows through the application of new technology, particularly more powerful towboats. The new economies have broadened the market for coal and other products of mines. Coal shipments from mines on the Ohio River, for example, are now being made down the Mississippi River via barge to new markets. It is essential that these bulk shipments be mixed with other commodities in the large Mississippi River tows if the economies of water movement are to be fully realized.

As interpreted by the courts, the present Section 303(b) will restrict the ability of barge lines to accumulate enough volume to utilize the full capacity of the large modern river towboat. Unless H.R. 7610 is passed, costs will be artificially increased, rates will go up and the employment opportunities on the inland rivers adversely affected.

We therefore urge prompt consideration and early action on this proposal so that the benefits of modern technology may continue to be enjoyed by the shippers and consumers served by inland river transportation. Thank you.

STATEMENT OF JOHN L. PEARSON, EXECUTIVE VICE PRESIDENT, NATIONAL RIVERS AND HARBORS CONGRESS

Mr. Chairman and Members of the Committee on Interstate and Foreign Commerce, I appreciate the opportunity to present this statement on behalf of the National Rivers and Harbors Congress in support of S. 1314—A bill to amend Section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

I am John L. Pearson of Washington, D.C. I am Executive Vice President of the National Rivers and Harbors Congress. This association, organized in 1901, is a non-profit corporation dedicated to the full development of the water resources of the Nation, including navigation, flood control, irrigation and reclamation, municipal and industrial water supply, pollution of hydroelectric power, recreation, enhancement of fish and wildlife, and related water uses. Our membership includes State and local governmental agencies, agricultural groups, industries, shippers, financial institutions, merchants, civic groups, and individual citizens in all fifty States.

In the field of navigation, we are gratified by the tremendous strides made in the development of our inland waterways, and by the ever-increasing use of these waterways to the benefit of all phases of the Nation's economy.

Our interest in S. 1314 stems from the fact that a recent court decision holds that unless the obsolete language of the present Act is changed, present practice permitting full use of large tows on our inland waterways would have to be drastically curtailed. The result would inevitably be diminished utilization of the inland navigation facilities developed through the years, at the expense of the taxpayer for the benefits of the taxpayer. The elimination by the enactment of S. 1314 of two sentences in the present bill, both of which have been aptly described by the Chairman of the Senate Committee on Commerce as archaic and restrictive, would eliminate this threat to the full use of our inland waterways and consequently to the full realization of the benefits of inland navigation to which our people are entitled.

We strongly urge enactment S. 1314.

STATEMENT OF HARRY M. MACK, CHAIRMAN, BOARD OF TRUSTEES, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

Mr. Chairman and members of the subcommittee, my name is Harry M. Mack of Cincinnati, Ohio. I am Chairman of the Board of Trustees of the Ohio Valley Improvement Association, Inc. This Association, organized in 1895, is a non-profit corporation of the State of Ohio, dedicated to the development and more effective use of water resources in the Ohio River Basin, including particularly improvement of navigation facilities, domestic and industrial water supply and flood control. Its membership includes agricultural groups, and industries such as coal, oil, steel, aluminum, chemicals and power, as well as shippers, banks, river operators, merchants, civic groups and individual citizens who support its work and program.

The Board of Trustees of the Association has unanimously adopted a resolution to give its full support to H.R. 7610 and similar legislation.

For 72 years, the Association has supported the development of water resources in the Ohio River Valley, recognizing that industrial growth and economic prosperity rest squarely on the continued improvement of these resources. A key element in this program is the modernization of navigation facilities on the Ohio River begun in 1954 to replace 46 obsolete locks and dams with 19 modern structures adequate for increasing traffic volumes.

The prospect of transportation economies and related water supply improvements inherent in this program has been a major factor in the phenomenal industrial growth which has occurred during the post-war period in the Ohio Valley. Since 1950, according to this Association's most recent survey, more than 25 billion dollars has been invested in new and expanded industrial plants in the counties bordering the Ohio River and its navigable tributaries.

The effective translation of the values of these improvements into meaningful transportation economies is, of course, dependent upon the efficient operation of barges and towing vessels. During the post-war period the development, through application of advanced technologies, of increasingly powerful towing vessels

pushing ever larger flotillas of barges has brought the benefits of river improvements home to America. These benefits have been especially evident in the form of reduced costs of electric power, gasoline, food stuffs, household appliances and countless other consumer goods, as well as in the form of industrial growth accompanied by expanded job opportunities and a rising tax base for local communities. The combination of governmentally provided waterway improvements with the technological advances and competitive vigor of the barge and towing vessel industry represents an ideal partnership of government and private industry for the public good.

In its present form, particularly as interpreted by recent judicial and administrative decisions, however, the exemption provided for water carriage of bulk commodities under Section 303(b) of the Interstate Commerce Act operates in effect to prohibit combinations of barges into flotillas of efficient size. Thus the economies of scale made possible by river improvements and technological advances are seriously curtailed; the objectives of both public and private investment are frustrated and public benefits reduced.

The bulk commodity exemption in its present form is defective also, we submit, in limiting its coverage to commodities handled and transported in bulk in accordance with trade custom as of June 1, 1939. Since that time the range of commodities handled in bulk has been greatly expanded by improvement in the design and construction of barges and by development of many new products capable of bulk handling and transportation. The limitation to the practices of a date long past prevents full application of modern technology and, without any rational basis in fact or policy, excludes important and growing volumes of commerce from the benefits of the exemption.

The pending legislation would remove these artificial restrictions and bring the law into harmony with modern conditions. Thus it would contribute substantially to the enhancement and diffusion to the public of benefits resulting from waterway improvements and technological developments in the barge and towing vessel industry. We strongly urge the passage of H.R. 7610 or any of the identical bills pending before the Committee.

STATEMENT OF ARTHUR J. BROSIUS, PRESIDENT, WATERWAYS ASSOCIATION OF PITTSBURGH

Mr. Chairman and members of the subcommittee:

My name is Arthur J. Brosius of Pittsburgh, Pennsylvania. I am President of the Waterways Association of Pittsburgh with offices at Suite 703, Standard Life Building, Pittsburgh, Pennsylvania. This Association, formerly the Pittsburgh Coal Exchange which was incorporated in 1870, is actively engaged in the study and the promotion of waterways development for navigation, flood control, conservation and low-flow augmentation.

Pursuant to a resolution unanimously adopted by its Board of Directors, the Association gives its full support to H.R. 7610 and similar legislation.

As a result of restrictive judicial interpretations of Section 303(b) of the Interstate Commerce Act, the scope of the statutory exemption applicable to water transportation of dry bulk commodities has been severely curtailed, effectively preventing the movement of bulk and regulated commodities in a single tow. Thus the attainment of the potential for low-cost, mass movements of commodities provided by governmentally improved waterway systems and the remarkable technological advance, in the form of greatly increased motive power and efficiency, made by the private industry in the post-war period, is obstructed and the benefits to the public both of governmental programs and of private investment are curtailed. The limitation to three of the number of bulk commodities which may move exempt from regulation in single tow of barges, as distinguished from a single barge or other vessel, is similarly inconsistent with full utilization of modern technologies and waterway capacities. The outmoded provision of existing law limiting the exemption to commodities handled and transported in bulk in accordance with June 1, 1939 trade custom also operates to handicap full utilization of capabilities.

H.R. 7610 could constitute an important and constructive step in assuring to shippers and consumers the potential benefits of improved waterways and modern techniques in shallow-draft vessel transportation. We strongly recommend the passage of this or any of the pending identical bills.

[TELEGRAM]

MARSEILLES, ILL., *September 26, 1967.*

HON. SAMUEL N. FRIEDEL,
Chairman, Transportation and Aeronautics Subcommittee,
Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.:

Our sincere thanks for the invitation to testify October 3 or 4 at the hearings on amending section 303(b) of the Interstate Commerce Act. Regrettably the press of business will not allow us to be present on such short notice. Please, however, let this telegram serve as evidence that we are indeed in favor of this legislation and that we do hope your committee will see fit to recommend its passage to the House of Representatives. We further request that this telegram be made a part of the record. Again our thanks.

W. R. MURPHY,
President, Rose Barge Line.

[TELEGRAM]

WASHINGTON, D.C., *October 4, 1967.*

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.:

The National Coal Association supports the passage of H.R. 7610 and other bills which would amend section 303(b) of the Interstate Commerce Act in such a way as to enable barge carriers to make full use of the efficient techniques and equipment they have developed in recent years.

Technical innovation has been the key to a steadily decreasing price of coal, which in turn has let to coal's position as an increasingly important supplier of the Nation's energy—technological innovations not only in coal mining techniques but also those providing greater efficiencies in coal transportation.

The cost of transporting coal often equals the cost of the coal itself; hence, the encouragement of all possible economies in transportation is a critical factor in coal marketing. The ability of barge lines to mix coal with other bulk commodities and with nonbulk commodities in the accumulation of very large tows and thereby to produce highly economical transportation services is vital to the coal industry and to the expansion of its markets.

Approximately 100 million tons of coal move on the inland waterways annually, and that figure is growing constantly. This volume, low-cost movement has influenced the rates of other modes of transportation and has set the pace for transportation of coal in general.

Much of the coal that moves on the inland waterways is transported in solid tows where the problem of mixing regulated and unregulated commodities does not arise. But the bright future of the coal producers is increasingly in markets far away from the Ohio, Illinois, Kentucky, and West Virginia mines. For example, coal is now being shipped successfully by river to the gulf States where it is competing with oil and natural gas, the ability of the carriers to mix coal with other exempt and regulated commodities, on the Lower Mississippi particularly, may mean the difference between successfully marketing coal produced in the States bordering the Ohio River 1,500 or more miles away, or restricting the market substantially.

The coal industry is vitally interested in the ability of the barge lines and other modes of transportation to realize cost savings in their operations which can be passed on to the shipper and, through the shipper, to the consuming public. We support H.R. 7610 and feel that, unless it is approved and the obsolete working of the act removed, recent technological advances in waterway transportation will be nullified and the cost of marketing coal will increase.

We shall appreciate your making this telegram a part of the record.

STEPHEN F. DUNN,
President, National Coal Association.

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 6, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The amendment proposed in H.R. 7610, and related bills, presently the subject of hearings before your Subcommittee, may have some far-reaching consequences which are not immediately apparent. As one who is interested in seeing that the competitive position of the western sugar industry is not endangered by inadvertent discriminatory legislation, I wish to request your scrutinous study of this measure.

A substantial quantity of western sugar, including that produced in Hawaii, is presently being marketed in the midwestern states. The sugar is shipped to these states by regulated rail carriers on a delivered price basis. This midwestern market can also be reached by southern sugar by means of barge service up the Mississippi, Missouri and Ohio Rivers. Obviously, this competitive situation would be virtually destroyed if water carriers to these areas are granted special governmental dispensation to provide unregulated service.

I submit that the legislation under consideration would produce such result. Enactment of H.R. 7610 would make lower rates available to shippers using unregulated bulk barge service. This in turn would enable shippers of southern sugar to undercut the price of western sugar and make the latter, for all intents and purposes, noncompetitive.

The foregoing remarks, citing sugar as an example, are equally applicable to other commodities which are presently transported to a given market area by trucking lines, railroads and water carriers.

For the stated reasons, it is strongly urged that your Subcommittee table H.R. 7610, and take no further action thereon.

It is requested that this letter be included in the record of hearings on this legislation.

Aloha and best wishes.

Sincerely,

SPARK M. MATSUNAGA, M.C.

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 16, 1967.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: It has been brought to my attention by a constituent and a friend in whom I have the deepest respect and confidence, the adverse impact of H.R. 7610 on the western sugar industry.

Mr. James H. Marshall, President of the California and Hawaiian Sugar Company, informs me that this bill would clearly have extremely serious consequences for the western sugar industry, and would add a considerable competitive advantage to those sugar refineries in other parts of our Country.

The most meaningful part of the arguments presented to me by Mr. Marshall was his belief that this competition would be unfair as a result of requiring western sugar industry shippers to ship by regulated rail carriers whereas their competitors could ship on unregulated carriers. That does not seem to me to be a wise policy for Government to sponsor, and I urge your rejection of those provisions of H.R. 7610 that would lead to this unfair result.

Sincerely yours,

JEROME R. WALDIE, M.C.

MINNESOTA RAILROADS ASSOCIATION,
St. Paul, Minn., September 28, 1967.

Re: H.R. 7610 (S. 1314)—Bulk Commodities Exemptions; Water Carriers.

Hon. ODIN LANGEN,
U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR ODIN: May I respectfully call your attention to H.R. 7610 (S. 1314), a bill pending in the Congress to repeal the so-called "mixing rule" in the domestic water carriers' bulk commodity exemption. The "mixing rule" is a limitation upon the scope of that exemption. The bill would thus broaden and enlarge the regulatory exemption enjoyed by water carriers in the transportation of bulk commodities.

As you know, under the present law the barge lines may transport bulk commodities free of rate regulation and free of other ICC regulation, provided only that they carry not more than 3 such commodities in a single tow and that they refrain from mixing bulk and non-bulk commodities in the same tow. The barge lines, in consequence, already enjoy a tremendous advantage over the rigidly regulated railroads in competition for bulk freight.

The present limitations have created no hardship for and have been no surprise to the barge lines. The practices which they seek to allow by passage of this bill are practices first instituted by the barge lines under a legal cloud and they have known full well for many years that they were proceeding under a cloud. The Interstate Commerce Commission, the lower courts and finally the Supreme Court of the United States have held that the practices which the barge lines seek to legalize by the passage of this bill are unlawful under the present act.

Bulk commodities constitute the very backbone of railroad traffic. The competitive consequences for the railroads in this regard are readily apparent. The net effect of the proposed legislation will be to further divert revenues from the railroads, who are endeavoring to maintain a basic transportation service for all America at their sole expense, and to give further competitive advantage to a form of transportation operating upon rights-of-way built and maintained at public expense without payment of any fees whatsoever.

It is our feeling that enactment of H.R. 7610 (S. 1314) is not justified and we earnestly solicit your support of our position at such time as the bill may come before you.

With best personal wishes,
Sincerely yours,

GORDON FORBES, *Counsel.*

CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY,
Chicago, Ill., October 13, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation & Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. FRIEDEL: The Chicago Association of Commerce and Industry supports enactment of H.R. 10659 and similar bills before your subcommittee which would eliminate a restrictive provision concerning Interstate Commerce Commission regulation of carriers operating on the inland waterways. Functioning as the chamber of commerce for the Chicago area, our Association of nearly 6,000 members includes every segment of the business and professional community, and carriers engaged in all modes of transportation. A primary objective of our Association is the fostering and promotion of adequate and economical transportation services by all types of carriers.

As the crossroads of the nation, Chicago has excellent facilities for every mode of transportation. The only inland city combining interior waterway shipping with overseas operations, Chicago is the vital link between the Mississippi River and the St. Lawrence Seaway. Chicago shippers and receivers utilize and benefit from the low cost river transportation that has been developed. Freight moving on the Illinois Waterway which connects Chicago with the Mississippi River increased from 1,695,120 tons in 1935 to 30,812,773 tons during 1965.

Following consideration of this matter by several committees, our Board of directors approved a recommendation that the Association urge Congress to enact

legislation to modernize the language of Section 303(b) of the Interstate Commerce Act as provided by H.R. 19659 and other bills.

The compliance order of the Interstate Commerce Commission, scheduled to become effective January 1, 1968, has the practical effect of prohibiting mixing of regulated and non-regulated commodities in a single large tow. Operating efficiencies and reduced costs which mixing of exempt and non-exempt commodities makes possible will be lost unless this bill is enacted.

While our Association believes the public interest will be best served by enactment of legislation to correct this particular inequity, we have not altered our long-standing policy position favoring ultimate elimination of the exemption in Section 303(b). However, we seriously question the propriety of using the subject legislation as a vehicle for reopening the much larger questions of bulk exemptions for all carriers and equality in regulation. The amendment which this legislation contemplates should not be obstructed by attempts to deal with these much broader and highly controversial subjects.

We strongly urge enactment of H.R. 10659.

Respectfully submitted,

GERALD E. FRANZEN,
Director, Transportation Division.

ST. LOUIS-EAST SIDE TRAFFIC CONFERENCE,
Granite City, Ill., September 27, 1967.

Subject: H.R. 7610, H.R. 10315, H.R. 10659, H.R. 11875, H.R. 12126, H.R. 12143, H.R. 12227, H.R. 12452, H.R. 12602, H.R. 12689, H.R. 12848, H.R. 13018.

Congressman HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

HON. SIR: Representation is made hereby on behalf of the St. Louis-East Side Traffic Conference in support of the above bills which are to be considered by the Subcommittee on Transportation and Aeronautics in public hearings on October 3 and October 4, 1967. These bills propose to amend Section 303(b) of the Interstate Commerce Act by revising exemption restrictions applicable to barge lines.

The St. Louis-East Side Traffic Conference is a non-profit organization made up of approximately 30 companies in the industrial area of St. Louis, Missouri-East St. Louis, Illinois and their environs. This organization is dedicated to the handling of all traffic and transportation matters affecting its membership. The members use all forms of transportation including rail, truck, barge forwarders, air freight and private truck carriage. We are vitally interested in a strong national transportation system operated effectively, efficiently and economically in the public interest and national defense.

The St. Louis-East Side Traffic Conference has officially gone on record in support of the above bills. It is only natural that because of our location at the confluence of the Mississippi and Missouri Rivers, and not far from the Illinois and Ohio Rivers, there has been demonstrated to us the importance of low cost barge transportation; and consequently our organization is greatly concerned with avenues of commerce on the inland waterway system. The low cost transportation afforded by barge operations on our navigable rivers has been of great aid to many of our members in the development of their business by reason of lower transportation rates on shipments of manufactured products, as well as on inbound raw materials and fuels.

Section 303(b) has been on the statute books for over 25 years, and during that time tremendous technological strides have been made that have practically revolutionized barge transportation. The provisions of Section 303(b), while workable when the law was passed, are now outmoded and need revision to bring them up to date to meet the present day needs of commerce. The revisions proposed by the above bills will enable barge carriers to hold down their operating costs by reason of continuance of operation of large tows. This will preserve, and continue in effect, low cost barge rates. This can result only from flexibility in operations and from volume movement of freight by barge in large tows. Volume is the key to efficiency and economy in all fields of industry today, and the improved techniques and facilities developed and put into operation by barge carriers to handle large tows and the savings resulting therefrom should not be wasted. Modernization of laws regulating commerce must keep pace with the developments resulting from improved

technology so that the benefits of such efforts may be enjoyed by the general public.

We respectfully urge therefore that the above bills be acted on favorably. We appreciate very much the consideration of our views in connection with this matter.

Very truly yours,

R. W. MECKFESSEL, *Chairman.*

UNITED BARGE LINE CORP.,
Pittsburgh, Pa., October 17, 1967.

Subject: H.R. 7610 and other identical bills to remedy the barge mixing problem.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: The hearings on these bills which you concluded last Thursday again amply demonstrated the interest and concern which you and the other members of the Committee have for maintaining a strong national transportation system in our country. The extent of the penetrating and constructive inquiries reaffirmed this concern to any observer.

It was my privilege to attend all of your sessions and to appreciate by first hand observation some of the difficulties with which you adjusted schedules and commitments in order to consider the mixing problem that has recently arisen for the water transportation industry. We hope that you will continue to appreciate the urgency of the problem and provide remedy as was mentioned by the United States Supreme Court and as is embodied in H.R. 7610.

Union Barge Line Corporation has been providing water transportation on the Inland Waterways since 1929 and today is the fourth largest regular common carrier on those waterways. Since the Transportation Act of 1940 Union has been operating under a common carrier certificate from the Interstate Commerce Commission, and in 1967 will perform 4,300,000,000 cargo ton-miles.

Since 1929 Union has pioneered an important part of the vast technological development in the industry and as a result, in large part, has been able to keep average cargo ton-mile rates from increasing more than ten percent during the last twenty-five years, whereas the Consumer Price Index in the United States has more than doubled during this period.

From this record it can be seen that as an established common carrier, Union has been and is a substantial part of the overall carrier industry serving the transportation needs of the country.

During this period we have grown with the sincere conviction that our interpretation of Section 303(b) of the Interstate Commerce Act has been right and on that basis have confidently invested a substantial sum in modernized equipment to do the job which the Supreme Court has now said, in effect . . . although we sympathize with your problems, the clock will be turned back unless Congress remedies this situation.

Ours is a simple problem with a simple solution. It is so essential that if we are to continue to provide a dynamic service to the public and encourage the investment of large sums of capital that we be able to continue to operate without a sword of uncertainty hanging over our heads. The issue of de-regulation, anti-trust, and related safeguards is a complicated one. Once Pandora's box is opened in this broad area, no decisive conclusion can be reached for some time and in the meanwhile the constructive environment and atmosphere for investment in technological developments will be stifled for lack of knowing where we are going and what part of this private capital and initiative will play.

We firmly believe the regulated common carrier, with the incentive to invest in private capital and with the government acting only as referee under our ICC set-up, has contributed substantially to making our transportation system the finest throughout the world.

Clearing the uncertainty by the remedial legislation embodied in H.R. 7610 and then getting on with the overall question of equality and anti-trust coverage in refinement of major areas of regulation, would retain present public benefits and also would be consistent with the unanimous Senate Committee support for this legislation as having merit on its own basis in order to avoid cancelling technological progress and efficiency on the waterways.

Respectfully,

CHARLES E. WALKER, *President.*

UPPER MISSISSIPPI WATERWAY ASSOCIATION, INC.,
Minneapolis, Minn., October 2, 1967.

Hon. ANCHER NELSEN,
Member, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE NELSEN: I write to remind you of the interest of the members of this Association in H.R. 7610, a proposed amendment to the "mixing rule" provisions of Section 303(b) of the Interstate Commerce Act; we are told that the Interstate and Foreign Commerce Committee will have this bill before it for study on October 3rd and 4th.

In earlier correspondence, I have commented to you on the inefficient and uneconomic effect on modern-day barging techniques which will be the result if Section 303(b)—as presently worded and as now interpreted—is enforced as proposed beginning January 1, 1968. Because of the dependence of waterway operators in the region of the upper Mississippi upon movements of coal upbound and grain downbound, and because of the dependence of the economy of the region upon the movement of large quantities of these two products by water, the expense and dislocation here would be extraordinary if a waterway operator were prohibited from filling out a downbound grain tow with, say, one bargeload of scrap. It is imperative that legislation such as H.R. 7610 be passed before January, 1968 so that this area may continue to know the ever-increasing benefits of waterway transportation which it has experienced in recent years.

With this letter you will find copies of a pamphlet reflecting the support which a companion bill, S. 1314, had during recent hearings.

Your interest and attention will be appreciated.

Sincerely,

DEAN K. JOHNSON,
Executive Secretary.

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
Washington, D.C., October 9, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, U.S. House of Representatives, Washington, D.C.

MY DEAR MR. FRIEDEL: The American Merchant Marine Institute, which represents a substantial majority of American-flag shipping of all categories, supports H.R. 7610 and S. 1314. We request that this letter setting forth the Institute's support of the bills in question be made part of the record of the Subcommittee's hearings beginning on October 3rd relating to the legislation in question.

H.R. 7610, introduced by Mr. Cabell and S. 1314, introduced by Senator Magnuson, would amend the Interstate Commerce Act dry bulk exemption and would repeal the no-mixing rule, the three-commodity limitation and the custom of the trade date under section 303(b). The Institute favors the passage of this legislation for the reasons set forth by the numerous witnesses who appeared before Senator Lausche's Subcommittee and your Subcommittee in favor of this legislation.

We greatly appreciate your attention to this matter.

Sincerely,

RALPH E. CASEY, *President.*

MISSOURI PORTLAND CEMENT CO.,
St. Louis Mo., October 17, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We operate three (3) cement manufacturing plants at St. Louis, Missouri, Kansas City, Missouri and Joppa, Illinois and eight (8) cement distribution terminals located at Memphis, Tennessee, Nashville, Tennessee, Louisville and Owensboro, Kentucky, Decatur, Alabama, Omaha, Nebraska, and Peoria and Chicago, Illinois.

A substantial part of our bulk cement moves in company-owned barges transported by a tower exempt from I.C.C. economic regulation.

H.R. 7610 and other similar bills would help us serve our trade territory more efficiently and economically.

It is difficult for us to understand why Congress would get into this whole business of deregulation in a simple bill designed to give water carriers more flexibility in transporting bulk commodities. The tank truckers are upset about this turn of events and the Wall Street Journal recently carried a little story about which I am sending you.

The railroads have been effectively competing with barge lines without any change in the law through the use of unit and integral trains to transport coal and other bulk commodities. Also, the railroads so-called heavy hand of I.C.C. regulation becomes the helpful hand of regulation when railroads protest reduced rates of their competitors, even those of other railroads.

We strongly support H.R. 7610 and urge you to pass the bill without amendment and deal with the problem of deregulation of the railroads in the same way the Senate Commerce Committee handled it.

Very truly yours,

LEE K. MATHEWS,
General Traffic Manager.

[From Wall Street Journal, Wednesday, October 11, 1967]

TRANSPORT-RATE REGULATION FIGHT RENEWED IN CONGRESS BY RAIL, TRUCK, BARGE LINES

WASHINGTON.—New firing is breaking out along an ancient Congressional battlefront—parity in transport rate regulation.

Railroads, barge lines and truckers all are getting into the fray, seeking to revive features of a 1964 regulatory overhaul bill that foundered in the House because of dissension among these three industry arms.

Their new and equally conflicting pushes so far center on a House Commerce subcommittee, but the fighting could be extended shortly to the Senate floor as well.

Experience strongly suggests that the new skirmishing will only bring another legislative statemate, and this may well be what the railroads and truckers want. The barge lines, though, are anxious to get through a bill overturning a Supreme Court decision that went against them earlier this year, and their anxiety could provide the catalyst for some legislative compromise.

"After the 1964 debacle," remarks a senior member of the house subcommittee, "I thought it would be at least a decade before anyone would poke his head up again on behalf of a regulatory overhaul. But all of a sudden, the issue is once again wide open."

The new embroilment was triggered by the barge lines in an effort to preserve their practice of hauling a variety of cargoes on a single tow. The Supreme Court, backing an Interstate Commerce Commission ruling, sharply limited barge cargo "mixing" practices last spring, although it gave the water carriers until next Jan. 1 to comply.

Under the court's ruling, water carriers couldn't put goods that come under ICC rate and route regulations on the same tow with bulk commodities, such as coal and grains, on which water carriers alone have a blanket exemption from ICC control.

The water carriers contend this would force them to break up large barge convoys, currently navigated as single units, into uneconomic smaller tows.

With an assist from Chairman Magnuson (D., Wash.) of the Senate Commerce Committee, the barge lines guided a bill restoring their "mixing" authority through the Senate panel last month. Beyond mere reversal of the court, moreover, the measure tends to broaden the definition of an "exempt bulk commodity" and eliminates an existing statutory ceiling of three on the number of such bulk cargoes that can be carried on a single tow outside the ICC's purview.

The railroad industry, which long has sought a similar bulk commodity exemption, offered only token opposition to the measure in the Senate unit—apparently to avoid offending its powerful sponsor, Mr. Magnuson. The truckers did the same, although they mostly would like to see nearly all bulk commodity exemptions stricken from the books.

In hearings set before a House Commerce subcommittee today and tomorrow, however, both the railroads and truckers plan to leap into the fray.

Spokesmen for the Association of American Railroads will urge amendment of the Magnuson bill to give the railroads bulk commodity "parity" with the water carriers. This is something barge interests have fought bitterly through

the years as certain to bring predatory rail-rate reductions and force out water competition.

The American Trucking Associations, for its part, will try to head off any new exemptions from ICC minimum rate controls by pursuing a two-pronged strategy. "We oppose any further exemption from rate regulation, but if Congress decides to grant them all the same, then the least it can do is make the antitrust laws applicable to the railroads to guard against predatory practices," asserts a trucking industry spokesman.

When the railroads are threatened with the loss of current antitrust waivers, the truckers learned long ago, rail ardor for more rate freedom begins to ebb. Such a loss would spell the doom of collective rate-making practices that most railroads have pursued for many years through regional rate conferences.

All this brings matters close to where they stood in 1962 when President Kennedy began a push for transport rate "deregulation" along the lines the railroads are urging. After more than two years, the House Commerce unit finally approved a hybrid bill that moved toward the "deregulation" theme in some respects but broadened ICC controls in others.

The package left nearly every sector of the transport industry with mixed feelings, but water carriers mostly ended up against it and the bill died in the House Rules Committee. Copies of the 1964 legislation currently are being dusted off, however, by transport lobbyists and lawmakers, for even if the full Senate ultimately passes the Magnuson bill intact, the water carriers plainly lack the votes to get it out of the House subcommittee without concessions.

"I want to see a compromise that's fair to all carriers, and the 1964 bill represents a good starting point," says the subcommittee chairman, Rep. Friedel (D., Md.). The subcommittee's ranking Republican, Rep. Springer of Illinois, bluntly told water-carrier spokesmen at an initial conference last week that they should forget about reversing the Supreme Court ruling unless they're more willing to compromise than they were three years ago.

Most subcommittee members are jaundiced by the collapse of nearly all past attempts at compromise and thus take a dim view of current prospects. Almost certainly, a bill won't emerge before next year. But by its very willingness to air the subject, the House subcommittee is at least giving rise to the possibility of an accord for the first time in several years.

DUNDEE CEMENT CO.,
Dundee, Mich., September 29, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I am delighted to learn that you have been able to schedule hearings on H.R. 7610, H.R. 10315 and H.R. 10659, concerning the mixing of commodities in a single tow on the inland waterways; this is great news!

You will perhaps recall that I had recently written on this matter to my congressman, the Honorable Marvin Esch, who had forwarded my letter to your attention, and to which letter you sent a prompt, courteous and interested response. I am writing to you directly this time, however, in order to request specifically that my advisory opinion on this matter be entered into the record of the forthcoming hearings. I believe that you will agree that our company is particularly entitled to be heard on this subject because we are one of the largest shippers on the inland waterways. Although we have only recently begun to transport our commodity by water transportation, we now own and operate a fleet of 34 special jumbo barges, in addition to loading and shipping barges owned by the carriers and others.

We enthusiastically support the aforementioned bills for the pure and simple reason that it is surely economic nonsense to prevent a barge line from carrying regulated and unregulated commodities in a single tow. Unless the recent order by ICC precluding this combined towing is corrected by legislation, there will result an exceedingly wasteful increase in costs for both shippers and carriers. When all of us strive so diligently to attain high efficiency in this country, it is indeed sad to see inefficiency instituted by governmental edict.

Your consideration of our opinions in this matter will be most sincerely appreciated!

Cordially yours,

ROBLEE B. MARTIN, *President.*

AMERICAN SUGAR CO.,
New York, N.Y., August 11, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: As a substantial user of barge transportation, we wish to inform you of our support of H.R. 7610, H.R. 10315 and H.R. 10659, companion bills to amend Section 303(b) of the Interstate Commerce Act.

Our company operates five cane sugar refineries at Boston, Brooklyn, Philadelphia, Baltimore and New Orleans and five beet sugar factories in California and Arizona. We ship a substantial volume of refined sugar by railroad, motor carrier and water carrier. Our principal water shipments are made by barge from our New Orleans refinery. Regular barge shipments are made to our Chicago warehouse and liquid sugar station and shipments by barge are also made to customers in St. Louis, Memphis, Louisville, Nashville, Evansville and Tampa. A smaller volume of refined sugar is shipped by inland waterways from our Baltimore refinery and packaging supplies are shipped by water from our Charleston, S.C. bag plant to our eastern refineries.

The purpose of these bills is to permit the mixing of regulated commodities with exempt bulk commodities in the same tow of barges without forfeiting the bulk exemption. These bills will overcome the effect of a recent decision, *Gulf Canal Lines* v. *United States*, 258 F. Supp. 864 (1966), aff'd per curiam 18 L.Ed. 98 (1967), which held that the mixing in a tow of barges of regulated commodities with barges of bulk commodities places the entire tow outside the bulk exemption and subjects the entire tow to I.C.C. regulation. If these bills are not enacted it will be necessary for the water carriers to fragment the large economical tows which have been used into smaller, less economical tows. This inevitably will result in the necessity for rate increases, which ultimately must be borne by the public. Technological development has been rapid in water transportation and powerful towboats are now available which can handle a large number of barges. Artificial restrictions should not be permitted to hamper the most effective use of these towboats.

The bills would also make clear that sugar transported in bulk by water is exempt from regulation by deleting from Section 303(b) the parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)". The custom of the trade as of June 1, 1939 no longer has any relevance in determining whether the regulation of bulk commodities transported by water is or is not in the public interest. With respect to sugar it is now generally believed that sugar in bulk shipped by water is exempt and the bills would merely confirm existing law. However, enactment of such legislation would be useful in completely settling this issue and avoiding any possibility of litigation.

Based on the above reasons we strongly urge prompt hearings on these bills and the enactment of the legislation to effect the amendment of Section 303(b) of the Interstate Commerce Act as explained above. We request that this letter appear as part of the record in such hearings.

Sincerely,

GEORGE E. DIETHELM,
Vice President and General Counsel.

GRAIN & FEED DEALERS NATIONAL ASSOCIATION,
Washington, D.C., October 5, 1967.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to express the views of the Grain and Feed Dealers National Association in strong support of H.R. 7610 and request that you include this letter in the record of the hearings on that bill.

The Grain and Feed Dealers National Association is an organization of grain and feed firms ranging in size from the smallest country elevators to the largest grain and feed complexes. The membership includes 1,700 direct memberships held by individual firms plus fifty-four state and regional associations representing 15,000 grain and feed firms.

The grain trade is known for its operating efficiency. Literally millions of tons of grain and oilseeds are transported annually through the agricultural marketing system. The grain trade is characterized by large trading volume and narrow margins. Similarly, for most bulk commodity merchants, transportation costs are second only to the cost of raw materials. Therefore, to preserve their position in such a competitive environment, our members and their customers must be able to take full advantage of technological improvements and other operating efficiencies.

For shippers of bulk agricultural commodities, carriers, and ultimately consumers, water transportation efficiency implies central barge fleeting, quick towboat turnarounds, preservation of large tows from departure to destination, and generally large cargo volume and lower unit cost. However, the cargo mixing restrictions of Sec. 303 (b) of the Interstate Commerce Act unduly limit water transportation efficiency.

Ironically, it is the small shipper who would suffer the most if the limitations contained in Sec. 303 (b) were to remain in force. He would be unable to have his barge or barges hooked up to a flotilla having a common destination.

Our industry has been a leader in the development of transportation efficiency. For example, we were the first industry to utilize the railroads' Big John covered hopper cars. We have been important users of tandem trailer trucks. Increased volume of grain has helped make it possible for water carriers to offset increased costs without corresponding rate increases through the use of improved navigation facilities and increased horsepower of towboats and capacity of barges. Our member firms have pioneered in some of the technological developments which have increased the efficiency of water borne traffic.

However, the statutory limitations that H.R. 7610 are designed to relieve are obstacles to further operating efficiencies because they force the break up of large tows.

Our industry has lived with the burden of the mixing rule long enough to realize that we cannot long endure misallocation of such important economic resources without sooner or later suffering parallel economic loss. We respectfully urge the subcommittee to help us avoid this situation by seizing this opportunity for relief and recommending H.R. 7610 for prompt passage.

Sincerely yours,

JOHN H. FRAZIER, Jr.,
Chairman, Transportation Committee.

MONSANTO CO.,
Washington, D.C., September 28, 1967.

Hon. SAM N. FRIEDEL,
Chairman of the Transportation and Aeronautics Subcommittee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: It is my understanding, hearings on House Bill H.R. 7610 will be held on October 3 and 4 before the Transportation and Aeronautics Subcommittee under your chairmanship.

H.R. 7610 has as its purpose the amendment of Section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemptions provided therein. Monsanto Company would like to go on record with your Subcommittee as being in complete accord with the legislation suggested in this bill.

Monsanto Company has 13 plants located on navigable water with barge and other marine facilities and a substantial movement of both liquid and dry bulk cargoes by water. Specifically in 1967, Monsanto will ship in excess of 500,000 net tons of Salt and Fertilizers by water on the inland waterways. Marketing of Sale is very highly competitive with transportation and handling costs representing a very substantial part of the delivered cost of this product. As previously stated, Monsanto is a large shipper on the inland waterways with tonnage growth exceeding 500% in the past ten years. Much of this growth can be directly attributable to the technological innovations and improvements made by the barge carriers during these years and their ability to pass on these economies of volume movements which in turn has enabled our company to distribute its products in the most economical manner.

It is believed that your Sub-committee will agree that the present provisions of Section 303(b) of the Interstate Commerce Act which were enacted in 1940

when barge transportation on our inland waterways was in its infancy are now archaic, and there is urgent need for modernization. Approval of the proposed amendment will eliminate these ambiguities in the Act and will enable both regulated and non-regulated water carriers to efficiently conduct their business and permit the efficiency and continued use of innovation and technological improvement made in their transportation services over the years.

Large volume tonnages must continue to enjoy the flexibility that prevailed prior to the interpretation of the law by the ICC and the courts and failure to enact the proposed amendments will result in increased cost to the barge lines and will materially lessen or destroy the value of favorable geographic locations of industry situated on navigable waterways to take advantage of lower water costs.

It is imperative, therefore, that the exemption provided in Section 303(b) in Part III of the Interstate Commerce Act be amended as suggested in the subject bill which would give both certificated and non-certificated carriers the ability to handle exempt dry bulk commodities in their tows with regulated commodities which freedom they currently enjoy under Section 303(d) of the Act on liquid bulk commodities.

The ICC have set a compliance date of January 1, 1968 for the barge companies to observe the recent courts interpretation and rulings. Consequently, action in this session of Congress is important.

Your full support of the proposed amendment is respectfully requested.

Sincerely,

M. E. ITEN,
Manager, Water Transportation.

ENGELHARD HANOVIA ORE AND BASE METAL SALES,
Newark, N.J., September 27, 1967.

Subject: H.R. 7610 and companion bills.

HON. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR SIR: For a number of years we have used river transportation for the shipment of ferrochromium and chrome ore from New Orleans to the markets of the Midwest and East. The primary reason for continuing to use the waterways is the inherent economic advantage this mode of transportation has over land movements for long distance haulage of bulk commodities.

We strongly favor the enactment of Bill 7610. This would insure continued low rates by water, guard against artificially increasing costs of water carriers and support the ability of the barge lines to accumulate large tows thereby maintaining the lowest possible costs through efficient operations.

I trust that our favorable view towards the enactment of Bill 7610 will be given a warranted consideration.

Very truly yours,

THOMAS W. CUSHING,
Vice President.

THE PROPELLER CLUB OF THE UNITED STATES,
New York, N.Y., October 4, 1967

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: The Propeller Club of the United States during the current year took a strong position for the repeal of the so-called "no-mixing" rule with which H.R. 7610 deals. We understand this bill is being heard before your Committee on October 4, 1967.

For the record and such other use as the Committee may find appropriate, we submit the official position of the Propeller Club on this important issue.

Best wishes and sincere regards,

Yours faithfully,

ED VICKERY,
President.

THE PROPELLER CLUB OF THE UNITED STATES—POSITION NO. 7—1967: REPEAL OF THE NO-MIXING RULE FOR INLAND BARGE LINES

BACKGROUND

Under an archaic and restrictive definition in Section 303(b) of the Interstate Commerce Act, a flotilla of barges is defined as a single vessel. Under a rule against "mixing" regulated and unregulated commodities, no more than three dry bulk commodities may be carried in a single tow without losing their exemption. New technology on the inland rivers now permits tows of 40 to 50 barges pushed by 6,000 to 9,000 horsepower boats, the result of a revolution in power of the past few years. The present "no mixing" rule makes it impossible to accumulate the large tows and hence provide the kind of economical service made possible by technological innovation. The Congress is now considering legislation which would repeal the sentence defining a flotilla of barges as a vessel and allow the continuation of the practice of operating large economical tows. Consideration is also being given to modernizing Section 303(b) by eliminating archaic reference to the practices of the trade in 1939. These measures have the support of the entire inland water carrier industry, of shippers and maritime labor.

POSITION

The Propeller Club of the United States believes that the repeal of the no-mixing rule for inland barge lines, repeal of the three-commodity limitation and repeal of the "Custom of the trade" date, under Section 303(b) of the Interstate Commerce Act, is in the best interests of consumers, shippers, the inland waterway transportation system and ultimately the economy of the United States; and urges that such action be taken.

ACME DISTRIBUTING COMPANY, INC.,
Sarasota, Fla., September 26, 1967.

HON. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We feel Bill H.R. 7610 will grant the domestic water carriers an unfair advantage versus the railroads and would appreciate your vote against passing this proposed bill. If the water carriers are allowed to promiscuously haul all commodities without restriction this would eventually have an adverse effect on the railroads which we depend for our transportation and could in essence place the railroads in such state as to request higher freight rates which we are not in position to absorb.

Very sincerely yours,

J. J. SOCCIARDI, *President.*

(Whereupon, at 11:50 a.m., the subcommittee was adjourned.)

○