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ADVISORY COMMISSION TO STUDY FREIGHT RATES

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 2355

TO ESTABLISH AN ADVISORY COMMISSION TO MAKE A
STUDY AND REPORT WITH RESPECT TO FREIGHT RATES

MARCH 17, 18, AND 19, 1970

Serial No. 91-62

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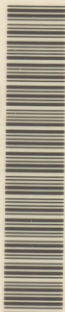


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TO ESTABLISH AN ADVISORY COMMISSION TO MAKE A STUDY AND REPORT WITH RESPECT TO FREIGHT RATES

TUESDAY, MARCH 17, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 5110, New Senate Office building, Hon. Vance Hartke (chairman of the subcommittee) presiding.

Present: Senators Hartke and Cannon.

OPENING STATEMENT BY THE CHAIRMAN

Senator HARTKE. The subcommittee on Surface Transportation is today commencing hearings on S. 2355, which is a bill to establish an advisory commission to make a study and report with respect to freight rates.

The witnesses have been advised, however, that their testimony need not be confined to the terms of the legislation. The costs to the consumer as well as the producer which arise from rate increases are often multiple. The consumer can never recover his losses even where a rate increase is temporary. Every aspect of activity in the United States is affected by transportation rates.

Freight rate increases have been the topic of discussion before this subcommittee in the ICC oversight hearings held last June as well as in the continuation of those hearings which were begun yesterday.

The railroads alone have proposed rate increases over the past 31 months which, if approved, would increase rates by 23 percent. The ICC has not allowed the latest of these proposals to go into effect, and one of the proposals; namely, the one made last fall, is, in effect, pending investigation.

This committee has been inundated with complaints from shippers and consumers throughout the country protesting the continuing increase in transportation rates. At a time when inflation poses a serious threat to the country, it is appropriate for Congress to review legislation such as S. 2355, as well as to review the general problem of transportation rate increases.

(The bill and agency comments follow:)

Staff member assigned to this hearing: A. Daniel O'Neal.

91ST CONGRESS
1ST SESSION

S. 2355

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1969

Mr. BURDICK (for himself, Mr. HUGHES, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MONDALE, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To establish an advisory commission to make a study and report with respect to freight rates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ESTABLISHMENT OF COMMISSION

4 SECTION 1. (a) There is hereby established an Advisory
5 Commission on Freight Rates (hereinafter referred to as
6 the "Commission") which shall be composed of thirteen
7 members appointed by the President as follows:

8 (1) one to represent the agricultural industry;

9 (2) one to represent industry generally;

10 (3) four to represent the transportation industry,
11 one from each of the modes of transportation regulated

1 pursuant to parts I, II, and III of the Interstate Com-
2 merce Act and the Federal Aviation Act of 1958;

3 (4) two to represent the public generally;

4 (5) four to represent the Federal Government, one
5 from each of the Departments of Transportation and
6 Agriculture, one from the Interstate Commerce Commis-
7 sion, and one from the Civil Aeronautics Board; and

8 (6) one to serve as Chairman.

9 (b) Any vacancy in the Commission shall not affect its
10 powers, but shall be filled in the same manner as the original
11 appointment.

12 (c) The Commission shall elect a Vice Chairman from
13 among its members.

14 (d) Seven members of the Commission shall constitute
15 a quorum.

16 DUTIES OF THE COMMISSION

17 SEC. 2. (a) The Commission shall make a full and
18 complete study of charges for the transportation of freight by
19 all modes of transportation for the purpose of determining—

20 (1) the factors that contribute to the fixing of such
21 charges;

22 (2) the reasons for any differences in such charges
23 because of the place of origin or destination or the com-
24 modity transported;

25 (3) whether or not all departments, agencies,

1 commissions, and instrumentalities of the Government
2 are properly carrying out the national transportation
3 policy, as stated in the Interstate Commerce Act, and
4 the Federal Aviation Act; and

5 (4) whether the national transportation policy as
6 stated in the Interstate Commerce Act and the Federal
7 Aviation Act is adequate in view of modern conditions.

8 (b) The Commission shall submit to the President and to
9 the Congress a report with respect to its findings and recom-
10 mendations not later than two years after the Commission
11 has been fully organized.

12 POWERS AND ADMINISTRATIVE PROVISIONS

13 SEC. 3. (a) The Commission or, on the authorization
14 of the Commission, any subcommittee or member thereof,
15 may, for the purpose of carrying out the provisions of this
16 Act hold such hearings, take such testimony, and sit and act
17 at such times and places as the Commission, subcommittee, or
18 member deems advisable. Any member authorized by the
19 Commission may administer oaths or affirmations to wit-
20 nesses appearing before the Commission, or any subcommit-
21 tee or member thereof.

22 (b) Each department, agency, and instrumentality of
23 the executive branch of the Government, including inde-
24 pendent agencies, is authorized and directed to furnish to the
25 Commission, upon request made by the Chairman or Vice

1 Chairman, such information as the Commission deems neces-
2 sary to carry out its functions under this Act.

3 (c) Subject to such rules and regulations as may be
4 adopted by the Commission, the Chairman, without regard
5 to the provisions of title 5, United States Code, governing
6 appointments in the competitive service, and without regard
7 to the provisions of chapter 51 and subchapter III of chapter
8 53 of such title relating to classification and General Schedule
9 pay rates, shall have the power—

10 (1) to appoint and fix the compensation of such
11 staff personnel as he deems necessary, and

12 (2) to procure temporary and intermittent services
13 to the same extent as is authorized by section 3109 of
14 title 5, United States Code, but at rates not to exceed
15 \$50 a day for individuals.

16 **COMPENSATION OF MEMBERS**

17 **SEC. 4.** (a) Any member of the Commission who is
18 appointed from the executive branch of the Government shall
19 serve without compensation in addition to that received in
20 his regular employment, but shall be entitled to reimburse-
21 ment for travel, subsistence, and other necessary expenses
22 incurred by him in the performance of duties vested in the
23 Commission.

24 (b) Members of the Commission, other than those re-
25 ferred to in subsection (a), shall receive compensation at

1 the rate of \$100 per day for each day they are engaged
2 in the performance of their duties as members of the Com-
3 mission and shall be entitled to reimbursement for travel,
4 subsistence, and other necessary expenses incurred by them
5 in the performance of their duties as members of the
6 Commission.

7 EXPENSES OF THE COMMISSION

8 SEC. 5. There are authorized to be appropriated, out of
9 any money in the Treasury not otherwise appropriated, such
10 sums as may be necessary to carry out this Act.

11 EXPIRATION OF THE COMMISSION

12 SEC. 6. The Commission shall cease to exist ninety days
13 after the submission of its report.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 18, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of June 12, 1969, requested comments on S. 2355, a bill "To establish an advisory commission to make a study and report with respect to freight rates."

This bill would establish an Advisory Commission on Freight Rates, composed of 13 members appointed by the President, representing shippers, carriers, government agencies, and the public. The purpose of the bill is to provide for a full and complete study of charges for transportation of freight by all modes of transportation and to determine the factors that contribute to the fixing of such charges.

The Department does not favor enactment of this bill.

The determination of freight charges is an extremely complex and technical process influenced by diverse economic, geographic and social considerations. An Advisory Commission of the type proposed does not appear to be the most appropriate means of achieving the objectives outlined.

The Department of Transportation was established by Congress to provide general leadership in the identification and solution of transportation problems, with responsibility vested in the Secretary of Transportation to provide leadership in the development of national transportation policies and programs. Also the Interstate Commerce Commission is authorized to investigate freight charges in administering the Interstate Commerce Act. Both of these agencies have experienced transportation staffs. Thus, the establishment of a special commission to study these matters does not appear to be necessary.

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

Sincerely,

CLIFFORD M. HARDIN, *Secretary.*

CIVIL AERONAUTICS BOARD,
Washington, D.C., March 18, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of June 12, 1969, requesting the views of the Board with respect to S. 2355, a bill "To establish an advisory commission to make a study and report with respect to freight rates."

S. 2355 would establish an Advisory Commission on Freight Rates, composed of Presidentially appointed members representing the agricultural and transportation industries; industry and the public generally; and the Federal Government. The Commission would study freight rates for the purpose of determining: (1) the factors that contribute to the fixing of such charges; (2) the reasons for any differences in such charges because of the place of origin or destination or the commodity transported; (3) whether or not all Government agencies are carrying out the national transportation policy, as stated in the Interstate Commerce Act and the Federal Aviation Act; and (4) whether that transportation policy is adequate in view of modern conditions. The primary purpose of the bill, judging from the remarks of its sponsor, is to insure that freight rates will be structured to respond to changes in costs resulting from technological innovation and to avoid rates which subsidize the transportation of one commodity at the cost of another.

The subject bill is a refinement of proposed legislation (S. 3410) introduced in the 90th Congress, proposing the establishment of an Advisory Commission to study freight rates for farm products. The primary purpose of the prior legislation appeared to be to have the Advisory Commission determine whether the criteria set forth in the Interstate Commerce Act were being applied in the fixing of railroad rates for the transportation of grain. The present bill has been enlarged to include consideration of air freight rates established pursuant to the Federal Aviation Act.

As your Committee knows, the air freight industry is still in a developmental period and its economics differ in some respects from those of the surface freight

industry. As is typical in a developmental period, the airlines offer some freight services at promotional rates which are tailored more to the need to develop new traffic than to a uniform cost formula. The Board has received few complaints from shippers complaining that freight rates are discriminatory, either with respect to "the place of origin or destination or the commodity transported." (See section 2(a) of the subject bill). Air freight rates thus do not appear to be particularly subject to the ills to which the bill is directed. Nonetheless, the Board has no objection to the enactment of legislation which, like the subject bill, establishes a commission to study air freight rates as well as surface rates. However, the Board defers to the Department of Transportation, and the other agencies that would be involved, as to the need for S. 2355.

The Board has been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

(Signed) SECOR D. BROWNE, *Chairman.*

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., March 19, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of June 17, 1969, requested the views of the General Services Administration on S. 2355, 91st Congress, a bill "To establish an advisory commission to make a study and report with respect to freight rates."

The bill would establish a 13-member Advisory Commission on Freight Rates, representing various shipper and carrier interests, the public, and the Federal Government, to make a full and complete study of freight transportation charges. The purpose of the study would be to determine: (1) the factors that contribute to the fixing of freight charges; (2) the reasons for any differences in charges because of the place of origin or destination or the commodity transported; (3) whether or not all Government agencies are properly carrying out the national transportation policy, as stated in the Interstate Commerce Act and the Federal Aviation Act; and (4) whether the national transportation policy is adequate in view of modern conditions.

GSA is concerned with transportation and traffic management on behalf of executive agencies of the Government, from the viewpoint of a user of transportation services. In that capacity, we are interested in the establishment and maintenance of fair and reasonable rates for the numerous commodities which are shipped throughout the United States by the Government. We are also interested in the maintenance of an adequate transportation system to meet the needs of the Government and the nation as a whole.

In view of the above, GSA favors the objectives of S. 2355, but defers to the Department of Transportation and the Interstate Commerce Commission as to whether the provisions of the bill are appropriate to accomplish these goals.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

ROD KREGER, *Assistant Administrator.*

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 27, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2355, a bill "To establish an advisory commission to make a study and report with respect to freight rates."

The bill provides that the proposed Advisory Commission on Freight Rates would make a study of charges for the transportation of freight by all modes of transportation for the purpose of determining (1) the factors that contribute to the making of freight rates; (2) the reasons for any differences in rates because of the place of origin or destination or the commodity transported; and (3) whether the national transportation policy as stated in the Interstate Commerce Act and the Federal Aviation Act is adequate in view of modern conditions, and whether all departments, agencies and commissions are properly carrying out that national transportation policy. The Commission would be directed to submit to the President and Congress two years after it has been fully organized a report with respect to its findings and recommendations.

The Department of Justice believes that a thorough study of freight rates might be useful. The freight rate structure has substantial effects on the nation's production and distribution system. In our opinion, questions exist whether rates adequately reflect the costs of service in many transportation functions, and whether adequate freedom for competitive rate-making is allowed. No mechanism now exists for obtaining a comprehensive view of rate patterns.

While we endorse the objectives of S. 2355, we defer to the Department of Transportation as to whether this bill is the most appropriate vehicle for a study such as that contemplated. In any such study, perhaps consideration might be given to broadening representation to include more members of the shipping public and representatives of academic institutions. Consideration might also be given to including an explicit statement of the need to inquire into questions concerning the appropriateness of the means by which rates are now proposed by transportation companies, the appropriateness of standards and procedures used by regulatory agencies in passing on such rate proposals, and the question whether the scope of regulatory authority should be curtailed in some areas, such as motor carriage of freight.

If the Committee does favorably consider the approach taken in S. 2355, we have one suggestion to offer. Under § 3(b), executive agencies would be directed to furnish to the Commission, upon request by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions. We suggest that this subsection be amended to conform with the language customarily found in provisions of this sort by inserting on page 3, line 24, after the word "furnish", the words "to the extent permitted by law".

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

FEDERAL MARITIME COMMISSION,
Washington, D. C. March 30, 1970.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Federal Maritime Commission with respect to S. 2355, a bill to establish an advisory commission to make a study and report with respect to freight rates.

The bill would establish an advisory commission for the study of freight rates in all modes of transportation which would report its findings to the President and to the Congress not later than two years after its organization. The scope of the study is to determine (1) the factors which contribute to the fixing of freight rates, (2) the reasons for differences due to place of origin or destination, (3) whether the national transportation policy is being properly carried out by all departments, agencies, commissions, and instrumentalities of the Government, and (4) whether that policy is adequate in view of modern conditions.

The composition of the "Commission", all members of which would be appointed by the President, is proposed as follows:

1. one to represent the agriculture industry;
2. one to represent industry generally;
3. four to represent the transportation industry, one from each of the modes of transportation regulated pursuant to *Parts I, II and III of the Interstate Commerce Act and the Federal Aviation Act of 1958*;

4. two to represent the public generally;
5. four to represent the Federal Government, one from each of the Departments of Transportation and Agriculture, one from the Interstate Commerce Commission, and one from the Civil Aeronautics Board; and
6. one to serve as Chairman—13 in all.

Sections 2(a) (3) and 2(a) (4) of the bill contemplate an evaluation of the manner in which the national transportation policy is carried out and whether such policy is adequate. The Federal Maritime Commission takes no position as to whether enactment of S. 2355 is necessary or desirable. However, should your committee determine to take favorable action on the bill, we offer the following comments for your consideration.

A superficial reading of the bill might convey the impression that the scope of the study and report is to be confined to freight rates in the domestic transportation only. However, we do not believe it is intended that the function of the advisory commission be so restricted. Section 2, which sets forth the duties of the commission does not limit those studies to domestic rates—on the contrary it charges the commission to “*make a full and complete study of charges for the transportation of freight by all modes of transportation . . .*” (italics supplied). Thus, the bill not only seems broad enough to include transportation by common carriers by water in the foreign commerce of the United States—it seems to contemplate that such transportation be included. In this respect it would appear that one of the duties of the advisory commission would be an appraisal of the administration of the shipping statutes in the light of the “national transportation policy.”

The Federal Maritime Commission which, under the shipping statutes, has regulatory jurisdiction over common carriers by water in the foreign and the domestic off-shore trades of the United States would not be represented by a member on the advisory commission as proposed by S. 2355, nor would the transportation industry subject to these statutes be represented on the proposed advisory commission. In the discharge of its statutory responsibilities the Federal Maritime Commission has conducted many investigations into the surveillance over rate making activities of those common carriers and conferences of such carriers subject to its jurisdiction.

It is our view that failure to utilize the Commission’s expertise in the international and domestic trades under its jurisdiction, especially as it pertains to rate fixing in the waterborne commerce, would result in an incomplete analysis of national transportation conditions.

For the above reasons we recommend that if the Committee favorably considers S. 2355, the Federal Maritime Commission and the shipping industry which it regulates, be represented on the advisory commission and that appropriate revision be made to section 1 of the bill to accomplish this.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration’s program.

Sincerely,

HELEN DELICH BENTLEY, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 23, 1969.

B-142070.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: We refer to your letter of June 12, 1969, in which you asked for our comments on S. 2355.

S. 2355 would establish an Advisory Commission on Freight Rates to study and report to the President and the Congress on the factors basic to the determination of freight rates via all modes of transportation. These include factors which result in rate and charge differences based upon the kind of commodity and upon geographical considerations. The report is also to include the Commission’s findings concerning the implementation of the national transportation policy by Governmental instrumentalities; and upon the adequacy of the national transportation policy in the present economy.

The Advisory Commission on Freight Rates would consist of 13 members appointed by the President: the Chairman, a member each from the Department of Transportation, the Department of Agriculture, the Interstate Commerce Commission, and the Civil Aeronautics Board, two members from the general public, a member from each of the transportation modes regulated by Parts I, II and III of the Interstate Commerce Act, and the Federal Aviation Act of 1958, one to represent industry generally and one to represent the agricultural industry. The members so appointed would elect their own Vice Chairman.

You may wish to consider the advisability of increasing the Commission's membership by one member from the Federal Maritime Commission or from the maritime transportation industry. Ocean charges and the conditions under which arrangements are made for ocean transportation may affect the level of freight rates and charges assessed by air and surface modes of transportation. Competition among carriers and ports for import and export freight may influence interior rates and patterns of traffic movement. Great Lakes port interests, too, have pointed out on occasion that freight charges from mid-west origins to nearby Great Lakes ports are often higher than the charges from those origins to East Coast Atlantic ports. Rates in both areas are determined in part by the intended transshipment via water to foreign destinations. It therefore may be advantageous to have ocean trade interests represented on the proposed Commission.

Under section 3 of S. 2355, the Commission or any of its members would be empowered to hold hearings and take testimony, under oath, at times and places concerning personnel appointment, classification and salary. The Chairman the departments and agencies of the Federal Government, including independent agencies, would furnish the Commission with information considered necessary for carrying out its functions.

The Commission would be authorized to adopt rules and regulations empowering the Chairman to appoint and fix the compensation of necessary staff personnel without regard to the provisions in Title 5 of the United States Code concerning personnel appointment, classification and salary. The Chairman would also have authority to arrange for temporary and intermittent services, as authorized in 5 U.S.C. 3109, at a rate not in excess of \$50 per day.

Section 4 is devoted to the compensation of the Commission members. From the standpoint of both administration and audit, we think S. 2365 would provide more satisfactory guidelines if the following language were to be substituted for paragraphs (a) and (b) which begin with line 17, page 4 of the bill, and end on line 6, page 5:

"(a) Members of the Commission who are officers or employees of the Federal Government shall receive no compensation for their services as such, but shall be allowed necessary travel expenses (or in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates prescribed in 5 U.S.C. 5702, 5704), and other necessary expenses incurred by them in the performance of duties vested in the Commission, without regard to the provisions of subchapter I, Chapter 57 of Title 5 of the United States Code, the Standardized Government Travel Regulations or 5 U.S.C. 5731.

"(b) Members of the Commission appointed from outside the Federal Government shall each receive compensation at the rate of \$100 per day for each day they are engaged in the actual performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, in accordance with the provisions of paragraph (a)."

The Commission is to submit its report not later than two years after it has been fully organized (section 2(b)) and shall cease to exist 90 days after the report is submitted (section 6). It is possible that the task set for the Commission is such that it may not be completed within the allotted time span. Some flexibility in this aspect of the bill might be afforded by adding to section 2(b) a proviso permitting an additional period of six months or more for submission of the report upon a finding of the Chairman, certified to the President and the Congress, of the need for the additional time. We also suggest that section 6 could usefully be expanded by a provision for placing the Commission's records, when its existence terminates, in the care of the Secretary of Transportation.

The establishment of such an Advisory Commission on Freight Rates is primarily a matter of Congressional policy-making. Enactment of the bill would have no material effect on the functions and operations of our Office. It is con-

ceivable, however, that in the long range, a rate study such as this bill contemplates might well benefit the Government in its capacity as purchaser of freight transportation services. And the results of the study could be useful to both Government and private industry in the joint effort to achieve and maintain a viable intermodal transportation system which will be adequate to serve the national interest and to fulfill expanding community needs for freight service availability. Subject to the foregoing comments, therefore, we have no objection to favorable consideration of S. 2355 by your Committee.

Sincerely yours,

ROBERT F. KELLER,
(For the Comptroller General of the United States).

Senator HARTKE. Scheduled to testify before the committee are representatives of the ICC, the Department of Transportation, the Department of Agriculture, carriers, shippers, and consumer groups. The first scheduled witness is the author of S. 2355, Senator Quentin Burdick.

At this time the record will contain a statement from Senator Prouty who indicated he could not be here in person, but his statement will appear at this place in the record.

(The statement follows:)

STATEMENT OF HON. WINSTON PROUTY, U.S. SENATOR FROM VERMONT

I quite agree that this is a good time to hold hearings with respect to the freight rate structure of all modes of transportation. I also agree that there are many problems associated with freight rate regulation today. One of these is certainly the continuing increase in the level of rates charged by all modes of transportation. However, it appears to me that the most important one, and the one to which S. 2355 is directed, is the result of technological advances which make possible a more efficient use of our overall transportation resources in multimodal combination than has been feasible in the past.

To secure the benefits of multimodal transportation, however, it is clear that some way must be found to rationalize the disparate freight rate structures of the various modes. Some uniform standard upon which to base all rates must necessarily be developed. Thus, in a very real sense this hearing has been called not so much to deal with past problems as to seek constructive solutions which will enable us to meet the challenge of the future. I would hope that these hearings would focus on these challenges and the means for developing an appropriate standard for rate regulation in the future rather than being simply a forum for the airing of grievances concerning inequities in the present freight rate structure.

For this reason, I am wholeheartedly in accord with the objectives of S. 2355. I believe a study such as proposed therein is an absolute necessity. However, I am troubled that the bill S. 2355 would establish yet another independent commission to make this study of freight rates. This is precisely the sort of investigation which we should expect and could direct the Department of Transportation to undertake.

We established that Department to serve as a coordinator of the various modes of transportation and as a mechanism to develop a truly National Transportation System. Yet this bill would bypass that Department in favor of establishing another independent commission. Clearly doing so would be more expensive than utilizing the existing resources and expertise of the Department, and in all probability would require a longer period of time. The Department presently has available to it much of the necessary information upon which to base such a study. I am told they would welcome the opportunity to do so, given adequate funding, of course.

I believe the Department should be Congress' chosen instrument for conducting the study proposed in the bill S. 2355 unless for some reason unknown to me the Department can be found not to be the suitable agency to do so.

Senator HARTKE. The first witness we have this morning is the author of S. 2355, the Honorable Senator from North Dakota, Senator Quentin N. Burdick.

STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM
NORTH DAKOTA

Senator BURDICK. Mr. Chairman and members of the committee, first of all I would like to express my appreciation for holding these hearings. I think the subject matter we are going to deal with today is of national importance, and as I say, I thank the committee for making these arrangements.

We have cautioned our witnesses to be brief and in most cases we are asking that their statements in toto be made a part of the record and that they summarize and touch the highlights.

At this time, Mr. Chairman, I would like to ask unanimous consent that my full statement be made a part of the record and I might summarize thereafter.

Senator HARTKE. Yes; without objection.

Senator BURDICK. We are here today, Members of the Senate and a group of constituents, to talk about S. 2355, legislation to bring about a general study of the freight pricing structure in this country.

This study should be conducted, we believe, by an independent commission. The people who are here from North Dakota, whom I shall introduce to you in a moment or two, are here out of genuine concern about how the freight price structure today affects the business of agriculture. The significance of this is easy to miss because we seldom think of the farmer as a businessman. But agricultural shipments represent 23.7 percent of all freight hauled in the United States.

The concern in the agricultural sector is mounting because in recent days the Nation's railroads have asked for their fourth general rate increase since 1967.

There has been at one time in the history of our Nation a general study of freight rates on agricultural products. It was in the 1930's and was a direct result of the terrible economic conditions on farms during the farm depression. It produced some changes in rates.

When you look at the freight rate structure in North Dakota, you cannot do so without one eye on the history books. North Dakota was settled as an extension of the Minneapolis and St. Paul and in early years there was no market except that or the head of the Lakes at Duluth-Superior. The freight rates established made movement in any other direction to any other market almost prohibitive.

But interest in export of wheat to the Orient grew and grew and in 1965 we succeeded in establishing this lower rate on export wheat moving to the west coast.

This new rate has generated greatly increased revenue for the railroads.

In the past freight rates have been set on a piecemeal basis. I think that with the problems this Nation faces today this is a luxury we cannot afford. We have a growing recognition of the interrelated nature of our economic structure and I believe this dictates a need for a broader approach.

Today we have the tools of economic analysis necessary to effectively determine the total costs of providing transportation service and to set the rates on the basis of the cost of service plus a reasonable return.

I believe his point is that this commission should be broadly representative of not just the providers of freight transportation services but also the consumers of these services. While it may be necessary in the process of legislation to adjust the makeup of the commission, I believe that this principle of broad representation can be adhered to.

Although the ICC has a staff competent to perform this study, what we need here is authorization much broader than just one or two modes of transportation. That is why we are asking at this time for a broad representation on this commission to make an adequate study.

(The statement follows:)

STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, I am here today as a member of the Senate with a group of my constituents to talk about S. 2355, legislation to bring about a general study of the freight pricing structure in this country. This study would be conducted by an independent Commission and it would be a study not limited strictly to the rate for hauling "X" quantity of "Y" commodity to point "Z"—though we must first know this—but would rather be a general study of what today goes into the pricing of that transportation service and what factors ought to go into it.

These people from North Dakota whom I shall introduce to you in a moment are here out of a genuine concern about how the freight price structure today affects the business of agriculture. The significance of this is easy to miss because we seldom think of the farmer as a business man. But agricultural shipments represent 23.7% of all freight hauled in the United States. The concern in the agricultural sector is mounting because in recent days the nation's railroads have asked for their fourth general rate increase since 1967.

There has been at one time in the history of our nation a general study of freight rates on agricultural products. It was in the 1930's and was a direct result of the terrible economic conditions on farms during the farm Depression. It produced some changes in rates. In the intervening years, beginning in the late 1930's and continuing through World War II, agriculture in our part of the country has seen some prosperity.

Since the beginning of the 1950's, however, the economy of agriculture has been on a downward trend. The prices farmers receive for their products have dropped. Although there has been some increase in productivity, the cost for the factors of production have gone much higher.

Further compounding this economic situation is the fact that agriculture is required to pay the freight bill both ways. When the farmer sells his produce, freight is deducted from the payment he receives. When the farmer goes down to his implement dealers to buy a new tractor, freight is added onto the price which he must pay.

Reflecting this increasing concern, the North Dakota Legislature nearly every session passes a resolution urging a freight rate study.

Mr. Chairman, if I may, I would like to enter in the record at this point the resolution passed by the North Dakota Legislature at its last session in 1969.

As I indicated a moment ago, this interest in freight rate reform has been with us in agriculture for some time. Through the piecemeal process, there have been some changes in freight rates. I point as an example to the export rate on grain which was established in 1965.

When you look at the freight rate structure in North Dakota, you cannot do so without one eye on the history books. North Dakota was settled as an economic extension of the Twin Cities of Minneapolis and St. Paul, and in the early years there was no other natural market except that or the head of the Lakes at Duluth-Superior. The freight rates established made movement in any other direction to any other market almost prohibitive.

But interest in export of wheat to the Orient grew and grew and in 1965 we succeeded in establishing this lower rate on export wheat moving to the West Coast.

This new rate has generated greatly increased revenue for the railroads.

The second accident of history which affects our freight rates is the lack of any other dominant means of transportation besides railroads in North Dakota.

Although the Interstate Commerce Commission certainly has a staff competent to perform the study, what we need here involves an authority much broader than just one or two modes of transportation.

Secondly, I think we need to study more than farm products. The rates on one commodity cannot be studied in a vacuum. In addition, we now have an interest on the part of quite a few segments of industry generated by these four rounds of requests for general freight rate increases.

In the past, freight rates have been set on a piecemeal basis. I think that with the problems this nation faces today this is a luxury we cannot afford. We have a growing recognition of the interrelated nature of our economic structure and I believe this dictates a need for a broader approach. Today we have the tools of economic analysis necessary to effectively determine the total costs of providing transportation service and to set the rates on the basis of the cost of service plus a reasonable return.

I think we should also be sure that this Commission is constituted in such a way that it does not take too narrow a view of what conditions in the industry should be included in the determination of rates. If intermodal competition, for example, is the determining factor in setting the rate on a particular commodity, then we will have the perpetuation of the present system under which rates on noncompetitive hauls are set high enough to subsidize below cost operations.

I think it is time for us to give some serious consideration to new concepts of the rate making broad enough to take in the highly complex economic structure of the nation and the results of decisions made affecting that structure. I also want to leave the Committee with no misunderstanding about the difficulty involved in the makeup of this Commission. To give you an idea of the feelings which I think exist in North Dakota I am asking for permission to submit at this point in the record a letter from a constituent, Mr. Ardale Wagner.

I believe his point is that this Commission should be broadly representative of not just the providers of freight transportation services but also the consumers of these services. While it may be necessary in the process of legislating to adjust the makeup of the Commission, I believe that this principle of broad representation can be adhered to.

Gentlemen, in summary, let me say that I believe that this is needed legislation, and I hope that you can move it along based upon the record which will be built in the next few days.

Senator BURDICK. So, in the interest of time, at this time I would like to ask the Chairman for unanimous consent to place in the record the following items: A statement by Mr. B. J. Malusky, general manager of the Farmers Union Grain Terminal Association. A statement by Ray R. McKinley, director of transportation of the Kansas Corporation Commission, in behalf of Chairman Dale E. Saffels.

I would also like to submit the following letters which I received from Senator George McGovern of South Dakota and a resolution of the South Dakota State Legislature.

Senator HARTKE. Without objection, these will appear as part of the record.

(The material referred to follows:)

STATEMENT OF B. J. MALUSKY, GENERAL MANAGER, FARMERS UNION GRAIN TERMINAL ASSOCIATION, ST. PAUL, MINN.

As general manager of Farmers Union Grain Terminal Association, I want to support S. 2355 introduced by Senator Quentin Burdick of North Dakota and other Senators from the States in which our members live, including Senators McGovern, Mansfield and Mondale.

This bill to set up an advisory commission to study and report on freight rates and national transportation policy is urgently needed by grain farmers, and especially by those in our area. We are the farthest from domestic markets and from seaports for overseas markets. We pay the highest rates on grain in the Nation, even higher for the length of haul than in the southwestern wheat area.

Over 100,000 farmers in Montana, the Dakotas and Minnesota own the 440 local cooperatives that are members of our federated regional cooperative, or are patrons of the nearly 200 local elevators which we operate directly. Some managers and cooperative officers are here today from our main grain State, North Dakota, to tell you of their transportation problems. These men have daily knowledge of the shortcomings and inequities of our present transportation system. I know this subcommittee will respond to their story and give it full weight in reaching your decision on this bill.

As one of the largest users of the railroads in this country, we pay on behalf of our members over \$23 million rail freight billings on more than 100 million bushels of grain shipped in nearly 50,000 carloads. In addition, we receive scores of thousands of truckloads of grain, giving us an annual volume of receipts of between 160 to 175 million bushels. We also ship many millions of bushels on Mississippi River barges, Great Lakes freighters, and ocean boats using the St. Lawrence Seaway.

We have large terminal elevators at Superior, Wisconsin, and St. Paul, Minnesota, and operate other terminals jointly in St. Louis and New Orleans. In addition, we are processing soybeans, flaxseed, malting barley, durum wheat, and commercial feeds in some of the largest plants in the country. Our net investment in these plants, all located on railroads, is nearly \$50 million.

Our local member cooperatives have a similar investment also all located on rail, making a total of around \$100 million in fixed assets on rail facilities. These are sizable totals, but they are small compared with the much larger investment our members have in their home farms, plus sizable investments in other cooperatives for marketing and farm supplies.

Grain farmers have a deep immediate and personal interest in freight rates, services and efficiency. Their net income depends directly on freight charges they must pay. Their marketings depend upon the quality and cost of the transportation services they can get. Their ability even to make sales at all often depends upon having railroad cars available, or upon having rates low enough for their grains to be competitive in distant markets.

With the price squeeze which grain producers are in, and with more competition for grain markets both here and abroad likely in the next few years, they are greatly interested in anything which can be done to get better service and lower rates in moving their grain.

The same problems affect their local marketing cooperatives, which have suffered so frequently from lack of boxcars or hoppers in recent years, and from mounting rates with one increase being asked after another.

Many changes have taken place in markets for grain in this country and abroad in recent years, and many changes likewise in transportation and in the other elements of our marketing system. The basic rate structure set up in 1935 under the Western Grain Case (Docket 17,000) no longer serves as well as it did in earlier years. By reason of many changes since then, many rates are no longer in balance with one another.

More importantly, the higher gathering rates from the local shipping point to the primary market such as Minneapolis, or Sioux City, weigh more heavily on farmers today relative to our low grain prices than they did even back in the depression years. Such exorbitant gathering rates also result in trucking of grain for many hundreds of miles, even though rail operations should be several times as efficient as any truck could be.

In addition, some commodity rates, such as those on malting barley, have not been kept in adjustment with other grains, while special rates have been developed for exports or for other grain areas competing with us, which distort the original rate pattern.

Now there is a growing movement to eliminate transit and other privileges, or to charge heavily for them. We also see more special rates from point-to-point instead of area to area, or for volume shipments of multiple cars or entire trainloads. Grain sampling at points of origin, introduction of more big hopper cars for grain, the use of computers and other means for more efficient high-speed movement, all are changing the grain transport picture. More freeways, bigger trucks, bigger barges, more ocean shipping available for the Great Lakes, increased use of our grains for intensive feeding in new areas of the country, relocation of our milling industry, and now the beginning of giant rail mergers, all these have great effect on grain movement.

Along with the mergers is coming a demand by railroads to abandon much or all of their branch lines. Farmers and others have tremendous fixed assets, in the form of grain and feed plants which can't be moved, on those branches. Their value will surely be greatly reduced by any such abandonment. Yet to judge by experience to date, railroads will not hesitate to bring about this change even by the subterfuge of simply allowing roadbeds and bridges to run down until they can claim that service is unsafe, and thereby walk off and leave many communities stranded.

For these reasons, but principally because we believe that it is possible for the transportation industry to do a much better job at lower rates for American grain farmers, we hope Congress will adopt the Burdick Bill at this session.

We believe such a Commission should widen its study to have a complete review of grain transportation, to find out what should be done to get equitable rates between areas and between commodities. Rates should be figured on cost plus a reasonable profit to attract adequate capital, and not on what the traffic will bear. We must have policies that will give us the most economical use of each mode of transport. We need every means to coordinate those modes more efficiently than now. This means truck-rail-barge combination services, including integrated operations where needed.

Furthermore, we believe such a study should deal with the many problems rural America faces if there is widespread abandonment of our railroad branch lines. Such a policy should provide for orderly change and for recompensing businesses which would be permanently harmed by such abandonment. This is the kind of policy our neighbor to the North is following under the findings of their Royal Commission on transportation completed nearly a decade ago. We believe Americans should be able to do at least as well by our citizens here as Canadians have in protecting the interests of others than the railroads.

Farmers certainly welcome the interest of the many Senators supporting this bill and of the members of the Committee who are holding these hearings. We hope that prompt action by the Senate and House will make it possible to have a thorough-going report on how to modernize our grain transportation system. We believe that with the tremendous tonnage of grain now coming from our farms, and with yet more to come in the future, that grain farmers are entitled to better service, more equitable rates, and greater efficiency than they are now getting under the present rates and rules.

We shall be glad to help the Congress and the Commission in that effort in any way we can. We believe that the time has come for such a complete review of our national transportation policy with respect to grain. We especially wish to thank the sponsors of this bill for initiating this investigation.

STATEMENT OF DALE E. SAFFELS, CHAIRMAN, KANSAS CORPORATION COMMISSION

Mr. Chairman, members of the Subcommittee, my name is Ray R. McKinley. I am Director of Transportation, Kansas Corporation Commission.

On behalf of the Kansas Corporation Commission, I wish to thank the Subcommittee for the opportunity to express the views of the Chairman of the Kansas Corporation Commission, the Honorable Dale E. Saffels, and Commissioners Jules V. Doty and John W. Cunningham, on S. 2355 which would establish an Advisory Commission to make a study and report its findings and recommendations to the President and to Congress with respect to freight rates. The intent of the report would be to clear up and modernize our freight rate structures.

Chairman Saffels has asked that I appear before you today as other commitments have made it impossible for him or the other Commissioners to be here.

The transportation industry is beset and challenged with many problems, and in our opinion, one of the most successful ways of coping with the changing transportation scene is through the process of education.

A comprehensive study made up of a Commission representing the agriculture industry, industry generally, each of the four modes of transportation, the public generally, and the Department of Transportation, Department of Agriculture, the Interstate Commerce Commission and the Civil Aeronautics Board, could take the steps necessary to assure what must be done in the 1970's and 1980's in order to determine what forms of transportation are required for the future health and welfare of this nation. Neither Government alone, nor individual members of society alone, can solve these problems, but by working together. Government and industry could make a valuable contribution by stimulating a more effective coordination between our modes of transportation.

Since our statutes are not perfect and transportation needs change, laws and regulations must be in a continual process of being updated, and only through cooperative efforts between all modes of transportation can we achieve the goals desired in today's competitive world of transportation.

Keeping pace with transportation needs will require the determined effort and productive imagination of everyone concerned, and only through the coordination of industry, labor, public, consumer, Federal and State agencies working together, can revision of our present standards meet the needs of the 70's. Certainly a Commission such as proposed by this bill could give priority to the areas of greatest concern, and the major industries could make great contributions to this Commission through their own research departments in the field of transportation.

This Commission would have the means for developing, within reasonable bounds, transportation needs for the future, and would have authority and power to go to Congress, if necessary, with recommendations to implement or secure any needed amendment to the present law.

Transportation service affects the well-being of individuals, communities, industries, and the nation as a whole, and its greatest impact is felt in the economic sphere. Freight rates affect the flow of commerce and are a key to our economic growth.

One of the greatest problems in the transportation field today is the determination of rates that are just and reasonable for the consuming public, yet provide the carriers with sufficient revenue to meet their obligations to provide the public with adequate service.

At the present time, the Interstate Commerce Commission's authority over motor carriers through routes and joint rates is limited.

If through the establishment of a truly coordinated transportation system, through tariff simplification, through enforcement interchange agreements, and stable intermodal through routes, a better and more economical service to shippers can be provided, I believe it should command our support. This proposed Commission could initiate legislation that would give the public more adequate, economical and efficient transportation service. The cooperation of this Advisory Commission with the various agencies that would compose the Commission could provide a free interchange of new ideas and a better understanding of each other, which might help us all to solve some of our transportation problems.

In our opinion, the creation of this Commission would be a significant step toward placing this country in a better position to respond to technological advancement and cut across various modes of transportation thus emphasizing total transportation. There is a need to stimulate better service to shippers and at the same time to stimulate the common carrier field in transportation.

While mass production and specialization has brought this country into an unparalleled standard of living, the benefits have not been distributed equally among the towns and cities of this nation. The small communities, set apart from our major urban areas, have declined. Adequate and reasonably priced transportation is a fundamental necessity for the future growth of these areas. Our transportation system today is becoming more oriented toward the large and more valuable shipments that move regularly in volume between areas of major traffic density. The light-density routes are being abandoned and downgraded. Reduced rates are placed on the major shipments, while the small producer finds himself less able to compete because of the high cost of transportation. Carriers concentrate on volume traffic where the profits are highest and where the potential efficiencies are the greatest.

Tariff restrictions and failure to provide connecting service with other carriers have come under strong regulatory attack.

The Commission established under S. 2355 could make recommendations to the Congress and Executive Branch after a study was completed in order to take a realistic assessment as to what should be done in this field.

This legislation, together with the revisions of existing regulations, might also speed up the settlement of disputed claims and result in encouraging the carriers to improve their level of service.

We believe a coordination of all modes of transportation, with accompanying coordination of rates and services, would bring about a better balanced, more efficient and sufficient progressive service to the over-all general public.

It would appear that one of the best means to accomplish this coordination would be through the establishment of a Commission, such as that proposed in

S. 2355, with power and authority to make a comprehensive study and report its recommendations to the Executive and the Congress. We believe this might be a means of expediting needed reforms in our transportation system, and strongly urge you to give this proposal your most serious consideration. I thank you for your consideration.

SOUTH DAKOTA STATE LEGISLATURE,

Pierre, S. Dak.

DEAR SIR: Enclosed is House Resolution No. 501, which requests the Congress to take action to direct the Interstate Commerce Commission to investigate freight rates applicable to small grains, in an effort to make them more equitable.

It is apparent that inequalities do exist and any effort on your part to help correct this situation would be much appreciated.

Thanking you for your favorable consideration, I remain

Sincerely,

PAUL INMAN, *Chief Clerk.*

HOUSE JOINT RESOLUTION NO. 501

INTRODUCED BY: MESSRS. DEXTER GUNDERSON AND GROSETH

A Resolution, Requesting the Congress of the United States to direct the interstate commerce commission to investigate the freight rates applicable to small grains and to prescribe such rates, charges, rules, and regulations as it shall find reasonable and equitable; and directing distribution.

Be it resolved by the House of Representatives of the State of South Dakota: Whereas, the South Dakota economy is dependent to a large extent upon the production and sale of agricultural products, particularly wheat and other small grains; and

Whereas, large quantities of small grains produced in South Dakota enter interstate commerce via the waterway, railway and highway trucking systems in order to reach markets for sale, processing, or consumption, and competes with similar grains of other states and foreign countries; and

Whereas, the freight rates and charges prevailing for the transportation of these grains via said transportation systems have a definite influence upon the ability of South Dakota grains to reach markets and places at which these grains are processed and utilized or consumed, and to successfully compete with the grains of other states and of foreign countries; and

Whereas, the most recent general investigation by the interstate commerce commission of the freight rates on grains in the west, was completed in 1932; and

Whereas, during the intervening years since 1932 there have developed substantial changes in marketing patterns, competitive conditions as between transportation agencies, improvements in transportation facilities and equipment and their operation, the manufacturing and marketing of products of small grains, the manufacture of new and different products, and shifts in population; and

Whereas, the current freight rate structure does not reflect the present day needs of the producer particularly, and, where there have been piecemeal revisions, they have in numerous instances aggravated existing situations; and

Whereas, this situation requires a reappraisal and a general overhauling of the present freight rate structure on small grains for the purpose of determining the reasonableness and equity of the present rates, charges, rules, and regulations applicable to their transportation, not only with respect to domestic movements but to export as well: Now, therefore, be it

Resolved, by the house of representatives of the forty-fifth Legislature of the state of South Dakota, That the Congress of the United States be urged to enter into an independent investigation, such as by an independent commission, concerning the equity of the freight rates, charges, rules, and regulations applicable to waterway, railway and highway truck transportation of small grains in domestic and export commerce; and to provide appropriations to proceed with and complete as promptly as possible such an investigation, and to make, as a result thereof, such recommendations as it may deem appropriate with respect to a reasonable adjustment of rates, charges, rules, and regulations free from undue preference, prejudice, and discrimination which may be found justified

in the premises; to recommend the establishment as a fundamental rule of rate-making the broad principle of equal charges for equal transportation service, recognizing transportation factors which affect the cost of producing the specific service and the different characteristics of service performed by each mode of transportation; to restate specifically the prohibitions of the 1958 Act against "umbrella" ratemaking; and to direct the interstate commerce commission: (1) in consideration of pending and future cases of rate regulation to give maximum practicable weight to the cost of moving the specific traffic involved, including a fair and reasonable profit; (2) to devise and prescribe cost finding procedures based on modern methods of electronic data processing and analysis; and (3) to issue regulations designed to foster application of basic ratemaking principles; and be it further

Resolved, that copies of this resolution be forwarded by the chief clerk of the house of representatives of the state of South Dakota to the chairman of the committee on commerce of the senate of the United States, the chairman of the committee on interstate and foreign commerce of the house of representatives of the United States, to each member of the South Dakota congressional delegation, and to the agriculture committee chairman of each house of all the great plains grain states' Legislatures, and their respective congressional delegations.

Adopted by the House, January 29, 1970.

DEXTER GUNDERSON,
Speaker of the House.
PAUL INMAN,
Chief Clerk of the House.

Senator BURDICK. And a letter from Howard L. Gordon, executive secretary of the North Dakota Farm Bureau; a letter from T. H. Steichen, general manager of the Farmers Union Central Exchange; a letter from William T. Guy, Governor of the State of North Dakota; and a letter from Walter G. Abrahamson, manager of the Farmers Union Elevator Co. of Minnesota.

Senator HARTKE. Without objection, these will appear in the record.

(The letters follow:)

NORTH DAKOTA FARM BUREAU,
Fargo, N. Dak., March 16, 1970.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Due to circumstances beyond our control, we cannot appear in person at your hearing on March 17 concerning S. 2355. We trust this letter will be of some value.

North Dakota Farm Bureau supports this bill which proposes to establish an advisory commission to make a study and report with respect to freight rates.

Very sincerely,

HOWARD L. GORDON,
Executive Secretary.

FARMERS UNION CENTRAL EXCHANGE, INC.,
St. Paul, Minn., March 9, 1970.

Hon. QUENTIN N. BURDICK,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR BURDICK: Farmers Union Central Exchange, Incorporated heartily approves Bill S. 2355, a bill to establish an advisory commission to make a study and report with respect to freight rates, which is scheduled for hearings March 17, 18 and 19 before the Subcommittee on Surface Transportation of the Senate Commerce Committee.

There is a need for this type of advisory commission to study the major modes of transportation as concerning freight rates and the establishment thereof, especially upon freight rates on farm products. The farmer is disadvantaged in the market place. It is well known that the cost of farm supplies to the farmer is a combination of the cost of the product plus the *accrued* transportation costs. But the same farmer, in marketing his products, receives the terminal price *less* the transportation costs to the terminal market.

Therefore, Farmers Union Central Exchange, Incorporated supports Bill S. 2355 and encourages the passage of it.

Sincerely,

T. H. STEICHEN, *General Manager.*

P.S.—A written statement on this bill will follow.

TOM.

STATE OF NORTH DAKOTA,
EXECUTIVE OFFICE,
Bismarck, March 13, 1970.

HON. WARREN G. MAGNUSON,
*Chairman, Senate Committee on Commerce,
New Senate Office Building,
Washington, D.C.*

DEAR SENATOR: I support and strongly urge the adoption of Senator Burdick's bill, S. 2355, to establish an advisory commission to make a study and report with respect to freight rates.

Public Service Commission Chairman Bruce Hagen; John Finsness, North Dakota Wheat Commission; David C. Nelson, Upper Great Plains Transportation Institute at North Dakota State University, Fargo, North Dakota; Ervin Miller, Farmers Grain Dealers Association of North Dakota; Bob Sanders, North Dakota Farmers Union; and others will very adequately present the position of the State of North Dakota to your Committee on Commerce which is hearing the proposed bill. I concur in the substance of their remarks. I am sure they will point out very dramatically the transportation problems we have.

We, in North Dakota, are aware as perhaps no other area of the country is aware of the need for a strong, efficient, fair, fast, modern transportation system. If the original intent of the Interstate Commerce Commission Act had been fulfilled, we believe we now would be a much more viable and economically strong part of the United States.

I have long advocated better national resource allocation. I have included both people and property. I believe we need a more equitable future population growth distribution policy. I believe we should better develop and at the same time conserve our natural resources in all areas of the United States.

Unless the original intent of the Interstate Commerce Commission Act is fulfilled and unless we have a truly comprehensive and fair national transportation policy we will not be able to do these things.

I commend Senator Burdick for his bill. I believe it has great potential. I hope that it will be adopted by the Congress. If this is done, I pledge energetic help from North Dakota to present all of the specifics and background that should go into the report and study of the commission.

I am convinced that out of that report and study will come many recommendations that, when adopted, will solve the transportation problems that have plagued us for almost 100 years.

Sincerely yours,

WILLIAM L. GUY, *Governor.*

FARMERS UNION ELEVATOR CO.,
Minot, N. Dak., March 9, 1970.

HON. WARREN MAGNUSON,
*Chairman, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: The matter of unfair freight rates on grain has been the concern of this Cooperative for some time and having lost all faith in the ICC to regulate fair rates for our State, we appeal to the Congress of the United States to assume the responsibility to see that fair and just rates on grain and other related products be forthcoming to our sparsely populated area.

Railroads have reduced rates in highly competitive areas and left others to fend for themselves, causing hardship on many grain firms in the high rate area.

Also, your attention is called to the commodity of barley. Trucks are not able to haul malting barley to market because the malster requires certain tests before dumping, and the trucker cannot wait the time it takes to make these tests; therefore, there is no competition. The rate from Minot to Minneapolis on all grain except barley is 49c cwt; on barley it is 56c cwt.

If the railroads had equipment to move the grain offered for shipment, I am of the opinion that higher rates would not be necessary at this time. I also believe that if a much higher investment credit were given the railroads for the construction of more grain cars, they would be more interested in building additional equipment.

Drastic action is needed at once to correct a very bad situation, even if the railroads have to be granted large investment credits for the purchase of cars, or some other tax incentives, in order to get the job done, I believe that giving the railroads some tax credits is better than to have the United States Government forced to take over the railroads.

Yours very truly,

WALTER G. ABRAHAMSON, *Manager.*

Senator BURDICK. Also a very interesting editorial by Alf T. Olsen, farm editor of the Fargo Forum of March 6, 1970, commenting on these rates.

Senator HARTKE. Without objection, this will appear in the record. (The article follows:)

SIDEWALK FARMING

By Alf T. Olsen, Farm Editor

It costs just as much to ship a bushel of barley from France to Milwaukee, Wis., as it does to ship one from Grand Forks to Milwaukee.

Because Fargo is a little closer to Milwaukee than Grand Forks, it costs three cents less from Fargo to Milwaukee than from France to Milwaukee.

Not only are freight rates hurting barley producers in the pocketbook, but since July 1, 1968 some 15.5 million bushels of barley have been imported to the United States from Canada, France, and of all places, Australia.

During the period starting July 1, 1968 and ending Dec. 31, 1969, 12,245,000 bushels of barley were imported from Canada, 2,165,000 from France and 1,141,000 bushels from Australia, according to John I. Finsness, counsel for the Transportation Division of the Fargo Chamber of Commerce.

Finsness is also counsel for the N.D. Public Service Commission in the recessed barley freight heading before the Interstate Commerce Commission.

According to the counsel, prices ranged as follows: For Canadian barley imported, a high of \$1.42 a bushel in July 68 to a low of \$1.065 in July 1969. The last figure available was \$1.075 a bushel in December 1969 (at a time when North Dakota barley growers were receiving from 20 to 30 cents less.)

French barley ranged from a high of \$1,259 a bushel in September and October of 1969, and a low of 53.1 cents in November 1969.

Australian barley brought a high of \$1.344 in September 1969 and a low of 98.6 cents in April 1969.

R. W. Welch, president of Froedtert Malt Corporation, Milwaukee, commenting in recent talks on barley freight rates, said . . . "adding freight to Milwaukee, as we must do for our plant, we arrive at a rate of 30.5 cents per bushel from Fargo, 33 cents from Grand Forks, and approximately 50 cents per bushel from our malting two-row producing area of Great Falls, Mont.

"The rate of competing French barley, delivered to Milwaukee by water, is approximately 18 cents per bushel laid down cost, plus 7 cents duty, and approximately 18 cents unloading and transfer—or a total of 33 cents per bushel from France to our malting plant.

"An average delivery of Canadian barley is slightly over 20 cents delivered our plant, including duty."

Commenting further on rail grain rates, Welch says:

" . . . first, is the lower freight rates on other grains. For example, a country facility in the Grand Folks area pays 29.5 cents per hundredweight to move other grains to either Minneapolis or Duluth markets, while his barley rate for the identical move is 41 cents per hundredweight. In the Fargo area a barley rate of 36.5 cents compares with 27 cents charged for other grains.

“ . . . in reducing rates in certain areas on other commodities to fight truck competition, the (rail) carriers have centralized most of their efforts in a region of number one importance in malting barley production.”

In December 1969, 2,379,000 million bushels of Canadian barley were imported into the United States at an average cost of \$1,075 per bushel—this was at a time when most area barley producers were getting between 70 and 80 cents a bushel.

Whether the answer lies in lower freight rates, increased barley tariffs or what, the fact remains that imports of over 15 million bushels of barley during an 18-month period can't help but have had an adverse and crippling affect on U.S. barley prices.

Senator BURDICK. A letter from Ardale Wagner, Williston, N. D. Lastly, a House Concurrent Resolution No. 40, passed in 1969 by the North Dakota Legislature supporting this approach.

Senator HARTKE. Without objection, they will appear in the record. (The material referred to follows:)

EPPING, N. DAK., February 17, 1970.

WALTER WICK,
Editor of the Williston Herald,
Williston, N. Dak.

DEAR MR. WICK: On March 17 to 19 hearings on a bill (S2355) sponsored by Senator Burdick, will be conducted in the Surface Transportation Subcommittee of the Senate Committee on Commerce. This bill would provide for a two year study, by a commission appointed by the president from all segments of the transportation industry.

If this study is to be meaningful it should not contain a majority selected from the transportation industry, but should be selected from all segments of our economy that are affected by shipping rates and regulations and should be selected by the organizations of that part of the economy affected.

Here are my suggestions on the makeup of the committee.

Transportation: One committee man from each of the major railroads. One from each of the largest trucking companies. One from the inland waterways. One from the rail unions. One from the truck drivers union. From transportation possibly ten or twelve in all.

Agriculture: At least five picked by and from the top farm organizations. Agriculture products are a large segment of surface shipping.

Industry: One each steel, auto, chemical, oil, coal, and lumber. I may have left out an important industry that has a vital interest in shipping.

Consumers: Two or more. One of these could be picked by the board of directors of the Consumers Union as this organization was formed to protect consumers interest. Maybe the other could be picked by the office of consumers affairs of our National Government.

This committee should have its presiding chairman selected by its members and chairman could be removed and replaced by a majority vote of its members.

Why take two years to study something that should be adjusted in less than six months?

When the rail carriers insisted on a 6% increase of rates it received the increase in less than six weeks without a hearing, claiming an emergency. I question if this was legal. They are asking for another 12% raise of rates.

Can we afford more government by appointment when the most affected people are not represented.

I hope those attending the hearing will consider these suggestions as anything less than this is inadequate to accomplish any worthwhile benefits for our citizens.

Yours Truly,

ARDALE WAGNER.

FORTY-FIRST LEGISLATIVE ASSEMBLY, STATE OF NORTH DAKOTA BEGUN AND HELD AT THE CAPITOL IN THE CITY OF BISMARCK, ON TUESDAY, THE SEVENTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND SIXTY-NINE

HOUSE CONCURRENT RESOLUTION No. 40

(*Streibel, Link*)

A concurrent resolution requesting the Congress of the United States to direct the Interstate Commerce Commission to investigate the carload freight rates applicable to small grains and to prescribe such rates, charges, rules, and regulations as it shall find reasonable and equitable.

Whereas, North Dakota's economy is dependent to a large extent upon the production and sale of agricultural products, particularly wheat and other small grains; and

Whereas, the bulk of all small grains produced in North Dakota enter interstate commerce via the State's network of railway systems in order to reach markets for sale, processing, or consumption, and compete with similar grains of other states and foreign countries; and

Whereas, the freight rates and charges prevailing for the transportation of these grains via said railway systems have a definite influence upon the ability of North Dakota's grains to reach markets and places at which these grains are processed and utilized or consumed, and to successfully compete with the grains of other states and of foreign countries; and

Whereas, the most recent general investigation by the Interstate Commerce Commission of the freight rates on grains in the West, which included North Dakota, was completed in 1934 pursuant to the Hoch-Smith Resolution (Public Resolution No. 46, 68th Congress, 43 Stat. L., 801) with piecemeal revisions permitted or imposed at various times since 1934; and

Whereas, during the intervening years since 1934 there have developed substantial changes in marketing patterns, competitive conditions as between transportation agencies, improvements in transportation facilities and equipment and their operation, the manufacturing and marketing of products of small grains, the manufacture of new and different products, and shifts in population; and

Whereas, the present freight rate structure does not reflect the present day needs of the producer particularly, but also other interests marketing and processing small grains in the light of these changed circumstances and conditions, and has thus resulted in numerous unreasonable and unduly prejudicial and preferential rates, and that where there have been piecemeal revisions, they have in numerous instances aggravated existing situations; and

Whereas, these factors call attention to the need for a reappraisal and a general overhauling of the present freight rate structure on small grains for the purpose of determining the reasonableness and equity for the present rates, charges, rules, and regulations applicable to their transportation, not only with respect to domestic movements but to export as well;

Now, therefore, be it resolved by the House of Representatives of the State of North Dakota (the senate concurring therein):

That the Congress of the United States be urged to enter into an independent investigation, such as an independent commission, concerning the equity of the freight rates, charges, rules, and regulations pertaining to the transportation of carload shipments of small grains in domestic and export commerce; and to provide reasonable and sufficient appropriations to employ competent and sufficient personnel to proceed with and complete as promptly as possible such an investigation, and to make, as a result thereof, such recommendations as it may deem appropriate with respect to a reasonable adjustment of rates, charges, rules, and regulations free from undue preference, prejudice, and discrimination which it will find justified in the premises; to recommend the establishment as a fundamental rule of ratemaking the broad principle of equal charges for equal transportation service, recognizing transportation factors which affect the cost of producing the specific service and the different characteristics of service performed by each mode of transportation; to restate specifically the prohibitions of the 1958 Act against "umbrella" ratemaking; and to direct the Interstate Commerce Commission: (1) in consideration of pending and future cases of rate regulation to give maximum practicable weight to the cost of moving the specific traffic in-

volved, including a fair and reasonable profit; (2) in collaboration with industry and the accounting profession promptly to devise and prescribe cost finding procedures based on modern methods of data processing and analysis and (3) to issue regulations calculated to foster application of the basic principle of rate-making enunciated above; and be it further

Resolved, That copies of this resolution be forwarded by the Secretary of State to the Committee on Commerce of the Senate of the United States, the Committee on Interstate and Foreign Commerce of the House of Representatives of the United States, to each member of the North Dakota congressional delegation, and to the Agriculture Committee chairman and presiding officers of each House of all the Great Plains grain states' Legislatures, and their respective congressional delegations.

ERNEST N. JOHNSON,
Speaker of the House.
G. R. GILBREATH,
Chief Clerk of the House.
RICHARD Z. LARSEN,
President of the Senate.
LEO LEIDHOLM,
Secretary of the Senate.

Senator BURDICK. So, at this time, members of the committee, I will say no more and proceed to introduce my witnesses after we have heard from the Interstate Commerce Commission witnesses.

Senator HARTKE. Senator Burdick, you have indicated here you want a separate commission, rather than the Interstate Commerce Commission. What if the Department of Transportation would conduct such a study? Do you think they would be competent in this field?

Senator BURDICK. I think they have competence, just like the Interstate Commerce Commission. But I think you have to have a broader representation. I think you have to go down to the consumer areas and have representation.

I think to do a real job in this field of transportation and the field of freight rates, I think you have to have all segments of the economy represented. That is why we think our commission is broader.

Senator HARTKE. Do you feel that the question of consumer interest is not presently being represented in the Interstate Commerce Commission and the Department of Transportation?

Senator BURDICK. I am not saying that they aren't represented. But I think that it would give broader representation if we had a commission of this type.

Senator HARTKE. Senator Cannon?

Senator CANNON. One thing that bothers me about the commission as you have proposed here is you would have membership on the commission from the Interstate Commerce Commission and from the Civil Aeronautics Board and yet these are the two regulatory boards that would be involved.

I am wondering if you might not have two situations or two possible objections. One, you would have an undue influence on an impartial committee from these agencies, and/or secondly, that the commission might rely to an undue extent on the expertise that these people have as members of their regulatory agencies.

I just wonder if you wouldn't be better off if you are going to have an impartial commission having it completely removed from the Interstate Commerce Commission and completely removed from the Civil Aeronautics Board?

Senator BURDICK. Of course as the sponsor of the legislation, I am not wedded to the content of the formation of the commission. If we

could have a commission without the members on it, in the judgment of the committee, I presume that would be all right.

But we thought we would make use of some of the expertise of these commissions and hope they wouldn't have an overriding dominant influence on the findings. But certainly that is in your prerogative as to what the content of the commission should be.

We are simply asking it be a broad representation of all segments of the economy.

Senator HARTKE. Thank you, Senator Burdick. I want to compliment you for this fine bill you have introduced here and one which I think will at least provide some avenue for some relief from the increases which are occurring regularly in transportation. My understanding is you would prefer we start with the Interstate Commerce Commission and then you have some additional witnesses. Is that correct?

Senator BURDICK. That is correct.

Senator HARTKE. Fine.

The next witness will be the Honorable Dale W. Hardin, Commissioner, Interstate Commerce Commission.

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, PRESENTED BY DALE W. HARDIN, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY LAURENCE K. WALRATH AND JOHN W. BUSH, COMMISSIONERS, INTERSTATE COMMERCE COMMISSION; AND FRITZ R. KAHN, DEPUTY GENERAL COUNSEL, INTERSTATE COMMERCE COMMISSION

I understand you have Commissioner Bush and Commissioner Walrath with you. We welcome you this morning.

Mr. HARDIN. Mr. Chairman, with me at the table today is Mr. Fritz Kahn, our Deputy General Counsel, in addition to Commissioners Walrath and Bush.

My name is Dale W. Hardin; I am the Vice Chairman of the Interstate Commerce Commission.

Our chairman, Mr. George M. Stafford is out of the city and is unable to be here today. With your permission, I will read the statement which he would have presented had he been able to be here.

Senator HARTKE. All right. We are very glad to have your statement.

Mr. HARDIN. Mr. Chairman, members of the subcommittee: I am very pleased to appear today to state our views on this bill, which would establish an Advisory Commission to make a study and report on freight rates.

The Advisory Commission so created would generally review the freight ratemaking activities of the Interstate Commerce Commission and the Civil Aeronautics Board for the purpose of determining:

- (1) the factors that contribute to the fixing of such charges;
- (2) the reasons for any differences in such changes because of the place of origin or destination or the commodity transported;
- (3) whether or not all departments, agencies, commissions, and instrumentalities of the Government are properly carrying out the national transportation policy, as stated in the Interstate Commerce Act and the Federal Aviation Act; and

(4) whether the national transportation policy as stated in the Interstate Commerce Act and the Federal Aviation Act is adequate in view of modern conditions.

This Commission stands ready and willing at all times to render an accounting of its administration of the Interstate Commerce Act in the area of rates as well as all others. Accordingly, we have no objection to the proposed Advisory Commission if the Congress feels its establishment to be in the public interest.

However, to assist the committee we offer the following observations and comments:

The Advisory Commission would be composed of 13 representatives of specified parts of government, industry, and the public, including one from the Interstate Commerce Commission. We note that the regulatory agencies would be required to furnish a preponderance of material upon which that Commission would base its report. Obviously, this would require a commitment of manpower from the represented agencies to allow the Advisory Commission to complete its task. In view of our present budgetary situation, under which we expect the loss of 182 jobs in the next fiscal year, any such commitment could jeopardize the performance of existing services, already seriously threatened in our opinion.

In addition, composition of the Advisory Commission in part consists of one member who is to represent "industry generally," and two representing the "public generally." It is not clear as to the difference, for example, whether the two members representing the "public generally" would also represent the shipping public (which would include industry), or just what segment of the public they are supposed to represent.

The Advisory Commission would be required to "make a full and complete study of charges for the transportation of freight by all modes of transportation. . . ." It is our opinion, based on past experience, that a study as broad and as comprehensive as proposed could be very cumbersome. In 1925 the Commission instituted a general investigation into only the rail rate structure of the United States in docket No. 17000, Rate Structure Investigation. By 1932 the Commission was forced to conclude that the proceeding had become unwieldy. The study under the bill as presently framed would appear to be subject to the same infirmity multiplied many times over since it proposes a study of a much broader range of rates.

Furthermore, to accomplish the stated purpose of the proposed legislation, it appears that all regulated modes of transportation and the administrators of the acts under which they operate should be included in the statute. For Example, section 1(a)(3) should include freight forwarders regulated pursuant to the Shipping Act, 1916, as amended, and Inter-Coastal Shipping Act, 1933, as amended. Accordingly, the Federal Maritime Commission should be added to paragraph (5) of that section, as a party represented on the proposed body.

We also believe that an amendment to section (b) is essential if the bill should be favorably considered. That section authorizes the Advisory Commission to require this agency, for instance, to furnish "such information as the Commission deems necessary." This power could be unwittingly abused by a body not fully familiar with the quasi-judicial functions of an administrative agency. Some data filed

with us, for example, are protected by statute. Other data, such as that in investigatory matters, are highly confidential. We believe section 3(b) should be qualified so that the production of information requested would be limited to that consistent with other law.

We would also point out that inasmuch as the national transportation policy in the Interstate Commerce Act is applicable to all the provisions of the act, a study confined to rate regulation alone may not be the best, or even the most appropriate, vehicle to use as a basis for determining whether the policy statement is presently adequate or in need of possible change.

We at the Commission would, of course, cooperate with the Advisory Commission in any way possible should the bill be enacted. Our administration of the Interstate Commerce Act and those provisions dealing with rates have already resulted in the development of extensive information on the subject. The criteria for ratemaking are set forth in the statutes and have been interpreted by the courts: Thousands of regulatory decisions interpreting and adapting these criteria to individual cases and changing circumstances are available. These matters have been critically examined and evaluated by academic specialists and other professional critics. The results of such evaluations are to be found in a vast body of literature on the subject.

Under the circumstances, and depending upon what the more specific purposes of such a study may be, the committee may wish to consider an alternative approach. As previously mentioned, much of the data and the criteria necessary to a broad evaluation of freight rates are contained in regulatory decisions and general literature with respect thereto. Perhaps a special subcommittee of the Commerce Committee could make such a study. The Commission and other similar regulatory agencies could work with such a special subcommittee (such as the Special Freight Car Shortage Subcommittee) in an effort to be of assistance in developing such material as the special subcommittee might wish them to provide. If such an approach has appeal to the committee, it might well obviate the necessity for enactment of S. 2355.

With the aforementioned thoughts in mind, the Commission would be happy to offer assistance to the committee staff in working out any details that our proposal may create in order to effectively accomplish the purposes of the bill.

That completes our prepared statement, Mr. Chairman. If there are any questions, we will be glad to try to answer them for you.

Senator HARTKE. Thank you for your statement.

Senator Cannon, do you have any questions?

Senator CANNON. Thank you, Mr. Chairman.

You heard my question to Senator Burdick, did you, concerning the membership of the Commission?

Mr. HARDIN. Yes, sir.

Senator CANNON. Do you see that that would pose any problem? That is, you have a member of the Interstate Commerce Commission and a member of the CAB on this Commission that is in fact making an investigation to determine whether, among other things, the proper ratemaking process has been engaged in. And this, of course, is the basic responsibility of the Commission initially. Do you see any possible conflict there?

Mr. HARDIN. I do not think so, Senator Cannon. The proposal, as I understand it, would place the representatives of the agency, the agencies, in a minority capacity, so that I think that in the objective evaluation of it, it would give the other members a stronger voice in it. I do not think it would make any great difficulty.

There is always a possibility of influence by those who have had experience in this field. But I am not sure that it would here outweigh the objectivity of the situation.

Senator CANNON. Do you think a rate increase study is necessary at this time?

Mr. HARDIN. Rate increase studies are going on nearly all of the time, Senator Cannon; for example, in general rate increase cases that come before the Commission.

I think that if there is a feeling of a need for a reevaluation by outside interests, that the Commission would welcome any views or comments that might be made in this field.

Senator CANNON. Does the Interstate Commerce Commission have the tools available to conduct this type of a study?

Mr. HARDIN. This type of study—if you mean by that the broad study that is represented in the bill, I have some question about it, without some guidelines, because of the kind of thing we ran into in previous broad rate structure investigations.

They became unwieldy. Hearings are held over a period of time wherein you find that as the record is developed it becomes stale by the time that you reach the point where some effective action may be taken.

Senator CANNON. In other words, time has passed you by, as you indicated in your testimony there. There was a period of 8 years elapsed before you found out the investigation was too unwieldy. Is that it?

Mr. HARDIN. That is correct, for the intended purpose.

Senator CANNON. Now, the Interstate Commerce Commission has not yet allowed the latest freight rate increase to be placed into effect. But in your order setting the dates for later procedures, it is ordered, and I quote, "That an investigation under the above caption be, and it is hereby instituted, into and concerning the adequacy of all freight rates and charges of all common carriers by railroad."

Does that mean that you are undertaking a freight study at this time? Or what does that mean?

Mr. HARDIN. It does indicate a freight rate study; yes, sir. It does not indicate a freight rate study of the kind contemplated by S. 2355. What we are talking about in the order is the adequacy of freight rates with regard to revenue needs. What you are talking about in S. 2355, as I understand it, is a broad general evaluation of freight rates throughout the country insofar as their application relates one to the other. So there is a difference.

Senator CANNON. In other words, there might be a need for added revenue from freight rates, and yet the balance in imposing the present freight rate structure might be unbalanced, let us say.

Mr. HARDIN. That is correct.

Maybe Commissioner Walrath has something.

Mr. WALRATH. I agree.

Mr. HARDIN. That is correct; yes, sir.

Senator CANNON. Thank you, Mr. Chairman.

Senator HARTKE. Let me ask you, what kind of information is presently available to the Commission to determine whether in fact there is discrimination between modes?

Mr. HARDIN. Mr. Walrath, do you want to discuss that?

Mr. WALRATH. That is a good question, Mr. Chairman, but rather difficult to answer. When we find discrimination we take action to cancel it out. Your question is rather broad. I wonder if you—

Senator HARTKE. Let me ask you: You know what a waybill is?

Mr. WALRATH. Oh, yes.

Senator HARTKE. Describe for the record what it is.

Mr. WALRATH. It is the shipping document on which the commodity transported is described, together with a statement of its origin and destination and the charges to be paid under the published tariffs.

Senator HARTKE. Now, on the basis of that, that could provide information for some type of analysis.

Mr. WALRATH. Oh, yes; that is correct.

Senator HARTKE. And it has in the past been used for such a purpose.

Mr. WALRATH. Yes; we have had for many years a sampling program of waybills, a 1-percent sample, which has been used by many researchers. But, as you are quite aware, Senator, our funds ran out and that was one program that we had to curtail, even though it was very useful.

Senator HARTKE. Do you feel institution of such a program would be of value?

Mr. WALRATH. Oh, yes, sir. It is my understanding, subject to correction by our acting chairman, that the Department of Transportation intends to take over the waybill program. Meanwhile, we are housekeeping it. I think it is still an on-going data collection program.

Senator HARTKE. What you are saying is the Department of Transportation does intend to make such an analysis on the basis of waybills?

Mr. WALRATH. What they may do with it, I am not sure, sir. But the raw sampling data will continue to be received by the Commission.

Senator HARTKE. When did the Interstate Commerce Commission stop this procedure?

Mr. WALRATH. We have not actually stopped it; we are still receiving data on a housekeeping basis, subject to funding by them. When they are ready, physically and personnel-wise to take it over, the file of waybill samples will be moved over there.

Senator HARTKE. What do you mean by housekeeping basis?

Mr. WALRATH. I mean we are still continuing to collect the data, but using funds they are providing us with.

Is that correct?

Mr. HARDIN. That is correct.

Mr. WALRATH. It is still going on. Information is still available.

Senator HARTKE. For the record, could you explain the rationale behind the Commission's refusal to suspend the 6-percent across-the-board increase which was sought by the railroads last fall? Let me be specific as to why I am asking this. As I understand it, it applies to the railroads, to all commodities; is that correct?

Mr. WALRATH. Their proposal would apply without exceptions, yes, sir.

Senator HARTKE. Some railroads really are doing better than other railroads; is that correct?

Mr. WALRATH. Yes, sir.

Senator HARTKE. Some are prospering; others are on the verge of—

Mr. WALRATH. Some are actually deficit operations.

Senator HARTKE. Why should you have the same increase for all of them across the board?

Mr. WALRATH. Well, Mr. Chairman, we do not have as of yet. As you know, that is a case that is still pending. In fact, the hearings are set for the month of April. We have made no decision on the merits as yet.

I could not begin to tell you the rationale that influenced any of the members of the Commission to vote as they did. I will state for the record that there were two objectors to that and there were two who concurred—I beg your pardon—what is the proper phrase—

Senator HARTKE. Let us put the record straight. You have not made a decision, but in fact the rate increase did go into effect by refusing to suspend.

Mr. WALRATH. That is right. It was a recognition of the fact that in the opinion of the majority of us, if not all, the railroads were desperately in need of that many dollars if they were to continue to operate viably. And until we could determine what adjustments should be made in their preliminary proposal, after protests and oral argument, the majority of the Commission were persuaded that they needed those funds not later, but right then, subject to refunds if and as we found that they should be adjusted.

Senator HARTKE. Now, if they have the authority, which they have at the moment, even though it can be revoked at a later date, if they have that authority for a 6-percent increase, in fact, and in effect they do not have to apply to all commodities; is not that true? Although the rate if ultimately allowed would be permitted for all commodities? Is that right?

Mr. WALRATH. You are entirely correct, sir. Any of these general revenue cases are permissive; they are not prescribed rates. Many of the roads choose not to take those increases.

Senator HARTKE. And the fact of it is that some items are more costly to transport than others?

Mr. WALRATH. Oh, yes, sir.

Senator HARTKE. Therefore, a blanket 6-percent across-the-board increase does have an effect which is not really related to the actual cost of transportation. Is that not true?

Mr. WALRATH. True. May I may a distinction between a rate case on one hand and a revenue case? In the revenue case the carriers are endeavoring to show us and show the consumers that in order to continue to render the service they need so many dollars; in this case about \$600 million. In a rate case, on the other hand, then the costs of moving a particular commodity, under particular conditions are, of course, subject to scrutiny. In a general revenue case, supported by the Supreme Court of the United States, both the carriers and shippers and we look to what the requirements of the railroad are to continue to operate.

Senator HARTKE. Last June I asked this same question; I am going to ask it again today: How does the consumer ultimately recoup the additional cost in a case where there is a suspension of the increase as we have in this case? In other words, how can the consumer ever recoup the addition in the event that ultimately the rate increase is not allowed?

Mr. WALRATH. If we are talking in terms of the housewife, the purchaser, physical consumer of the goods, then I would have to concede that they do not get it unless they get a reduction in the prices of the loaf of bread, whatever it may be, after the rates are changed.

Senator HARTKE. That is right.

Mr. WALRATH. May I say this, sir, that the consumer in the sense of both the wholesaler and retail merchant, whoever paid the freight under the refund provisions, they do have an avenue of relief.

Senator HARTKE. But the refund itself goes to the holder of the bill of lading.

Mr. WALRATH. Whoever paid the bill and has the paper to show it; yes, sir.

Senator HARTKE. So the ultimate consumer has no real chance of recouping this increase, basically speaking.

Mr. WALRATH. That is correct.

Senator HARTKE. The real effect of the decision is to do that.

Mr. WALRATH. I could not dispute that, sir.

My colleague reminds me that the retailer may not have passed that increase on to his consumer.

Senator HARTKE. The chances are he did, though.

Mr. WALRATH. It all depends, sir, on how much the increase affected the cost. I can think of a simple illustration, that raising the price of a given commodity 6 cents per, or 6 percent per hundredweight may mean a fraction of a cent on an item that would travel in that shipment.

Senator HARTKE. I understand. But ultimately the transportation is a cost of doing business and it ultimately has to be borne by someone.

Mr. WALRATH. Yes, sir.

Senator HARTKE. It either is going to be borne by the ultimate consumer or somebody down the line.

Mr. WALRATH. That is true, sir. But may I ask if the chairman would feel that this might be a good time for us to give you the benefit of our studies of the relative rise in Consumer Price Index and wholesale price index as against the rise in rail rates? Would you care to do that? We have made some studies along that line.

Senator HARTKE. All right.

Mr. HARDIN. Mr. Chairman, these are figures that were given to us, by our Bureau of Economics, making comparisons of the rise in the Consumer Price Index, the wholesale price index and railroad carload freight rate index.

The first figure I will give you will be based on the year 1950, using that as a 100 base. The Consumer Price Index, wholesale price index, and railroad carload freight index at 100 in 1950; in 1969 the Consumer Price Index had risen to 157; in 1969 the wholesale price index had risen to 134; in 1969 the railroad carload freight rate index had risen to 112. Differences of 57 percent, 34 percent, and 12 percent, respectively.

Senator HARTKE. Thank you.

Senator CANNON?

Senator CANNON. What does that mean? Does that mean that the cost of the shipment only went up 12 percent? That the cost of the—the wholesale cost only went up 34 percent, and somebody between the wholesaler and retailer made up that difference for the 57 percent increase?

Mr. HARDIN. That is correct, yes, sir.

Senator HARTKE. This is what the farmer is faced with. He is faced with the fact that his wheat price is probably in most cases lower today than it was in 1950, and the price of a loaf of bread is about double what it was in 1950. There are a lot of people who want to know why. We are into one aspect of that problem. We are trying to find out why.

Mr. HARDIN. The only comment I can make, sir, is by way of comparing the increase in the rail rates with the rise in the other areas. That is, the rise insofar as the rail rates are concerned has not gone up as rapidly as the rise in the other indexes.

Mr. WALRATH. Might I add, Mr. Chairman, that I am sympathetic with Senator Burdick's problem in the Dakotas. I think it will be shown from any study that the level of grain rates, for example, through the Dakotas, to the west coast or to the Lakes, may be at a higher level than at some other point where there is competition that you do not enjoy up there that would tend to hold the rates down. But perhaps within the zone of reasonableness.

Yet if you look at the penny increase type of thing on a hundred pounds of grain or a carload of grain, it is reflected in very small fractions of 1 cent per loaf of bread. Now, this would indicate that the retailer and the wholesaler between them have taken advantage of the inflationary tendency, not based on freight rates on grains, but rather on the general atmosphere.

Senator CANNON. Well, as a theoretical matter, those things always sound good, but when it comes to a practical matter, I am sure that does not solve Senator Burdick's problem and it does not solve my problem in Nevada, when shippers in Reno, Nev., are charged more to ship from San Francisco to Reno than they would be to ship from San Francisco to Salt Lake. That occurs in instances.

Mr. WALRATH. You have a good point, sir. If it could be shown the rates were relatively unreasonable or unduly discriminatory, it would be our obligation to try to correct those disparities. As I am sure you realize, and I am sure Senator Burdick does, when a carrier who is regulated, who has to recover his costs some way, is faced with unregulated competition by river, for example, or unregulated truck competition, where those competing modes can move traffic at any rate at all, then the regulated carriers tend to reduce their rates to meet that competition. Where they do not have that type of competition and still have to recover their costs, of course, the tendency—as long as we have the free enterprise system, the tendency will be to hold the rate up to a level which returns more than bare out-of-pocket costs.

Senator BURDICK. Mr. Chairman, there are two arms to this nut-cracker. Not only are we having difficulty with farm prices, and, of course, transportation charges reduce the prices, but we have got the other problem of paying freight two ways upon our supplies, also.

Mr. WALRATH. Sir?

Senator BURDICK. Upon the supplies the farmer uses. So he is in a real price squeeze.

Mr. HARDIN. There are two things I might add to this, Mr. Chairman. In the general increase cases coming before the Commission, there have traditionally been holddowns on commodities such as grain and farm products, and supplies in some instances, also.

The other thing is that where the inequities arise, these become the subject of complaint cases at the Commission. There is one now which is pending before the Commission which relates directly to what we are talking about here, the Public Service Commission of North Dakota versus the Great Northern Railway, Docket 35109. It relates to this very type of situation where rates moving over one route are higher than rates over another route.

This is now before the Commission. It is a pending case. I do not want to discuss the merits of that, obviously, but I did want to mention it so you will understand that these things are before the Commission and we do take them up for consideration as we get them.

Senator HARTKE. During the oversight hearings we held in June, it was asserted that the Interstate Commerce Commission did considerable cost analysis before approving rate increases. What cost analysis and/or verification was ever taken with respect to *Ex parte 262* before the Commission decided not to suspend the proposal?

Mr. WALRATH. Before we made the decision not to suspend, sir, there was but limited time to do the necessary cost analysis. Within a matter of 5 or 6 days after the cast was filed, however, we asked both our Bureau of Economics and our Bureau of Accounts, which incorporates the cost findings section, that as papers came in in the course of that proceeding containing figures and the justification which will form the basis for our final decision, that they do verify the accuracy of it.

I recall in June that I used the phrase of "independent study." It was too broad a phrase; it left the impression that we did a study in the sense that we are talking about today in connection with this bill. That was not so. That was not correct. But what I meant to imply was we check the accuracy of the basic data that are submitted either by shippers or opponents or by carriers. We check it against our public records, the annual reports that are filed by the railroads which are broken down in uniform accounting, so we know precisely what it has cost them for labor, what it has cost them for fuel, all of this.

And having determined—let us take both sides of the coin. Having determined that they are inaccurate, that would cause us to get into the case officially through our Bureau of Enforcement and offer expert testimony to correct the record.

If that verification indicates the data are correct, then, of course, we do not publicly enter the case, but rather use that data, subject to the cross-examination and examination by other parties, as the data base upon which our ultimate judgment decision is based.

Senator HARTKE. Senator Cannon?

Senator CANNON. No further questions.

Senator HARTKE. Thank you, gentlemen.

Senator BURDICK has witnesses at this time that have come from the great State of North Dakota.

Senator BURDICK. I wonder if Commissioner Hagen and John Finsness and David Nelson would come up to the table.

Senator HARTKE. Senator Burdick, I think for the benefit of the reporter, you should identify these people.

Senator BURDICK. I shall. At my left is Mr. Bruce Hagen, chairman of the Public Service Commission of North Dakota. At his left is David Nelson, director of the Upper Great Plains Transportation Institute and at my right is John Finsness, representing the North Dakota Wheat Commission.

First I would like to present Commissioner Hagen.

**STATEMENT OF BRUCE HAGEN, PRESIDENT, PUBLIC SERVICE
COMMISSION, STATE OF NORTH DAKOTA**

Mr. HAGEN. Thank you Senator Burdick, Senator Hartke, and Senator Cannon.

It is a pleasure for us to be here today. I am appearing for the North Dakota Public Service Commission, which is in support of S. 2355. I am also appearing for the State of North Dakota, and I am appearing as part of a large delegation of people from our State from all walks of life who favor the bill.

Governor Guy has a letter in the record. I would like to read a paragraph or two from that letter. This is to Senator Magnuson and he states:

We in North Dakota are aware, as perhaps no other area of the country is aware, of the need for a stronger, efficient, fair, fast, modern transportation system. If the original intent of the Interstate Commerce Commission Act had been fulfilled, we believe we now would be a much more viable and economically strong part of the United States.

I have long advocated better natural resource allocation. I have included both people and property. I believe we need a more equitable future population growth distribution policy. I believe we should better develop and at the same time conserve our natural resources, in all areas of the United States.

Unless the original intent of the Interstate Commission Act is fulfilled, and unless we have a truly comprehensive and fair national transportation policy, we will not be able to do these things.

I commend Senator Burdick for his bill. I believe it has great potential. I hope it will be adopted by the Congress. And if this is done, I pledge energetic help from North Dakota to present all of the specifics and background that should go into the report and study of the Commission.

The North Dakota Public Service Commission, like most States, generally reacts to what happens before the Interstate Commerce Commission on freight rates. We have, perhaps, about 20 different cases pending before the Interstate Commerce Commission. I think most States face the same problem we have in the lack of funds and lack of staff to adequately do the job.

We do have an exception now in that we have filed a complaint case which was referred to earlier against the barley freight rate structure that affects the State of North Dakota.

We believe, and we are not precisely certain, but we believe that the barley rates are probably 70 to 90 percent over the full distributed costs. This is one example of why we believe there is a need for a freight rate study.

The railroad freight rates are most of North Dakota's problem, but all of the freight rate structure should be studied. We have some examples; the gathering rates from the North Dakota farm to the markets are way too high compared to the intermarket proportional rates between the various markets.

The railroad rates from North Dakota to the west coast, this would be in the eastern part of the State at least, are the same as Minneapolis. Yet on the same commodities going east of Minneapolis, we pay a higher price than Minneapolis pays. We don't believe this is fair.

We have a bipartisan commission in North Dakota, the North Dakota Legislature is on a bipartisan basis. That legislature and our commission unanimously have supported various ideas to study the freight rate structure in the United States.

We believe that if this study is set up, it is an opportunity for a Democratic Congress and a Republican President to get together to do something for this country. We have had a position change in that originally in our State we thought the Interstate Commerce Commission would be adequate to study transportation, but we don't believe that is true any more. We think an independent study would be better. It would be similar to a doctor trying to diagnose his own ailments. We don't think he can do that.

You have to have an independent study. I think the Ralph Nader report we read about yesterday, and we haven't, of course, read the study, certainly has some merit and should be made an exhibit or source for this particular study of freight rates.

I have served since 1965 on the Mid-America Governor's Transportation Council. This is composed of 12 States from Canada to the Gulf of Mexico. We have studied various aspects of transportation problems, but one dominant theme has stood out and that is that we, in the mid-United States, have a danger of becoming a colonial area for the rest of the country.

In effect, we are, we believe, Mediterraneanizing the country with all of the population on each coast. Certainly a freight rate study should look into this and find remedies.

We, in North Dakota, want a strong, fair transportation system covering railroads, trucks, and all modes of transportation. We think it should be intermodal; there should be joint rates and through routes between all of the various modes.

We have problems. North Dakota has many small towns. We have a struggle on a day-to-day basis to maintain any kind of transportation at all for those communities. Certainly in a nation that is full of pollution and congestion, this is a problem of national concern.

We feel we should go to more cost of service pricing in freight rates. Presently we operate more or less on a value of service. We think this is out of date.

It is interesting to note, as we understand it, the first complaint before the Interstate Commerce Commission almost 100 years ago, was from some North Dakota farmers who were short of boxcars. That same situation prevails today.

In our commission, we are faced every day with the boxcar problem. Practically every elevator in our State, and we have over 600, complain about shortages of boxcars. Certainly any study of the freight rate structure, indirectly at least, should alleviate this problem. It is something we certainly are anxious to have done immediately.

We feel that grain, in effect, subsidizes much of the other industries which railroads operating in our State serve. We do want to have strong and healthy railroads, but we don't feel we should pay the entire bill.

I would like to thank the committee for the opportunity of appearing today. We have other members of our delegation who will cover different points.

And should the bill become law, our State, Senator Burdick, Governor Guy and all of us would like to volunteer to have at least one or two hearings in the State of North Dakota. If you would care to come out, we would be happy to present more witnesses and to submit additional important testimony at that time.

Thank you very much.

Senator BURDICK. Mr. Chairman, would you like to hear the other two witnesses before you engage in the questioning?

Senator HARTKE. Yes, fine.

Senator BURDICK. Mr. Finsness.

STATEMENT OF JOHN I. FINSNESS, ESQ., REPRESENTING NORTH DAKOTA WHEAT COMMISSION

Mr. FINSNESS. Senator Hartke, Senator Cannon, Senator Burdick: The three of us, Commissioner Hagen, myself and Dr. Nelson have prepared statements which we would like submitted for the record. We intend to summarize them for you now.

I am John Finsness. I am an attorney in practice before the Interstate Commerce Commission for the last 30 years. I have participated in numerous complaint cases. I have initiated numerous complaint cases, and I have participated in the ex parte general increase cases since perhaps the end of the Second World War. I would like to read a short statement that the Interstate Commerce Commission put out in 1888, its second annual report.

It was not at first clearly perceived by everyone that the provisions of the act to regulate commerce which prescribed rules of impartial accommodation as between persons, occupations and localities, were really intended to go so far as to place in respect to such accommodations the smallest and most obscure hamlet in the country in the scale of right against the largest and most powerful city, entitling each to the same favorable regard from the carriers which served them . . . that the purpose was that here should be no unreasonable discrimination as between country and city any more than between large towns. It will probably not be claimed by anyone that it is desirable to give by law or through the use of public convenience an artificial stimulus to the building up of cities at the expense of the country.

In great cities great social and political evils always concentrate, grow and strengthen, and the larger the cities are the more difficult it is to bring these evils under legal or moral restraints.

This fact is so generally recognized that the feeling may be said to be practically universal that the interest of any country is best consulted when public measures and the employment of public conveniences favor the diffusion of population and the profitable employment of industrial energy everywhere rather than the concentration of population in a few localities.

That is a pretty pertinent statement for our general situation today. I took a look at a few of the first volumes of reported decisions that the Interstate Commerce Commission put out, and there are about 350 of them now I guess. In one Interstate Commerce Commission, page 215, the Interstate Commerce Commission said that the objective of the law is that the strong shall not have undue advantages over the weak and that minorities shall be protected and their interests guarded so that substantial equality may exist for all.

Many early decisions stress that uniformity and equal treatment of all shippers, and so forth, were paramount considerations under the Interstate Commerce Commission Act. Pretty soon, however, we saw this, what I think is a great statement, begin to erode.

In 16 Interstate Commerce Commission :

The carriers may lawfully do many things which they may not lawfully be compelled to do. Rates prescribed by the Commission are maximum rates and may be reduced to meet competition.

Within certain limits where competing producers are not served by the same carriers, the making of a rate on a commodity lower than the reasonable maximum, but affording some profit over and above out of pocket costs, in order to enable producers to distribute their products in distant markets in competition with producers more favorably situated is upheld by the Commission and is a common practice of carriers.

In 24 Interstate Commerce Commission :

Carriers might voluntarily disregard distances if by doing so they do not cause unjust discrimination, but they may not be required to do so.

In 59 Interstate Commerce Commission :

There are limits of reasonableness in the making of rates which admit of a certain degree of flexibility in their adjustment for the sake of convenience and simplicity or for the purpose of meeting commercial and competitive conditions.

These are old cases, but they are just as valid today as they were then. I can add some more conditions to this original intent of ours to provide uniformity to the shippers of the country.

Competitive differences will justify different rates, preference and prejudice must be undue and created by the same railroad or group of railroads to be proscribed.

Rates greater than out of pocket costs are justified in some instances. The volume of traffic is a ratemaking consideration. Multiple cars on trainloads of cars can be a ratemaking consideration.

Competition between markets can be a ratemaking consideration.

Now it seems to me we have come almost full circle. It is my opinion that the railroads of the country literally have the power to say whether an industry makes a profit or incurs a deficit. They literally have the power to say where an industry may locate, and where it may not locate. I am in favor of this study. I think it should be a study from a fresh viewpoint. I am in no position to criticize unduly the Interstate Commerce Commission. Over the years they probably have been one of the best friends North Dakota has ever had.

I think also that you come awfully close to giving them a burden which they cannot perform. In other words, they have to not only provide the shippers of the country with just and reasonable freight rates, free from prejudice and preference, but they have the concurrent duty to provide the necessary revenues for the railroads to operate.

Thank you very much.

Senator BURDICK. The next witness will be David Nelson, director of the Upper Great Plains Transportation Institute at North Dakota State University, Fargo, N. Dak.

I might say at this point, Mr. Chairman, I assume the full statements of these witnesses and those that follow will be in the record?

Senator HARTKE. The entire statements of each individual will appear in the record in full and the additional comments will appear as summaries of those statements.

**STATEMENT OF DAVID C. NELSON, DIRECTOR, UPPER GREAT PLAINS
TRANSPORTATION INSTITUTE, NORTH DAKOTA STATE UNIVER-
SITY, FARGO, N. DAK.**

Mr. NELSON. Senator Hartke, I am David C. Nelson, director of the Upper Great Plains Transportation Institute, North Dakota State University, Fargo, N. Dak.

I also hold the rank of associate professor of agricultural economics at NDSU. I have been director of the Transportation Institute since July 1, 1967, and prior to that was assistant professor of agricultural economics since July 1, 1964.

I hold the degree of bachelor of business administration from the University of Minnesota, and a master of science degree from North Dakota State University, and a doctor of philosophy degree from the University of Nebraska.

All of my teaching and research experience has been in the broad area of marketing and economic theory. I have some 32 publications many of which are in the general area of transportation.

I have also prepared and presented some 15 papers at conferences, etc., during the past 5 years, many of which dealt with the area of transportation.

I find this bill is not unlike the Hatch Act and the Morvill Act which I am very familiar with in the area of agriculture which provides for resources to perform studies for the agricultural industry, because that industry is incapable of providing its own research. Those resources have been I think largely responsible for almost all of the increased productivity in the field of agriculture.

It is also not unlike the act creating the National Commission on Food Marketing during the early 1960's, which I think provided an excellent base and pool of data. The performance of that Commission argues against the argument of the Interstate Commerce Commission that this kind of study cannot be done. The Commission on Food Marketing did, I think, a magnificent study in a short period of time.

I can't understand why any carrier should oppose this kind of legislation, because it is a positive bill, that is it proposes to do something constructive for shippers, carriers and the general public. Something they cannot afford to do themselves and something that cannot or should not be done by any existing regulatory or otherwise policy administrative bodies.

In order to maintain clear objectivity in studying the resource allocating effects of the transportation pricing system, it must be done by an independent body which has responsibility to the Congress only and which represents as broad a spectrum of the freight transportation sector as possible.

If this condition were not so, then the existing agencies would by now be in a position to tell us a great deal more than they are. For example, why after nearly 85 years of experience cannot the Interstate Commerce Commission tell us something much more specific about the cost of operating railroads, et cetera? Why isn't data available which will at least tell us what the average cost of operating a specific railroad company is?

Even more important, what are the costs of handling particular kinds of commodities? Without good cost data, and I am told it is not available until a carrier submits it into the hearing record—I was told this by a member of the Interstate Commerce Commission Studies Division just recently (I called for some data on specific railroads and was told this was not available until the carrier actually submitted it into the record) I don't know how in heaven's name general rate increases can be allowed. Why do all railroads, motor carriers, etc., and this is the point Senator Hartke made so well I thought, need the same increases "in order to continue serving the public?" Why does the same increase always apply on all commodities? Surely the cost of hauling all commodities is not the same.

Further, it is doubtful that the demand conditions facing each carrier and each mode are identical. Nor is it likely the demands which in part control the transporting of a specific commodity are identical.

And this is further evidence that the historic methods of adjusting rates is merely madness and has resulted in nothing more than rooms full of tariffs, all of which can be computerized, but which still contain rates that are discriminatory, prejudicial and preferential and make little economic sense.

There are all kinds of examples of this which I am sure you will hear about yet this morning, and over the next couple of days. Because the industry, the transportation industry, is slowly becoming buried in a problem of low cash flow and restricted availability of development capital, some prescription is necessary.

However, prescriptions of most kinds cannot be made without objective knowledge of the components and the impact of the pricing system. It may be true that more or less regulation may be necessary; there may be a need for a change in transportation policy; there surely is a need for a change in transportation policy. But before any prescription can be made, more knowledge is necessary. Prescriptions without knowledge of the pricing system is much like treating yellow jaundice by applying white paint. It treats the symptom, not the problem, and in this case we must treat problems.

Thank you.

Senator HARTKE. Thank you, sir.

Senator CANNON?

Senator CANNON. Thank you, Mr. Chairman. Do any of you have some specific thoughts on this point I raised earlier about the makeup of the commission, the danger of having regulatory bodies as important members of the commission and determining whether or not they are doing their job really?

Mr. NELSON. I am not really sure that—I find myself on both sides of the fence. I think in the one case I would think that it would be useful to have these people on the commission such as this, in order to alleviate the difficulties of obtaining data, although this could be done through other means I suppose. I can understand the points that you are trying to make that there might be some undue bias. However, I think the size of the commission is sufficient that two representatives, one from the Civil Aeronautics Board, one from the Interstate Commerce Commission, would not have sufficient voting power to overrule the other 11 voters, unless the system would not prevail on that commission.

Senator CANNON. Of course you have also the Department of Transportation on there which adds to the problem somewhat perhaps.

Mr. NELSON. I don't think you can rule out the Department of Transportation if the other two are on there, because the Department of Transportation does contain many old-line agencies that went to DOT, that were either a part of the Interstate Commerce Commission or other agencies, who have regulatory responsibility.

Mr. FINSNESS. Senator Cannon, if I may, this is not my bill, but I have some views on it. I would think that such a commission would be heavily weighted toward people who perhaps don't even know anything about transportation freight rates, but might be knowledgeable in the field of economics, to provide a fresh view, which is what I think we need.

Senator CANNON. Thank you.

Senator HARTKE. Senator Prouty has asked me to ask this question. Can you give any reason why the study, which has been proposed under the bill we are considering, S. 2355, should not be conducted exclusively by the Department of Transportation?

Mr. NELSON. If I may answer that question in part, it goes back to the statement I just made, that the Department of Transportation in fact is composed of a number of old-line agencies. My own biases are that I simply cannot understand any agency wanting to objectively "investigate" policy with the notion that perhaps the outcome of that "investigation" might be the consolidation or the doing away with some of the agencies.

Senator HARTKE. Yes. What you are really saying in substance here is that in view of the importance of transportation in the overall costs of commodities, and the overall problems that are being experienced by the shippers, that you feel that a fresh approach is necessary, and a massive in-depth study should be done by a group of people who have no bias and prejudice. Is that right?

Mr. NELSON. Right, and with the proper staff to do it.

Senator HARTKE. Yes. All right. Thank you.

(The statements follow:)

STATEMENT OF BRUCE HAGEN, CHAIRMAN, NORTH DAKOTA PUBLIC SERVICE COMMISSION

My name is Bruce Hagen and I am Chairman of the North Dakota Public Service Commission. I have served on the North Dakota Commission since 1961. Our Commission deals with intrastate and interstate regulatory matters. An important and large part of our work is in transportation. We have many transportation problems and among them are freight rates and charges affecting our state.

I am pleased to be here today to represent the people of the State of North Dakota and the North Dakota Public Service Commission in support of Senator Burdick's Bill, S. 2355. I also am part of a large delegation of concerned, dedicated and interested people from our state who are here in support of S. 2355. They represent people from all walks of life and various organizations which support and urge the establishment of a national advisory commission to study freight rates and to recommend necessary changes which are needed for the future of this country. S. 2355 would establish an advisory commission to make a study and report with respect to present freight rates. It is a much needed piece of legislation.

Our state is in the geographic center of the North American Continent. Due to this geographic position we are more highly dependent than most states on transportation. Before we can assume the role we should assume in the American

economy we must have some changes and improvements in our transportation system. From the very beginning of our history we have suffered from adverse freight rate structures. This can be related primarily to railroad freight rates. Basically this situation came about because this country was settled from east to west, and because we have been dominated by railroads which at one time were the only public transportation we had. Largely because of this dependency we continue to have freight rate structures which are much higher than economically justified. Eastern interests very often have freight rate advantages over North Dakota.

Over the years some of our problems have been alleviated, but generally, solutions have been inadequate and new problems have arisen.

In the 1920's, Congress passed the Hoch-Smith Resolution which impelled changes in, and reestablishment of, railroad freight rates on a more equitable relationship throughout most of the United States. But no sooner had the resultant rate investigations been concluded than rate erosion began; this has continued since that time, and we are now confronted with all types of transportation problems, a large part of which are centered in the area of freight rates.

Very simply stated, the freight rate structure we have in North Dakota and the Midwest today reflects the policies of individual railroad managements. The published rates very often have no economic relationship to costs of transportation. More often than not they are based solely on truck competition whether imagined or real. Substantial increases in the movement of grain by motor and water carriers have compounded this problem and brought about drastic changes in the railroad philosophy of freight rate formulation. Rate changes have not been realistic due to these competitive conditions. We find today that the level of rates, as well as the rate structures themselves differ markedly throughout the various grain producing and consuming areas.

We now have west-bound export rates only on wheat. These rates, while not perfect, do move our grain into a position for export overseas. In spite of railroad opposition, which lasted almost five years, North Dakota persisted and obtained these export rates for wheat. We took them because they were all we could get. Now a substantial amount of our railroad revenue comes from the west-bound export movement of wheat.

Although we have received needed adjustments where the railroads have truck competition in North Dakota, adjustments have not been made in other areas where they do not have truck competition. These areas without adjustments suffer economic losses from this practice. Multiple or "Big John" rail car rates prevail in such of the United States, but we don't have them in North Dakota.

The total transportation bill for North Dakota's consumers, farmers, shippers and receivers is approximately \$200 million annually. This is out of a new generation of wealth of around a billion dollars a year at the present time. Today, we ship over 100,000 cars of grain and other commodities each year from North Dakota. We originated 26,638 cars of wheat, rye, oats, barley and flaxseed in the drought year of 1934. In 1943 we shipped a high of 143,094 cars of the same commodities, 44,298 cars of all types of commodities terminated in North Dakota in 1968—most of which originated in this state. At the same time our truck transportation system has also been increasing as our state undergoes vast change.

There are many discrepancies under the present system of transcontinental grouping of rail rates. Rate structures have grown up around various commodities that move east-bound or west-bound and utilize storage-in-transit, moving inbound on flat rates and the outbound transit balance protected on the through transcontinental rates, resulting in movements from the transit storage warehouses from 700 to 800 miles on a free balance. This means that railroads will haul a 120,000 pound rail car this distance for nothing. A good example is movements of canned goods from California to points in Kansas for storage-in-transit. Upon reshipment from Kansas to points on the Gulf in Texas, the transcontinental rates apply, both to Kansas and Texas, and the rates are usually the same. This means that the inbound transit rate is the same as the through transcontinental rate and the outbound movement is rated free balance, or moves for nothing. Economically this is madness.

Another discrepancy is the movement of grain to the west coast domestic market. This movement costs a North Dakota producer \$1.65 per one hundred pounds to ship to the south Pacific coast and \$1.52 to the north Pacific coast. North Dakota has these same rates to the west coast from all origins in the state east

of a north-south line drawn through Bismarck and Minot, North Dakota. However, Minneapolis and St. Paul, or the Twin Cities as they are usually called, in Minnesota have the same rates to the same points on the west coast. This is true even though Minnesota points are several hundred miles more distant from the west coast. Yet, on commodities going east we do not get the same geographic rate advantage that the Twin Cities receive. We pay higher rates than the Twin Cities on east-bound grain and products by paying rail rates based on mileage factors. Is this reasonable? Is this not preferential? Is this not prejudicial? Why must it be?

If we pay more than the Twin Cities on commodities going east-bound—which we do—then why shouldn't North Dakota have a lower rate on commodities going west-bound than the Twin Cities due to our geographic location? By all the rules of resource allocation the present situation is not economical. Nor is it fair.

Our class rates from and to west coast and intermountain territory points have all been in existence for almost 15 years. Yet, they are based only on an interim order of the Interstate Commerce Commission. Interim should only mean for a short period of time. Rates based on distance have been prescribed by the Interstate Commerce Commission throughout the United States. Yet, from and to the west coast and intermountain territories, distance is forgotten at the North Dakota and Montana state line in the making of rates.

Our Commission, like most state commissions, is faced with an overwhelming number of cases both within the state and before the Interstate Commerce Commission. Most of the time we are reacting to changes proposed by railroads and other modes of transportation. But in North Dakota we have, for example, recently filed a complaint against the barley freight rate structure that affects our state. These barley rates have no relation to cost and the carload rates on barley from North Dakota to the markets are higher than on wheat, rye, oats, and flaxseed. We estimate that barley rates are approximately 70% to 90% higher than their fully distributed costs which contain a rate of return on investment of 4%. This is but one case and we hope ultimately it will help to straighten out part of the problem, but a freight rate commission is needed to determine and assemble facts as to where we are going and suggest methods to improve the present chaotic condition.

Another example of the need for a commission such as proposed, is that in North Dakota hold charges have been permitted by the Interstate Commerce Commission for stopping cars of grain for inspection. Hold charges at this time are \$11.91 per car. North Dakota is the only place in the United States where this charge is assessed. North Dakota grain shippers are paying for this charge when other parts of the grain producing areas in the Midwest do not pay. We believe this is unjust because there is no difference in the movement of grain moving from country origins to markets in any part of the United States.

Another dramatic example of the need for a commission to examine freight rates is the level of the country point or "gathering" rates on grain which we have in North Dakota. Gathering rates are the price the farmer pays to have his grain moved by a railroad into the market. They are unreasonably high when contrasted with the "intermarket proportional" rates with distance considered. The intermarket proportional rates are the rates between markets. We believe this is unlawful. We believe they should be investigated and changed.

Another example of the need for a commission is the fact that there is no rate structure for miscellaneous movements of grain. Rates now are all created to carry grain into and through the existing primary markets. Adjustments should be made here.

In North Dakota we have many small towns. They must have a viable, fast, efficient, reasonably priced transportation system. To do this, there is a need to coordinate different modes of transportation. Coordination of transportation could and should be done through joint through rates between, for example, railroads and motor carriers. This is simply not being done today, but, in our frank opinion, it is a must. There is no reason why an ox and a horse cannot pull together if properly taught, trained, and supervised. What applies to these two modes of transportation should apply as well to other modes of transportation.

During the 1960's, the North Dakota Legislature passed many resolutions which have come through both houses of the North Dakota Legislature and have received unanimous bi-partisan support asking that something be done about the freight rate structures which affect North Dakota. The Legislature has been interested in all rates, but particularly the rates on grain. Many

times those resolutions have asked that the Interstate Commerce Commission investigate all freight rates. Generally, in the earlier years, it was thought the Interstate Commerce Commission could do the job. But in later years, we have given up on this method. The Interstate Commerce Commission cannot adequately investigate itself. We support Senator Burdick's bill which would set up an advisory commission to make a study and report with respect to freight rates. We feel that this would be the best approach at this time.

The Interstate Commerce Commission is understaffed and, in our frank opinion, requires additional knowledge of the various regions and regional problems of the United States. The present budget cut being proposed for the Commission would injure it even more. The Interstate Commerce Commission could use more staff, for example, to check on car safety and policing of efficient utilization of cars.

The railroads are in many instances attempting to get out of the transportation of livestock. While the motor carriers have taken most of this traffic, particularly for the shorter hauls, there is still, and will always be, a continuing need for an adjustment of rates for movements that the motor carriers cannot, and do not handle. The Interstate Commerce Commission did prescribe an adjustment back in the early 1930's pursuant to the Hoch-Smith Resolution, and we believe the basic rate structure they prescribed should be maintained.

We believe that if the rate structure were straightened out we, as a state, would have a great potential for an increase in our economic activity. What is true for our state would be true generally for our whole area of the country.

In 1965, twelve states in the center of the United States from North Dakota to the Gulf of Mexico banded together to form a "Mid America Governors' Transportation Committee." These states were: Colorado, Kansas, Minnesota, Nebraska, North Dakota, Texas, Iowa, Missouri, Montana, Oklahoma and South Dakota. In 1969, this Committee became the "Mid America Governors' Transportation Council." It has a staff and has presently been established on a permanent basis. This Council is working on all transportation problems affecting the Midwest. In all of its activities one theme has stood out. We are in danger in this country of adopting and solidifying a "Mediterranean-type Concept." Under this concept most of the population would be on the east and west coasts. The center of the country would become a vast colonial type area producing raw materials, particularly foods for the congested, urban areas. I am sure none of us in good faith can support this premise. Pollution problems alone should give us enough reasons for trying to maintain and develop our own part of the country. If the proposed advisory freight rate commission attacks the basic transportation problems we have, we feel it could be a beginning to eliminate the colonial concept blanket that covers us in the Midwest.

We need a strong transportation system. We want healthy railroads, truck lines, airlines, barge systems as well as all other public transportation. In North Dakota, we have supported and still support a rate making concept on a "cost of service" basis, along with other transportation characteristics. Most railroad freight rates have been formulated on a "value of service" basis. Over the years this concept has become more and more meaningless—especially when the service itself deteriorates. We are chronically plagued, for example, with boxcar shortages. Straightening out the basic freight rate structure itself should contribute to improve the boxcar situation. Straightening out and advocating a national transportation policy responsive to present circumstances and conditions should also help.

We have pointed out that our North Dakota State Legislature has supported many resolutions by unanimous vote over the years directed to Congress to attack and straighten out our freight rate structure and all its related problems. There has been overwhelming bi-partisan support for this. I come from a bi-partisan commission which also supports this same premise. Our Midwest is a colonial area and we find we must all work together to try to achieve those changes which are needed. We hope the bill is passed.

On the national level should the bill be passed by a Democratic Congress, a Republican President will have the opportunity to establish the advisory Commission which will make a study and report. This would be limited to a two year period. This insures bi-partisan support on the national level. Should the commission be established, North Dakota will be honored to have the Commission hold a hearing in our state where we will present more specific evidence and furnish witnesses in support of our position.

Thank you for the opportunity to appear for the people of the State of North Dakota.

TESTIMONY OF J. I. FINSNESS ON BEHALF OF THE NORTH DAKOTA STATE
WHEAT COMMISSION

My name is John I. Finsness. I am an attorney with over thirty years experience in surface transportation freight rates, ten of those years in the traffic department of a Class I Middlewestern Railroad and the balance as Commerce Counsel of the Chamber of Commerce of Fargo, North Dakota. I am presently retained in that capacity and also represent the North Dakota State Wheat Commission, created by the North Dakota legislature, financed by the wheat producers of North Dakota and with a pervasive interest in existing railroad freight rates on grain.

I have negotiated innumerable rates with the railroads and common motor carriers, have sought suspension of many rates since the Second World War, participated actively in numerous formal cases before the Interstate Commerce Commission and have participated as principal litigant in a number of formal cases brought to the I.C.C. by North Dakota interests.

I believe myself to be knowledgeable about the freight rate structure in my part of the country, the basic factors upon which it is based, the actions and interactions of the common carriers in the field of rates and the actions, decisions and inactions of the various regulatory bodies with statutory duties in this field.

I understand the purposes of this bill which is to make a study of charges for the transportation of freight by all modes of transportation, to determine the factors that contribute to the fixing of such charges, the reasons for differences in such charges because of the place of origin or destination or the commodity transported, whether the instrumentalities of the government are carrying out the National Transportation Policy and whether said policy is adequate in view of modern conditions.

I am in full accord that such a study should be made and that it should be made by persons independent of the various governmental instrumentalities concerned.

In this second annual report in 1888 the Interstate Commerce Commission said:

"It was not at first clearly perceived by everyone that the provisions of the Act to Regulate Commerce which prescribed rules of impartial accommodation as between persons, occupations and localities, were really intended to go so far as to place in respect to such accommodations the smallest and most obscure hamlet in the country in the scale of right against the largest and most powerful city, entitling each to the same favorable regard from the carriers which served them . . . That the purpose was that there should be no unreasonable discrimination as between country and city any more than between large towns. It will probably not be claimed by anyone that it is desirable to give by law or through the use of public conveniences an artificial stimulus to the building up of cities at the expense of the country. In great cities great social and political evils always concentrate, grow and strengthen, and the larger the cities are the more difficult it is to bring these evils under legal or moral restraints. This fact is so generally recognized that the feeling may be said to be practically universal that the interest of any country is best consulted when public measures and the employment of public conveniences favor the diffusion of population and the profitable employment of industrial energy everywhere rather than the concentration of population in a few localities."

These were great and wise words, and we are saying the same thing today in mounting intensity as we view the crimes, the riots and civil disorders, the pollution and the strangulation by automobile of our large cities, not to mention their vulnerability to the ICRM.

While the words were wise, we never did anything about them, and it is my personal belief that our transportation policies and the freight rate structure of the country contributes in no small measure to the concentration of industrialization and population in large cities at the expense of the country, the consequences of which we are all now well aware.

In 1 I. C. C. 215 the I. C. C. said that the object of the law is that the strong shall not have undue advantages over the weak, and that minorities shall be protected and their interests guarded so that substantial equality may exist for all, and many early decisions stressed that uniformity and equal treatment of all shippers were paramount considerations under the I.C.C. Act.

In this connection there are what are called class rates maintained by railroads which are relatively equal and uniform throughout the country for all shippers

of like commodities, distances considered. The only trouble is that these class rates actually apply on not more than fifteen percent of the railroad traffic.

The huge remainder of railroad traffic moves on a freight rate structure so replete with inequalities, discriminations and plain chaos that an insane man would find it insane.

Starting with the premise that rates should be uniform and equal to all shippers without preference or prejudice we find on closer examination by I. C. C. or Court fiat that:

1. Carriers may lawfully do many things which they may not lawfully be compelled to do, 16 I.C.C. 323.

2. Rates prescribed by the Commission are maximum rates and may be reduced to meet competition, 40 I.C.C. 201.

3. Within certain limits and where competing producers are not served by the same carriers the making of rates on a commodity lower than the reasonable maxima, but affording some profit over and above out of pocket costs of service, in order to enable producers to distribute their products in distant markets in competition with producers more favorably situated, is upheld by the commission and is the common practice of carriers, 140 I.C.C. 633.

4. Carriers might voluntarily disregard distances if by doing so they do not cause unjust discrimination, but they may not be required to do so, 24 I.C.C. 96.

5. There are limits of reasonableness in the making of rates which admit of a certain degree of flexibility in their adjustment, for the sake of convenience and simplicity or for the purpose of meeting commercial and competitive conditions, 59 I.C.C. 321.

The above are very old cases, as valid today as when they were written. I might add a few of my own which can be easily documented.

Different circumstances and conditions of transportation will justify different rates.

Competitive differences will justify different rates.

Preference and prejudice must be undue and created by the same railroad or group of railroads to be proscribed.

Rates barely higher than out of pocket costs are justified in some instances.

The volume of traffic is a rate making consideration.

Multiple cars or train loads of cars can be a rate making consideration.

Competition between markets can be a rate making consideration.

The result of all this is that we have stringent controls on entry into the transportation business, particularly as to trucks, and we have nothing but a facade of regulation over freight rates with firmly buttressed precedents either by the I.C.C. or the Courts to legitimize practically every departure from uniformity in rate treatment which can be devised.

All of this gives the transportation companies, literally, the power to decide whether an industry survives or dies, whether an industry locates in Chicago or Podunk, whether a producer makes a profit or a deficit. Even if the railroads had the best possible motives attuned to the public good, they still have this power.

I do not lay all of the blame for our present condition at the doorstep of the Interstate Commerce Commission. We have plastered the bottoms of our rivers at public expense to provide cheap transportation to those few who can utilize them, driving railroad rates down in the process for those same few and adding to the disabilities of the inland shippers. Vast segments of the transportation industry, the agricultural exemptions, and barge exemptions, are unregulated, which emasculates any meaningful I.C.C. control.

But the fact remains that even in areas left to the meaningful control of the I.C.C., we have not achieved that uniformity and that equality of treatment which the I.C.C. Act was designed to provide.

A report by the Joint Economic Committee of Congress entitled "Economic Analysis and the Efficiency of Government" issued on February 12th recommends a full scale congressional study of the performance of regulatory agencies based on suspected performance shortfalls in six specified areas, all of which I agree with. Senate Bill 2355 is similar in nature but directed to the narrow but certainly important and complex field of freight rates.

If there is one thing the freight rate structure of the country is not, it is not uniform or equal. And the lack of uniformity certainly implies special consideration or preference or prejudice, or whatever the reason.

There is reason to believe the I.C.C. is placing more reliance upon intermodal competition than upon regulation to effectuate the purposes of the national transportation policy. Competition may prevent extortion, but it will not necessarily prevent preference or prejudice because competing modes may elect to compete at a low level at one place and on a high level at another.

As an example, the rail rate on birdseed from Fargo, N.D. to the West Coast is the same as the rate from Philadelphia even though I requested a lower rate from the railroads although I did not formally complain to the I.C.C.

The wheat rate from Fargo to New York is 29 cents higher than from Minneapolis although the rate from both points to the West Coast is the same. Many rates on grain for one reason or another are at out of pocket cost levels. From Western North Dakota and Montana eastbound they are undoubtedly far above full cost.

It is quite safe to say that there are few freight rate adjustments on any commodity class which treat all shippers in the country on an equal basis, distance considered.

There is little or no oversight by the Congress concerning implementation of the purposes of the I.C.C. Act regarding freight rates. Other than requiring due process, and decisions based on records as made, the courts wash their hands of the whole affair, leaving implementation of the Act to the expertise of the I.C.C. even when they might consider that body to be wrong.

The Commission has some duties which are hard to reconcile, for instance, its duty to provide just and reasonable freight rates and its duty to insure the carriers sufficient revenues to provide adequate service. These conflicting duties are reason enough for instituting a study by a group independent of the Commission to determine whether the original great purposes of the Act are being implemented or subverted.

STATEMENT OF DAVID C. NELSON, DIRECTOR OF THE UPPER GREAT PLAINS, TRANSPORTATION INSTITUTE AT NORTH DAKOTA STATE UNIVERSITY, FARGO, N.D.

My name is David C. Nelson, I am Director of the Upper Great Plains, Transportation Institute at North Dakota State University, Fargo, N.D. I also hold the rank of Associate Professor of Agricultural Economics.

I have been Director of the Transportation Institute since July 1, 1967 and prior to that was Assistant Professor of agricultural economics at N.D.S.U. since July 1, 1964.

I hold the degree Bachelor of Business Administration from the University of Minnesota (1958); Master of Science from North Dakota State University (1960); and Doctor of Philosophy from the University of Nebraska (1964).

All of my teaching and research experience has been in the broad area of marketing and economic theory. I have some 32 publications, many of which are in the general area of transportation. I have also prepared and presented some 15 papers at conferences, etc., during the past five years. Many of these presentations dealt with the broad subject matter area of transportation.

A rather interesting comment appears in the October 15, 1969 issue of *Forbes magazine*, "... the railroads have persuaded the Interstate Commerce Commission to grant them two freight rate boosts over the past two years designed to yield \$870 million annually. To date, ... revenues ... were up only \$200 million." The key phrase is *designed to yield*. There obviously is something terribly wrong with the ratemaking techniques of the American railroad industry when those who should be in position to know, missed a two-year target revenue of \$1.7 billion by more than \$1.5 billion.

The fact that a federal regulatory body (ICC) would approve such increases indicates that the agency is not fully cognizant of the conditions affecting the need for freight rate adjustments. This is particularly relevant in the face of a recent third attempt to employ the general rate increase method to solve the problem of railroads (low cash-flow and short investment capital). Because it is also apparent that railroad ratemakers do not fully understand the conditions surrounding their problem, one could easily wager the X-262 increases will not yield the \$600,000,000 without any increase in tonnage hauled. It is interesting to note along this line that increases in revenues do derive merely from tonnage increases and that it appears that revenues might not have increased at all from general rate increases. For example from 1958 through 1968 the originated tonnage on U.S. Class I railroads increased about 20.7 percent.

At the same time total revenue increased about 8.4 percent while rates were increased generally about 20 percent or slightly greater. It might even be hypothesized here that had the railroads not raised rates at all the increases in revenues may have been significantly greater than 8.4 percent. That is, the elasticity of demand situation may be of such magnitudes that certain classes of traffic were merely driven to other modes of transportation because of the increase in rail rates. (See for example the variance in demand elasticity coefficients between aggregate values and commodity values—Table 1.)

Other sources indicate that some \$300 million was expected from X-256 and approximately \$470 million from X-259 annually. The X-256 target was nearly reached the first year while the X-259 target was missed by some \$20 million (*Petition in re proposed increase in freight rates and changes*, October 10, 1969, p. 9). At the same time increases in reported costs were some \$1 billion greater than increases in revenues 1969 over 1966. It is interesting to note however that the X-262 petitioners report an increase of some \$968 million in wages 1969 over 1966 while the Association of American Railroads in their January 1970 *Railroad Review and Outlook* report an increase of \$421 million 1969 over 1966 (Table 9, p. 27). This means that the remaining increase of \$547 million is in the form of payroll taxes and health and welfare benefits (a little hard to believe! Probably closer to about \$98 million).

The expected annual increase in revenue from X-262 was projected at \$600 million which of course is about \$450 million less than the reported excess in costs over revenues from X-256 and X-259. And yet note the language of the Commission in *Increased Freight Rates, 1968*, 332 ICC 790 (the Commission's final report with respect to findings pursuant to investigation of matters relevant to X-259):

"Without the additional revenue to be derived from the increased freight rates and charges authorized herein, the earnings of respondents would be insufficient to enable them, under honest, economical, and efficient management to provide adequate and efficient transportation service consistent with the public interest and the national transportation policy."

Obviously, they (railroads) were incapable of doing it with the X-259 increases (even though the Commission didn't seem to be aware of that) and the return on investment declined 1967 to 1968 and remained constant at 2.44 percent "year to June 30, 1969".

And now a request for another 6 percent which should be projected to yield at least another \$600 million if the projections of railroad pricing people can be believed. This would then mean that the X-262 projections plus a new 6 percent emergency increase should yield something around \$200 million more than that necessary to meet the miscalculated changes in costs (unless of course railroad management is already well aware that the X-262 increases will not yield anything close to \$600 million).

If all this sounds disoriented and confusing—its because it is! It is extremely difficult to make sense out of the rate-revenue-cost situation and it is becoming increasingly more difficult. How does the Commission know, for example, that each and every carrier should take and be allowed the same increase in general rate increase cases? I recently requested cost data from the Commission regarding three individual carriers and was told that the data is impossible to come by unless it is submitted into the record (a hearing) by the carrier. This, of course, means that the Form A, B, and C costs reported by carriers are not analyzed individually. Further it means that there is no way of knowing whether the Southern Railway needs the same increase as the Union Pacific. And even if the carrier (Consolidated or Buckingham motor carriers) does submit costs into the record, who knows if they are correct if the Commission doesn't know? So how come they always ask for 3 or 6 percent lately??? Why not 1, 2, 4, 5, or 7 percent?

Of course it is not fair to focus on railroads, but I believe that what is true for railroads is more or less true for other carriers or at least soon will be. I know from conversations with people I know in both the motor carrier and the air freight carrier business that they silently applaud each time the ICC approves another general rate increase for rails. Why?? Simply because it makes it much easier to pick off the high value traffic if the rail rate umbrella is high enough. Does it solve the rail problem? No! Otherwise they wouldn't be asking for a fourth increase in two years. Rail ton-miles have been increasing over the past few years while their share of the national ton-mile market has held about constant. Their share of the revenue pie has steadily been decreasing while other modes have been increasing their share.

Obviously the rails are left with the low valued bulk hauls many of which carry rates which are below fully distributed costs and some of which are even below out-of-pocket costs. There is only one conclusion to this kind of trend—national bankruptcy (one by one) and public ownership. And there is nothing to indicate that the same problem will not slowly affect the other modes as their competition becomes technologically more capable to compete or as new forms of transportation successfully invade the market.

How would motor carriers and others get into this kind of problem? Simply because the motor carrier rate structure essentially duplicated the railroad system in 1936 when the I.C. Act called for publication of rates (it was much simpler to merely duplicate another system than to figure out a system that was in fact applicable to an industry with a much different cost structure). The differences between motor and rail traffic today is that motor carriers haul a large portion of their traffic under the class rate system while railroads haul very little class rate traffic. Railroads haul at least 85 percent of their traffic under a wide variety of commodity and exception tariff situations.

Of course none of this seems to have anything to do with the technology of operating and the efficiencies that should be forthcoming from increasing substitution of capital for labor. Rate structures and levels are generally based on "somebody's" idea of some vague value concept and I would suggest that herein lies a major root of the railroad and perhaps an evolving motor and air problem. In the industry that I am most acquainted with, agriculture, the rate of substitution of capital for labor has been the force that has kept American agriculture from folding and continuing to produce food in the face of generally falling prices and increasing input costs. It has always seemed rather strange to me that the same economic principles apparently do not apply to the American transportation industry. Not only do we seem to abide inefficiency, but we encourage its expansion by willy-nilly allowing general rate increases every time one mode gets into a cash problem. And the culprit always seems to be labor and the regulatory agencies never seem to question the cost data (at least very seriously), i.e., it does not necessarily follow that both total and unit costs increase at the same time unless of course the firm is operating in excess of its economic capacity (lowest cost per unit of output) and I seriously doubt if this applies to any of the transportation modes. It may just be possible that rates should be reduced at the time that increases are being applied which may *in fact* be the solution to a revenue problem. In fact some very few research results on demand elasticity indicate that this hypothesis is more true than not (Table 1).

The concepts that apply to pricing in transportation somehow seem to be different than in other industries. Discrimination can and does exist in an economic sense, but in a legal sense it does not (Tables 2 and 3). In other words the science of economics has a set of conditions which indicate the presence of discrimination, but these conditions are not necessarily sufficient before the Commission to establish that discrimination exists in the sense defined by the Commission. It is interesting to note however that the economic conditions which indicate discrimination are generally the same conditions which apply to the pricing of products in other industries as regulated by other agencies. It is an interesting example of being both right and wrong at the same time.

Of course freight rates are no simple matter. Computerization of the tariffs which the poor devil rate clerks have to work with does not simplify the rate structure itself. It may be true that with computerization it will be much, much simpler to locate a specific rate; but that rate may still be discriminatory; it may still not reflect 1970 demand or cost conditions; it may still be preferential or prejudicial; etc. Further the factors which are considered in determining rates do not become simplified. These factors still require careful analysis which requires a combination of both talent and data which so far I have not observed is available in quantity the transportation management circles that I travel in. A working knowledge of each of the following factors concerning the product is necessary in understanding the making of rates:

1. Crude or finished
2. Liquid or dry
3. Knocked down or set up
4. Loose or in bulk
5. Nested or in boxes or otherwise packed
6. If edibles, whether green or dried, dessicated or evaporated

7. Cost of service in general
8. Length and direction of haul
9. Season and manner of shipment
10. Space occupied and weight
11. Whether in carload or less-than-carload lots
12. Equipment required; flat, gondola, box, tank, or special
13. Whether heater or refrigeration service is required
14. The weights; actual or estimated
15. Hazardous and extra hazardous
16. Risk of handling, either to shipment or to other property
17. Liability to waste or injury in transit
18. Market value
19. Shipper's representation as to their character
20. Volume of annual shipments to be calculated
21. Dispatch of movement, perishable or other rush shipments
22. Carrier's risk of owner's release from damage or loss
23. Competition, rate made necessary by competition

There seems to be no question that something needs to be done concerning the pricing system in the transportation industry. As long as a generalized value-of-service (or of commodity) system continues, then trouble is in store for each mode at that time when other modes become capable of assuming additional traffic beyond the normal increase in gross national product. This situation seems to occur whenever new technology becomes available to a particular mode and/or when rate levels which apply to one mode are generally increased. Obviously this kind of situation cannot continue to occur without disaster befalling one of the modes and of course the entire industry eventually. Before prescriptions are developed (such as more or less regulation, increasing emphasis or mergers, new transportation policy) the pricing system in transportation must be studied. Without a thorough study of the pricing system, prescriptions are merely uneducated guesses to solutions. It is the price system which is charged with the responsibility to allocate resources in a free-enterprise economy. If there is overcapacity, obvious inefficiency, low returns to investment and sales, then an understanding of how that pricing system has and does work is a required component to generate prescriptions of any kind. *This bill is designed to perform this function and therefore it is an excellent bill!*

It would not be sufficient to study the price (rate) system without correspondingly studying the various transportation policy statements and their implications. It is obvious that a "transportation industry" cannot exist within the current framework of national policy. Pegrum identifies a major part of the problem:

"The Federal Aviation Act contains a declaration of policy to guide the Board in its economic regulation of air transport. This declaration is similar to the one embodied in the Interstate Commerce Act, although it contains no statement with regard to wages and working conditions, nor does it make any reference to other forms of transportation. It is evident that Congress intends that the Board shall regulate air transportation independently of, and without regard to, the effects of its actions and policies on the other agencies." (Dudley F. Pegrum, *Transportation: Economics and Public Policy*, Irwin, 1968, p. 365.)

There are of course many other inconsistencies. The best documentation and discussion that I have seen regarding these inconsistencies has been done by Charles F. Phillips, Jr., in his book *The Economics of Regulation*, Irwin, 1969, pp. 473-482. Although I don't think it necessary to reproduce them here, Phillips' conclusions are worth repeating:

"In 1887, Congress enacted the Interstate Commerce Act to regulate the nation's railroads. At that time the industry has a virtual monopoly of transportation in this country and was guilty of many corrupt and highly discriminatory practices. Over the years, however, other modes of transport have developed and have grown, aided in large part by various government promotional activities. The basic problem has been to promote and regulate each new mode of transport as it has developed without placing the existing modes in an unfair competitive position. The overall objective has been to foster the development of an economically efficient transportation industry.

"Congress has been willing to amend the existing statutes, but such adjustments have often been slow and have failed to recognize the changing economic and technological environment of the transportation industry. President Kennedy, in a 1962 message to Congress, argued in part:

"... pressing problems are burdening our national transportation system, jeopardizing the progress and security on which we depend. A chaotic patchwork of inconsistent and often obsolete legislation and regulation has evolved from a history of specific actions addressed to specific problems of specific industries at specific times. This patchwork does not fully reflect either the dramatic changes in technology of the past half century or the parallel changes in the structure of competition.

"The regulatory commissions are required to make thousands of detailed decisions based on out-of-date standards. The management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative. Some parts of the transportation industry are restrained unnecessarily; others are promoted or taxed unevenly and inconsistently.

"Some carriers are required to provide, at a loss, services for which there is little demand. Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates. Restraints on cost-reducing rivalry in rate-making often cause competition to take the form of cost-increasing rivalry—such as excessive promotion and traffic solicitation, or excessive frequency of service. Some carriers are subject to rate regulation on the transportation of particular commodities while others do not; and of those enjoying the use of public facilities, some bear a large part of the cost, while others bear little or none.

"... The resources devoted to provision of transportation service should be used in the most effective and efficient manner possible; and this, in turn, means that users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the service they desire at the lowest total cost, both public and private. . . ."

"This means a more coordinated Federal policy and a less segmented approach. It means equality of opportunity for all forms of transportation and their users and undue preference to none. It means greater reliance on the forces of competition and less reliance on the restraints of regulation. And it means that, to the extent possible, the users of transportation services should bear the full costs of the services they use, whether those services are provided privately or publicly." (From *The Transportation System of Our Nation*, Message from the President of the U.S., April 5, 1962: House Doc. No. 384, 87th Cong., 2d sess., pp. 2, 3.)

"Some of these inconsistencies and obsolete policies may be inevitable; some may not. A more coordinated policy, moreover, is difficult to achieve."

I would submit that more coordinated policy is not just difficult to achieve, it is high impossible without knowledge of pricing systems and without a thorough objective study of the role that existing policy has played to this point.

I find that not much of what is being called for here is now being done. And piecemeal study is not enough. The transportation pricing system has been described as a large blanket. Like any other blanket if one corner is pulled, the middle and all other corners move in some manner. The entire pricing system must be studied, as a system, not as a collection of parts into a badly evolved book. Furthermore, it is not sufficient to ask the Interstate Commerce Commission, the Civil Aeronautics Board, the Department of Transportation, or other any existing regulatory agency (DOT contains many old-line regulatory agencies) to "investigate" the rate system. In the first place that is akin to asking each agency to "investigate" itself which of course is not only unrealistic but is also nonsense because even if the resources were available, who is to guarantee an objective self-study? Secondly, each agency in part depends upon existing policy statements for justification to their existence; thus they are not likely to make policy recommendations which may mean mass consolidation of existing regulatory forms in order to regulate the "industry" as an industry.

I feel that S.B. 2355 (Burdick, et al.) is a good bill and I strongly urge this Committee to report the bill for passage.

TABLE 1.—VARIOUS ELASTICITY OF DEMAND FOR RAIL TRANSPORTATION, AGGREGATE AND BY COMMODITIES, COEFFICIENTS CALCULATED BY SEVERAL RESEARCHERS

Aggregate or commodity	Researcher					
	Benishay and Whitaker	Morton	Perle	Limmer	Miklius	Berger
Aggregate.....	-0.842	-0.50	-0.723			
Oranges.....				-1.9		
Celery.....				-3.6		
Lettuce.....					(1)	
Wheat (Hard Red Spring).....						-2.25

¹ -1.97 to -3.19.

Sources: Haskel Benishay and Gilbert Whitaker, Jr., "Demand and Supply in Freight Transportation," *Journal of Industrial Economics*, 1966, pp. 243-262; Alexandar L. Morton, "A Statistical Sketch of Intercity Freight Demand," paper presented at the January 1969 meeting of the Highway Research Board, Washington, D.C.; Eugene D. Perle, *The Demand for Transportation: Regional and Commodity Studies in the United States*, University of Chicago Press, 1964; Ezekial Limmer, "The Elasticity of Demand for Railroad Transportation of Florida Produce," *Journal of Farm Economics*, vol. 37, 1955, pp. 452-460; Walter Miklius, "Estimating the Demand for Truck and Rail Transportation: A Case Study of California Lettuce," *Agricultural Economics Research*, vol. 19, 1967, pp. 46-50; Donald W. Berger, *Demand for Transportation of Berley and Hard Red Spring Wheat*, unpublished manuscript thesis, North Dakota State University, Fargo, January 1970.

TABLE 2.—SELECTED PROCESSED AND UNPROCESSED COMMODITIES: RATIO OF REVENUE TO OUT OF POCKET COSTS, UNITED STATES TO U.S. RAIL TRAFFIC, 1961

[In percent of out-of-pocket costs]

Category	Fails to contribute to overhead burden ¹	Contributes to overhead burden ²
Processed:		
Cotton linters.....		143
Fruits, dried.....		148
Fruits, frozen.....		124
Vegetables, frozen.....		119
Beans and peas, dried.....		140
Wheat flour.....	94	
Corn meal.....	76	
Soybean, oil, cake.....		100
Vegetable, oil, cake.....		115
Cottonseed oil.....		123
Linseed oil.....		125
Soybean oil.....		102
Sugar.....		153
Cigarettes.....		211
Unprocessed:		
Wheat.....		185
Corn.....		140
Flaxseed.....		203
Hay.....		122
Tobacco.....		124
Sugar beets.....	59	
Peanuts.....		132
Apples.....	85	
Grapes, fresh.....	72	
Pears, fresh.....	80	
Celery.....	75	
Onions, dry.....	78	
Potatoes.....	87	
Tomatoes.....	81	
Vegetables, fresh.....	72	

Source: Interstate Commerce Commission, carload waybill statistics, 1961; and railroad cost scales by territories, 1961.

¹ Revenue per ton is less than the out-of-pocket costs incurred to haul that ton, e.g., fresh pears contributed sufficient revenue to cover 80 percent of the out-of-pocket costs.

² Revenue per ton is greater than the out-of-pocket costs incurred to haul that ton.

TABLE 3.—RATIO¹ OF REVENUE TO OUT-OF-POCKET COSTS ON WHEAT SHIPMENTS BY RAIL FROM SELECTED STATES TO SELECTED STATES, 1966

From—	To—								
	United States	Illinois	Iowa	Kansas	Minnesota	Nebraska	Oregon	Washington	Weighted
Kansas.....	150	180	190	180	210	190	120	110	150
North Dakota.....	160			260	210		160	150	220
Nebraska.....	160		190	190	150	190	150		170
Missouri.....	100	170		100					100
Minnesota.....	130	140	180		140				130
Montana.....	200				230		200	190	210
South Dakota.....	180		190		190	190	150	140	190
Colorado.....	110			240		240	70	80	120

¹ Percent of out-of-pocket costs; e.g., 100 would mean that the revenue per unit would just cover the out-of-pocket costs incurred to haul that unit. Data is calculated in terms of shipments on 60-ton common bocars.

Source: Interstate Commerce Commission, Carload Waybill Statistics, 1966, SS-2; Rail Carload Cost Scales by Territories, 1966, 2-68. Developed unpublished M.S. thesis by B. Mariska, Department of Agriculture economist, University of Nebraska, Lincoln.

Senator HARTKE. Senator Burdick?

Senator BURDICK. Thank you.

The next witnesses will be Erwin Miller, president of the Farmers Grain Dealers Association of North Dakota; William Martin, manager of the Buxton Farmers Union Elevator; Albert J. Hardy on behalf of the South Heart, N. Dak., and West River Transportation Committee, and the Honorable Donald Giffey, member of the State house of representatives.

Senator HARTKE. Each of the statements of these gentlemen will appear in full in the record, after their oral summation.

Senator BURDICK. Mr. Miller?

STATEMENT OF ERWIN MILLER, PRESIDENT, FARMERS GRAIN DEALERS ASSOCIATION OF NORTH DAKOTA

Mr. MILLER. Senators Hartke, Cannon, and Burdick.

My name is Erwin G. Miller. I have managed the Farmer Elevator Co., of Williston, N. Dak., for over 25 years. I am president of the Farmers Grain Dealers Association of North Dakota and a director of the National Grain and Feed Dealers Association, and a member of the National Country Elevator Committee. I have served on several transportation committees.

Having served in the aforementioned capacities for over two decades; I have had ample opportunity to hear the complaints of many people, in and out of the grain industry, about the inequities of our present rate structure. These inequities do exist.

I have before me here the rates on barley from Clementsville, N. Dak., recorded at 44 cents per hundredweight where wheat and other grain commodities are at 37 cents. And there are larger inequities within that area. I am sure that some of these inequities and possibly the result of an attempt of many pressure groups to get higher or lower rates in various areas.

I would like to read two resolutions which were adopted unanimously at the 58th annual convention and meeting of the Farmers Grain Dealers Association of North Dakota on the 21st of January 1970.

Resolution: Whereas the freight rate structure on all commodities in America today is in such a state of confusion and so many inequities exist because of changes over the years.

Now therefore, be it resolved, that the Farmers Grain Dealers Association of North Dakota is in favor of scrapping all existing tariffs, and new equitable rates be established on the basis of mileage, tonnage and value of products hauled.

The second resolution is to support U.S. Senate bill 2355 to investigate freight rates and charges.

Whereas, the United States Senate Bill No. 2355, introduced by Senator Burdick, would establish a thirteen member advisory commission to undertake a study of the cost of transportation of all commodities including grain and grain products, throughout the country by all modes of transportation in order to determine the legitimacy of present rate making philosophies by both carriers and regulatory bodies.

Now, therefore, be it resolved, that the Farmers Grain Dealers Association of North Dakota urges the North Dakota Congressional delegation to support this Bill.

In view of the aforesaid, I respectfully urge that S. 2355 be passed.

Thank you.

(The statement follows:)

STATEMENT OF ERWIN MILLER, PRESIDENT, NORTH DAKOTA FARMERS GRAIN DEALERS ASSOCIATION, AND MANAGER OF THE FARMERS ELEVATOR COMPANY OF WILLISTON, N. DAK.

My name is Erwin Miller of Williston, North Dakota. I am appearing as President of the Farmers Grain Dealers Association of North Dakota, and also as manager of the Farmers Elevator Company of Williston, North Dakota, a country elevator with a capacity of 184,000 bushels and handling all types of grain and seeds produced in the Williston area. We also market farm supplies such as flour, salt, twine, feeds, seeds, fertilizer and certain chemicals.

I am authorized to state that the people I represent urgently request approval of S. 2355. As we comprehend it, provision is made for the appointment of a Commission to study and make a report of the freight rate structures of the United States and make appropriate recommendations to Congress as to remedies necessary and required pursuant to such facts as they may develop by reason of these studies. My statement will supplement in large part, statements made and filed with this Committee and largely relate to the transportation of grain from North Dakota.

I happen to operate an elevator in that part of the state, the northwestern corner, that still pays the highest rates authorized by the Interstate Commerce Commission. These basic rates became effective in 1935 and have since been changed by numerous authorizations by that Commission during the intervening years so that today they are about double, and probably more, than those prescribed. Practically all of the grain producing areas in the western United States have lower levels of rates on grain than we do and I know of no justification for the differences in treatment.

Grain moving from North Dakota to our primary terminal markets such as the Twin Cities and Duluth, Minnesota have several levels of rates depending upon the time of the year and the type of grain shipped. From northwestern North Dakota we have only one level and that is the maximum basis prescribed. From other areas, particularly in the central part of the state there are seasonal rates established with lower rates in effect from November 1 of one year to June 1 of the following year. In the eastern portion of the state, reduced rates are in effect throughout the year but in many instances being the lowest during the winter months or from November 1 to June 1 as mentioned. In some instances, there is one rate applicable throughout the year below the maximums prescribed. In some instances, the rates on coarse grains are treated differently than rates on wheat.

I understand that the reason for the establishment of these so-called "seasonal" rates is because during the heavy shipping season, which is supposed to be from June 1 to November 1 of each year the railroads couldn't handle the business tendered them due to lack of serviceable grain cars, and under those circumstances there was no need to reduce the rates to meet truck competition.

I can emphatically state that this is rather amusing due to the fact we have practically a chronic shortage of grain cars regardless of the time of the year. The shortage is just a question of degree. It is seldom that there is a sufficient supply of cars to fill orders for them by grain shippers. And it seems it is becoming worse and not better. If our railroads could have all of the cars which they own on their lines, or the equivalent of it, I doubt there would be much complaint, and certainly less reason for having varying rates on grain depending on car supply.

It should be mentioned that when these rates on grain were first prescribed and ordered by the Interstate Commerce Commission, they were all uniform and the same from the whole state, distance considered, except as to flaxseed, which I understand had a level 12% higher than applicable on grain. Today flaxseed takes the same as the rates applicable on wheat and other grains, other than barley.

Barley is treated differently. The rates have not been changed except as to so-called blanket increases in freight rates authorized by the Commission during the past 30 some years due to lack of business during the depression years, or increased operating expenses incurred during the war years and since that time.

There is only one city in North Dakota that has the same rates on barley as on wheat and other grains, and that is Oakes, North Dakota which rate is maintained by the Chicago North Western Railroad. That railroad does not discriminate as between grains in the freight rates they maintain from the grain producing areas they serve, of which our sister state, South Dakota, is one.

All of this grain moves in the same type of equipment, loads and has loaded substantially heavier per car during the last 20 years than when the rates were prescribed, and moves generally to the same markets in the same fashion.

Within the last 3 years there have been blanket increases in freight rates authorized or permitted by the Interstate Commerce Commission. With the exception of the most recent one permitted last November (1969), several railroads, among which were the Chicago & North Western and the Chicago, Milwaukee, St. Paul & Pacific Railroad, did not apply these increases to their freight rates on grain in large parts of South Dakota, parts of Minnesota, Nebraska and other states, yet they were parties to a pleading to the Commission to authorize increases in rates as quickly as possible. The Milwaukee Road did not take them in South Dakota, yet they did from its stations in North Dakota. I know of no reason justifying this difference in treatment. The marketing of grain from producing areas of the upper Great Plains are very much the same.

I could sight other examples of discrepancies and discriminations but it seems to me that the above illustrates clearly that there is a great need for the appointment of a commission to obtain facts, and make a study and report, as to freight rates particularly as they apply to grain throughout the United States. There is no reason for the heterogeneous mass of inconsistencies in rates that have developed in the past one or two decades for the movement of grain from at least the major grain producing areas of the United States, and I think it is particularly bad in the upper Great Plains state of which North Dakota is a substantial producer.

STATEMENT OF WILLIAM MARTIN, MANAGER, BUXTON FARMERS UNION ELEVATOR

MR. MARTIN. I am William W. Martin, manager of the Farmers Union Elevator, Buxton.

Mr. Chairman and Senators, I will read my testimony here. During the early months of 1969, elevators and shippers were notified of a 3-percent rail rate refund on shipments from country stations into Minneapolis, St. Paul, Duluth and Superior, between June 24, 1968 and March 17, 1969.

This refund amounted to an estimate of \$800,000 plus 4 percent interest to the elevators and shippers in North Dakota. This was fine, but in December of the same year the Interstate Commerce Commission granted the railroads a 6-percent increase across the board.

This seemed rather contradictory. Rail rates, since November 1966, to March 1970, have increased about 10 percent. Now, I understand the railroads are asking for another increase of 6 percent.

Let's examine the grain rates by rail from Buxton, N. Dak., to Minneapolis, Minn., or Superior, Wis. We are what they call an equal freight station, meaning we can ship to Minneapolis or Superior for the same rates.

The present barley rate is 43 cents per hundredweight and the wheat rate is 32 cents per hundredweight. The only reason I can think of for the difference in rates is the truck competition in the area. Malt barley has to move by rail, because the buyer prefers carload lots. The farther west you go in the State of North Dakota, the barley and wheat rates come closer together.

The reason for this is because they move out of the malting barley area. I would like to quote from a speech given by a Milwaukee malster at the Red River Barley Days in Grand Forks, N. Dak., January 13, 1970.

He said:

Let's examine some of the reasons for barley's low comparable position. For example, a country facility in the Grand Forks, North Dakota, area pays 31 cents per hundredweight to move other grains to either Minneapolis or Duluth market while his barley rates for the identical move is 43 cents per hundredweight.

Farther west the rates come closer together and are in fact eventually equated. However, in reducing rates in certain areas on other commodities, to fight truck competition, the carriers have centralized most of their efforts in regions of number one importance to malting barley production.

In addition, seasonal rates which apply to other commodities between November 1 and May 31 work to additional disadvantage, amounting to 2 to 5 cents per hundredweight. Adding freight to Milwaukee, we arrive at a rate of 34.5 cents per bushel from Grand Forks, North Dakota.

The rate of competing French barley delivered Milwaukee by water is approximately 20 cents a bushel, plus 7 cents duty and approximately 8 cents unloading and transfer, or a total of 35 cents per bushel from France to our plant.

An average delivery of Canadian barley is slightly over 22 cents delivered our plant, including duty.

I do believe we need to establish an advisory commission. It seems to me the Interstate Commerce Commission favors major railroads in the East. I have some photographs of some of the problems, the shippers in North Dakota have with equipment and such, we receive from the railroads.

Enclosed are five photographs¹—of Great Northern Railroad boxcar No. 47863, which was spotted for grain loading on February 2, 1970. You notice the posts, wall, floor, even one side you can put your hands through. It took two of our employees 6 hours to prepare this car for loading, using a total of 32 grain doors. The normal amount is 15.

We receive no reimbursement from the railroad for rebuilding cars. I do understand in the sugar business—if a sugar company in the Red River Valley has to cooper or prepare a car for loading, they can

¹ The photographs are in the subcommittee files.

charge the railroad a cooperage charge. We can't. So this is discriminatory.

We are quite lucky the car was unloaded with no loss of grain. This car represents the condition of 15 percent of the number of cars we receive a year. We have had a car shortage for the last few years. This has been quite a financial burden on the country elevator, especially with the high cost of borrowed money. For example, from January 1, 1970, to March 10, 1970, the elevator owned cash grain of 248,000 bushels, at an approximate cost of \$218,000.

During the same period, the railroad companies furnished 42 cars. We were able to move approximately 147,000 bushels of grain. We still had on hand March 10, 1970, an inventory valued at around \$90,000. We paid interest of 10 percent for the period, or a cost of \$2,000, added to this are additional insurance costs.

If we had received the cars to move all grain in the same period, our interest costs would be considerably lower. I am sure this experience is the same with most country elevators. I feel too that our seasonal rate puts us in North Dakota to a considerable disadvantage.

We are approximately 12 miles from the Minnesota border, and the seasonal rate does not apply to Minnesota companies across the river. At times we are at a 2-cent disadvantage per bushel of grain. Working in a market from 3 to 4 cents margin, this 2 cents can be quite a burden.

Thank you.

Senator BURDICK. Mr. Hardy?

STATEMENT OF AL HARDY, ESQ., FARMER'S ELEVATORS OF SOUTH HEART, N. DAK., AND BELFIELD, N. DAK., AND WEST RIVER TRANSPORTATION COMMITTEE, INC.

Mr. HARDY. My name is Al Hardy. I am a practicing attorney in Dickinson, N. Dak. I have been retained by the Farmer's Elevators of Belfield and South Heart, N. Dak., and I am also appearing on behalf of the West River Transportation Committee, Inc., which is a voluntary organization made up of eight southwestern North Dakota counties and Wibaux County, Mont.

A little background on this organization might be interesting as far as the committee is concerned, and what kind of interest there is at the grassroots level. This West River Transportation Committee grew out of a meeting that was called just for the reason of looking at freight rates in southwestern North Dakota.

Over 300 farmers showed up at that meeting, farmers and elevator men. Their greatest concern out there is the inverse rate. This is our rate that we have going to the west of the country. In 1965 a west coast market was opened up, Japan in particular, and the Southern Plains area, through the Santa Fe Railroad and the Union Railroad, which are in competition, a condition we don't have in North Dakota, established the 70-cent rate. When North Dakota went to what is now the Burlington Northern, and requested a west coast rate, they received this inverse rate on a take-it-or-leave-it basis.

Their original response was they couldn't live with it. They came back later and said, "We will give you this or nothing." What that amounts to is at Fargo, N. Dak., you pay 70 cents a hundred; 300 miles

to the west, closer to the market, the producer, the farmer, is paying 86 cents a hundred.

These figures do not include the last two 6-percent rate increases that we are laboring under right now. And the farmer is not the only one suffering under the increased rate problem.

The Department of Agriculture, through its Commodity Credit Corporation, is presently moving in excess of 10 million bushels to the west coast. What we have got here is the Interstate Commerce Commission, one governmental agency, forcing another governmental agency to pay unreasonable and we feel discriminatory—discriminatory toward us as far as we are paying—and prejudicial freight rates.

By prejudicial, I mean this is prejudicial in favor of the eastern markets. The way the inverse-rate thing is set up, our grain is all funneled east to Minneapolis. There has been no little amount of speculation out there as to whether there is some sort of collusion between the railroads and the Minneapolis markets, because it seems like every time something develops in the way of freight rates, the eastern markets come out the better.

So, we have a situation where we are not only paying unreasonable rates, but they are also fixing our marketplace and the price by virtue of the fact that the farmer pays the freight. If the inverse rate can be defended as being logical and reasonable going west, it certainly should be that same situation going east. But I don't think anybody in a rational approach to the problem would even consider submitting this to the railroads, because they would undoubtedly be flatly rejected.

The problem is further compounded by virtue of the 6-percent across-the-board increase. You get a 6-percent increase, say, on 24 cents a bushel, at one station, and that goes up to 25 cents, but if another station, 10 miles away, which occurs with the two elevators I represent, originally was 25, they go to 27. So you get a 2-cents spread through mathematical projection and this gets worse, and yet the stations are only 10 miles apart.

Another thing on the 6-percent increase that we find particularly aggravating out there, is they are not applied between the intermarket proportionals. The information that the administrative assistant of the North Dakota Public Service Commission related to me is the last two 6-percent increases, *Ex parte 256* and *259*, were not applied between Minneapolis and Chicago, a distance of about exactly the same as between Beach, N.D., and Minneapolis. And Beach, N.D., is in the far western part of the State.

Theoretically, even though it is flour, the rates are supposed to be the same. But this increase, these increases were not applied on that. If the railroads are losing money, why in the world weren't they applied on that intermarket proportional?

Instead, it appears as though the farmer is subsidizing that move. But I also submit to you there is a factor of competition between Minneapolis and Chicago which we do not have in North Dakota.

We have an entire State now that is subject and literally prostrate before one corporation for transportation. It would be foolish for anyone to assume that trucks could move a North Dakota harvest.

Another thing of concern, is a proposal by it, what was the Northern Lines Committee on February 3, 1969, to establish points 50 to 60 miles apart all across the State of North Dakota. This is where you would have to deliver your grain because they would give those points or loading stations a substantially lower rate than the elevators in between. You would have destroyed farmer's elevators, all elevators in between those points, because if it is that much lower, you will haul your grain to one of those points.

Senators, I thank you for your attention and for the opportunity to appear before this committee.

Senator HARTKE. Thank you, sir.

Senator BURDICK. Representative Giffey.

STATEMENT OF DONALD GIFFEY, MEMBER, NORTH DAKOTA HOUSE OF REPRESENTATIVES

Mr. GIFFEY. Thank you, Senator Burdick, Senator Hartke, Senator Cannon. Like the other people from North Dakota who have appeared, I, too, have prepared a statement.

Senator HARTKE. Your statement will appear in the record, sir.

Mr. GIFFEY. I would like to visit with you for a few minutes about things that are contained in my statement. When you appear this far down on the list, Mr. Chairman, you might repeat a bit, but I will try to not repeat any more than necessary.

My name is Donald Giffey. I am from Roseglen, N. Dak. I live in the west-central part of the State. I appear before your committee this morning really representing three categories of people who are concerned about the reasonableness, and I underline reasonableness, of rates and regulations in the transportation industry.

The people I represent, and myself personally, are concerned. I want to say at the beginning that we urge this committee and the Congress to give favorable consideration to S. 2355. It is my understanding that the most recent in-depth study of freight rates and regulations was made in 1934.

The rates and rules suggested at that time have been amended, adjusted, and revised so many times that those people, who are the experts in the field, say they no longer are meaningful and thus in many cases have lost their reasonableness.

Mr. Chairman and members of the committee, I appear before you today as a grain farmer. This is my business. I am a producer of small grains in North Dakota. I am also a member of the board of directors of the Garrison Farmers Union at Garrison, N. Dak., so thus I appear as representing management in effect.

As Senator Burdick indicated, I am a member of the North Dakota House of Representatives. I have been a member there for 10 years. We in the legislature have from time to time passed resolutions pertaining to the very problem we have before us today.

We in North Dakota derive 75 or 80 percent of our new wealth each year from agricultural products. For the most part these products are transported to neighboring States for processing or exporting.

The transportation costs on these farm products are staggering and, of course, are borne by the farmer in direct reductions in the price of his products.

The 6 percent freight rate increase that was granted in late 1969 lowered the price of wheat at Garrison, N. Dak., 2 cents per bushel. Another 6 percent rate is being asked for. We as farmers and producers would like to know, are these increases justified? No one seems to know what the proper freight rate on grains should be. We feel the proper rate is the cost plus a fair profit. Perhaps the study proposed by S. 2355 would give us the answer.

So, Mr. Chairman, and committee members, as a farmer in North Dakota, I support this bill. Since I have been a member of the North Dakota Legislature we have passed resolutions asking the Interstate Commerce Commission to enter into a study concerning the reasonableness and lawfulness of the freight rates, charges, rules and regulations pertaining to shipments of grains.

We meet in North Dakota biannually and this resolution has been passed in 1963, 1965, and 1967. Through the several sessions we passed this, copies were forwarded to this committee and other appropriate committees.

But we in the North Dakota Legislature felt nothing of significance has materialized. So, as a result, the resolution by the 1969 session, which Senator Burdick referred to and introduced in the record, was changed to call for an independent study concerning the reasonableness and so forth of freight rates. So we must assume that the North Dakota Legislature supports the bill that we have before us this morning.

From the standpoint of the local elevator management the problem becomes more specific. Mr. Miller told you of his problems. I will go into a few different problems we at Garrison, N. Dak., have.

I am not the manager; I am a member of the board of directors. But it is the elevator management that has to deal daily with freight rates that places competition down the road in a favorable position.

We have this same problem at Garrison. We have an elevator, and a town a few miles down the track has a 2 cents per bushel less rate on wheat. Actually, the wheat from that station is hauled through Garrison. It is hauled farther than our wheat from Garrison, N. Dak., is hauled, but their rate is 2 cents less per bushel because they are located southeast of us. This is one of the problems we face.

It is the management that has to put up with the seasonal freight rates. Seasonal freight rates have been brought up before.

On November 1 in Garrison, N. Dak., freight rates to the terminal market dropped 4 cents a bushel, so the price of wheat goes up 4 cents a bushel. On June 1 the situation is reversed, and wheat goes down 4 cents a bushel.

How would you like to buy and sell grain at times nearing these dates and then with the perennial boxcar shortage, you do not know if you can make deliveries according to your contract.

In the early part of October a Minneapolis Market Commission Co. informed the management of our elevator they would start accepting contracts for wheat to be delivered after November 1. After November 1 the freight rate goes down 4 cents a bushel. So in essence the manager of our elevator could raise the price 4 cents a bushel. At that time wheat in Garrison, N. Dak., was selling for \$1.30 a bushel. A 4 cents increase would put it at \$1.34.

Our manager had a number of contracts from farmers who said, when Duram wheat gets to \$1.35, let me know, I may sell some. So he thought he would cut into his margin and put it at \$1.35 and see if the farmers would sell. He bought over 100,000 bushels of Duram wheat in a matter of hours, to be delivered after November 1.

What happened a few days later? The railroad industry put in a request for a 6 percent freight rate increase effective immediately. It added to the ulcers of the elevator manager, I can assure you, because this amounted to about 2 cents a bushel loss in the margin at Garrison, and it would have more or less handled the grain at no profit. Perhaps just at cost.

Luckily, the 6 percent increase was not granted immediately. We got the grain delivered and we did come out all right. But these are the things we think are wrong. It seemed like the original intent was to move grain in the wintertime and help alleviate the boxcar shortage, but the boxcar shortage seems to be with us all of the time.

It seems strange that the country elevator must plead to the railroads for equipment to haul the elevator's grain. This is what we have to do all of the time.

I took this off the waybill at the elevator. It costs \$1,119.10 to ship 3,500 bushels of wheat to Minneapolis. This to me seems like a lot of money. It is a lot of money. Because there just are not enough cars available even at this price, we have increased the use of trucks.

In 1968 from Garrison we shipped 266 railroad cars and 384 trucks. In 1969 we shipped only one more railroad car, 267, but we shipped 105 more trucks. So far in 1970 the boxcar shortage is even more significant. We have shipped only 32 railroad cars and 149 trucks.

The trucks are not the answer. They tend to set their rates according to the railroad rates, they even fluctuate their rates according to the seasonal rates and then there just are not enough trucks to go around. You cannot do the whole job with trucks, at least from our area.

Mr. Chairman and members of the committee, I believe these facts point to the urgency and necessity of the in-depth study that is called for in S. 2355. I would hope that the final report of this proposed study would call for definite guidelines and rules to be followed through the years in setting the freight rates.

I thank you very much, Mr. Chairman.

(The statement follows.)

STATEMENT OF DONALD GIFFEY

My name is Donald Giffey, from Roseglen, North Dakota 58775. I am a grain farmer, raising wheat, barley, oats, rye, and flax. For the past 12 years I have served on the Board of Directors of the Garrison Farmers Union Elevator, Garrison, North Dakota. I am a member of the N. Dak. House of Representatives, having represented my district for nearly ten years.

With these interests and responsibilities, Mr. Chairman and Committee Members, you can see why I have taken time to come to Washington to support bill S. 2355. The last in depth study of freight rates was authorized by Congress nearly 40 years ago. There have been so many changes made in the industry and in the rate since then, that in my opinion, it is imperative to take another good look for the purpose of correcting inequities that we all know exist.

We in North Dakota derive some 75 to 80% of our new wealth each year from agricultural products. For the most part these products are transported to neighboring states for processing or exporting. The transportation costs on these farm products are staggering and of course are borne by the farmer in direct reductions in the price of farm products. Each time a freight rate increase is granted, the price of grain at the country elevator goes down.

Since I have been a member of the N. Dak. Legislature, we have passed resolutions asking the Interstate Commerce Commission to enter into an investigation concerning the reasonableness and lawfulness of the freight rates, charges, rules and regulations pertaining to shipments of grains. Through the several sessions that this resolution was passed and copies forwarded to this committee and other appropriate committees, we felt nothing of significance materialized. As a result a resolution passed by the 1969 session called for an independent investigation authorized by the congress. S. 2355 will accomplish this, so we must assume the North Dakota Legislature supports this bill.

From the standpoint of the local elevator management, of course the problems become more specific. It is the elevator management that has to deal daily with freight rates that place his competition a few miles down the railroad track in a favorable position. It is the management that has to put up with seasonal freight rates. On November 1st in Garrison, North Dakota, freight rates to the terminal market drop \$.04 per bushel, so the price of wheat goes up \$.04 per bushel. On June 1st the situation is reversed and wheat goes down \$.04. How would you like to buy and sell grain at times nearing these dates of rate changes, and then with the perennial box car shortage, so you don't know if you can make deliveries according to your contract?

The box car shortage seems to be with us almost all of the time. This makes marketing on contract very difficult, due to the uncertainty of being able to make contract deliveries on time.

It seems strange that the country elevator must plead to the railroads for equipment to haul the elevators grain. It costs \$1,119.10 to ship 3,501 bushels of wheat from Garrison to Minneapolis, but because there just aren't enough cars available even at this price, we have increased our use of trucks. In 1968 we shipped 266 rail cars and 384 trucks. In 1969 we shipped only one more rail car (267) but we shipped 105 more trucks. So far in 1970 the box car shortage is even more significant. We have shipped only 32 rail cars and 149 trucks.

I believe these facts all point to the urgency and necessity of the in depth study called for in S. 2355. I would hope that the final report of this proposed study commission would call for definite guide lines and rules to be followed through the years in the setting of freight rates.

Senator BURDICK. Mr. Chairman, I ask that the photographs of Mr. Martin be filed, not made a part of the record.

Senator HARTKE. They will be included by reference; yes, sir.

Do you have any other witnesses?

Senator BURDICK. That is all of this group.

Senator HARTKE. Are there any questions?

Senator CANNON. I don't have any questions, Mr. Chairman. I want to say these gentlemen certainly make a persuasive case that something needs to be done. This sounds like a very inequitable situation.

Senator HARTKE. Thank you.

Senator BURDICK. The next witnesses will be Robert Sanders, research director, North Dakota Farmers Union; Mr. F. O. Ottem, president of the National Matting Barley Growers Association; Philip Martin, administrative assistant, United Power Association; and John Wright of the Duram Growers Association.

Senator BURDICK. Mr. Chairman, John Wright would like to file a written statement later.

Senator HARTKE. That will be fine.

Senator BURDICK. Mr. Sanders.

STATEMENT OF ROBERT SANDERS, RESEARCH DIRECTOR, NORTH
DAKOTA FARMERS UNION

Mr. SANDERS. Thank you, Senator Burdick.

Chairman Hartke, Senator Cannon, I am Robert E. Sanders, research director of the North Dakota Farmers Union.

I appreciate this opportunity to appear before your committee to express the Farmers Union's support of S. 2355.

The North Dakota Farmers Union is a general farm organization with more than 36,000 farm family members. Our membership is vitally concerned with the shipment of farm products to terminal markets and with the shipment of production supplies into the rural trade centers where farmers buy them. In both cases, farmers pay the cost of transportation and they do so with little or no knowledge of the equitableness of their transportation costs when compared to costs for similar transportation in other areas or the cost of transporting different products within their own area.

For this reason, delegates to the annual convention last December adopted a program statement which is a mandate from the membership of North Dakota Farmers Union to the officers and staff to support the principle of S. 2355.

The general interest in transportation problems that leads to that mandate also inspired a large number of North Dakotans who are here in this room to come to Washington for this hearing. They believe that the bill is of sufficient importance to justify the time and cost of making this trip. Members of the North Dakota Farmers Union are vitally concerned with freight rates and other problems relating to the transportation of grain.

I emphasize we are interested in grain. However, to avoid duplication, I leave this subject to those present who can discuss it from their personal experience.

The farmers are extensive consumers of production supplies. In my submitted statement I cited examples of production supplies that are delivered to retailers at a laid-in price, freight included. Even the retailer in many cases cannot determine if the transportation charges are realistic. Many shippers or consumers feel that their product is being disadvantageously rated as compared to a different product receiving comparable transportation, or that it is disadvantageously rated as compared to similar products receiving transportation in different areas.

The public is chafing under this confusion. At least three times during the last decade the North Dakota State Legislature has passed resolutions asking Congress to make a thorough study of ratemaking and related transportation problems. People are looking to the Federal Government to find answers that they cannot find for themselves by their own individual action.

The commerce of this Nation cannot continue to grow without adequate growth and public confidence in the Nation's transportation system. We, therefore, urge this committee to issue a favorable report on S. 2355 and we fervently hope that Congress will see fit to pass this bill.

On behalf of the North Dakota Farmers Union, I wish to thank you for the privilege of placing this statement in the record.

(The statement follows.)

STATEMENT OF ROBERT E. SANDERS, RESEARCH DIRECTOR NORTH DAKOTA FARMERS UNION

Mr. Chairman, members of the committee. I am Robert E. Sanders, Research Director for the North Dakota Farmers Union. I appear, today, on behalf of that organization in support of S-2355. The North Dakota Farmers Union, a state division of the National Farmers Union, is a general farm organization with more than 36,000 farm family members. North Dakota farmers are commercial operators. The products they produce are sold in national and international markets and must be transported to those markets in order to be sold. Prices that farmers receive are based on terminal market quotations minus freight from the point of origin to the terminal market. Thus, farmers are very conscious of the cost of moving their products from their farm to the primary markets of the nation.

The cost of moving products into and out of North Dakota has been estimated at about 200 million dollars per year. Since North Dakota's economy is largely agricultural, farmers either directly or indirectly pay the major portion of this transportation bill. Obviously, a cost of this magnitude is of great concern to them. An additional concern, and frequently a more frustrating one, is the lack of transportation service when that service is desired. The prices of farm commodities quoted on terminal markets fluctuate up and down from day to day and from week to week. For at least the past decade there have been many occasions when farmers or their elevators were unable to move grain to terminal markets during a period of rising prices because no boxcars were available to carry the shipments.

Recognizing that the individual shipper or consumer is powerless to find solutions to these and other transportation problems, delegates to the 43rd Annual Farmers Union Convention held in Bismarck, North Dakota last December unanimously adopted the following program statement, "North Dakota is very dependent on transportation in all forms. Rates are not based on equal charges for equal services performed. We recommend that a congressional inquiry be conducted with the specific purpose of establishment of a fundamental concept of rate equality and the regulatory authority of the Interstate Commerce Commission". My appearance before your committee, Mr. Chairman, in support of S. 2355 is based on the program statement just quoted. It is a mandate from the full membership of the North Dakota Farmers Union. I would point out, too, that the same desire for solutions to many transportation problems that led to adoption of the above quoted statement inspired many of the men in this hearing room to take four days of their valuable time to come to Washington at some expense to themselves or to the organizations which they represent to attend this hearing.

The North Dakota Farmers Union is vitally concerned with the full range of problems surrounding the shipment of grains from country gathering points to the terminal markets. This is as it should be. In 1968 cash receipts from marketing of field crops amounted to over 453 million dollars and represented 62.9% of the total receipts from marketing farm products in the state. Truly field crops, and particularly wheat and barley which together accounted for over 46% of the total cash receipts from marketings, are the economic life blood of North Dakota farmers. Grains are also the economic life blood of country elevators and since there are several men here who are prepared to testify from their day to day experience as elevator managers or board members of cooperative elevators, I would simply state our concern with the grain shipment problems and leave the development of details to others who are testifying before your committee.

Commercial farmers are extensive consumers of production supplies. They are, therefore, almost as concerned with freight on in shipment of materials which they must purchase as they are with out shipment of products they produce. Many of the production supplies are delivered to retailers in the farm trade centers at a laid in price which includes freight. Frequently the retailer does not even know what percentage of that laid in price is attributable to the transportation cost.

On gasoline and diesel fuel there are three major pricing regions within the state of North Dakota. The difference in price being attributable to the difference in transportation costs. Transportation of petroleum fuels basically is via pipeline from a refinery to a tank farm for the long haul transportation with final delivery made by short haul truck lines. The lowest priced area is in the eastern part of North Dakota. East of a line generally drawn from the northwest corner

of Cavalier County south, through Devils Lake to the South Dakota border south of Ellendale. East of this line the delivery price of regular gasoline during January of 1970 was seven tenths of a cent less than the delivery price to the bulk petroleum dealer west of the line. The third area is a small portion of Cavalier and Pembina counties generally north of highway number 5 where the cost of regular gasoline to the bulk petroleum dealer during last January was four tenths of a cent higher than the rest of eastern North Dakota. Obviously, the transportation charges are averaged within each territory and neither the ultimate consumer nor the local dealer have access to information that will permit them to compare the price they pay for transportation service with the actual cost of furnishing that service.

Farmers are large consumers of automotive equipment. Most North Dakota dealers, if not all of them, receive their automobiles, farm pickups and trucks through a combination of rail and truck transportation. Here again, the railroad performs the long haul service with short haul delivery to dealers from a regional distribution point by truck. The transportation costs, at least for some major makes of automotive equipment, are based from Detroit to point of delivery to the dealer. The charge varies with each final destination. If the final destination of a farm pickup or truck is east of the regional distribution point, that is closer to Detroit, the freight is less than it would be at the regional distribution point where the transport truck picks up the equipment for final short haul delivery. Again, this is an example of averaging transportation costs into a large territory and does not reflect the ton mile cost to the transportation companies.

These are examples of a rate structure that is very confusing to the consuming public. Because of this confusion many shippers or consumers feel that their product is being disadvantageously rated as compared to a different product receiving comparable transportation or disadvantageously rated as compared to a similar product receiving similar shipment in a different area. The public is chafing under this confusion. At least three times during the last decade the North Dakota state legislature has passed a resolution asking Congress to make a thorough study of rate making and other related problems in the transportation system. People are looking to the Federal Government to find answers that they cannot find for themselves by their individual action. The commerce of this nation cannot continue to grow without adequate growth and public confidence in the nation's transportation system. We, therefore, urge this committee to issue a favorable report on S-2355 and we fervently hope that Congress will see fit to pass this bill.

I appreciate very much the privilege of appearing before this committee to express the views of North Dakota Farmers Union, thank you.

Senator BURDICK. Mr. Ottem.

Mr. OTTEM. Mr. Chairman and Senator Cannon, I am Fritz Ottem, from Cavalier County, N. Dak., and I represent the National Malting Barley Growers Association and am its president. So much has been said about the barley rates here today, I won't go into it.

But I would like to make a statement or paraphrase a statement of Winston Churchill. I think it is quite true today, that never before in the history of the United States have so many owed so much to so few as the American people to the farmer of the United States today. We have filled the tables of the people of the United States and a good part of the world. And the only thanks I know of that we have ever gotten is to be ridiculed, sneered at.

Irate housewives blame us for the high cost of food in the United States today. It is therefore that I have presented this testimony on the actual farming that I am doing and the cost of production and the charts that I have brought before you here today are as true as I could possibly get them.

I am an average farmer in North Dakota. With that in mind, when I can only make an income of about \$7,500 a year, on an investment of that kind, of 830 acres, we are going through possibly the third worst period in the history of that farm.

My father settled there or squatted on the land in Dakota territory in 1882 and the first 5 years had really tough luck with his oxen in trying to raise wheat to begin with in North Dakota.

Our next period was in the 1930's. But we managed to come through that, and today we are in probably as much of a critical period as we have been at any time. I think that when you go through the prepared statement I have, it will conclusively prove I think that this is very true. I would like to make one more statement.

If I may use a phrase of the railroads that you see on TV, "The American farmer, who needs them? You do."

Thank you.

Senator HARTKE. Thank you, sir. Your entire statement will be placed in the record.

(The statement follows:)

STATEMENT OF FRITHJOF O. OTTEM

My name is Frithjof O. Ottem. I farm near Osnabrock, Cavalier County, North Dakota. At present I am the President of the National Malting Barley Growers Association. The members are mostly from the Red River Valley area of North Dakota and Minnesota where most of the six row variety of malting barley is grown.

We organized in April 1961 to try to establish some relationship with the various industries which effect us. Our problems were manifold and we found that we were alone and it has become apparent that solutions are not simple. One of the first problems we had to tackle was the unjust freight rates on malting barley. The rates were ten cents higher on barley than on wheat or other small grains from Osnabrock to Minneapolis. Over the past years we have often met with the traffic men from the railroads which haul from this valley area and have always met with the same response, "We will take your complaint under consideration", and that is the end of it. Instead of getting an adjustment downward we have had to face two rate increases in the past few months. This rate has increased from 46 cents per cwt. to 48 cents and now 51 cents.

Very little consideration is given to the farmer when such rates are increased. I want this committee on commerce to consider our plight. When the railroads raise their rate one cent it affects the farmer two cents in the opposite direction. It costs us one cent more in transportation and it also decreases our support price by one cent, which is based on Minneapolis less rail costs.

North Dakota has lost half of its farmers since 1935 and unless this trend is stopped those remaining will soon become bankrupt.

This year North Dakota had one of the best crop years in history and I think I can show you from my own farming figures that it is far from profitable.

This is a family farm which is owned by brothers and sisters. I farm 830 acres and my brother farms 920. We did farm separately until labor and other factors made it impossible to do so. Now we use fewer implements, but larger ones. The last tractor bought cost \$17,000.00. My brother and I do more per day now than five men did a decade ago. This farm is about the average size in North Dakota at the present time.

In a table appended I have shown the production and the net income from these crops and you will notice that I had only a net return of \$7505. This figure represents my earnings for the year and this leaves little, if any, return on my investment. You will also notice on the chart just below that I would have little to survive on if I produced only the state average. This then indicates that there are many farmers worse off than I am in this high yielding year.

You may wonder why we farmers are ever increasing the production when we know that we will have to take less for it. Page 6 will partially explain this. You will notice that where I have spent the least I lost money on that crop as shown on the bottom of the page. Where I spent money for fertilizer and used better farming practices I made the most. This is a cycle that is hard to curb unless all farmers are willing to reduce production. However, we must also bear in mind that cutting production will have a tendency of encouraging im-

ports from other countries. Canada shipped in 6.9 million bushels in 1969. This is about 7% of the total volume used for malting in the United States.

Since we have few, if any, local markets for our products we are dependent on commercial transportation. Railroads can go to the I.C.C. and get higher rates in case they do not show a net return on the investment. Where, may I ask, can the farmer go to get any return? It has been my belief that the Interstate Commerce Commission was put into effect to protect the public from undue rates. When is the farmer considered when these applications are approved?

When a farmer is inefficient in his operations, his only course seems to be to leave the farm. Is it the same with railroads? Should this bill become law we would welcome a complete investigation of the efficiency of the railroads in management.

This bill also has another purpose that can be valuable to the farmer. What can be seen in the future for commercial transportation, such as the railroads? It is important for us to know if we will have to furnish our own trucks for transporting our commodities in the near future. The trend at the present time seems to indicate that we must.

We appreciate this opportunity in appearing before you and it is our hope that this bill will be given your every consideration for its passage.

1969

PRODUCTION REPORT FOR THE F. O. OTTEM FARM IN CAVALIER COUNTY, N. DAK.

Crop	Acres	Yield per acre	Total yield (bushels)	Income	Expenses	Net income
Oats.....	77	111.3	8,571	\$3,330.57	\$2,586.43	\$744.14
Durum.....	132	32.4	4,281	27,369.15	4,649.80	2,719.35
Wheat.....	73	47.2	3,445	14,482.05	2,184.16	2,297.89
Barley.....	190	55.0	10,446	17,720.86	5,977.49	1,743.37
Total.....			26,743	22,902.63	15,397.88	7,504.75

THE ABOVE FARM USING NORTH DAKOTA AVERAGE YIELD AND U.S. PRICE SUPPORTS

Oats.....	77	56.0	4,312	\$1,633.63	\$2,586.43	-\$902.75
Durum.....	132	33.0	4,356	27,459.34	4,649.80	2,809.54
Wheat.....	73	30.0	2,190	2,036.70	2,184.16	-147.46
Barley.....	190	42.5	8,075	5,943.43	5,977.49	-34.06
Total.....			18,933	17,123.15	15,397.88	1,725.27

¹ Landlord's share taken from this figure.

² This crop is on owner's land.

Note: Price supports at Osabrock, N. Dak.: Oats, \$0.52; Durum, \$1.24; wheat, \$1.24; barley, \$0.74. ASC program payments: Wheat and Durum, \$3,138.61; barley, \$848.53.

Operating expenses on the F.O. Ottem farm for 1969¹

Cultivating once.....	\$0.85
Fertilizer.....	2.20
Seeding.....	1.25
Harrowing.....	.30
Spraying.....	.60
Swathing.....	1.25
Combining.....	4.50
Harrowing stubble.....	.60
Plowing.....	2.50
Rock picking.....	.70
Ditching.....	.13
Taxes.....	1.85
Liability.....	.11
Building insurance.....	.08
Interest on investment.....	5.13
Granary rental.....	.52
Total.....	22.57

¹ These expenses are the same for all fields.

OATS

General expense	\$22.57
Extra cultivation	.85
Hail insurance	3.27
Summerfallow	5.10
Seed	1.80
Total expense	33.59
8313 bushels, at 0.52 Government loan	\$4,322.76
258 bushels sold	118.00
Total income	4,440.76
Less $\frac{1}{4}$ to landlord	1,110.19
	3,330.57
Expense 33.59×77 acres	2,586.43
Net gain	744.14
Income per acre	43.25
Expense per acre	33.59
Net gain per acre	9.66

Durum wheat on second crop land: 132 acres; 4,281 bushels; 32.44 per acre

General expense	\$22.57
Fertilizer fall application	3.10
Hail insurance	5.45
Wild oat spray	.95
Seed	3.08
Total expense	35.15
Income:	
3,892 bushels at 1.24	\$4,826.08
389 bushels sold on market	522.15
Government payment	2,010.92
Total income	7,369.15
132 acres \times 35.15	4,649.80
Net income	2,719.35
Income per acre	55.82
Expense per acre	35.15
Gain per acre	20.67

Spring wheat on summerfallow: 73 acres; 3,445 bushels; 47.2 bushels per acre

General expense	\$22.57
Seed	2.25
Summerfallow	5.10
Total expense	29.92
Income:	
1,494 bushels at 1.24	\$1,852.56
897 bushels at 1.35	1,212.30
193 bushels at 1.50	289.50
Government payment	1,127.69
Total income	4,482.05

Yield:		
35 acres × 55 bushels	-----	1,925
38 acres × 40 bushels	-----	1,520
Total bushels	-----	3,445
Less landlord's $\frac{1}{4}$	-----	861
Owners' share	-----	2,584
Income per acre	-----	60.51
Less expense	-----	29.92
Net per acre	-----	30.59

Barley field A., Summerfallow: 39.6 acres; 2,875 bushels; 72 bushels per acre

General expense	-----	\$22.57
Extra cultivation	-----	.85
Summerfallow	-----	5.10
Hail insurance	-----	7.10
Seed	-----	3.50
Total expense per acre	-----	39.12
72 bushels per acre × 0.74	-----	53.28
Government payment	-----	4.47
Total	-----	57.75
Less expense	-----	39.12
Net gain (per acre)	-----	18.63

Barley field B., Summerfallow: 38 acres; 2,660 bushels; 70 bushels per acre

General expense	-----	\$22.57
Extra cultivation	-----	.85
Summerfallow	-----	5.10
Hail insurance	-----	7.10
Seed	-----	1.25
Total expense	-----	36.82
70 bushels × 0.74	-----	51.80
Government pay	-----	4.47
Total	-----	56.75
Less expense	-----	36.82
Net gain	-----	19.93

Barley field C., second crop: 73.5 acres; 3,597 bushels; 49 bushels per acre

General expense	-----	\$33.57
Extra cultivation	-----	.85
Fall fertilization	-----	3.00
Seed	-----	1.25
Total expense	-----	27.67
Yield 49 × 0.74	-----	36.26
Less landlord $\frac{1}{4}$	-----	9.08
Total	-----	27.18
Government pay	-----	4.47
Total	-----	31.65
Less expense	-----	27.67
Net gain (per acre)	-----	3.98

Barley field D., second crop: 39 acres; 1,314 bushels; 33.7 bushels per acre

General expense.....	\$22. 57
Extra cultivation.....	1. 70
Seed	1. 25
<hr/>	
Total	25. 52
33.7 × 0.74	24. 42
Landlord	6. 10
<hr/>	
Total	18. 32
Government pay.....	4. 47
<hr/>	
Total	22. 79
<hr/>	
Expense	25. 52
Income	22. 79
<hr/>	
Loss (per acre).....	2. 73

Senator BURDICK. Philip Martin.

STATEMENT OF PHILIP O. MARTIN, ADMINISTRATIVE ASSISTANT, UNITED POWER ASSOCIATION

MR. MARTIN. Chairman Hartke, my name is Philip Martin. I am administrative assistant, United Power Association and the Rural Cooperative Power Association of Elk River, Minn. These associations operate electrical generating facilities at Stanton, N. Dak. and at Elk River, Minn. United Power Association's 180,000-kilowatt electrical generating station at Stanton, N. Dak., is fueled with lignite, which is supplied from a mine approximately 25 miles from the plant, and is completely dependent upon rail delivery for its fuel supply.

I appear before you today to acquaint you with what United Power Association feels is a discriminatory application of railroad freight rates. Where general freight increases have been granted to railroads by the Interstate Commerce Commission, it has been stated in the Interstate Commerce Commission report, *Ex parte 259*—Increased Freight Rates, 1968, decided January 9, 1969, that "inherent in a general rate increase proposal is the right of election by specific carriers to make use of the authority in whole, part, or not at all. Thus our conclusions herein do not require that any respondent increase its rates by a particular amount nor, except as specifically provided herein, do they preclude variability of application, provided increases do not exceed those allowed."

Such a practice in the application of rate increases is discriminatory in that it permits a railroad to apply the full rate increase to one shipper and to apply a lesser amount, or no increase, to another shipper. Where rate increases are applied inequitably to two or more shippers that are in competition with each other, it puts the railroad in a position of controlling the competitive aspects between the parties. It is our opinion that the Interstate Commerce Commission is not regulating the application of rate increases in a manner that is fair and equitable to the parties.

A case in point is the movement of lignite from Beulah, N. Dak., to Hoot Lake, Minn. Attached is a statement, appendix A, a summary of the freight rates that have been in effect for the movement of lignite from Beulah, N. Dak., to Hoot Lake, Minn., under the Northern Pacific Railway, which is now Burlington Northern, 3881 series of freight tariffs. It is amazing that the revenue derived from movement of 600,000 tons per year is less from the rate that went into effect on January 1, 1969, which is after the effective dates of the X-256 and X-259 rate increases, than the revenue received under the rate that was in effect prior to the application of the X-256 and X-259 rate increases.

It is difficult for us to comprehend that after two freight rate increases the revenue the railroad derived is less than prior to the granting of these two rate increases.

Attached is appendix B which reflects the percentage increases that have been imposed by the railroad on the different lignite hauls since 1966 for several major consumers in North Dakota and the adjoining area.

Rural Cooperative Power Association's electric generating facilities at Elk River, Minn., are located approximately 35 miles northwest of Minneapolis-St. Paul. Additional freight charges to transport a ton of coal these 35 miles is 88 cents per ton or 12 percent of the total freight charges to transport the coal from Kentucky.

We do not dispute the railroad's right to fairly and equitably adjust freight rates; but we do dispute the fact that the railroad can do this in a discriminatory manner.

We vigorously protest the actions of the railroad when they indiscriminately apply among shippers rate increases that have the approval of the Interstate Commerce Commission. We feel these increases should be fairly and equitably borne by all parties, not just those selected at the discretion of the railroad.

The ultimate consequence of such procedures is that those shippers that are not favored by rate adjustments absorb all the increased costs of the railroad operation.

Those that are not burdened with these rate increases are able to maintain or improve their operation and competitive position.

We feel that Congress should establish a review committee with the ultimate goal of establishing fair and equitable freight rates between all products and areas of the country.

Thank you, sir.

(The appendixes follow :)

APPENDIX A.—FREIGHT RATE FOR LIGNITE COAL FROM BEAULAH, N. DAK., TO HOOT LAKE, MINN., FOR OTTER TAIL POWER CO.

Quantity received during years (tons)	Tariff 3881-J, supplement 11, May 7, 1965	Tariff 3881-J, supplement 7, X-256, Aug. 19, 1967	Tariff 3881-J, supplement 11, X-259, May 27, 1968	Tariff 3881-J, supplement 15, July 19, 1968	Tariff 3881-J, supplement 16, Sept. 1, 1968	Tariff 3881-J, supplement 19, Jan. 1, 1969	Tariff 3881-J, supplement 21, X-262, Nov. 18, 1969
Cents							
12,000 to 264,999.....	300	307.5	315	315.0	315	315	335
265,000 to 364,999.....	280	287.5	295	295.0	295	295	313
365,000 to 464,999.....	260	267.5	275	267.5	260	255	270
465,000 to 564,999.....	240	247.5	255	247.0	240	200	212
565,000 and over.....	220	227.5	234	227.0	220	190	201
Total charges for stated tonnage							
Tonnage:							
264,999.....	\$794,997	\$814,872	\$834,747	\$834,747	\$834,747	\$834,747	\$887,747
100,000.....	280,000	287,500	295,000	295,000	295,000	295,000	313,000
100,000.....	260,000	267,500	275,000	267,500	260,000	255,000	270,000
100,000.....	240,000	247,500	255,000	247,000	240,000	200,000	212,000
35,001.....	77,002	79,627	81,902	69,452	77,002	66,502	70,352
Total (600,000 tons).....	1,651,999	1,696,999	1,741,649	1,723,699	1,706,749	1,651,249	1,753,099
Average rate per ton (cents).....	275.3	282.8	290.3	287.3	284.5	275.2	292.2

APPENDIX B

Shipment to—	Summary of lignite freight rates by Northern Pacific Ry. Co. for several major consumers (in cents per ton)			Summary of total freight charges by Northern Pacific Ry. Co. based on quantities shipped in 1968			Percent increase
	Rate in effect Sept. 9, 1966	Rate in effect Nov. 11, 1969	Approximate 1968 tonnage	Charges based on rates in effect Sept. 1, 1966	Charges based on rates in effect Nov. 17, 1969		
Montana-Dakota Utilities, Mandan, N. Dak. ¹	86.4	91.0	470,000	\$406,000	\$427,700	5.34	
Northern States Power Co., Fargo, N. Dak.....	² 253.0	³ 268.0	115,000	290,950	308,200	5.93	
Otter Tail Power Co., Jamestown, N. Dak.....	² 227.0	³ 242.0	62,000	140,740	150,040	6.61	
Otter Tail Power Co., Fergus Falls, Minn. ⁴	275.3	275.2	600,000	1,651,999	1,651,249	-.04	
Valley City Municipal Utilities, Valley City, N. Dak.....	² 240.0	³ 255.0	23,000	55,200	58,650	6.25	
United Power Association, Stanton, N. Dak.....	32.0	35.0	840,000	268,800	294,000	9.38	
Total.....			2,110,000	2,813,689	2,889,839	2.71	

¹ Average rate based on 470,000 tons per year.

² Northern Pacific freight tariff 3061-R.

³ Northern Pacific freight tariff 3061-S.

⁴ Average rate based on 600,000 tons per year.

Senator BURDICK. Mr. Chairman, that completes our list of witnesses.

Senator HARTKE. Senator Cannon?

Senator CANNON. I have no questions.

Senator HARTKE. I have two questions which Senator Prouty requested be asked of all of the witnesses.

Senator BURDICK. Would you like each witness to reply to the questions?

Senator HARTKE. Yes that is what he requested. The first is:

Can you give me any reason why the study which has been proposed under the bill we are considering, S. 2355, should not be conducted by the Department of Transportation?

And the second is:

Would you have any objection to our directing the Secretary of Transportation to undertake such a study as opposed to creating a new independent commission to do so?

Senator HARTKE. I want to thank you, Senator Burdick, for a very excellent presentation, as is customary of your fine work here in the U.S. Senate.

I want the people from North Dakota to know Senator Burdick is considered one of the outstanding Senators here and has a constant interest in the welfare of the people of North Dakota. You should be proud of the work he does. We certainly are proud to be associated with him.

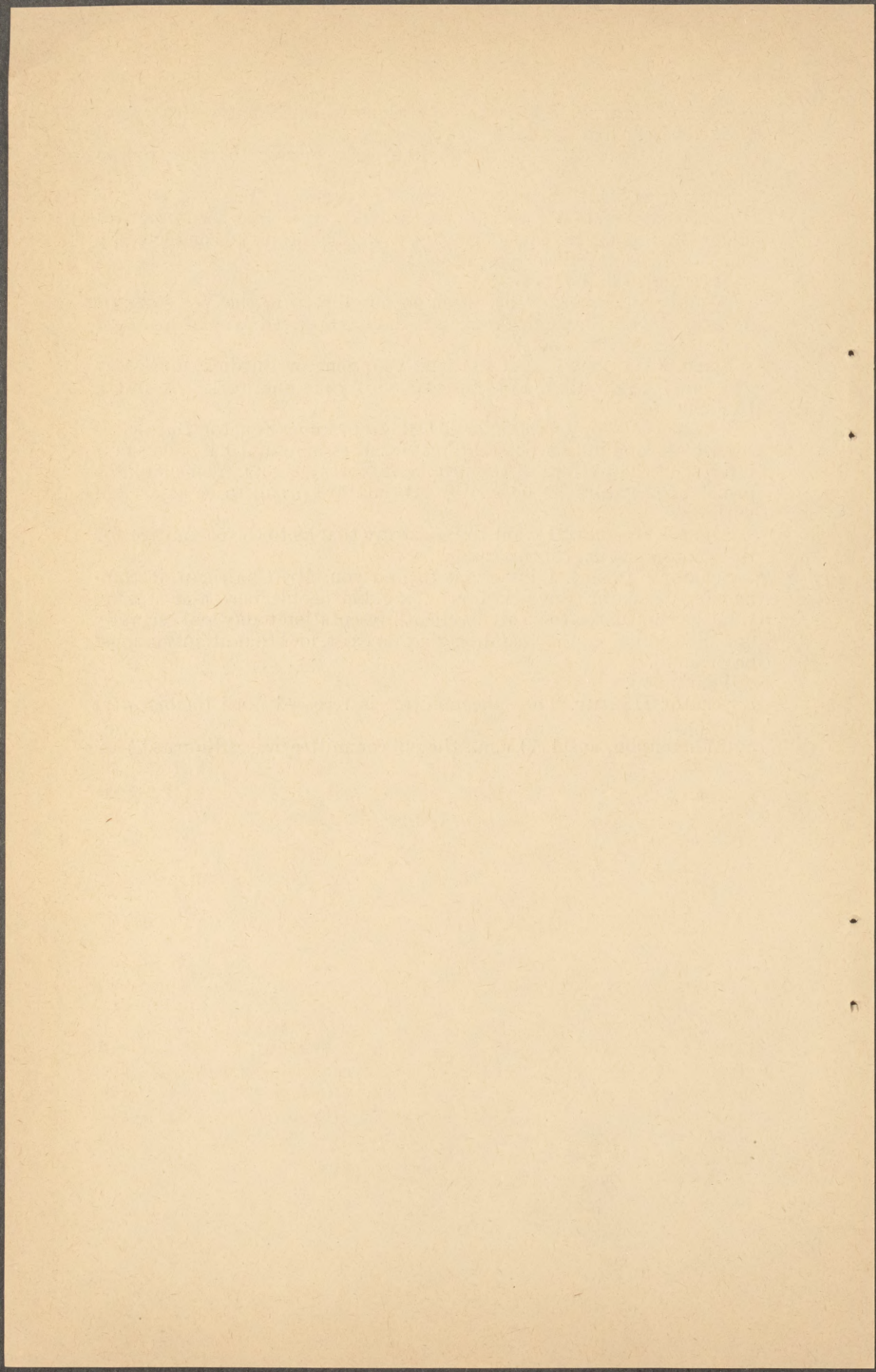
Senator BURDICK. I want to repeat my thanks to the committee for their consideration this morning.

Senator CANNON. I just want to join you, Mr. Chairman, in commending Senator Burdick for having his people here and making what he considered to be an excellent presentation today and certainly one that points up the inequities that do exist, and that attention must be given to.

Thank you.

Senator HARTKE. The subcommittee is recessed until tomorrow at 10 o'clock.

(Whereupon, at 11:50 a.m., the subcommittee was adjourned.)



TO ESTABLISH AN ADVISORY COMMISSION TO MAKE A STUDY AND REPORT WITH RESPECT TO FREIGHT RATES

WEDNESDAY, MARCH 18, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, Hon. Vance Hartke (chairman of the subcommittee) presiding.

Present: Senators Hartke, Prouty, and Pearson.

Senator HARTKE. The committee will come to order.

This morning we will continue hearings on S. 2355, a bill to establish an advisory commission to make a study and report with respect to freight rates.

The first witness this morning will be the Honorable Charles D. Baker, Deputy Under Secretary of the Department of Transportation, and the Honorable Reginald Whitman, the Administrator of the Federal Railroad Administration, Department of Transportation.

Good morning, gentlemen.

STATEMENT OF HON. CHARLES D. BAKER, DEPUTY UNDER SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY HON. REGINALD WHITMAN, FEDERAL RAILROAD ADMINISTRATOR, AND ROBERT CALHOUN, DEPARTMENT STAFF

Mr. BAKER. Good morning, Mr. Chairman. In addition I have with me Robert Calhoun of our Department staff, and together we hope to be able to provide answers to the information you are seeking.

I would like the opportunity here to read a statement with respect to S. 2355.

I appreciate the opportunity to speak before you today on S. 2355, a bill dealing with an area of public concern in which the Department of Transportation has taken a great interest. This bill would establish an advisory commission on freight rates to be composed of 13 members representing agriculture, industry generally, four modes of transportation, the general public, four agencies of the Federal Government, and finally a chairman. This commission would have the responsibility of reporting to the Congress after 2 years on every major aspect of the freight rate structures of the United States of all domestic carriers.

Two issues are presented by this proposal.

First, is this a subject worthy of national concern and the answer is yes. Frequent requests by carriers for rate increases affect not only the overall cost of transportation to the public, but also the structure of rates, leading to uneven impacts throughout the economic system.

Unfortunately, no one is able to appraise the extent of structural distortion from rate increases or its impact on the economy. Moreover, there are still survivors of older patterns of regional rate disparities, not only in rail but in other modes. There is also the uneven structural impact of intermodal competition, causing problems for some regions and some carriers.

Second, is this the right way to go about dealing with the problem? The answer here is, not necessarily.

We recognize, of course, that special commissions have made historic contributions to the solution of great public problems. On the other hand, not all of them have been so successful, and in recent years the Congress has had success with alternative procedures to deal with special problems. One of the most frequent, and generally successful, means of dealing with special problems has been the assignment by Congress of special tasks to competent agencies in the executive branch, where these agencies can mobilize their resources and advise Congress and the public in accordance with their statutory responsibilities.

Congressional assignment of special tasks has been particularly successful in the highway field: examples being the concept of the interstate system, highway cost allocation, highway safety, apportionment of interstate highway funds, and various highway safety activities.

In other fields, the Department of Transportation has been authorized by Congress to prepare studies and recommendations dealing with automobile insurance, and the Aviation Facilities Expansion Act, which is now in conference, authorizes a study respecting the allocation of costs among the various users of the airport and airway system. This is a framework within which the Department of Transportation is accustomed to operate, and where the public has accepted the partnership of a cognizant Federal agency, and the Congress, in working out great national problems in transportation.

Indeed, the Congress recognized in its action in creating DOT the role that the Department can play in matters of this nature. The congressional declaration of purpose in the DOT act states that the Department shall:

Develop and recommend to the President and the Congress for approval national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

The Department has developed a keen interest in the rate structure problem. We have urged the regulatory commissions to relate motor and rail rate increases to structural reforms. In our pleadings and evidence before the regulatory agencies during the past 2 years we have suggested means whereby this may be accomplished. We also plan to publish in the near future an evaluation of the existing structures of rail and motor rates. Efforts are also being made to respond to needs expressed by air carriers and users of their service for improvements in the structure of freight rates.

Further, we have recently asked for proposals for the conduct of study of domestic air freight rate structures, emphasizing the structural components in present air freight tariffs.

Beyond these activities which are well underway, there is a further critical question that must be addressed, and that deals with the timing and framework of the kind of study contemplated by this legislation. Recently, in response to Presidential directive, the Department of Transportation has undertaken a comprehensive study of all aspects of national transportation policy. This is a mammoth effort and will probe many significant aspects of public policy as it pertains to transportation. It will concern itself, among other things, with the way in which regulation, including the regulation of rates and tariffs, affects particular modes of transportation and shippers.

In this national transportation policy study appropriate recognition is being given to the fact that structure, or the relationship among rates, has been a key issue in public policy in transportation. The Hoch-Smith resolution in 1925 and the investigations by the ICC of the territorial rate classifications and scales, culminating in the historic decision in docket 28300, which restructured basic railroad rates in 1952, are illustrative of this public concern.

We note that conditions have changed mightily since the basic work was done on docket 28300. Transport competition has assumed a role not imagined by the researchers of the late 1930's and early 1940's. This means that there are structural impacts of competition, and that the competitive modes in air, highway, and water transport have structural problems of their own in addition to those of the railroads which were the traditional focus of concern.

Inflation has emerged as a problem affecting rate structures. Regional growth and development has changed the basis of many traffic flows and would affect the issues involved in rate analysis. There is a new interest in foreign trade and balance of payments which give emphasis to the structure of export and import rates of domestic carriers. Moreover, there are new analytical tools available for the study of rate structures. These tools can be related to new methods of carrier and industrial management so that the implementation of rate recommendations can be carried out in ways much better than those prescribed in the older cases.

The issues confronting the shipper and the public in rate structures are numerous and go beyond the present evidence of geographical disparities. There are cost relationships involved in the structuring of rates, there are demand factors emphasizing the use of transportation in the transactions among the many sectors of the economy, there are numerous specific problems of regions and carriers, and, what may not be generally realized, there is a problem of the manner in which rates are published and interpreted. The complexity of tariffs themselves obscures many structural relationships, some good, some bad.

Because of the increased complexity of the issues involved in the freight rate structure, the content of any modern national transportation policy report must go well beyond those of the past of a similar nature. It will not be sufficient to perform an analytical task and then have some recommendations at the conclusion of the report. We cannot expect that any single agency or statute or even group of statutes and policies will solve the rate structure by itself.

Much of the energy for changing the structure must come through the competitive incentives of the transportation industry itself, and policies should be designed principally to channel these incentives and

be related to other regulatory statutes, factors, and conditions. The DOT policy study as it affects the rate structure area will probably have three objectives: (1) Basic analytical studies to provide background for policy recommendations; (2) development of administrative methods and guidelines to channel carrier business incentives as an instrument of structural reform; (3) provision of administrative methods and guidelines to utilize empirical data from the operation of carrier activities as a means of further analysis and continuing revision and surveillance of rate structures.

As I have noted, our study is well underway and we anticipate that it will be concluded in early 1971 at the latest. It will not answer every specific question that might be raised about transportation, but it will provide the large context in which many such issues can be more properly addressed.

It is our judgment that before taking final action on a study of the type proposed in S. 2355, the committee first give consideration to our upcoming national transportation policy evaluation. With this document in hand, and with an opportunity to consider the facts and ideas it will present, the committee can better judge whether such a study is needed and what exactly its characteristics should be. We would, of course, welcome an opportunity to present our views and at that time to assist the committee in any other way.

While it is our recommendation that action be postponed on S. 2355, if the committee believes that such a study should be initiated before the completion of the larger transportation policy report, it is our position that it would be far more preferable if the study were carried out by the Department of Transportation. To do this, however, suitable financing and other legislative authority would be needed.

This concludes my comments on S. 2355, Mr. Chairman, I shall be pleased to answer any questions you or the members of your committee may have.

Senator HARTKE. Thank you.

Senator Prouty?

Senator PROUTY. Mr. Baker, you have referred to the fact that the Department is presently engaged in a study of all aspects of national transportation policies, including freight rates, at the direction of the President.

In your view, would there be any conflict in undertaking at the same time a study such as the one proposed in S. 2355?

Mr. BAKER. I don't think, Senator, there would be a conflict in undertaking them at all. It is our view that they would be better done, perhaps, in sequence rather than concurrently; that the outgrowth of the larger policy study would provide guidance and a basis for which the study of the kind here contemplated could then proceed and build on.

Senator PROUTY. In fact, would not your work on the two concurrently result in substantial opportunities for economy?

Mr. BAKER. I think, Senator, there are certainly possibilities in this area. I think the nature of the broad policy study would in large measure involve analyses, studies, considerations, that would perhaps not be as specific in the kind of level of detail that is perhaps contemplated in this bill.

But I would certainly agree there would be possibilities in this direction.

Senator PROUTY. If you were authorized to undertake the study, how long would it be before personnel of your Department could actually commence work?

Mr. BAKER. I think that is a difficult question to answer, specifically, Senator. But I would assume, given the appropriate funding and legislative authority to proceed, that this is the sort of thing that could be commenced in perhaps 3 to 4 months—something like that.

I think the reason I cite that is this would be a very large study in any case. We, of course, have the national transportation policy study going on. I think if the Department were to undertake it, it would be imperative that we insure it be staffed up with the kind of personnel that would be required to perform such an analysis and such study.

Senator PROUTY. You are already engaged in a study, and you already have at your disposal and are processing a substantial portion of the materials which would be necessary to the type of study we are talking about here.

In other words, you are pretty well prepared to get underway in the reasonably near future?

Mr. BAKER. If that were the direction of the Congress, I think this is true, Senator. I would wish to repeat that there are, of course, many aspects of the national transportation policy work that would address areas outside of that explicitly contemplated here by this proposal.

Senator PROUTY. What would you regard as suitable financing for such a study? Maybe that is a difficult one, but we have heard all sorts of proposals tossed around.

Mr. BAKER. In our appraisal of the proposal as we received it, our preliminary estimates are that to do the kind of detail, the kind of level of analysis that is contemplated in a study of this nature, we are probably talking about on the order of \$700,000 to \$800,000.

Senator PROUTY. Well, that is a much lower figure than I have heard suggested for the new commission that has been proposed in the bill.

You refer in your statement, to the need for other legislative authority if the Department were to conduct this study. Specifically, what does this reference mean?

Mr. BAKER. Well, I think I would like Mr. Calhoun to respond to this. He has had some experience in this.

I think, broadly speaking, we are talking about the authority to acquire data and to acquire information. Certainly in the case of the regulated carriers, this information that would be necessary for this kind of a study is largely—if not entirely—available.

We would hope in the unregulated segments, the transportation industry—in voluntary cooperation—would provide much of the kind of information we want. However, we think it is quite likely that legislative authority to compel the production of documents and make available certain kinds of information might be necessary.

Perhaps Mr. Calhoun would like to elaborate on that.

Mr. CALHOUN. No.

Senator PROUTY. Mr. Chairman, I have no further questions. I would like to make a statement at this time, if I may.

Senator HARTKE. Yes, sir.

Senator PROUTY. There seems to be general agreement that a study of the freight rate structures of the various modes of transportation is necessary. Our differences go principally to the question of the urgency of getting such a study underway.

I am convinced that we should do so as soon as possible. I am no more prepared to wait for the results of the study to which Mr. Baker has referred than I am to risk a delay of a year or more while a commission is established.

Accordingly, I have requested the minority staff of the committee to prepare a joint resolution directing the Secretary of Transportation to make a comprehensive study of the freight rate structures of all modes of regulated transportation, including maritime and freight forwarders, which are not included within this bill.

As I indicated at the beginning of the hearing, it appeared to me more logical to have a study of the type proposed prepared by the Department of Transportation. After hearing the testimony of the Deputy Under Secretary, I am convinced that this is the only rational way to proceed.

He has indicated in response to my questioning that they could commence work on such a study almost immediately. You have heard him state the materials of the sort which must of necessity be analyzed in making such a study are not only available to the Department, but are currently being processed by it.

While it is impossible to estimate the amount of time that would be required to set up an independent commission and get it to work on conducting this important study, there must inevitably be a substantial leadtime in connection with such an undertaking.

Similarly, there are no estimates—and probably can be none—of the cost attendant upon proceeding in the manner prescribed by the bill, S. 2355.

We have been given an estimate by Mr. Baker which I take to be reasonably firm for the cost of undertaking such a project within the Department of Transportation. Clearly, there are substantial economies to be realized by relying on its expert staff and the materials which it has and is collecting in the normal course of its operations, and in connection with the study which it is already undertaking at the request of the President.

For these reasons, I would hope that not only the members of my party, but also sponsors of this bill that we are considering, will join with me in sponsorship of my joint resolution which I will be presenting within the next few days.

Prior to introduction, it is my intention to submit a draft of this resolution to the Department of Transportation. I would hope, Mr. Baker, your Department would be in a position to comment on that draft almost immediately, for the benefit of myself and other members of the committee.

Mr. BAKER. We would be pleased to do so, sir.

Senator PROUTY. Thank you.

Senator HARTKE. Thank you, Senator Prouty.

As usual, Senator Prouty is interested in moving along in a diligent and effective manner. I certainly will look forward to this document, and take it into consideration as we review these matters.

Let me ask you, Mr. Baker, you have attempted to show why in your opinion the Department of Transportation would be the appropriate agency to carry on this study. And you have referred in that context to the Department of Transportation's comprehensive study of transportation policies.

Now, when did President Nixon first propose the development of such a policy?

Mr. BAKER. I believe, Mr. Chairman, that this was the result of discussions that took place between the President and Secretary Volpe about the time of the inauguration—roughly a year ago—a little more than a year ago.

Senator HARTKE. Initially, when was that study to be completed?

Mr. BAKER. I think it was originally hoped it would be completed within the year.

Senator HARTKE. By the end of 1969?

Mr. BAKER. Yes, sir.

Senator HARTKE. From this experience, and the experience that we have had in trying to defer to the requests of the Department of Transportation on this committee concerning railroad passenger service, and our experience in the airport/airways bill, which, incidentally, has now passed and the conference is meeting on it this afternoon; do you think there is anything which inherently commends the Department of Transportation as the agency to do this kind of study?

Mr. BAKER. I think, Mr. Chairman, that as far as the timing of the present national transportation policy study is concerned, it is certainly true that this is taking a longer period of time than we originally had hoped. I think further it is clear that there have been difficulties in developing positions on two other modal areas that you refer to.

Nonetheless, I feel there are certain things that would make the Department an appropriate agency to conduct such a study. I think for one thing it necessarily transcends any single regulatory agency. I think, secondly, that the Department does have professional staff who are concerned with these issues, who have done work either analogous or broadly related to the kinds of questions here raised.

I would hope that if we were given this assignment, if the Congress chooses to direct us to do so, that we could in fact follow it out expeditiously and without undue delay.

Senator HARTKE. But the record does not necessarily indicate that that is going to be an expeditious journey. Isn't that right?

Mr. BAKER. I agree, Mr. Chairman, that the transportation policy study has indeed taken longer than we had hoped.

Senator HARTKE. And the other two, too.

Mr. BAKER. That is correct, sir.

Senator HARTKE. The thing is, that in this bill, in the commission bill, as recommended by Senator Burdick and others, he does include the Department of Transportation. Is there any reason why the full force and effect of the studies which you have available could not immediately be transferred without any lost time or lost effort to such a commission, in combination with those from representatives from industry, individuals, and interests; that they couldn't just use this information as a basis for a study and come up with a broad scale interpretation, rather than being narrowly confined perhaps to what the Department of Transportation might deem advisable?

Mr. BAKER. I think, Mr. Chairman, there are perhaps two aspects of this.

The first, in answer to your direct question, is could the information be available to such a commission; and the answer is surely yes. The work that is going on within the Department in large measure could and would be available to such a group.

I think how expeditiously this could be done, how easily from an organizational standpoint such a commission might function, and as a result how effectively and how expeditiously the process might be undertaken, is something I think more difficult to ascertain.

I would hope, however, that—well, I would like to correct that. I am sure that if the Department were given the responsibility to undertake such a study, the same kinds of groups, the same kinds of interests here identified, would definitely have major inputs to the kind of analysis that would be undertaken—the shipper groups, executive departments, regulatory agencies themselves.

Senator HARTKE. The fact remains that one of the reasons that an independent commission was suggested, and the testimony here revealed that yesterday, was the simple fact that many persons felt that neither the Interstate Commerce Commission nor the Department of Transportation could in and of themselves approach this matter from that type of objective viewpoint which would incorporate a broad diversity of concerns, including especially the concern of the consumer.

Now, this is one aspect—I am not asking you to comment on it any further—but I just feel this is one of the reasons why these people have expressed such a great concern about whether there could be that independence of thought, No. 1; and second, whether there can be expeditious handling of this matter by the Department of Transportation, especially in view of its past history.

Now, let me ask another question along the same line Senator Prouty asked. He asked about the cost, which you indicated might be \$700,000 to \$800,000. Wouldn't the information that you have, and whatever expertise you have in this field immediately reduce the cost of the commission itself in its attempt to find a solution to this problem, or to make its analysis? In other words, the fact that the Department of Transportation is a part of the commission, wouldn't that in effect alleviate part of the necessity for additional costs for the material which you have available?

Mr. BAKER. I think there is no question, Mr. Chairman, if the proposal were pursued as outlined here in the bill, and the Department of Transportation was one of the constituents or contributing elements to it, that the information we have would, of course, be available and would necessarily reduce the aggregate cost, as opposed to if they were starting from scratch without involvement or assistance.

Senator HARTKE. What I am really asking is—and I think this is the ultimate question—would there inherently be a substantial difference in the cost if it were done by the Department of Transportation as distinguished from the commission in your opinion?

Mr. BAKER. As a matter of fact, Mr. Chairman, I would think likely so.

Senator HARTKE. How much?

Mr. BAKER. That is very difficult for me to estimate, because I think for some of the questions that surround the formation of the commission itself, how long it would take to organize, who the people would be involved, and how they would in fact ultimately operate—which, in part, would be determined by the people on it, the chairman and the staff associated with it.

I would think there would be organizational costs that would be involved. It would necessarily, as I think Senator Prouty implied earlier, while there is not a direct overlap between the studies and work we have ongoing, there are analogies and similarities, so that concurrent activity might produce some economies.

I think this is a little different than saying would the information coming out of it be available to the commission, which to be sure it would. But I think the concurrent action within a single entity, such as the Department of Transportation, would be inclined, as contrasted to the two alternatives, to produce some economies.

Senator HARTKE. You do not have any estimate as to what you think would be the actual difference between the commission cost and your cost?

Mr. BAKER. No, we didn't attempt to estimate that.

Senator HARTKE. Isn't it true that the Department of Transportation, though, does in fact contract out part of its own studies?

Mr. BAKER. Very much so; yes, sir.

Senator HARTKE. In other words, the same effect, really, is realized—what we are talking about here with the commission—is about receiving the expertise of people outside of the actual operating department, and that is part of the design of those people who are advocates of this legislation.

I am not saying you are right. I'm just saying that is what they are saying.

Can you draw a distinction for me between having a contractor do it, some consulting firm, or the agency itself?

Mr. BAKER. Well, I think in the case of the Department of Transportation, that the procedure would be that undoubtedly a large part of the work that would be undertaken if the Department were instructed to pursue the study, would be undertaken on a contractual basis with various organizations. However, there would additionally be, I'm sure, a large part of information gathering and analysis, and particularly in the analytical part, done within the Department itself, by people expert in these kinds of related areas.

As a result, I wouldn't wish to say if the Department were to undertake it that it would simply be a contracting agency for an essentially external study.

Senator HARTKE. Isn't that what you have done in your study of domestic air freight rate structures?

Mr. BAKER. This is correct. Yes, sir. We have gone outside and solicited—we have proposals out for information on this area. When the information is received, necessarily it would go through considerable analysis in the Department.

Senator HARTKE. How many rate cases before the ICC has the Department of Transportation been involved in? Do you know?

Mr. BAKER. I think, Mr. Chairman, we have a listing on that subject, if I can find it. Perhaps Mr. Calhoun can comment on that while I'm looking.

Mr. CALHOUN. We have—subject to checking this actual list as to the number we have participated in since the creation of the Department—in two of the general rate increases before the ICC. We are a party in the general fare investigation at the CAB. I think we have participated in at least six of the general motor carrier increases before the ICC. All told we have been involved in almost 70 regulatory proceedings before the ICC, CAB, FMC, FCC, and FPC.

Senator HARTKE. How many of these were rail rate cases? Two you say?

Mr. CALHOUN. I believe two, including the pending—and immediate rate increase, *Ex parte 265*.

Senator HARTKE. This is the 6-percent increase?

Mr. CALHOUN. The present one—*Ex parte 265*, we are also going to be participating in.

Senator HARTKE. But you are not in it yet?

Mr. CALHOUN. The case is still in the procedural stage.

Senator HARTKE. You are planning to become involved in this case?

Mr. CALHOUN. Yes, sir.

Senator HARTKE. In both of the 6 percent cases pending?

Mr. CALHOUN. That is right.

Senator HARTKE. You plan to become involved in both of them?

Mr. CALHOUN. That's right.

Senator HARTKE. Can you tell us what has been the outcome of the motor carrier cases in which you have been involved?

Mr. CALHOUN. We have won some and lost some. As you heard in the hearing Monday, we have undertaken to try to put in an independent evaluation of the evidence from an economic and transportation point of view—not just simply representing the consumer or shipper interests as such, but the people of the United States as a whole and their interest in the transportation system.

Now, it is unfortunate because of the nature of the procedure at the Commission that it is not always easy to turn a legal victory into a practical one; because of the lack of a refund provision in the Interstate Commerce Act for motor carrier increases. This is a difficulty.

Senator PEARSON. Will the chairman yield?

Senator HARTKE. Yes; I will be glad to.

Senator PEARSON. I have to leave. I just want to say one or two things.

I was with the Secretary this morning at a briefing, all of the committee was invited. He said in the next 2 years we would have to provide a transportation system which was equal to everything we had done since the creation of this Republic.

I don't understand the Department of Transportation. When this Department was first set up, Alan Boyd was its Secretary, an extremely able man, and we didn't get a single report on time pursuant to the statutory requirements. The excuse was then we had a new department, they were just feeling their way, new personnel. Now we have a new administration.

But as to the airline and railroad passengers, I understand what some of the problems are. Not only are they complex, but you have to go to the White House and Bureau of the Budget and work these things out. The more people that have to get into it, the longer it takes. But here on the transportation policy study, a matter as vital as freight

rates are—we are losing industries in Kansas, milling industry, because of freight rates. I am not sure that this is right or proper. If it is, we lose them. But our only opportunity to build an industrial base in the Middle West is to relate it to what we already have, agricultural programs. Now a year has gone by, the lesson of all this I suspect is if we can't get these fundamental things done, somebody is going to take the jurisdiction from you, pursuant to this bill here.

I don't understand it. I must say it is a matter of great concern to me. Maybe Senator Prouty with this joint resolution will retain the jurisdiction for you. I wish I had been more alert about the nature of these hearings when I was at breakfast this morning, because there was an excellent opportunity to say this same little spiel. I hope you will carry it back, because I missed the opportunity this morning.

We are just going to absolutely be suffocated and mired down in commissions and studies on one hand, and those we need we don't seem to be able to get out of the Department of Transportation. I really don't ask you to comment, because I didn't ask a question. I am just very much concerned about this in my State and the Middle West.

I feel desperately frustrated by it. We have had special commissions ourselves out there, and we go to the railroads and have meetings and we don't get anything done. So the bureaucracy is going to have to protect itself; we will help as much as we can. I am sorry, I have to leave.

Senator HARTKE. I want to thank Senator Pearson for what I think are very objective observations.

Senator PEARSON. Let me say it was true of the last administration, too. We can document this if anybody wants to do it.

Senator HARTKE. There is no question about that.

Senator PEARSON. And I speak for Alan Boyd, he was an extremely able man, but we just didn't get anything done in the last administration. Don't you agree, Mr. Chairman?

Senator HARTKE. I quite agree. I quite agree the same problem exists today and we have a Secretary today who is an extremely able person. This is what makes it so frustrating. If you didn't like the man and didn't think he was capable, you could be very critical. I think that Senator Pearson said in substance is that we need massive immediate attention to the whole question of transportation. And if we do not have it in short order we are going to have crisis after crisis beyond a proportion which can be dealt with.

I don't think that we are dealing with something here on which we have much time. I think to a great extent these problems have been neglected, and I suppose most people have hoped ultimately that they somehow would go away, but the time has come now for immediate attention. This is why we have taken steps at least in the Senate in the field of railroad safety, as Mr. Whitman well knows; action has not been taken in the House, however. I would imagine quite honestly anybody who watches the situation with the number of railroad derailments that are occurring, and with the poisonous substances and explosive substances that are being moved, that one of these days you will have that set of circumstances which may move us into action. And that is we will have a derailment with either an extremely explosive substance or a highly poisonous substance in a big city where there are

a lot of people. And then it will be a tragedy of nationwide proportion. We do have some time left yet if we move now. But it must be utilized. I don't think it can all be utilized in studies.

I think we have two matters working here. One of them is a long-range approach and I quite commend the Department for making that type of evaluation. I am not adverse to that whatsoever. But in the meantime some people die every day, some people check out. What we need to do is also provide for the attention to an ongoing transportation system. I think that is what Senator Pearson is talking about.

I quite agree with Senator Pearson that this is certainly not any criticism directed at the personalities involved, but it is a criticism directed at the apparent—I was going to say apathy, I don't know what the correct word is. It is not necessarily apathy. Maybe it is the enormity of the operation, and the inability to frame a decision to move into massive readjustments which are going to be necessary; maybe that is just beyond what people have the willingness to do. If that is true, that we don't have that capacity to meet that challenge, then we are going to see a rather severe breakdown in the whole transportation system, hopefully within the lifetime of most of us. I don't mean hopefully the breakdown will occur, I mean hopefully we live that long.

I am talking about a short period of time in my opinion. I think the next 5 years are very crucial. Unless we meet this problem with much more than a report and a study within the next 5 years, I think we will have a report of tragedies.

I want to thank Senator Prouty also. I will say this about Senator Prouty, I have had the opportunity to work with him, and he has been most cooperative in this whole field.

Senator PROUTY. Thank you, Mr. Chairman. I appreciate that. I can say the same for the chairman.

Mr. BAKER. Mr. Chairman, if I might just have an opportunity to make a brief remark, I think that the Secretary, the administration, and the Department agrees wholeheartedly with your description of the situation and your sense of urgency about the problem.

I think the Department in the last year that I have been familiar with it has in fact been working very hard to recognize both its obligations in, as you point out, the longer range planning considerations and some of the immediate problems.

I certainly share your regret that there have been in some areas delays, and all I can say at this point is I think that a number of things have been accomplished and I would surely hope that, because of the recognized sense of urgency, as you point out, that the Department can, will, and must be responsive to the kinds of problems that you are citing.

Senator HARTKE. I thank you. I don't know that it adds anything, but you take the railroad passenger service bill. I introduced a bill originally and I made the point at that time that I was not wedded to it. We took some ideas from other members of the committee, Democrats and Republicans, and put them together and wrapped up the bill. The staff worked up another bill. We even indicated that, as far as railpax is concerned, we had no basic objection to considering that. But we waited and waited and finally we made the decision to move. In the meantime we have the threat of an impossible situation, if Penn Central is permitted to terminate, for example, their passenger

service west of Harrisburg. The Penn Central is the biggest rail passenger service carrier in the Nation. The staff member indicates they may carry as much as 40 percent of the passengers in the country today. But if that western service is terminated, what you have is nothing more than just an eastern seaboard passenger service at best.

I think we have to make up our minds on this business. If the Nation does not need passenger service, then we ought to stop trying to save it. If we do need it, we need to go ahead and do something immediately. I certainly am not in favor of increasing the subsidies from the Federal Government, paying out more money. That is why I said we kept an open mind all of the way through it. If somebody could come up with a better plan or better mousetrap, we would have accepted that.

Let me ask you, in this specific case, do you believe the Department of Transportation should have been more active in the rail rate cases? In the motor carrier cases basically you have been fairly successful, isn't that true? Is that a fair analysis? You have had better success in the motor carrier cases, as far as you are concerned, better success than you have had in the rail rate cases?

Mr. CALHOUN. Yes, sir.

Senator HARTKE. Do you believe you should have been more active in rail rate cases?

Mr. CALHOUN. Our lack of success I think in the rail cases was not due to any lack or diligence on the part of our attorneys, who are extremely able and hard-working, but it is more a question of the procedure, again, defeating this sort of approach.

For example, in *ex parte* 262 the Commission set up a procedure whereby there were no hearings of an evidentiary nature. There was simply an oral agreement before the entire Commission, followed by an order allowing the rates to go into effect with a subsequent investigation limited to a number of very narrow issues, such as whether the Long Island Railroad is to be in or out of the increases, things that do not have general economic or transportation implications. There is no meaningful contribution we can make in discussing the Long Island Railroad that the State of New York which owns this carrier cannot make as good or better.

When you are faced with a situation where you are talking, talking in effect to an empty record, I rather doubt there is any more we could have done that we did not do.

Senator HARTKE. Let me ask you this question? How long do you think a thorough rate study would take?

Mr. BAKER. I think a study of this kind contemplated in the bill would probably take something on the order of 12 months, perhaps somewhat longer. Is that correct?

Mr. CALHOUN. I would say at least 12 months. The bill that you have before you calls for 2 years.

Senator HARTKE. Yes, I know.

In a recent case I think the Department of Transportation said their participation in rate cases "has generally been limited to cases in which we believe far-reaching precedents are involved. Do I take it from that that you do not believe the 23 percent increase in 31 months involves a far-reaching precedent?

Mr. CALHOUN. I think we would agree with that. This is why we have tried to take a hand in these increases.

I should add that it is not, I don't think the Department views its function as simply being an adversary against the railroads in these increases.

Senator HARTKE. No, let me make that clear. I agree with you. I think that is a very bad approach if you take the position you are going to be an advocate against anyone. I think that is true. It is so easy to be critical and so difficult to be positive in these things, but I quite agree with that assessment.

Well, let me say to you—I thank you for your testimony. I don't know what else to tell you at this moment. I feel we have taken some leadership in the transportation field in this committee. We moved effectively for the first time on a railroad safety bill in the history of this country. We have moved in passenger transportation. We are trying to move in the field of freight rates. We really look forward to your cooperation and your advice as to how we can be helpful.

Mr. BAKER. Whatever the decision of the Congress is in this matter, Mr. Chairman, I can assure you we will cooperate in every way possible.

Thank you very much.

Senator HARTKE. The Honorable Walter R. McDonald, commissioner of the Georgia Public Service Commission, and chairman of the National Association of Regulatory Utility Commissioners' Committee on Railroads, and with him, Paul Rodgers, general counsel, NARUC.

STATEMENT OF WALTER R. McDONALD, COMMISSIONER, GEORGIA PUBLIC SERVICE COMMISSION, AND CHAIRMAN, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS' COMMITTEE ON RAILROADS, ACCOMPANIED BY PAUL RODGERS, GENERAL COUNSEL, NARUC, AND BRUCE HAGEN, CHAIRMAN OF THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

Mr. RODGERS. Mr. Chairman, Commissioner McDonald is not here this morning because unfortunately he is involved in a telephone rate case, which was not concluded as of today. However, I have the privilege of being accompanied by Chairman Bruce Hagen of the North Dakota Public Service Commission.

Mr. Chairman, the members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on S. 2355, which proposes the establishment of the Advisory Commission on Freight Rates to make a study of charges for the transportation of freight by all modes of transportation for the purpose of determining: the factors that contribute to the fixing of such charges; the reasons for any differences in such charges because of origin, destination or commodity; and whether Federal agencies are properly carrying out the national transportation policy and whether such policy is adequate in view of modern conditions.

The Commission would be composed of 13 members appointed by the President and they would represent all significant interests except the State regulatory commissions.

The NARUC strongly supports the study of charges for the transportation of freight as proposed in S. 2355. Such a study is urgently needed at this time in order to assist government agencies in perform-

ing their administrative functions in the transportation field with improved national coordination and to assist the Congress in formulating new policy in this difficult area.

However, we urge that the membership of the Commission should be increased from 13 to 17 members so that four State regulatory commissioners may be included—one each from the Northeast, the South, the Midwest and the West. This amendment may be made: by redesignating phrase (6) of section 1 (a) as phrase (7) by striking “and” at the end of phrase (5); and by inserting between phrases (5) and (7) a new phrase (6) to read as follows:

(6) Four commissioners of State commissions engaged in the regulation of freight rates to represent the State governments; and

We roughly estimate that approximately 50 percent of the tons transported by motor carriers, and 15 percent of the tons transported by railroads, move in intrastate commerce. Obviously, representation of the State commission should be included in the composition of the proposed Commission since they have such an extensive involvement in our national transportation system.

In addition, the NARUC requests that the scope of S. 2355 be broadened to include an amendment to the Interstate Commerce Act to require that railroads exhaust their remedies before State commissions prior to applying to the Interstate Commerce Commission for increases in intrastate rates.

The Transportation Act of 1958, 72 Stat. 570, amended section 13(4) of the Interstate Commerce Act (49 U.S.C.A., sec. 13(4)) to provide that a railroad may seek from the Interstate Commerce Commission an increase in intrastate rates by alleging unjust discrimination against, or undue burden upon, interstate commerce, and that the ICC is required to take jurisdiction and to act upon the proposed rate increase “whether or not theretofore considered by any State agency or authority and without regard to the pendency before any State agency or authority of any proceeding relating thereto.”

Although this provision was placed in the law in 1958, the railroads have apparently made no effort to bypass the State commissions until December 24, 1969, when approximately 80 railroads filed a blanket petition with the ICC to increase the intrastate rate level in nine Southern States to the current *ex parte* No. 262 interstate level. The petitioning railroads did not await or even seek intrastate rate relief from the commissions of the nine Southern States. *Intrastate Freight Rates and Charges in Southern States, 1969*, Docket No. 35203. Obviously this case sets a precedent which will be followed in the years ahead.

Accordingly, we respectfully urge that the Interstate Commerce Act be amended by striking the parenthetical language in the proviso of section 13(4) and inserting in lieu thereof the following language:

(if the State authority having jurisdiction thereof shall have denied a petition duly filed with it by said carrier seeking relief regarding such rate, fare, charge, classification, regulation, or practice, in whole or in part, or shall not have acted finally on such petition within 120 days from the presentation thereof).

In other words, there would have to be resort to the State commissions as there traditionally has been for intrastate rate increases, but the State commissions would be forced to act on those within 120 days or they would lose jurisdiction.

It is essential to the full protection of the consumer interest that the State commissions retain primary jurisdiction over intrastate rail rates. The intrastate traffic pattern in each State is unique and, therefore, each State should be permitted to continue to seek to maximize the abundance of low cost transportation of certain economically significant commodities within its borders in order to stimulate business and to promote the general welfare and prosperity of its citizens.

ICC review in these matters should only be directed to a substantial disparity which operates as a real discrimination against interstate commerce, and Congress should leave appropriate discretion to the State commissions to initially deal with intrastate rates in relation to the general level of rates which the ICC found to be fair to interstate commerce.

Furthermore, retaining initial State consideration of intrastate rate cases will assure that the consumers within the State, and especially small shippers, will have an opportunity to be heard in a local forum and before a State commission who, through its day-to-day contact with local problems, is in the best position to judge local needs within the framework of the overall revenue requirements of the railroads. While it is practical for a small shipper to appear at a public hearing in the State capital and verbally express his views, how many small shippers can afford to employ the attorneys and other experts required for filing intricate pleadings with the ICC in Washington, D.C.?

In conclusion, we look forward to working with this subcommittee and other interested parties in our untiring effort to strengthen the effectiveness of public regulation of freight rates, and to heighten regulatory responsiveness to the needs of a changing America.

Thank you for your attention.

(The attachments to the statement follow :)

RESOLUTION SUPPORTING LEGISLATION TO REQUIRE EXHAUSTION OF STATE REMEDY
IN INTRASTATE RAIL RATE CASES

Whereas, The Transportation Act of 1958, 72 Stat. 570, amended Section 13(4) of the Interstate Commerce Act (49 U.S.C.A., Sec. 13(4)) to provide that a railroad may seek from the Interstate Commerce Commission an increase in *intrastate* rates by alleging unjust discrimination against, or undue burden upon, interstate commerce, and that the ICC is required to take jurisdiction and to act upon the proposed rate increase "whether or not theretofore considered by any State agency or authority and without regard to the pendency before any State agency or authority of any proceeding relating thereto": and

Whereas, Irrespective of this provision having been placed in the law in 1958, the railroads apparently made no effort to bypass the State commissions until December 24, 1969, when approximately 80 railroads filed a blanket petition with the ICC to increase the intrastate rate level in nine Southern States to the current Ex Parte No. 262 interstate level (*Intrastate Freight Rates and Charges in Southern States, 1969*, Docket No. 35203); and

Whereas, the petitioning railroads did not await or even ask intrastate rate relief from the commissions of the nine Southern States; and

Whereas, It is essential to the full protection of the consumer interest that the State commissions retain primary jurisdiction over intrastate rail rates; and

Whereas, The intrastate traffic pattern in each State is unique and, therefore, each State should be permitted to continue to seek to maximize the abundance of low cost transportation within its borders in order to stimulate business and to promote the general welfare and prosperity of its citizens; and

Whereas, ICC review in these matters should only be directed to a substantial disparity which operates as a real discrimination against interstate commerce, and Congress should leave appropriate discretion to the State commissions to initially deal with intrastate rates in relation to the general level of rates which the ICC has found to be fair to interstate commerce; now, therefore, be it

Resolved, That the Executive Committee of the National Association of Regulatory Utility Commissioners hereby supports the enactment of legislation to amend Section 13(4) of the Interstate Commerce Act by striking the parenthetical language in the proviso of such Section and inserting in lieu thereof the following language:

"(if the State authority having jurisdiction thereof shall have denied a petition duly filed with it by said carrier seeking relief regarding such rate, fare, charge, classification, regulation, or practice, in whole or in part, or shall not have acted finally on such petition within one hundred and twenty days from the presentation thereof)";

and be it further

Resolved, That the General Counsel of this Association is hereby requested to furnish copies of this resolution to the members of the Committee on Commerce of the United States Senate, the Committee on Interstate and Foreign Commerce of the United States House of Representatives, and the Interstate Commerce Commission.

Adopted February 25, 1970.

Senator HARTKE. Senator Prouty has asked me to ask these questions.

Can you give any reason why the study which has been proposed under the bill we are considering, S. 2355, should not be conducted by the Department of Transportation?

Mr. RODGERS. Senator, I think the exchange which has occurred with the past witness certainly points out the benefit of the study being conducted by a Commission.

Any institution, such as the ICC and the Department of Transportation, have developed certain institutional outlooks or prejudgments which they would obviously carry into a study. And therefore we think it would be beneficial if a fresh group, such as proposed by this bill, could do a study basically from the consumer point of view.

When the study is finished, then, of course, DOT and ICC would have every opportunity to comment upon the conclusions reached in the study.

Senator HARTKE. Also, Senator Prouty asked would you have any objection to our directing the Secretary of Transportation to undertake such a study as opposed to creating a new independent commission to do so?

Mr. RODGERS. Well, we would prefer the commission route, but if that was not decided on by this committee, then I think a DOT study would certainly be beneficial.

Senator HARTKE. I want to thank you for your statement.

I think it is very clear.

Mr. RODGERS. Thank you very much.

Senator HARTKE. The next witness is Benny L. Kass, attorney at law, Ad Hoc Committee on Consumer Protection, Washington, D.C.

STATEMENT OF BENNY L. KASS, ATTORNEY AT LAW, AD HOC COMMITTEE ON CONSUMER PROTECTION, WASHINGTON, D.C.

Mr. KASS. Good morning, Mr. Chairman.

Senator HARTKE. Good morning.

Mr. KASS. My name is Benny L. Kass, I am a Washington attorney, and I appear today on behalf of the Ad Hoc Committee on Consumer Protection, a coalition of more than 40 local organizations created in 1963 for the protection of the consumer.

Mr. Chairman, before I continue my prepared statement I have two comments to make while they are fresh in my mind. You asked in your

colloquy with Mr. Baker from the Department of Transportation whether the Commission route would be better than the Department of Transportation doing it. He said well certainly when the Department of Transportation would prepare the study they would take into consideration the same interests that are considered in the bill. And the record, I think, will bear me out that he said shipper groups and other regulatory agencies will be involved.

Mr. Chairman, I think this highlights in a nutshell the biggest problem that consumer organizations are facing today. Shippers, although they certainly are different from railroads, are not the consumer. I think the record ought to be made very clear that there is a basic difference between the shipping industry and the consumers of the United States. I have more to say about that specifically. But I think when Mr. Baker said shippers and other regulatory agencies will be contacted, in his own mind he left out the consuming public, the public that is actually affected most and ultimately by any increase in rates, any changes in rate schedules.

I might also add that we are presently involved as a protestant in the rate increase on vegetables and melons. On Friday we sought a temporary restraining order which was denied us.

We appealed on Monday to the court of appeals, and just yesterday the court of appeals remanded the matter back to the district court for further consideration, and we have a hearing this afternoon on a temporary restraining order.

So, I am going to be obviously restrained in what I can say today and therefore will have to keep my remarks quite general.

We will be glad to submit full documents and further statements after the conclusion of that pending case. The bill presently pending before this subcommittee, S. 2355, would establish an advisory commission to make a study and report with respect to freight rates. Although we certainly endorse the concept of studying freight rates, after almost 8 months of direct involvement in one rate case regarding an increase in the price of vegetables and melons, the ad hoc committee is not sure that another study will correct the many problems we have encountered.

You have heard the Nader students charge that the Commission is the servant of private interests. As a result of our own experience before the Interstate Commerce Commission, we must confirm this charge. Furthermore, we must report to this committee that the ICC has done everything in its power to thwart others who try to represent the public interest, who try to fill the void that exists in the Commission.

Permit us to summarize our involvement in general terms. In late July 1969, we learned of a proposed railroad rate increase for the transportation of fresh vegetables and melons from the west coast to the East. The ad hoc committee filed a protest before the Commission, stating our concern "that any increase in rates—especially one as high as the proposed 21 percent increase presently pending before the Commission—will be passed on to the consumer."

We further added:

Without taking a position on the merits of the increase, we believe there is merit alone in asking the Commission to suspend the rate increase and make a full investigation—including full hearings—of this proposed rate. This investi-

gation and hearing must take place prior to allowing the rate increase to take effect. We would consider it unconscionable if such investigations and hearings were not conducted. (Ad Hoc Committee letter to ICC, July 29, 1969.)

We were pleased to learn that the Commission in fact suspended the rates, and we became formal protestants in the case. It is important to note that this was the first time in the history of the ICC, regrettably, that a consumer organization had ever protested a rate increase, leading the publication *Traffic World* to comment that "Consumer Protest a Factor in ICC Suspension Order on Rail Vegetable Rates" (August 2, 1969).

The ad hoc committee participated fully in the subsequent hearings that took place. Then, on February 25, 1970, the ICC permitted the rates to be increased. And, as stated earlier, we are presently in court trying to restrain those rates from going up. In order to avoid specific references to the pending case, we propose to outline our experiences under general categories:

I. PROCEDURAL OBSTACLES TO THE PUBLIC INTEREST

A. *Notice to public of proposed increases*

In fiscal year 1968-69, over 270,000 schedules and tariffs were filed with the Commission, involving hundreds of thousands of rates. This information was supplied to our committee by the ICC and we have documents to submit for the records at the conclusion of my statement.

Although most—if not all—of these filings represent added costs to the consuming public, they are not published in the *Federal Register* nor in any newspaper or other publication which can be easily read by the American consumer. For the ad hoc committee—or anyone else for that matter—to be kept informed of new rate proposals, one has to subscribe to such publications as *Traffic World* or others at a yearly cost of about \$140. This is not expensive to the railroads or to some shippers, for this too is passed on to the consumer; but it is prohibitive to the average citizen, and thus, the public regrettably is not kept informed of these pending rate increases.

The ad hoc committee will soon petition the Interstate Commerce Commission to issue a rule, pursuant to the Administrative Procedure Act, to wit:

Every proposed rate increase filed with the Interstate Commerce Commission will be published in the *Federal Register*, with an explanation as to its effect on the American consumer.

This is no different, Mr. Chairman, than the proposed consumer bulletin that Betty Furness proposed that all agencies comply with, and that Mrs. Knauer is looking into, but we haven't seen any evidence that the bulletin is coming out.

What we are trying to do at ICC and every regulatory agency is at least be informed of the proposed increases, proposed rulemaking, proposed rates that may go into effect, so the consumer who wants to get involved, to file a protest, will at least have a basic understanding of what he is doing.

We might add, however, that the ICC Act is as much an obstacle as is the Commission. Section 6(3) provides that if the Commission does not act to suspend rates within 30 days from the date they are filed, the rates are permitted to go into effect. In this day when consumer inter-

ests are starting to be recognized, we respectfully suggest that this is a very backward procedure.

Rates proposed by the railroad go into effect unless suspended; the burden of proof is on the carrier to show that the proposed changed rate is just and reasonable (sec. 15(7)), but only in the event the rate increase goes to hearing. We submit that section 15(7) must be turned around.

If the railroads want to change their rates, the burden must be on them from the very beginning to prove that it is, indeed, just and reasonable. I submit not only should this be applicable in railroad rate increases, but I think in any utility increases, we have to give serious consideration to putting the burden from the very beginning on the person who is proposing to change the rates, rather than have the public or other interested parties come in and protest them.

And if this committee will be reexamining section 15(7), we submit that 30 days is too short a period in which to permit protestants to file in a proper manner. Six months' notice seems more reasonable, but certainly not less than 90 days.

B. Public counsel

During the hearing on vegetables and melons, the ad hoc committee petitioned to proceed in forma pauperis, but this was denied.

I might add, without going too deeply into the case, that the district court and the court of appeals have permitted us to file in forma pauperis, and we are in court right now in forma pauperis.

We also sought free legal counsel to be supplied us by the Commission, but this too was denied. As a result, the ad hoc committee was required to spend considerable time preparing papers and briefs, and considerable dollars sending them to all parties of record. We asked the Commission to at least assist us in sending copies of our prepared statements and other materials to other protestants and respondents, stating that the "Xerox cost to us alone is prohibitive." The Commission responded as follows:

* * * The Commission will not prepare copies of your pleadings or serve them on the parties to the proceeding. Attorneys are required to effect service of their pleadings in accordance with the provisions of the Commission's general rules of practice applicable to the type of proceeding involved. (Letter of Feb. 10, 1970.)

In the absence of public counsel assigned to help consumer organizations adequately participate in rate cases, the cost of such participation is prohibitive. The ad hoc committee has already incurred considerable expense, expense which cannot be passed on to the consumer because we are the consumer. If consumers, and the public generally, are to participate properly in rate cases, the ad hoc committee submits that free legal assistance is mandatory.

We tried. We wrote the Department of Transportation and asked them to intervene as a protestant. But the Department informed us that their "participation in matters before the transportation regulatory agencies, which because of staff limitations has to be on a selective basis, has generally been limited to cases in which we believe far-reaching precedent is involved." And you discussed that with the Deputy Secretary earlier. We submit our correspondence again for the record. Apparently, in most railroad rate increases involving food

and other commodities of vital importance to the American consumer, the Department of Transportation takes the position that these are not important.

Mr. Chairman, it is our conclusion that the Interstate Commerce Commission was not candid with this committee when it reported last year—and I believe you call this your green dragon—that:

Since increases in rates ultimately are reflected in retail selling prices, the poor have an important interest in proceedings of this type. This interest is now protected. . . . (2) by the increasing participation of the Department of Transportation as a party in proceedings before the Commission . . . (p. 31, Report of Basic Policy Matters under Consideration by the Interstate Commerce Commission).

Here is another example of buckpassing the question of public interest. And yet, when a reporter for the Washington Daily News asked a representative of the Transportation Department about this, he said, "We participate in relatively few cases before the regulatory commission." (Washington Daily News, July 31, 1969.)

It is our understanding that Senator Metcalf is presently considering legislation to create a Consumer Transportation Counsel similar to his proposed Consumer Utility Counsel (S. 607). Based on our own very frustrating experiences, we certainly support this approach.

C. Cost of transcript

Many lawyers for railroads and shippers have said this is a petty matter, but to a lawyer trying to adequately represent his client, it is highly significant. I refer to the availability and cost of a transcript to a hearing. Again, I cannot go into the details, for there is a case pending, and we soon will be seeking a copy of the transcript pursuant to the Freedom of Information Act. But suffice it to say the transcript was available to us only during the business hours of the Commission at the offices of the Commission. If we wanted to copy the transcript, it would cost about \$0.85 per page, since the ICC has a contract with a private reporting company which makes its money from the sale of copies of the transcript to interested persons. Clearly, this is prohibitive; the case went on for 9 days. Lawyers for respondent railroads, and even other protestants such as food chains, are able to purchase the transcript so that they can confer with their clients at their home offices, in privacy, with other resource material available. And the cost of this transcript is not only tax deductible as a business expense, but it, too, is passed on to the consumer. If we are to adequately represent our clients, we either have to spend the money or bring them all down to the offices of the ICC.

We might add, however, that we attempted to purchase the transcript at the Commission's usual photocopy rate of \$0.30 per page, but we were flatly turned down, again because of the overriding importance of the contract with the private reporting company. The ad hoc committee is making an analysis of the different ways in which regulatory agencies handle this important problem, and will report back to this committee at a later date. I might add we are also seriously considering antitrust action against the reporting companies on the grounds of restraint of trade. However, the Federal Trade Commission has granted us permission, in the public interest, to take advantage of their lower per page copying costs.

These are just a part of the procedural problems we have encountered over the last 8 months in trying to adequately represent the consumer in a rate case involving vegetables and melons.

I might add we are also in a meat case right now and I have just written last week to the Department of Transportation asking them to come into this case, and we have not yet received a response.

There are substantive obstacles to the public interest.

The Interstate Commerce Act itself contains many provisions which have the effect of precluding public participation. For example:

Section 5(a) agreements: Pursuant to this section, carriers can sit down and agree among themselves as to fixed rates, without regard to the antitrust laws of the United States. Commissioner Walrath, in his testimony to this subcommittee last year (Review of ICC Policies and Practices, June 24-25, 1969) highlighted the problem:

Under the 5(a) agreement if (the carriers) use this business of sitting down and talking together in a region, or nationally even, they must then put that on the public docket and hear the shippers before they can file for that (Answer to Sen. Hartke, p. 79).

Herein lies perhaps the biggest difficulty. Congress—and of course the Commission—has always equated the shippers with the public interest. Senator Hartke, your response to this last year is worthwhile quoting:

You see, always you come back to these two groups of people, the carriers and the shippers. What disturbs me is that it appears that this process has gone on so long, in an atmosphere of adjudicating the rights between individuals, that the economics of the shipper and the economics of the carrier become paramount and the consumer or the public generally has been lost sight of, not from any conscious misdoing, but as just the very nature of the apparatus and the way it works. (Ibid., p. 59.)

Rebates: Section 15(7) of the act provides a formula for refunding “such portion of such increased rates or charges as by its decision shall be found not justified.”

Obviously this was enacted with the shipper in mind, for how can the consumer ever be made whole for the extra prices he pays as a result of any unjustified or illegal increase. Can the consumer keep accurate records on prices of the meats he buys in the supermarket, for example, so that he can claim the rebate? What statutory scheme, or any scheme for that matter, can be devised so that the consumer who purchases coal or other commodities will know the date purchased and its origins? We submit that section 15(7) is shipper oriented, and not totally in the public interest.

Mr. Chairman, we have not even touched on the many substantive difficulties involved with freight rates, difficulties which we hope will be thoroughly analyzed, if the Advisory Commission is created as proposed in S. 2355. We have attempted to present to this committee a list of the actual problems we have encountered these past 8 months, problems which raise serious obstacles to the direct—and full—participation by the American consumer in the regulatory process. Ultimately, it is the consumer who has to pay the price of this process. And surely he should be allowed to raise his voice in protest.

The ad hoc committee on consumer protection appreciates this opportunity to discuss our difficulties with the committee.

Senator HARTKE. Do you think the rate study is needed?

Mr. KASS. Very definitely.

Senator HARTKE. Then who should do it?

Mr. KASS. I think your Commission has to do it, the proposed Commission, under S. 2355. The ICC should have done it 5 or 10 years ago, but they didn't. I don't want to be here 10 years from now and saying 5 years ago the Department of Transportation should have done it. I think the only way to do it is have an independent body such as the Commission make the study.

Senator HARTKE. You have suggested establishment of a consumer transportation counsel?

Mr. KASS. Yes, sir.

Senator HARTKE. The Civil Aeronautics Board, Federal Maritime Commission already have counsels to serve this function. It is the opinion of the chairman that the ICC has the power to establish such an office now. Why do we need legislation to do this?

Mr. KASS. It is also the opinion of this witness that the ICC has the power. However, as you testified on Senator Hart's and Senator Moss' independent consumer counsel bill, the same approach follows. There is very definitely a need for outside independent evaluation, such as the Congress in the legislative oversight.

Senator HARTKE. What I am asking really is do you think that legislation of that type would really do the job? Don't we really need a change in attitude? A whole change in the organization? This is what the Nader group really said. I mean is it possible to reform? I think this is a basic question. Or do you have to create a whole new structure?

Parenthetically, you know that this is a problem of government, generally?

Mr. KASS. Yes.

Senator HARTKE. One of my constituents, a priest, just told me at home he thought the whole structure of the United States is ungovernable. I mean now when people reach that point of despair the country is in trouble—I do not believe a lot of people recognize the depth of despair in so many areas. I don't want to get off the subject, but the depth of despair of the aged who for the first time in their lives find themselves poor, at the age of 65 plus 1, the depth of despair of many of the young people in trying to find ways to express themselves other than through violence. Yet we are constantly passing more and more laws—I understand the President is going to come up with a recommendation for a new one to control violence. Is it possible for us to do something in this field of transportation? Or is it beyond the scope of the present institutions?

Mr. KASS. I am afraid to say it is beyond the scope. There are some of us who still hope that the existing legal process can be the means of expressing ourselves and obtaining change before violence has to be resorted to.

I regret to say that 5 years ago our committee numbered many more individuals and organizations. Now they are beginning to be frustrated, and we are finding less and less individuals and organizations here in the District of Columbia that we represent. They are very reluctant to join. "So you are going before the ICC. So you are going to the courts. So what?" I still have hope something can be done.

Senator HARTKE. You mean they think you will run into a stone wall?

Mr. KASS. Well, I notice we ran into a stone wall at the ICC. We tried very desperately to participate fully in every step along the line. We have been thwarted by the ICC. Maybe they blame it on the laws, the ICC Act itself. The ICC told you last year about the representation of the poor—and our organization primarily represents poorer individuals and organizations in the District of Columbia. Where are these agencies that come in?

Senator HARTKE. This is not an exciting business, you know. It is a very mundane operation, and it is tremendously important to the whole future of the Nation, as far as whether or not we can put the transportation system on a basis on which it can function to serve the public interest. And that is basically the whole reason for the Interstate Commerce Commission, to promote the public interest.

Mr. KASS. But the fact that we were the first consumer organization to file a protest, I hope more will come into it. I don't know the answer to these various problems. You say it is very mundane. It is. But on the other hand, if the price of meats and vegetables and melons go up in the supermarkets—

Senator HARTKE. Let me say I don't think it is mundane, I just think the people who report find it uninteresting—I mean we have one reporter here. We will acknowledge him at least and thank him for coming. But the people who report this operation think it is very mundane. They find nothing exciting about it. It is the old idea, in other words, even though the house is afire. They are still busy sipping their coffee in the living room and saying it may never get down this far.

Mr. KASS. I don't know how you can change this attitude. Before I went into private practice I worked on the Freedom of Information Act, where President Johnson when he signed it said there must be a change in attitude. There is no change in attitude in Government agencies on the availability of information. I am deeply concerned with this.

I think the ICC, I think Mr. Baker when he testified today does not see the connection between a minor rate increase on vegetables and melons or meats or coal as it relates to the whole regulatory process through to the consumer. I think if they can begin to understand this, hopefully hearings such as yours will at least open their eyes somewhat, plus our protests, our temporary restraining order which we hope to get today.

Senator HARTKE. Thank you, Mr. Kass.

(The information referred to earlier follows:)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., February 10, 1970.

Re I & S Docket No. 8536—Meat and Packinghouse Products, West and Southwest to the East.

BENNY L. KASS, Esq.,
Chairman and Counsel, Ad Hoc Committee on Consumer Protection,
Washington, D.C.

DEAR MR. KASS: This is in reply to your letters of January 19 and February 2, 1970, relating to participation in the above captioned proceeding by the Ad Hoc Committee on Consumer Protection particularly with respect to your request for "free legal counsel", assistance in serving copies of pleadings and also your petition for rulemaking.

It appears that your request for "free legal counsel" stems from a recent Federal Trade Commission ruling in the American Chinchilla Corporation Case (FTC Docket No. 8774), where that agency dismissed a complaint against one of the respondents on the ground that the hearing examiner should have considered the respondent's request for counsel because of indigency and that his failure to do so deprived the respondent of protection of his right.

The situation in the FTC proceeding is not analogous to the subject proceeding now pending before the Commission for investigation. The proceeding before the FTC arose out of a complaint which named a corporation and several individuals as respondents to a charge of violating Section 5 of the Federal Trade Commission Act. It was the duty of the named respondents to answer the allegations or suffer a default judgment to be entered against them. Where a named respondent could not answer and defend himself due to his indigency, he was compelled to surrender his rights under a cease and desist order without being afforded the process of law. The proceeding before this Commission is an investigation proceeding in which any person may intervene and participate under the provisions of Rule 73 of the Commission's General Rules of Practice (49 CFR § 1100.73).

Pursuant to section 15(7) of the Interstate Commerce Act, 49 USC 15(7), the Commission is empowered to make the determination whether the suspended schedules should be permitted to become effective. The burden of proof relative to the lawfulness of the proposed schedules is on the proponents of the rate change. If the Commission finds after investigation that the rates are shown not to be unlawful, protestants have further recourse to judicial review of the Commission's determination.

It is noted that you are an attorney and registered to practice before this Commission. As an attorney you may enter an appearance in the investigation proceeding on your own behalf or on behalf of the Ad Hoc Committee on Consumer Protection. For that matter, any individual member of the Committee may appear in his own behalf. Therefore, your request for "free legal counsel" is inappropriate.

With regard to your petition for rulemaking which was included in your protest against the proposed rates which have been suspended and which are now the subject of an investigation in Investigation and Suspension Docket No. 8536, your attention is directed to the provisions of Rule 42 of the Commission's Rules of Practice (49 CFR § 1100.42). Subsection (a) of this rule provides in part:

"... and no protest shall include a prayer that it also be considered a formal complaint."

Accordingly, if you wish to file a formal petition for the institution of a rulemaking proceeding which is, in this case in the nature of a complaint, you should do so in a separate pleading.

Regarding your suggestion relative to notice of proposals for rate increase; you suggest that every proposed rate increase filed with the Commission be published in the Federal Register with an explanation as to its effect on the American Consumer. Perhaps you are unaware of the magnitude of what you suggest. For example, in fiscal year 1968-1969, over 270,000 schedules and tariffs were filed with the Commission (ICC 83rd Annual Report p. 122), involving hundreds of thousands of rates. To attempt to publish and to show the possible effect on the consuming public of each of these proposals would be an intolerable burden both physically and financially. Additionally, the requirements regarding notice insofar as tariffs changes are involved are specifically provided in section 6 of the Interstate Commerce Act, 49 USC section 6.

I would like also to call your attention to the impracticability of attempting to publish in the Federal Register proposed changes in rates and schedules. As you are aware, the Commission must act on tariff proposals within a very limited time frame according to the provisions of section 6(3) of the Act. Under this section if the Commission does not act to suspend rates within 30 days from the date they are filed with the Commission, the rates are permitted to go into effect. The suspension procedures provided by Rule 42 of the Rules of Practice (49 CFR § 1100.42) in accordance with the authority vested in the Commission by section 15(7) of the Interstate Commerce Act require that persons desiring to challenge the lawfulness of proposed rates must file their protests and requests for suspension at least 12 days prior to the effective date of the intended rate changes. If the Board of Suspension declines to suspend the proposed changes, all interested parties are promptly notified. The protestant may petition for reconsideration of the decision not to suspend the rates provided the petition reaches the Commission at least not later than 4:00 p.m. the second work day

prior to the effective date of the tariff or schedule in question. The petition must then be acted upon by the Commission within the very limited period of time prior to the expiration of the 30 day notice period. In view of these stringent time limitations, the delay occasioned by your suggestion of publishing all proposed tariff changes in the Federal Register would so shorten the time for filing pleadings and consideration of them by the Commission that the entire suspension procedures would become unworkable and meaningless.

In conclusion, Mr. Kass, I must advise that the Commission will not prepare copies of your pleadings or serve them on the parties to the proceeding. Attorneys are required to effect service of their pleadings in accordance with the provisions of the Commission's General Rules of Practice applicable to the type of proceeding involved.

Sincerely yours,

H. NEIL GARSON, *Secretary.*

[Washington Post, Feb. 12, 1970]

ICC BARS FREE AID TO GROUP—AGENCY SAYS FTC RULING IS DIFFERENT

The Interstate Commerce Commission yesterday refused to provide free legal services for a consumer group appearing before the regulatory agency.

The group, represented by Washington attorney Benny Kass, claimed that the costs required for full participation in an ICC rate investigation automatically excluded consumer interests from playing an active role.

The request stemmed from proposed 17 per cent increases in rail freight rates for meat shipments from the West and Southwest to the Northeast. The ICC has suspended the higher rates pending an investigation, which can last as long as seven months.

In a reply to Kass, ICC Secretary H. Neil Garson said anyone—whether or not he is an attorney—can make a statement before the commission. But he rejected the idea that the agency should supply free legal counsel, which would enable the consumer group to become a full-fledged "party" to the investigation.

As such, the group would be entitled to make formal legal pleadings to the commission and to receive automatically the pleadings of other parties.

In his letter, Garson mentioned a recent decision by the Federal Trade Commission requiring free legal services for anyone facing an FTC charge and unable to pay for an attorney. But in this case, Garson said, the defendant actually faced a stiff FTC penalty and, without a lawyer, was being denied "due process of law."

Kass yesterday expressed disappointment but not surprise at the ICC's decision. Repeated attempts to secure counsel may, he said, convince regulatory agencies that they should appoint "peoples' counsel" for important issues.

Kass also said he would not drop the idea of having the ICC publish all new requests for rate increases—from railroads, bus companies and truckers—in the Federal Register.

The ICC also rejected that suggestion as impractical. Some of the rate filings, one ICC staff member said, are "like telephone books."

Each day's filings are now kept separate for nearly a week and can be examined by anyone, according to Edward H. Cox, director of the ICC's Bureau of Traffic. Many private companies, he said, subscribe to "Traffic World," a service organization which sells weekly summaries of the new rate proposals.

Spokesmen for "Traffic World" said yesterday that the weekly report costs \$140 a year and goes to about 11,000 subscribers—most of them large transportation users.

FEBRUARY 2, 1970.

Re I & S No. 8536.

HON. H. NEIL GARSON,
*Secretary, Interstate Commerce Commission,
Washington, D.C.*

DEAR MR. GARSON: The Ad Hoc Committee is delighted to hear of the above-cited suspension, and wish to go on record as wanting an opportunity to present both oral and written testimony on behalf of the Washington meat-consuming community.

Needless to say, although we cannot afford to attend a hearing even in Washington, we see no other place where it would be less expensive; accordingly, we

ask that the hearing, if any, be held at the Commission's offices in Washington.

We asked the Commission, by letter dated January 19, 1970, for free legal counsel to be assigned us in the event that these tariffs were suspended. We renew this request at this time.

We also request the Commission to assist us in sending copies of our correspondence, briefs, and other material to other protestants and respondents. The Xerox cost to us alone is prohibitive. If possible, we would hope that the Commission could send our statements out for us.

Kind regards,
Sincerely,

BENNY L. KASS,
Chairman and Counsel,
Ad Hoc Committee on Consumer Protection.

WASHINGTON, D.C., *January 19, 1970.*

Hon. H. NEIL GARSON,
Secretary, Interstate Commerce Commission,
Washington, D.C.

DEAR SECRETARY GARSON: The Ad Hoc Committee on Consumer Protection, a local coalition of organizations founded in 1963 for the protection of District of Columbia consumers, wishes to protest the proposed railroad rate increase on meat and packinghouse products effective January 30, 1970, listed as ICC A-4609.

We protest this proposed rate increase because we do not understand it. There is no present way, short of a public hearing, to obtain the needed information on which to evaluate the effect of these increases on the consumer. We did not see any public notice of the proposed increase filed in the Federal Register, nor published in any newspaper which can be easily read by the American consumer.

We are, however, concerned that an increase in rates, especially following so closely upon the heels of two Ex Parte across the board increases, will be passed on to the consumer. This includes a proposed increase in meat products, including hot dogs.

Accordingly, as we stated in I & S 8486, "without taking a position on the merits of the increase, we believe there is merit alone in asking the Commission to suspend the rate increase and make a full investigation—including full hearings—of this proposed rate."

Furthermore, we ask the Commission, if the rate is suspended, to assign the Ad Hoc Committee "free legal counsel" so that we may adequately participate in the case. As you know, we are a protestant in I & S 8486, and this has caused us considerable expense, expense which cannot be passed on to the consumer because we *are* the consumer. If we are to participate properly in this, and in other rate cases, we feel that free legal assistance is needed. As you know from reading the transcript of I & S 8486 (a transcript which we cannot afford to purchase), we were forced to stop attending the hearings because of financial restrictions.

And finally, pursuant to the Administrative Procedure Act, we wish to petition the Commission to issue a rule, to wit:

Every proposed rate increase filed with the Interstate Commerce Commission will be published in the Federal Register, with an explanation as to its effect on the American Consumer.

Thanking you in advance for your consideration,
Sincerely,

BENNY L. KASS,
Chairman and Counsel,
Ad Hoc Committee on Consumer Protection.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., January 12, 1970.

Re I & S Docket No. 8486, Vegetables and Melons, Transcontinental Eastbound.
BENNY L. KASS, Esq.,
Washington, D.C.

DEAR MR. KASS: In your letter of December 30, 1969, you make the alternative requests for either:

(1) A free copy of the transcript in the subject proceeding for use during the pending of the proceeding.

(2) Pursuant to the Freedom of Information Act, photocopies of designated portions of the transcript at the usual photocopy rate.

In reply, I wish to reiterate my statement to you in my letter of December 19, 1969, wherein I disapproved your initial request for a free copy of the transcript namely:

Of overriding importance is the matter of our contract with a private company, CSA Reporting Company, which acts as the official reporter of the Commission and which makes its money from the sale of copies of the transcript to interested persons. Our contractual relationship with CSA is such that we cannot issue free copies without jeopardizing the reporting services required by the Commission.

With regard to your request pursuant to the Freedom of Information Act, I must disagree with your interpretation of the intent of the "public records" provisions of § 552(a)3 of the Act (5 USC § 552). The Act did, in fact, contemplate an exemption from the copying requirement of transcripts of Agency proceedings in situations such as the one which exists between the Interstate Commerce Commission and CSA Reporting Company.

The Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act dated June 1967 at page 25 states in part as follows:

"Where an agency's contract with a reporting service requires that copies of transcripts be sold only by the service, the copy in the possession of the agency should be made available for inspection. If a copy of the transcript is requested, the agency may refer the applicant to the reporting service."

As I previously indicated, the Commission does have such a contractual agreement with CSA. Accordingly, your requests pursuant to the Freedom of Information Act are denied.

Sincerely yours,

H. NEIL GARSON, *Secretary.*

WASHINGTON, D.C., *December 30, 1969.*

Hon. H. NEIL GARSON,
Secretary, Interstate Commerce Commission,
Washington, D.C.

DEAR SECRETARY GARSON: Thank you for the letter of December 19, 1969, whereby I am informed that you are unable to furnish me (for my consumer client's use) a free copy of the transcript of I. & S. No. 8486, *Vegetables and Melons, Transcontinental Eastbound*. I appreciate your concern, however, for my needing the transcript, and will no doubt take up your kind offer of assistance as this case proceeds.

You must recognize, of course, that lack of a transcript for use in my office is not just an inconvenience. Counsel's role in any administrative matter is to confer with and obtain guidance from his clients. Respondent railroads, in I. & S. No. 8486, and other protestants who are able to purchase a transcript can confer with their clients at their home offices, in privacy, and with other resource material available. If I am to adequately represent my clients, I am forced to bring all of them down to your office, a scene which I submit would probably subject them to official red-tape in light of current rules regarding "demonstrations." Be that as it may, your decision of December 19, 1969, has the effect of denying my clients a form of administrative due process—just because they are unable to pay for the transcript.

There is a more serious issue at stake here. We recognize the need for competent reporting services. We do not quarrel with the Commission's right to enter into contractual relationships with private reporting companies. But, "of overriding importance" is not—or should not be—the matter of your contract with a private reporting company. In this regard, the Commission's primary concern should be the right of the public to be adequately represented before Commission proceedings—which should include having full access to transcripts.

The Freedom of Information Act requires that public records be available for inspection and copying, "unless the materials are promptly published and copies offered for sale." I doubt, seriously, that the Act contemplated such exemption for reporting companies, and accordingly I must make two alternative requests of the Commission:

First: On behalf of the Ad Hoc Committee on Consumer Protection, protestant in the above cited case, we request that the Interstate Commerce Commission furnish us with a free copy of the transcript, for our use during the pendency of the entire case.

Second: If the above request is denied, we ask the Commission—pursuant to the Freedom of Information Act—to photocopy portions of the transcript (which we shall designate following our inspection) and to bill us at the usual photocopy rate, which we understand to be substantially less than the per page rate charged by the reporting service.

Your prompt response to these requests would be appreciated, in light of our need to continue as an active protestant in I. & S. No. 8486.

Kind regards,
Sincerely,

BENNY L. KASS,
Chairman-Counsel,
Ad Hoc Committee on Consumer Protection.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., December 19, 1969.

BENNY L. KASS, Esq.,
Washington, D.C.

DEAR MR. KASS: I have tried to reach you by telephone but I was unable to do so.

Hearing Examiner R. M. Glennon has brought to my attention a request which was made by you on the record in I & S 8486, *Vegetables and Melons, Transcontinental Eastbound*, that you desire a copy of the transcript for your personal use without cost to you or your clients. While I appreciate the fact that the lack of a transcript for use in your office may be an inconvenience, nevertheless, I am unable to furnish you with a copy for the reason that the Commission does not have budgetary appropriations for such purpose. However, the official docket of the Commission contains the transcript and is always available at the Commission for study by anyone interested in the proceeding. A Public Docket Room containing tables and chairs is available for use by the public and attorneys during the business hours of the Commission. Additionally, I have made arrangements on occasion for attorneys to utilize the official docket of the Commission here at the Commission's offices on weekends upon request.

Of overriding importance is the matter of our contract with a private company, CSA Reporting Company, which acts as the official reporter of the Commission and which makes its money from the sale of copies of the transcript to interested persons. Our contractual relationship with CSA is such that we cannot issue free copies without jeopardizing the reporting services required by the Commission.

Whenever possible, I shall try to work with you to overcome your cost problems because I am also concerned with reducing the costs of litigation. If you have any questions in this regard, please call me.

Sincerely yours,

H. NEIL GARSON, *Secretary.*

ICC TO HEAR CONSUMERS ON FREIGHT-RATE BOOST

(William H. Jones)

Prices for lettuce, other fresh vegetables and melons in Eastern supermarkets will be the unusual subject tomorrow before an examiner of the Interstate Commerce Commission in the age of the consumer.

For the first time, a group speaking for everyday housewives and shoppers has filed a protest in a railroad freight rate case, charging that "only the consumer in this case has the public interest at heart."

The group, called the Ad Hoc Committee on Consumer Protection, is a coalition of District organizations founded in 1963. Attorney Benny L. Kass heads the organization, which includes the Council of Churches of Greater Washington, the United Planning Organization, Office of Urban Affairs of the Archdiocese of Washington, Americans for Democratic Action, NAACP, and the District Democratic central committee.

What the consumers oppose is a plan by railroads for increases of 3-to-21 per cent in rates for shipping farm goods from the West Coast to Eastern cities. Major supermarket chains are also opposing the increases. The shopper, however, would end up paying the freight bill.

Opponents have alleged that Western farmers decided to support the new rates—the largest in the history of food items—in return for a secretly-negotiated deal on illegal rebates with nine Eastern rail roads. Previously the farmers had generally opposed higher rates.

The rebates, called “market decline payments,” did not appear in the new rate schedules published last summer (the rates were supposed to go into effect in early August, but were suspended after the ICC was flooded with protests). The payments are made to compensate growers when trains are delayed and prices drop in the meantime. Such payments were routine until 1964, when the Eastern railroads dropped them. Ever since, the Western farmers have been trying to get the payments reinstated.

Noting the situation of the farmers and the allegedly secret deal on rebates, one lawyer last week predicted the railroads had launched their “Bay of Pigs” in freight rates, so unprepared were they for the protest filed before the ICC.

YOU, THE CONSUMER

He was jokingly referring to another freight rate case recently decided by the full ICC, which one commissioner called the “‘Gulf of Tonkin Resolution’ in the field of national rate making.”

In a split decision earlier this month, the ICC granted an “emergency” request from the nation’s railroads for an across-the-board 6 per cent increase in all freight rates, that will add an estimated \$600 million a year in revenues.

The general rate increase approved by the ICC—pending a forthcoming investigation—was the third such “emergency” request by the railroads since May, 1967. In brief, the rail lines argued that increased costs and a sharply reduced rate of return had reached the point that even minimum earnings would disappear if the increase was not approved.

ICC chairman Virginia Mae Brown, in a dissent, strongly disputed the railroads’ view. “No emergency exists to justify making these rates effective at this time,” she stated.

Moreover Mrs. Brown saw in the railroads’ persistent “emergency” approaches, a “divide and conquer” situation in which the rails join together, subverting their separate situations, “and appear of record united in a common cause.”

“In opposition thereto,” she continued, “are arrayed the numerous and diverse shipping interests, each evaluating the proposal as it affects them separately (which) weakens the shippers’ presentation, but it does not remove from the commission, the responsibility of considering the diverse shipper positions and the effect of the proposed increases upon them.”

Three other ICC members did not vote with the majority of six: Willard Deason, who also favored suspension of a rate increase pending a full study; Dale Hardin, who disagreed with the final order because it did not provide for hold-downs on such commodities as coal, grain and scrap iron; and Kenneth H. Tuggle, who did not participate.

It was Tuggle who accused the majority of formulating the “Gulf of Tonkin resolution” of freight rate making. In essence, he agreed with Hardin that the final decision was objectionable because it did not provide for hold downs—or smaller increases—on important commodities. But he was so disturbed by the “precipitant” action that he decided to be shown as “not participating in this proceeding.”

In both cases, there have been other expressions of alarm, particularly about the inflationary impact of more and more rate increases. The Department of Transportation, while not objecting to the general increase (and declining to participate in the vegetables case) said it feared the railroads were embarked on a program of annual “emergency” requests of the ICC unless the agency conducted a thorough study of the problem of rate making and established new procedures for establishing equitable rates in the future.

The National Industrial Traffic League, representative of large shippers and manufacturers, criticized the lack of an orderly procedure for considering general rate increases.

And, in a brief filed in the vegetables case, attorney Kass charged the railroads’ arguments—that present service is inefficient and that railroads have no

incentive to improve this service unless they get more money—means it “would only be a matter of time before the railroads returned to the commission seeking additional revenues.”

“We are deeply concerned with inflationary trends in this country; too often, the real loser is the American consumer,” stated Kass, charging that the proposed increase in food shipping rates is “neither just nor reasonable.”

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 26, 1969.

BENNY L. KASS, Esq.,
Washington, D.C.

DEAR MR. KASS: Thank you for your recent letter to the Secretary of Transportation urging that this Department intervene in I. & S. Docket No. 8486, the pending investigation before the Interstate Commerce Commission into various railroad rate increases applicable to eastbound fresh vegetable and melon traffic.

The Department does not represent particular interests as such, whether those interests are those of carriers, shippers, regions, or receivers. Our participation in matters before the transportation regulatory agencies, which because of staff limitations has to be on a selective basis, has generally been limited to cases in which we believe far-reaching precedent is involved. Thus, in the recent motor carrier rate increase cases, our purpose in intervention was to encourage the Commission for the first time to set out, as it did, clear, comprehensive and sufficient guidelines for determining whether proposed increases in the motor carrier industry were just and reasonable. We were not primarily concerned with the specific rates themselves.

Our role before a regulatory agency is to present on the record views and evidence, pertaining to the broad policy questions involved, which we consider necessary to enable the agency to render a decision in the public interest and which we believe would not otherwise likely be available on the record.

Prior to the recent action of the Commission suspending the proposed rate increases, now under investigation in I. & S. Docket No. 8486, the counsel for certain large food chains actively opposing the rates discussed them with our office and urged the Department to intervene. We advised him then, and still believe, that under our intervention policy set forth above, appearance by the Department in this case was not necessary.

Your interest is appreciated.

Sincerely,

R. TENNEY JOHNSON, *Deputy General Counsel.*

WASHINGTON, D.C., August 15, 1969.

HON. JOHN VOLPE,
Secretary, Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: This letter is a request, on behalf of the Ad Hoc Committee on Consumer Protection, for the Department of Transportation to intervene and testify in a pending matter before the Interstate Commerce Commission.

On July 29, 1969, the Ad Hoc Committee filed a letter of protest with the ICC on a proposed 21% railroad rate increase for the transportation of fresh vegetables and melons from the West Coast to the East. We were successful in having the increase suspended, and the matter has been tentatively designated for oral hearing. Its docket number is: I&S Docket No. 2486.

Representation of the consumer interest is not easy when funds are not available, when legal research is time-consuming and costly, and when government agencies—which claim they are acting in the public interest—pick and choose the type of case they will enter into. I quote the Washington Daily News of July 31, 1969 (attached), which quoted Mr. Stephen Cross of the Litigation Office of your agency: “We participate in relatively few cases before the regulatory commission.”

If this latter statement is correct, it is in direct conflict with what the ICC told the Senate Commerce Committee in a recent report entitled “Report of Basic Policy Matters under Consideration by the Interstate Commerce Commission”:

Since increases in rates ultimately are reflected in retail selling prices, the poor have an important interest in proceedings of this type. This interest is now protection . . . (2) by the increasing participation of the Department of Transportation as a party in proceedings before the Commission . . . (p. 31).

If the Department participation in "relatively few cases", however, not only was the Senate Committee misled, but the American consumer is being ignored.

Our comments on this matter would be appreciated, and the interest by your Department in rate insurance is encouraged.

BENNY L. KASS,
Attorney at Law.

Senator HARTKE. Our next witness is Matt Triggs, assistant legislative director, the American Farm Bureau.

**STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR,
THE AMERICAN FARM BUREAU FEDERATION**

Mr. TRIGGS. Good morning, Mr. Chairman. I believe you have our statement before you.

Senator HARTKE. Yes.

Mr. TRIGGS. We appreciate the opportunity to present the views of the American Farm Bureau Federation relative to the proposal for a Commission to make a study and submit a report with respect to freight rates.

There are few, if any, segments of our economy with a greater stake in efficient transportation service at the lowest feasible rates than farmers—both with respect to the farm products they ship to market and the farm supplies used in steadily increasing volume for farm production.

We support the enactment of S. 2355.

We recommend that the scope of the study be broadened in at least two respects.

First, we would suggest that section 2(a) be modified to provide for the submittal of views and analysis relating to ratemaking policy and practices. This may perhaps be inferred from other language in this section, but it is sufficiently important, in our opinion, to warrant specific reference.

Certainly there is limited value in a study of freight rates unless it leads to recommendations for legislation to improve or modify ratemaking policy and practice.

In this connection it should be noted that a report on "Federal Transportation Policy and Program" sent to Congress by President Eisenhower in 1960 and President Kennedy's recommendation to Congress in 1962 both included substantial proposed changes in rate-making policy which have not resulted in the enactment of legislation.

Second, we would suggest that section 2(a) be revised, or modified, or added to, to include a study of inefficiencies in the use of manpower by freight carriers and the cost of such inefficiencies to the public. The major areas of inefficiency in the railroad industry relate to (1) restrictions in the kind of work that individual workers are permitted to undertake (2) the basis of payment, that is, the use of obsolete mileage factors to determine a day's work, and (3) the employment of more workers than are needed to perform the work to be done.

These areas of inefficiency are, of course, established by labor-management contracts. It would be idle to suppose that the rapid upward trend in freight rates can be halted or slowed unless some progress can be made toward eliminating the heavy costs involved in such inefficiencies. A major public service would be achieved if a comprehensive analysis of the scope, character, and costs of such restrictive practices were to be made available.

Thank you for the opportunity to present these recommendations. Senator HARTKE. Thank you. Senator Prouty requested again that these two questions be asked.

Can you give any reason why the study which has been proposed under the bill, S. 2355, should not be conducted by the Department of Transportation and would you have any objection to the committee directing the Secretary of Transportation to undertake such a study as opposed to creating a new independent commission?

Mr. TRIGGS. I have been expecting this question. I am a little put to it to answer it because the consideration of our board of directors involved primarily the question of whether or not a study was desirable and not so much about who should make the study.

Nevertheless, they endorsed the bill, S. 2355. And this is consistent with their position on other occasions when they have expressed a preference for an independent appraisal, feeling that it is more likely that an independent appraisal will be objective, impartial—and because it won't bear the burden of the fact that an administration policy is being developed, with all the political implications that may be involved that may restrain and affect decisionmaking.

I am going around Robin Hood's barn. But I think our board action indicates a preference for an independent impartial commission study.

Senator HARTKE. You do think such a study is necessary?

Mr. TRIGGS. I think there are many areas of lack of knowledge of factors affecting ratemaking.

Senator HARTKE. Thank you, sir.

That concludes the witnesses this morning.

(Thereupon, at 11:30 a.m. the hearing was recessed, to reconvene at 10 a.m. the following day.)

ESTABLISH AN ADVISORY COMMISSION TO MAKE A STUDY AND REPORT WITH RESPECT TO FREIGHT RATES

THURSDAY, MARCH 19, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5110 New Senate Office Building, Vance Hartke (chairman of the subcommittee) presiding.

Present: Senators Hartke, Moss, and Prouty.

Senator HARTKE. Good morning.

We will continue the hearings on S. 2355, a bill to establish an advisory commission to make a study and report with respect to freight rates.

Our first witness this morning is John C. Blum, Deputy Administrator, Regulatory Programs, Consumer and Marketing Service, Department of Agriculture.

STATEMENT OF JOHN C. BLUM, DEPUTY ADMINISTRATOR, REGULATORY PROGRAMS, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JAMES H. LAUTH, CHIEF, TRANSPORTATION BRANCH, AND W. A. IMHOF, OFFICE OF GENERAL COUNSEL

Mr. BLUM. Mr. Chairman, thank you. I have with me this morning two of my colleagues, who I would, with your permission, like to have join me at the table and help me to furnish information for the record. On my left is Mr. James H. Lauth, Chief of our Transportation Services Branch, on my right is Mr. W. A. Imhof of our Office of General Counsel. Both of these gentlemen are deeply involved in our transportation activities.

Mr. Chairman, I appreciate the opportunity to present the views of the Department of Agriculture this morning concerning S. 2355, and to discuss briefly with you the nature of our interest and responsibilities relating to freight rates for agricultural commodities.

The Department's formal report on S. 2355 has been sent to the chairman of the Committee on Commerce, and I shall not reread it here. Briefly, the Department does not favor enactment of S. 2355, because we do not believe that an advisory commission of the type proposed is the most appropriate means of achieving the bill's objectives.

The determination of freight charges is a complex and technical

process, influenced by diverse economic, geographic, and social considerations. Existing agencies of Government have experienced transportation staffs which could be used to advantage in carrying out a study such as that contemplated by the bill.

The Department of Agriculture has a deep interest and involvement in agricultural freight rate matters. Under the Agricultural Marketing Act of 1946, the Secretary of Agriculture is "directed and authorized * * * to assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers." (7 U.S.C. 1622 § 203(j)).

The Department has a relatively small professional staff involved in these activities. Thus, we are dependent to a large degree on information and data from other sources. We know the importance of having adequate information for making sound program decisions.

Changes in rate levels and structures in recent years have created economic stresses and strains, with resulting inequities and disparities in freight rates for agricultural commodities.

Innovations in transportation technology and ratemaking have resulted in lower costs and reduced rates for some commodities. Examples are the establishment of incentive loading rates, multiple car and unit train rates, and "barebones" rates. However, these reductions have not been universal. They generally have been applied on a selective basis, depending on the degree of competition from other modes of transportation. This has placed production areas which lacked intermodal competition at a competitive disadvantages in regional and national markets.

Many areas of the country are heavily reliant upon rail transportation and do not have effective truck or barge competition. Since farm products are relatively low in value and are limited by soil, climate and topography as to areas of production, freight rates take on added importance in determining the efficiency and profitability of distribution to national markets. In areas which lack transportation alternatives, high freight rates can seriously restrict the movement of agricultural commodities.

The problem of higher rates in noncompetitive transport areas has been aggravated by the general freight rate increases of the past several years; 1967 increases have ranged from 3 to 5 percent in *Ex parte 256*; 1968 increases ranged from 3 to 10 percent in *Ex parte 259*; 1969 increases totaled 6 percent in *Ex parte 262*. These increases were not uniformly applied, but generally were lower—or not applied at all—in areas having effective intermodal competition, with higher increases in noncompetitive areas. This has further widened the disparities among agricultural producing areas.

The Department of Agriculture opposed each of these general rate increases because of the burden they placed upon the agricultural sector of the economy and because of lack of adequate evidence to support the magnitude and distribution of the rate increases proposed.

In short, there is a need for additional information concerning the structure of transportation charges for agricultural commodities and the factors that contribute to the fixing of such charges. Our reservation with respect to S. 2355 relates to the manner in which it is proposed that the study be carried out. We believe that adequate expertise is presently available within the respective agencies of Government to conduct the type of study which is contemplated by the bill.

That completes my statement, Mr. Chairman.

Senator HARTKE. Thank you.

At the Interstate Commerce hearings we held last June, the Commissioners assured me there was sufficient independent cost analysis studies by the ICC in these rate cases.

Now the Department of Agriculture has frequently asked for more analyses. I would assume you basically disagreed with that statement of ICC, is that right?

Mr. BLUM. I think on the record we have indicated, Mr. Chairman, that we did not feel that there had been sufficient cost information of specified types included as a part of the record.

Senator HARTKE. How can that problem be met in your opinion? What is the best solution?

Do you think the study would help in any way whatsoever in that field?

Mr. BLUM. I am not sure that a study would get directly at it, because I am not sure whether the problem was that the information was not available, or that it was not put into the record. I know that there was a need for additional information.

Senator HARTKE. Yes.

Do you think the ICC had the information and was not using it?

Mr. BLUM. I do not know, sir.

There is some cost information which they do get.

Senator HARTKE. What kind of arguments are you making in *Ex parte 262* and *265* basically?

What is your general approach there?

Mr. BLUM. In *265* we have not yet got into any substantive arguing. Our first paper that was filed was in effect to object to the emergency nature of the action. In *262* our position basically was, as in previous cases, that we objected to the proposed increases on two principal grounds: One, the burden on Agriculture, and two, the lack of sufficient evidence in the record to justify the particular increases requested.

Senator HARTKE. Basically you feel such a study is desirable, is that right?

Mr. BLUM. Yes, sir.

Senator HARTKE. Who do you think should do it?

Mr. BLUM. I don't know that we have a recommendation on that, sir.

In our report we indicated that we felt that there were competent technical people in both the Department of Transportation and the Interstate Commerce Commission. We have some people that are knowledgeable in this area, but we certainly would not be equipped to do this kind of a study.

Senator HARTKE. Don't you think you could be helpful in this?

Mr. BLUM. We could be helpful to the limit of our resources and we would be glad to be.

Senator HARTKE. Basically the Department of Agriculture moves in these cases in the position of representing the interests of the farmer, is that correct?

Mr. BLUM. The farmer and the agricultural community. Basically the farmer.

Senator HARTKE. Who really in your opinion represents the ultimate consumer in these hearings?

Do you understand what I am really driving at?

Mr. BLUM. Yes, sir.

Senator HARTKE. In other words, what I am trying to find out is, we get these various interests represented, but who represents the consuming public?

Vicariously, possibly the USDA yes, if you say you represent the farmer and the agricultural communities generally, and the agricultural community is a consumer, so you could say that is vicarious representation. But that is only incidental, not direct.

Mr. BLUM. That is right.

Well, we feel that our responsibility under the statute is fairly definitive. I believe the Commission has a responsibility to consider all of the interests involved, including consumer interests.

Now who presents those interests before the Commission I don't know that I really know. I suppose there are consumer groups that have appeared at times, but consumers are generally not well organized.

There are retail distributive elements of the agricultural marketing community who are closer to the consumer, who at times have represented interests with which the consumer was identified. But as active spokesmen, I think consumers are generally not represented.

Senator HARTKE. Yes; I think this is a fair conclusion.

Basically what you are saying is that the shipper is represented, the carrier is represented, you come in and your presentation basically is representing the farmer and the agricultural community.

But, if you really have any consumer interests represented here, in a broad scope, it is not a definitive one.

Mr. BLUM. I believe that is right.

Senator HARTKE. All right.

Before what other agencies, besides the ICC, do you actively participate in rate cases?

Mr. BLUM. Well, we have authority to appear before each of the agencies that I quoted from the statute here. As a matter of actual fact most of our work is before the ICC. We have occasionally appeared before the Federal Maritime Commission.

Senator HARTKE. Is there a difference in how the cases are handled before the ICC than, in other cases, like the Federal Maritime Commission, things of that nature?

Mr. BLUM. My personal experience is limited on that. I defer to Mr. Imhof.

Senator HARTKE. Is there a difference, in your opinion, as to the analysis of the data, protection of the consumer, things like that?

Mr. BLUM. I have not had enough experience to detect any significant difference, to be able to define what they would be.

Senator HARTKE. That is all of the questions I have.

Senator Prouty?

Senator PROUTY. Mr. Blum, I gather from your statement that you very much are in favor of a study being made?

Mr. BLUM. Yes, sir.

Senator PROUTY. Would you have any objection to having this conducted by the Secretary of Transportation?

Mr. BLUM. I can see none.

Senator PROUTY. With that in mind, Mr. Chairman, I would like to read a brief statement at this point.

Senator HARTKE. Yes, sir.

Senator PROUTY. Mr. Chairman, I have with me today a draft of the joint resolution which I indicated to you yesterday I requested the minority staff of the committee to prepare. Although this is a preliminary draft which may be subject to some changes, I felt it was important that it be put before the committee this morning, so that it may be considered as an alternative to the bill S. 2355 upon which these hearings are being held.

It is a relatively short resolution, which I believe to be self-explanatory, hence I will not undertake at this point to present a detailed analysis of its provisions.

It is intended to authorize a study somewhat more comprehensive than that contemplated by the bill. It would also require the Secretary to report not only the results of that study, but also legislative recommendations as to the feasibility of establishing comparable standards for the regulation of freight rates and the most desirable means of administering such standards.

My reasons for believing that such a study can be more expeditiously and less expensively conducted by the Department of Transportation than by an independent commission as proposed under the bill, have already been set forth.

Mr. Chairman, I ask unanimous consent to have the text of my Senate joint resolution, appear as a part of the record of these proceedings.

Senator HARTKE. Yes; it will be made a part of the record at this time.

(The resolution follows:)

91ST CONGRESS
2^D SESSION

S. J. RES. 186

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1970

Mr. PROUTY (for himself, Mr. COTTON, Mr. GRIFFIN, Mr. PEARSON, and Mr. SCOTT) introduced the following joint resolution; which was read twice and referred to the Committee on Commerce

JOINT RESOLUTION

Providing for a full and complete study of charges for the transportation of freight by all regulated modes of transportation and the submission of recommendations with respect to appropriate standards for determining the lawfulness of such charges and the most effective means of administering such standards.

Whereas the freight rate structures of the various modes of transportation as they have developed over the years are conflicting, contradictory, and confusing; and

Whereas in this State there exist virtually unlimited possibilities for the sort of discrimination which it was the intent of Congress to eliminate by the passage of the various regulatory statutes, more specifically referred to hereinafter; and

Whereas to secure the benefits of multimodal transportation now made possible through advances in technology, some way must be found to rationalize the disparate freight rate structures of the various modes; and

Whereas uniform or comparable standards by which to judge the lawfulness of the charges for the transportation of freight by each of the various modes is desirable and would greatly facilitate the free flow of goods transported both domestically and in foreign commerce; and

Whereas the Department of Transportation was created to coordinate the various modes of transportation and as the mechanism to assist in development of a truly national transportation system in which the most efficient use will be made of all of our transportation instrumentalities: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled, That*
3 the Secretary of Transportation acting in cooperation with
4 the Interstate Commerce Commission, the Civil Aeronautics
5 Board, the Federal Maritime Commission and other inter-
6 ested Federal and State agencies shall make a full and com-
7 plete study of rates and charges for the transportation of
8 freight within the fifty States by the various modes of trans-
9 portation subject to regulation pursuant to the Interstate
10 Commerce Act, including freight forwarders subject to regu-
11 lation under part IV thereof, the Federal Aviation Act of
12 1958, the Shipping Act, 1916, and the Intercoastal Ship-

1 ping Act, 1933, and, within one year after the date of en-
2 actment of this joint resolution, prepare and submit to the
3 President and the Congress a report and recommendations
4 on—

5 (1) the extent to which freight rates and other
6 charges for the transportation of freight differ depend-
7 ing upon place of origin, destination, or commodity;

8 (2) the principal factors underlying such differ-
9 ences;

10 (3) the standards applied by each of the agencies
11 of the United States Government responsible for the
12 regulation of such rates and charges in passing upon
13 the lawfulness thereof, both in the aggregate and on an
14 individual basis;

15 (4) the extent to which competition is permitted to
16 and does determine the levels of freight rates and charges
17 under the various regulatory acts above referred to;

18 (5) the extent of commonality between the stand-
19 ards applied by such regulatory agencies in passing
20 upon the lawfulness of the freight rates and transporta-
21 tion charges of carriers; and

22 (6) appropriate standards for determining the law-
23 fulness of freight rates and charges for all modes of
24 freight transportation and the most effective means of

1 administering such standard or standards as may be
2 recommended.

3 SEC. 2. (a) In order to carry out his functions under
4 this resolution, the Secretary is authorized and directed to
5 appoint, without regard to the provisions of title 5, United
6 States Code, governing appointments in the competitive
7 services, such advisory committees, representative of the
8 divergent interests involved, as he deems appropriate to
9 represent the interests of consumers, shippers, and the trans-
10 portation modes for the purpose of consultation with and
11 advice to the Secretary. Members of advisory committees
12 appointed under this section, other than those regularly em-
13 ployed by the Federal Government, while attending meet-
14 ings of such committees or otherwise serving at the request
15 of the Secretary, may be compensated at rates to be fixed
16 by the Secretary but not exceeding \$100 per day, and while
17 away from home or regular place of business they may be
18 allowed travel expenses, including per diem in lieu of sub-
19 sistence, as authorized by section 5703 of title 5, United
20 States Code, for persons in the Government service em-
21 ployed intermittently. Members of such advisory committees
22 shall, for the purposes of chapter 11, title 18, United States
23 Code, be deemed to be special Government employees.

24 (b) Each department, agency, and instrumentality of
25 the executive branch of the Government, including independ-

5

1 ent agencies, is authorized and directed to furnish to the Sec-
2 retary, upon request, such information as the Secretary deems
3 necessary to carry out its functions under this Act.

4 SEC. 3. (a) For the purpose of carrying out the provi-
5 sions of this resolution, the Secretary, or on the authoriza-
6 tion of the Secretary any officer or employee of the Depart-
7 ment of Transportation may require, by subpoena or otherwise,
8 the production of such books, papers, correspondence, mem-
9 orandums, contracts, agreements, or other records as the
10 Secretary, or such officer or employee, deems advisable.

11 (b) In order to carry out the provisions of this resolu-
12 tion, the Secretary or his duly authorized agent shall at all
13 reasonable times have access to, and for the purposes of ex-
14 amination the right to copy, any documentary evidence of
15 any corporation, business firm, institution, or individual hav-
16 ing materials or information relevant to the study authorized
17 by this resolution.

18 (c) The Secretary is authorized to require, by general
19 or special orders, any corporation, business firm, or individ-
20 ual or any class of such corporation, firms, or individuals to
21 file, in such form as the Secretary may prescribe, reports or
22 answers in writing to specific questions relating to the study
23 authorized by this resolution. Such reports and answers shall
24 be made under oath or otherwise, and shall be filed with the

1 Secretary within such reasonable period as the Secretary may
2 prescribe.

3 (d) Any of the district courts of the United States with-
4 in the jurisdiction of which an inquiry is carried on may, in
5 case of contumacy or refusal to obey a subpoena or order of
6 the Secretary or such officer or employee issued under sub-
7 section (a) or subsection (c) of this section, issue an order
8 requiring compliance therewith; and any failure to obey such
9 order of the court may be punished by such court as a con-
10 tempt thereof.

11 (e) Witnesses summoned pursuant to this section shall
12 be paid the same fees and mileage that are paid witnesses in
13 the courts of the United States.

14 (f) Any information which is reported to or otherwise
15 obtained by the Secretary or such officer or employee under
16 this section and which contains or relates to a trade secret
17 or other matter referred to in section 1905 of title 18 of the
18 United States Code, shall not be disclosed except to other
19 officers or employees of the Federal Government for their
20 use in carrying out this resolution. Nothing in the preceding
21 sentence shall authorize the withholding of information by
22 the Secretary (or any officer or employee under his control)
23 from the duly authorized committees of the Congress.

24 (g) In carrying out his functions under this section, the
25 Secretary shall to the maximum possible extent avoid the

1 imposition of any requirements for reports, information, or
2 other material from carriers subject to economic regulation
3 by the Civil Aeronautics Board, the Federal Maritime Com-
4 mission, and the Interstate Commerce Commission which
5 duplicates the requirements by any of these agencies.

6 SEC. 4. There is hereby authorized to be appropriated,
7 out of any moneys in the Treasury not otherwise appropri-
8 ated, to the Secretary of Transportation not to exceed \$750,-
9 000 for the purpose of carrying out the provisions of this
10 joint resolution.

Senator HARTKE. The next witness is W. H. Joubert, general traffic and distribution manager, Bowaters United States Corp., Calhoun, Tenn.; and with him is James P. Deehan, Union Camp Corp.; and J. Raymond Clark of Ephraim and Clark. Good morning, sir.

STATEMENT OF W. H. JOUBERT, GENERAL TRAFFIC AND DISTRIBUTION MANAGER, BOWATERS UNITED STATES CORP., CALHOUN, TENN.; ACCOMPANIED BY JAMES P. DEEHAN, UNION CAMP CORP.; AND J. RAYMOND CLARK OF EPHRAIM & CLARK

Mr. JOUBERT. Good morning, Senator.

Senator HARTKE. We have to recess a minute. I have three executive sessions going on at this time in addition to these hearings and I have to go to Finance Committee. We will see if we can get a Senator to come in temporarily while I am gone.

(Recess.)

Senator Moss (presiding). Mr. Joubert, we will be glad to have you proceed. Chairman Hartke had to leave for a brief time and will be back shortly, but we will go ahead in the meantime.

Mr. JOUBERT. Thank you, sir.

Today my purpose is to present testimony which in essence describes, evaluates, and criticizes the procedures, administration, and organization of the Interstate Commerce Commission, with particular reference to recent railroad general freight rate increases.

The view of our conference is that the Commission repeatedly ignores, or fails to evaluate correctly and fully, evidence and testimony which shippers place before it. Certainly, there is no indication in the Commission's reports that the evidence we presented in opposition to the increases has received any consideration. Most of us are convinced that the Interstate Commerce Commission has failed to perform effectively the duties which Congress has assigned to it and has allowed itself to be repeatedly stampeded by railroad demands for increased revenues.

THE GENERAL INCREASE FALLACY

In deciding general rate increase petitions of the railroads, the Interstate Commerce Commission has adopted the short-sighted policy of approving such applications without fully considering, or in recent cases, without considering at all, testimony and exhibits of opposition shipper witnesses. Prior to deciding such crucial issues, the ICC should provide a procedure for developing a comprehensive record, consider the entire record—pro and con, and permit cross-examination of all pertinent witnesses. Otherwise, the Commission cannot possibly foster the national transportation policy, or effectively administer the Interstate Commerce Act. The ICC has been so anxious to accord to the railroads the expeditious handling urged by the carriers that analysis has been sacrificed to speed.

The SPMTC has retained professional assistance in each of the recent general increase proceedings in an effort to bring the public interest aspects of the railroads' revenue need claims, particularly those in southern territory, to the Commission's attention. We have requested that the Commission exercise its subpoena powers to develop a full record. The result, however, has been cursory consideration of an abbreviated record.

The unanimous report of the Interstate Commerce Commission in the general increase case of 1968, *Ex parte No. 256*, granted the railroads virtually every rate advance they sought. (See 332 ICC 280, Feb. 6, 1968). It might be observed at this point that the SPMTC acquiesced in the interim 3-percent increase in this proceeding. That is, we did not oppose this 3-percent increase. In rendering this decision, the Commission included admonitions to the railroads which they subsequently ignored in entirety. So did the Commission.

One of these caution signs was that the railroads, in sustaining their burden of proof in future general revenue proceedings, should undertake—from the Commission's decision itself—"realistic studies of unit costs of performing transportation service." (332 ICC 280, p. 285.)

In our opinion the railroads did not present any such study in subsequent revenue cases, namely, *Ex parte Nos. 259, 262*, or thus far in *265*. This is one of the issues raised in the court proceedings that I shall subsequently discuss.

Also in its *Ex parte 256* decision, the ICC observed that the significant thing is the cost per unit of service rendered, not the price of particular amounts of labor and material, that affects the reasonableness of the rates; in other words, that consideration should be given to increasing railroad productivity. The decision complained that in this respect the record of the carriers was seriously lacking (332 ICC 280, p. 286).

Further, the decision stated that the Commission expected the petitioning railroads in future revenue proceedings to make a more complete disclosure of facts in support of the relief sought (332 ICC 280, p. 286, Fr. 6, 1968). The shipping public is still awaiting such disclosure.

Less than 9 months following the *Ex parte 256* decision and these warnings (Nov. 26, 1968), the Interstate Commerce Commission approved the *Ex parte 259* rail rate increase, despite the fact that the railroads completely ignored all the admonitions of the *Ex parte 256* ruling.

In *Ex parte 259*, the railroads alleged that more revenues were urgently required in order to provide continued capital expenditures for the freight car fleet and roadway and structures. Yet, in 1969, the railroads installed only 49,255 as against 65,862 freight cars in 1968. In other words, they installed fewer freight cars in 1969 than they installed in 1968, despite the increase granted.

The chronology of the Commission's disposition of the railroads' petition in *Ex parte 259* is illustrative of the almost unreasoning dispatch accorded these cases. Following the effectiveness of the interim 3-percent increase and oral hearing, briefs were permitted by shippers on November 12, 1968. The Commission's report came out on November 25, less than 2 weeks later, permitting the rates to become effective the next day, November 26, 1968.

A number of interested shippers, the SPMTC included, sought a court stay, but were denied. The matter is pending, however, before the Supreme Court, upon review of a 2 to 1 3-judge decision denying jurisdiction to review general increase orders of the ICC. A summary from our jurisdictional statement in this case (*Alabama Power Co., et al. v. United States of America, et al.*) filed only a few weeks ago (Mar. 6, 1970) will suffice to summarize the basis for shippers' criticisms of the Commission's hasty and fragmentary report in *Ex parte 259*:

"Appellants challenged the lawfulness of the Commission's orders on the following grounds:

"(1) The Commission did not apply the statutory standards (49 U.S.C. 15a(2), App. D p.) and its ultimate findings are supported neither by the requisite basic evidentiary findings nor by substantial evidence.

"(2) Despite wide differences in financial needs of the railroads in the eastern, western, and southern districts, the Commission, without explaining or justifying such action, authorized the same measure of increase nationwide.

"(3) The Commission refused to consider the unit costs of performing the various railroad transportation services."

On October 10, 1969, in *Ex parte No. 262*, the railroads again petitioned the ICC for another increase, a straight across-the-board advance of 6 percent. The carriers based their plea upon increased wage and material costs, low operating and net incomes, low net railway operating income, and depletion of working capital. They claimed that funds were needed to complete projects and improve service and equipment. However, the carriers declined to furnish, or the Commission to require, any overall plan for improvements of equipment or service.

While the Interstate Commerce Commission declined to grant the rail plea that the 6-percent increase become effective on 1 day's notice, it authorized publication of the new rates to become effective on statutory notice, 30 days, November 18, 1969.

The *Ex parte 262* proceeding which followed was nothing short of a travesty. The Commission gave shippers no time to prepare an adequate defense against this raid upon their pocketbooks. The ICC ruled that shippers had to submit protests on or before November 6, and deliver oral arguments on November 12. The time for argument was drastically limited, however, in our case 10 minutes to discuss \$20 million of proposed increases for our industry. The Commission failed to give shippers the opportunity to develop meaningful evidence or cross-examine railroad witnesses. In this connection the SPMTC filed a petition for subpoena on October 23, 1969, seeking railroad cash flow data which would have shed some light upon their revenue need claims. The Commission utterly ignored this petition and has not to this date acted upon it.

Thus, on November 18, only 39 days following receipt of the rail petition, and in an unprecedented procedure which muffled the southern paper industry from presenting effective rebuttal, the railroads, put into effect rate advances which are exacting annually an added \$600 million from the shipping public. Although there is still pending Commission consideration of possible rate discrimination, this is the first increase proceeding in which the Commission failed, notwithstanding railroad willingness, to even institute an investigation into the reasonableness of the proposed increases. It might be noted that a number of shippers, ourselves included, are likewise seeking judicial review of this even more summary Commission action in *Ex parte No. 262*. Here, let me emphasize again, there was not even a Commission report, just an order permitting the increases.

On March 3, 1970, the Nation's eastern and western railroads filed a petition with the Commission, seeking approval of another 6 percent general increase in their freight rates and charges. The southern

railroads, who at first abstained, finally succumbed to pressure and became parties to the new proceeding, *Ex parte 265*, and on March 12 asked for a corresponding increase in rates within the South.

The 6-percent increase sought in *Ex parte 265* would exact about \$650 million annually from the shipping public, over \$20 million of which would be paid by SPMTC member companies.

On March 6, 1970, the Interstate Commerce Commission fixed June 2, 1970, as the earliest effective date for the increases and established an expedited procedure calling for railroad submissions March 23, shipper statements May 1, briefs May 15, and oral arguments May 20, again providing a grossly inadequate time for consideration of this critically important proceeding.

Although the order calls for a general investigation into the adequacy of railroad freight rates of broader scope than the railroad petitions, no provision has as yet been made for developing a record on this issue. Based upon past performance, we are no more confident of a full and fair appraisal of the evidence in *Ex parte 265* than in earlier cases.

SUMMARY OF COMMISSION HANDLING OF GENERAL INCREASE PROCEEDINGS

In my opinion most of the members of the Interstate Commerce Commission are blind to the fact that a nationwide rate increase penalizes shippers in the South for railroad inefficiency in other territories and encourages southern railroads needlessly to increase freight rates when the fact is the southern railroads could probably gain greater prosperity by decreasing those rates.

The ICC is permitting railroads to travel the same road to ruin that they traveled 20 years ago. Beginning with the general increases in *Ex parte 148* and extending through *Ex parte 223*, the railroads in about 18 separate increases raised their freight rates. As a result, the railroads' share of the Nation's freight for the first time in 75 years is well below 50 percent. It is significant that this share held steady between 1961-67, a period of no general rate increases.

The shipping public seeks and finds few friends among Government executive and independent agencies who favor a scientific approach to ratemaking. The least guidance is found in the ICC and the newly created Department of Transportation, the two agencies looked to for expertise in the field.

Department of Transportation actually supported the railroad petition for a 6-percent general increase in *Ex parte 262* with no facts available or without revealing the basis for its evaluation. This action was most alarming to shippers who supported creation of DOT to act as spokesman for the public before the ICC. Several other governmental agencies which actually move freight and pay transportation charges, and the U.S. Department of Agriculture, as both shipper and spokesman for the former, opposed the *Ex parte 262* increase.

Frequently the Interstate Commerce Commission requires from 1 to 2 years to rule upon many simple applications affecting small geographical areas. However, in general increase cases such as X-256, X-259, and X-262, involving \$400 to \$650 million annual costs to the shipping public, the ICC, under the guise of "emergency," often has required little more than a month to grant the railroads all they ask.

It should be emphasized that in none of the recent railroad increase cases has the Commission failed to grant the overwhelming preponderance of the railroad request.

THE ICC FAILURE TO SOLVE THE CAR SHORTAGE PROBLEM

There has long been a virulent and worsening shortage of freight- and cargo-carrying equipment in the United States. Simply stated, our Nation's capacity to produce material goods is outrunning our capacity to transport and distribute that production.

Plain boxcars are the prime conveyance, the absolute necessity, for transporting products of the paper industry. In 1954 the railroads owned 634,813 such cars. By 1969 this figure had fallen to 363,964. (ICC Annual Report, 1969, p. 133.) Combining general purpose and equipped boxcars, the supply declined in these 15 years from 682,474 to 510,274 cars. Even in 2 years, total boxcars dropped from 540,600 in 1967 to 510,274 in 1969, the period of the X-258, X-259, and X-262 general rate increases.

Moreover, apart from the decreasing supply, the railroads' utilization of this equipment is so deficient that the average rail boxcar moves under load only 23 days, or 6 percent of a calendar year. During the remaining 342 days, the car moves empty or not at all. The turn-around time for boxcars has increased from 15.40 days in 1953 to 18.95 in 1958 and to 21.60 in 1968, showing a steady deterioration in railroad transit time.

Acting ICC Chairman George M. Stafford recently stated that lack of service was the primary complaint of shippers to the Interstate Commerce Commission. Mr. Stafford was "somewhat troubled" about these shipper grievances. It might be observed that a leading target of shipper service complaints, Penn-Central, is perennially relied upon as establishing revenue needs for the entire industry. Penn-Central, it will be remembered, is the result of a recent Commission-authorized merger which was justified on grounds of increased efficiency and resultant economies in operation; obviously the reverse has in fact occurred. In other words, the Penn-Central service has worsened.

APPROVAL OF RAIL MERGERS WITHOUT FULL CONSIDERATION OF HARMFUL RESULTS

Apparently the Interstate Commerce Commission is completely blind to the great railway merger betrayal. The southern paper industry did not collectively oppose any of the recent railway mergers. The public had assurance from the railroads and the ICC that its service would be improved and the projected economies from those mergers would be passed along to shippers in the form of reduced freight rates.

In *Ex parte 259* the southern paper industry called attention to the distortion in the southern region results created by the then extraordinary postmerger expenses of Seaboard Coast Line. That is the Seaboard Airline Railway merged with the Atlantic Coastline Railroad. More recent results demonstrate the soundness of our request that the nonrecurring costs of merger were such as to make the 1967 SCL showing entirely unrepresentative as to the future. The Seaboard Coast Line, having now digested its merger, increased its rate of return

from 2.24 in fiscal year 1968 to 3.25 percent for the year 1969. Their net operating income increased 100 percent in the first 9 months of 1969. Thus, the same improvements which were urged in justification of the merger were later accepted by the Commission as justification for the increased rates.

The Chairman of the Illinois Central argues that the proposed merger of the IC and Gulf, Mobile, & Ohio Railroads, now pending before the Commission, holds out prospects for increased earnings through both savings and added traffic of approximately \$15.5 million annually before taxes. Similarly, consolidation of the Monon and the Louisville & Nashville is supposed to improve earnings of both railroads.

However, we southern paper shippers have gained no substantial benefits whatsoever from the numerous mergers of the past decade. Instead, we feel disappointed and betrayed by the fact that following consummation of a dozen mergers in the South alone, we have seen no improvement in service, no significant addition to available freight cars, and no new highly efficient innovations, but instead we have faced and continue to face a rash of general increases in rail rates.

CONGLOMERATES

Faced with the moribund character of their own industry, the Nation's railroads are striving to revive their ailing financial structures by branching into nontransportation businesses.

The typical railroad conglomerate originates as a parent holding company whose initial subsidiary is the railroad itself. The holding company is created by the railroad, acquiring majority stock control through a tender offer. It then moves into other nonrailroad businesses, through mergers and acquisitions.

The Commission's attention has previously been directed toward the serious problem arising within the framework of the rule of rate-making and respondents' claim of insufficient earnings to provide adequate service, posed by the increasing diversification of railroads through the formation of holding companies, or so-called conglomerates. The Commission has itself recently taken cognizance of this problem in its detailed policy report to this subcommittee, where it observed that it was convinced that the conglomerate restructuring of the railroad industry could pose a threat to achievement of an adequate rail transportation system and complicate the Commission's regulatory and enforcement problems. Yet, when urged in *Ex parte* 262 to investigate the extent to which railroad revenues were affected by corporate interrelationships, the Commission declined to do so.

OUTMODED RATEMAKING PRACTICES

Traffic and distribution officials of shipping organizations negotiate freight rates under almost impossible conditions. Armed with what pitifully few and usually out-of-date facts we can compile about the carrier revenues, costs and operations, we negotiate with individual rail, motor, barge, ocean, and airline companies to establish fair rates and charges. We look to the ICC to help develop the information and protect us from overreaching carriers, but thus far with little result.

These carriers belong to hundreds of so-called rate bureaus and conferences, which in turn are comprised of thousands of various committees, subcommittees, jurisdiction levels, and appeals boards. The rate we request may be remunerative to the carriers and in every respect economically sound, but the opposition of one conference committee, or even more ridiculous, of a single eccentric individual, can frequently nullify the charge we seek.

Further, the mill man must negotiate rates and charges for warehousing, drayage, stevedoring, other handling, insurance customs and tariff duties, and a myriad of other distribution costs under equally baffling circumstances.

We shippers must frequently challenge regulated rates before governmental bodies such as the Interstate Commerce Commission, which, unfortunately however, often lacks information or guiding standards to apply the law in accord with the mandate of Congress or other pertinent legislative bodies. Enactment of S. 2355 should assist immeasurably in developing an orderly approach to ratemaking, fair to shippers and carriers alike.

Senator HARTKE (presiding). We will recess for a few minutes.

(Recess.)

Senator HARTKE. I want to thank you for your statement. You have indicated in your statement that you think there is going to be, or that there is evidence of some major divergence of traffic from railroads to other modes as a result of these increases. How much, if any, traffic has your company diverted, or in other words, your conference?

Mr. JOUBERT. The conference has not prepared a study that I recall right now that indicates that. But could I cite some figures from my own company, Bowaters United States Corp.

Senator HARTKE. All right.

Mr. JOUBERT. I know that in about 1956 we shipped between 85 and 90 percent of our total outbound freight via rail. Now we are shipping less than 75 percent of our freight from our mill in Calhoun, Tenn., by rail. We have diverted that freight—we are served by Tennessee River barge transportation at Calhoun, Tenn. We are also served by truck. We have diverted thousands upon thousands of tons of freight from rail to those other means of transportation, largely because of these freight rate increases, Senator Hartke.

Senator HARTKE. What do you think—

Mr. JOUBERT. Mr. Deehan perhaps has some information about his company.

Mr. DEEHAN. Senator, we have a number of studies underway where we believe we will divert tonnage. We have not diverted any significant tonnage at this point, but we believe substantial tonnage will be diverted shortly. We have some operational problems that have to be worked out within the company, but we believe there will be substantial diversions.

Mr. JOUBERT. But we have actually diverted, Senator.

Senator HARTKE. I understand. Do you have any opinion as to why the Department of Transportation decided to support the 6 percent increase in ex parte 262?

Mr. JOUBERT. I have no idea whatsoever as to why they did that. I was utterly shocked, considering the reasons that DOT was created. I was shocked that they took that position. I am speaking personally now.

Senator HARTKE. Is this a correct summary of your statement to say that the Department of Transportation in the cases which we have been talking about has not generally represented the public generally or the consumer?

Mr. JOUBERT. To date I will say that is true. In the reports it has issued and in the studies it has made and in the positions it has taken. I would say that to date DOT has not represented the shipper interests or the public interests. Now, this is also my own personal opinion.

However, we must recognize that DOT is a young agency, just recently created. It is the latest of the cabinet departments created, I believe, and it may be that eventually DOT will develop the impartiality and the public spirit and expertise to serve the people generally instead of serving merely the carrier interests.

Mr. CLARK. Could I add something along those lines, Senator?

Senator HARTKE. Yes.

Mr. CLARK. As an active commerce practitioner, our disappointment with DOT, and I think perhaps this is a process of gearing up, has been a failure to present evidence in these proceedings where, as in *ex parte* 262, they have taken a position, we are unable to determine the basis for their position.

We had hoped that DOT would appear in these proceedings and put some evidence in pro or con, as the case may be, but in any event make known to the parties the basis for their determinations. That has been a disappointment up to now.

Senator HARTKE. On page 11, the last full paragraph there, you have some very interesting comments and give some statistics about the use of railroad boxcars. Could you provide for the committee the support for that statement?

Mr. JOUBERT. Yes, Senator. The figures in the paragraph beginning "Moreover," are in an annual report of the ICC, but I frankly say I do not have the backup for that particular statement. May I mail it to you?

Senator HARTKE. Yes, if you will submit that we will include that in the record at this place.

(The subsequent information was received for the record:)

[Telegram]

BOWATERS UNITED STATES CORP.,
Cathoun, Tenn., March 20, 1970.

Mr. A. DANIEL O'NEAL,
Staff Counsel, U.S. Senate, Committee on Commerce,
New Senate Office Building, Washington, D.C.

CC: The Honorable Vance Hartke—Washington.

Mr. Raymond Clark—Washington.

Mr. James P. Deehan—New Jersey.

Source of statistics in my statement, page 11, paragraph 3, on March 19 before your committee regarding S. 2355 are in eightieth annual report of the Interstate Commerce Commission, 1966, page 92. Quotation that page reads: "It has been estimated that in a calendar year the average boxcar moves loaded in trains a total of 23 days, and moves empty 14 days. The remainder of the year it stands idle in railroad yards and at customer locations."

Again sincere thanks for many courtesies which you extended me at hearings this week.

With kindest regards.

W. H. JOUBERT,
General Traffic and Distribution Manager.

Senator HARTKE. You comment on the difficulty of the shipper in obtaining enough information to negotiate freight rates, because the ICC refuses to help develop the information. How would S. 2355 provide a lasting solution to that problem? Are you not really saying that what you need is an independent counsel, somebody to represent the public constantly inside the ICC?

Mr. JOUBERT. In the first place, I believe you have two questions there. The ICC statistical data are completely out of date. Almost all of its statistics are 3 to 4 months behind. It abandoned the waybill studies which were very valuable for shippers. And it abandoned the burden studies showing the out-of-pocket and the fully distributed costs and the contribution which each commodity makes to the revenue of the railroads. It abandoned that study. The Commission seems to have abandoned all of the statistics that the shipper can use in his behalf.

Now, as for an independent counsel within the Commission to represent the consuming and shipping public, like say, a public defender in a city or county represents the public, that may be an extremely good idea. I believe personally—I cannot speak for the whole Conference—I would approve of it, Senator.

Mr. CLARK. Could I add something to that, Senator? It is very timely. We are at this moment filing a petition in ex parte 265 to bring about a representation on a consumer basis before the ICC. There is a procedure, Senator. The Commission has used it in the past to direct participation by its Bureau of Enforcement to assist in developing these facts.

They have a procedure for this ombudsman approach. It has been used in some of the railroad merger cases. I am filing a petition today to ask them to use it in ex parte 265. We will see what happens with that petition.

Senator HARTKE. The thing about S. 2355 is that it really provides for a study of all modes of transportation. Most of the testimony, for whatever reason it may be, has been devoted to railroads and to trucks. Do you think that the overall study is too broad? Do you feel that we could probably do a quicker and better job if we confined it to just those two modes or should it include all modes of transportation? Are they so interrelated that it ought to include all of them?

Mr. JOUBERT. We would not object. We know that intermodalism is on the way; it is coming. That is, intermodal arrangements, intermodal rates, intermodal transportation. That is, say, truck, plane, air, water. We see no reason why all of these agencies should not be included in any investigation similar to that contemplated in this bill. That is, the CAB, FMC, ICC. Perhaps they all should be included.

Senator HARTKE. On behalf of Senator Prouty, can you give me any reason why this study which has been proposed under the bill we are considering, S. 2355, should not be conducted by the Department of Transportation?

Let me read the other question too. Would you have any objection to the committee directing the Secretary of Transportation to undertake such a study as opposed to creating a new independent commission to do so?

Mr. JOUBERT. As I said a while ago, I have very serious reservations about the Department of Transportation and what it has done thus far on behalf of the public interest. I have serious reservations about

the expertise and the knowledge of the present personnel of the Department of Transportation. Based on their record up to date take a rather jaundiced attitude toward the whole organization.

Their last report—I read their last annual report—and I was just astounded at the poor organization and poor writing of that report. However, we must admit that DOT has the information on file over there. It has all of these agencies under its control. The chances are it can develop and grow into an organization which could perform this research function. And should that happen, should those improvements happen, I see no reason not to let DOT carry out this investigation.

Mr. CLARK. Could I supplement that briefly? We would like to see something cranked up by way of a study of freight rates. We think it is a recurrent problem; it is part of the inflationary problem. Of course, the increased freight rates that our industries bear, get passed on to the consumer.

If putting this into DOT is a way to get the studies underway, I would think the members of our conference would be in favor of getting it underway. We need some freight rate principle to be developed here along with the data. And we are all in favor of getting it started.

Mr. DEEHAN. I would concur in that, Senator.

Senator HARTKE. Thank you, gentlemen.

The next witness is Mr. Jacob P. Billig, attorney at law, Washington D.C.

STATEMENT OF JACOB P. BILLIG, ATTORNEY AT LAW, WASHINGTON, D.C.; ACCOMPANIED BY NORMAN BARNET AND WILLIAM GARDNER

Mr. BILLIG. Good morning, Senator. I have been in litigation for the last week and was unable to prepare in time sufficient copies of a statement. I have completed a draft of my testimony and copies are en route and should be here shortly.

I would like to introduce two of my associates. To my right Mr. Norman Barnet who has just left the Federal Maritime Commission where he had the post of Assistant Solicitor, and to my left Mr. William Gardner who is also an ICC practitioner and has been in practice in Washington for 2 years.

I appear here today as counsel on behalf of the Rath Packing Co., of Waterloo, Iowa; John Morrell & Co., of Chicago, Ill.; Oscar Mayer & Co., of Madison, Wis., and the Geo. A. Hormel & Co., of Austin, Minn.

These companies are nationwide producers and distributors of meats and packinghouse products. They are vitally concerned with the level of transportation rates applicable to the movements of their products which can and do significantly affect the success of their marketing programs.

For this reason each of these four companies has been participating in rate cases before the Interstate Commerce Commission for over 40 years. And I have represented them in this respect for over 4 years.

I understand that the bill at hand, S. 2355, which calls for the creation of an Advisory Commission on Freight Rates had its genesis

in certain dissatisfactions by midwestern interests in the rates assessed by the Nation's carriers from the Midwest to consuming points throughout the country. And also dissatisfaction with the regulation thereof by the Interstate Commerce Commission of such rates.

My clients are midwesterners as well. They, too, are not always pleased with the rate treatment accorded to them by the motor carriers and the railroads who carry their products. And they, too, are not always pleased with the decisions of the Interstate Commerce Commission which they receive when they challenge the reasonableness of the transportation rates assessed against them. But they nevertheless strongly oppose S. 2355.

My clients oppose S. 2355 because they believe that the interest of all carriers, receivers, consumers, shippers can only be served by preserving and promoting the integrity and the independence of the Interstate Commerce Commission as the sole surface transportation rate adjudicatory agency.

The proposed bill would in our judgment seriously threaten that independence and integrity; indeed, in our judgment it would turn the rate regulation forum into a political playground from which no fair, rational, or just result could be realized. In addition, it would utilize funds which are badly needed by the Commission to do its job.

And finally, since the mission of the proposed Advisory Commission is substantially duplicative of what is or could be the present mission of the Interstate Commerce Commission, the proposed bill would undercut the prestige and the status of the Interstate Commerce Commission which are both suffering badly enough at the present time.

We therefore urge you to turn your attention from the proposed Advisory Commission on Freight Rates to the present Interstate Commerce Commission and specifically to what can be done to improve the quality of the rate regulation at the ICC.

Now, in my 10 years of practice before the ICC I have come to believe that the quality of regulation at this agency suffers most because of the unequal representation in rate cases as between carriers on the one hand, and on the other, shippers and consumers.

The regulated carriers retain and regularly utilize a sophisticated, knowledgeable, and experienced retinue of attorneys, cost accountants, statisticians, and traffic experts to defend their proposals before the Commission. The shippers, receivers, and consumers are regularly and overwhelmingly outgunned by this impressive array of carrier talent and resources.

The continuous appearance of the meatpacker clients which I represent in rate cases before the Commission for over 40 years is the exception rather than the rule. In many other cases where serious and substantial increases are involved, major shipping and receiving interests frequently go unrepresented, except perhaps in the ex parte proceedings where a number of shippers do show up. But here, because of the operation of law thereto, no effective challenging can usually be mounted.

The National Industrial Traffic League, the only national shipper traffic group, has participated strenuously in motor carrier cases, in rail cases. However, it has remained largely a reluctant if not a silent dragon.

The Department of Transportation has appeared on only a handful of occasions and then almost exclusively in motor carrier cases. And the record of the Department of Agriculture, beset by a fear of preferring producers in one territory versus another, as well as the interests of the agricultural producers versus those of the agricultural consumers, which it represents in both respects, has not been much more impressive.

Consumers have appeared before the ICC to date in one rate case, the so-called *Vegetable and Melon* case. But even here their cause would have been effectively defeated had it not been for the willingness of my law firm to take their case to the courts on a pro bono publico no fee basis.

On top of all this, the Interstate Commerce Commission, of the three transportation regulatory agencies, has been the only one to refuse to institute an office of public counsel to participate in cases on behalf of the unrepresented public interests.

In your legislative oversight hearings last June, the Commission indicated that public counsel was not necessary because the Commission itself protects the consumer. This, however, has not been abundantly clear in the decisions which it has released since that time. Moreover, the public interest cannot be effectively or properly represented by Commissioners solely when they are deciding how to vote in particular cases or on particular issues therein.

Plainly what is required is that a record be developed at the trial level through the introduction of pertinent evidence and the conduct of appropriate cross-examination upon which a decision justified by the interests of shippers, receivers, and consumers could be secured from the Commission or if necessary from the courts.

Now, there have been a number of suggestions as to how this void in the representation of the public interest at the ICC can and should be filled. The suggestion which has been made of a separate agency whose sole function would be to appear before all of the regulating agencies has merit and should be explored. The issue of why the ICC alone of the three transportation regulatory agencies has not established an office of public counsel should be investigated and a determination made as to whether such an office would meet the need for equal representation in ICC rate cases.

However, I today would like to suggest a third alternative for your consideration and for consideration by the ICC and the other Federal administrative agencies. This alternative is the authorization of Government attorneys to appear and serve before the ICC and the other agencies as public interest defenders.

The public defender system, relying largely upon the volunteer services of private attorneys, has helped to meet the need for the legal representation of the poor in civil and criminal cases in many communities throughout our Nation. Why cannot the vast reservoir of legal talent employed by the U.S. Government here in Washington likewise be tapped on a part-time basis to meet the urgent need for the representation of the public interest at the ICC and the other agencies?

Such authorization of Government attorneys as public interest defenders could not only meet this urgent need, but would serve the following useful public purposes as well:

- (1) It could bring before the ICC in its formulation of regulatory

policies new ideas, including young ideas, which might well inspire more creative solutions to old nagging regulatory problems.

(2) It would create a corps of attorneys to represent the public interest who would be less vulnerable to pressures from the Commission before which they appear than if they were employed as hearing counsel by the same agency itself.

(3) Since the attorneys would be drawn from a number of agencies, they would also be less vulnerable to pressures to conform their positions to particular industry viewpoints.

(4) It would provide an opportunity for Government attorneys to work on cases from both sides of the table, thus increasing their skill and value to the agency by which they are employed; and

(5) It would add another attraction to Government service and permit the agencies to compete more effectively for young attorneys with the private law firms who in reacting to the current demand now specifically offer pro bono publico opportunities as part of a young associate's everyday work.

Now, while it could be argued that a Government attorney appearing as a public interest defender in a court seeking review of an agency decision technically would have a conflict of interest because of his Government employment, actually as a representative solely of the public interest, this in our judgment would not be the case. It is not unusual, for example, for the Justice Department to confess error against the Commission in court cases if it feels that the agency has erred contrary to the public interest. If necessary, appropriate legislation could be enacted to overcome any technical conflict of interest problems in this respect.

In short, Gideon's trumpet must be sounded in the halls of the Interstate Commerce Commission as well as in the civil and criminal courts throughout the land. And it would manifestly be in the public interest to permit the largest single concentration of legal talent in the world to respond to that call.

These public interest defenders should be authorized as part of their regular Government duties to appear and participate in ICC cases and those before the other regulatory agencies, and as Justice Leventhal said in the Marine Enclosures Case in the Court of Appeals, "and run their pennant of 'private attorney general' to the very pinnacle of the mast" in the defense of the public interest.

Senator HARTKE. In your opinion the ICC should do this study; is that right?

Mr. BILLIG. If any study is warranted—I am not sure it is—the ICC should do it. However, I feel the best results in matters such as this are derived on an ad hoc case-by-case basis, and I question the validity of the approach as well as the result to take a shotgun approach without referring to a specifically defined set of facts and I question whether there would be any value for anyone to do the study, whether the ICC, DOT, or an independent agency did it.

Senator HARTKE. Basically you are opposed to the study?

Mr. BILLIG. Yes, sir.

Senator HARTKE. Thank you. I want to thank you for your third alternative to these problems, too.

The next witness is Mr. James Souby, President, Association of Western Railroads on behalf of the Association of American Railroads.

STATEMENT OF JAMES M. SOUBY, JR., PRESIDENT, WESTERN
RAILROAD ASSOCIATION

Mr. SOUBY. Mr. Chairman, my name is James M. Souby, Jr. I am president and chief executive officer of the Western Railroad Association, 514 Union Station, Chicago, Illinois, and also serve as chairman of the executive committee—Western Traffic Association.

I am appearing today on behalf of the member roads of the Association of American Railroads in opposition to S. 2355.

It is not that we object to a study of our freight rates or those of other carriers. It is, rather, that the duties of the proposed advisory commission would unnecessarily duplicate functions already the responsibility of the Interstate Commerce Commission. The ICC has a continuing obligation to address itself to most of the matters contemplated by this bill.

If additional study of these and other ratemaking matters is thought to be needed, it seems to us that the study ought to be made by the ICC and the CAB and the other involved regulatory agencies, instead of by an ad hoc group lacking the Commission's experience, qualifications, and expertise.

It was suggested yesterday that perhaps the Department of Transportation should be directed to make the study. This suggestion has more to commend it than the proposal contained in S. 2355 but, even so, it would seem more appropriate to me that the resources of the ICC be used.

The argument has been made during this hearing that the ICC has insufficient concern for the interest of the consumer. It is not my place to defend the Commission or take its side, but I question whether it is fair to say that the consumers' interest has been overlooked in the case of ICC-regulated rates—rail rates, anyway. The statistics show that the level of rail rates has lagged far behind the rising consumer price index.

In fact, the price of railroad services in 1969 remained below the level of 10 years earlier. From a base of 100 in 1957-59, the consumer price index rose from 101.5 in 1959 to 127.7 in the year 1969. During this period the freight rate index measured against a 1950 base of 100 dropped from 118 in the year 1959 to 112 in the year 1969 and revenue per ton mile dropped from 1.445 cents in 1959 to 1.350 cents in 1969.

Stated another way, railroad freight rates in 1969 were 92 percent of what they were in 1950 and at present are estimated still to be 97 percent of what they were 10 years ago.

Investigation of the type contemplated by S. 2355 during its progress might well inhibit innovation by carriers, particularly railroads, in the area of pricing. Up to now, rate innovation, which is the basic reason for the complexity of rate structures, has been calculated to encourage competition by encouraging to the maximum extent possible the free flow of commerce with the minimum adverse effect upon carrier financial integrity.

We urge that innovation clearly redounds to the benefit of the consumers, who are the ultimate beneficiaries of competition among producers and users of the commodities moving in transportation.

Rate regulation has recognized the validity of carrier objectives in the matter of competitive rates because it has not imposed upon the regulated transportation agencies rigid scales which would deny them the flexibility to adjust their rates to the wide variety of conditions which they encounter in building up their volumes of business.

The tendency of any investigative group, particularly one such as contemplated here, would naturally be in the direction of some sort of uniformity which breeds rigidity. This has been the case in virtually every prior investigation the carriers have been subjected to, even those which have been conducted by men with a certain amount of rate experience.

The railroads are much concerned that as a result of a general investigation of the type contemplated in this bill they would either find their lowest rates used as the criterion of a general basis under which they could all go bankrupt or they would have a rate structure so high for important traffic and so inflexible that it would dry up much of their tonnage.

I was not here Tuesday but I understand there were complaints against grain rates to the west coast. I do not intend to go into any detail on individual freight rate adjustments here, but I want to say that in the situation complained about, we are dealing with reduced rates, not increases.

We have a typical case in which the man less distant from a market is complaining because his more distant neighbor and competitor is getting a reduced rate. This constitutes the bulk of the complaints which the railroads receive from day to day and which the Interstate Commerce Commission is obliged to arbitrate.

The rate in question, incidentally, opened up a vast new market for North Dakota spring wheat in the Orient. It takes a great deal of sophistication to evaluate railroad rate structures under such circumstances and quite naturally the railroad industry is opposed to Government sponsored studies as to which there is no guarantee that the necessary expertise and experience will be employed in coming to the final conclusion.

Incidentally, in speaking of the grain rate structures, I would like to point out that the basic system of grain rates was painstakingly investigated by the Interstate Commerce Commission over a period of years—still under investigation as a matter of fact—and was prescribed on the lower reasonable lawful level.

It has been maintained on a relatively low basis partly as a result of the activities of the Department of Agriculture in freight rate cases and partly as a result of very severe competition from unregulated transportation, both by motor carriers and by barge lines.

As Mr. Blum indicated, the Department of Agriculture has opposed the railroads in virtually every railroad rate increase case since World War II. I disagree that they have been unsuccessful. Major agricultural commodities such as grain and grain products have received more favorable treatment than any other body of traffic except perhaps coal.

Such treatment was given in *Ex parte 259* in the Western States, as a result of the Commission's order, and I think in part as a result of activities of the Department of Agriculture in opposing the increase. In *Ex parte 256* grain traffic was given favorable treatment in the West as a result of action by some of the carriers.

I agree with the Department of Agriculture in its principal reason for opposition to this bill, namely that freight rate structures are too complex for investigation by an advisory commission of this particular type.

Senator Pearson yesterday indicated a problem which has been recently a matter of concern to the milling industry in the Middle West. Here again we are dealing with a concern generated not by a freight rate increase but by a severe reduction in the rates on wheat and other whole grains, made possible by a technological breakthrough, namely the jumbo covered hopper car.

This equipment made possible movement at low cost from the grain elevators in the Midwest direct to large centers of population in the East, and in turn has encouraged milling in those eastern areas, and, thus creating severe competition for the mills located in the wheat States.

This particular matter was reviewed in an extensive investigation and was finally considered by the U.S. Supreme Court which concluded that progress had to be served by allowing the consumers to have the benefit of the technological progress.

In that case I might mention that the western railroads were not 100 percent in agreement with the reduction, because many of them felt that they wanted to protect the milling industry in the Middle West. But the final result was that technology prevailed.

As for the three recent general increases in rates and the fourth, which the carriers have just presented to the Interstate Commerce Commission, it is the position of the railroads that they were occasioned by inflationary pressures which have been felt through every segment of the American economy.

The spokesman for the American Farm Bureau Federation yesterday acknowledged that one of the basic causes of the upward pressure on railroad freight rates lies in the manpower problems of the railroad.

No investigation of the type here proposed is going to solve that problem, nor is it going to prevent the railroads from being obliged to follow the pattern of all industry throughout the United States in granting to its employees inflationary increases in wages.

I might inject also that an investigation would not solve the freight car shortage which is one of the principal problems faced today and one of the principal complaints of the paper industry which was represented here today.

As I have indicated previously, the railroads have done a far better job of holding down their prices during this spiraling inflation than industry generally, as measured by the indices which I have cited, and these indices can be verified through responsible sources.

Senator HARTKE. Thank you for your statement.

Wasn't part of the reason that the railroad rates did not increase at the same rate as the consumer price index due to the type of commodity which is being carried by the railroads, the different types of commodities being carried? That is, lower valued commodities in larger units?

Mr. SOUBY. There was a lot of that going on through these innovative rates such as the incentive loading rates, rates of that type,

that built up that type of volume. But I venture to say that it was through reductions in rates which brought the index down and not through the loss of tonnage.

Senator HARTKE. Could you provide for the committee a breakdown of these commodities for that period of time to which you refer?

Mr. SOUBY. I can make an effort to do it. I receive these figures on an average basis, and how they are compiled I am not certain. I would be glad to look into it and do it if it is available.¹

Senator HARTKE. Do you believe there has been any diversion of traffic from the railroads to other modes as a result of rate increases?

Mr. SOUBY. We have estimated that there is a diversion factor that takes place. It increases as your rate level gets higher. There is no question about that. Around 1960 we reached the end of the rope, as far as the inflationary period following World War II.

However, we are encountering another one and our best estimates indicate it is around a 10-percent loss of increased revenue as a result of the rate increases.

Senator HARTKE. Does this concern your people?

Mr. SOUBY. It does very much. But as I say, 10 percent of the revenue of the increase is lost. In other words, if we make a 10-percent increase, we can expect to keep only around 8½ or 9 percent, perhaps 9½ in the case of the first one we made in Ex parte 256.

Yes; it is of great concern, because it tends to build up as the rate level increases, there is no question about it.

Senator HARTKE. Do you feel this ought to require study from the railroads' point of view?

Mr. SOUBY. The railroads are studying it. They have it under constant study. They submit observation to our rate people, and one of the principal functions of our association is to follow the pattern of the traffic, to see if these rate increases are producing diversions and, if they are, to make such rollbacks as we deem necessary.

We admonished the Commission that when we come in for a 6-percent increase, we know we are going to have to make some adjustments after the increase is granted. But that is the only way of dealing with a financial crisis such as a general wage increase.

Senator HARTKE. Senator Prouty has these questions: Can you give any reason why the study which has been proposed under the bill we are considering should not be conducted by the Department of Transportation, and would you have any objection to our directing the Secretary of Transportation to undertake such a study as opposed to creating a new independent commission?

Mr. SOUBY. The first part of the question, the reason we feel it could not be done by the Department of Transportation is it does not have the expertise the Interstate Commerce Commission has and is not likely to have it in the foreseeable future.

As for the second part of the question, whether we would object to the study, I cannot say we would object. We think it would be a waste of money and time, but we could not object.

Senator HARTKE. Thank you, sir.

I want to thank all of the witnesses we have had so far. If there are any other people or groups who feel they want to be heard, we

¹ See p. 139.

certainly will be willing to keep the record open for a reasonable period of time, for 2 weeks from today at 5 p.m. for additional testimony.

This hearing has demonstrated conclusively that this is a very serious problem, affecting not alone the interests of the people directly involved but the entire Nation.

I hope we do not permit the whole question of transportation in this field to follow the pattern of what has happened in railroad passenger service throughout the Nation, where we are faced with ultimates before we act. It is of crisis proportion. We have attempted to give this matter the attention we feel it deserves and we are hopeful we can come up with something conclusive.

Thank you.

(The subsequent letter was received for the record:)

WESTERN RAILROAD ASSOCIATION,
Chicago, Ill., April 15, 1970.

HON. VANCE HARTKE,
U.S. Senate, Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR SIR: This refers to my testimony on March 19, 1970 before the Surface Transportation Subcommittee of the Senate Commerce Committee on S. 2355 at which time I was requested to furnish information relating to a comparison I gave of freight rate indexes for 1959 and 1969, respectively.

I have just received a copy of the reporter's transcript. A review of the transcript reflects your suggestion that the railroad rates may not have increased at the same rate as the consumer price index due to the type of commodity which is being carried by the railroads. In other words, you suggested the possibility that lower valued commodities in larger units were being carried in the latter period. My answer was that there was a considerable amount of traffic being handled recently under innovative rates such as the incentive rates which would build up volume and might reduce overall average revenues. However, I stated my view that it was through reductions in rates that the index was brought down and not through losses of tonnage. You then requested that I provide for the Committee a breakdown of these commodities for the period of time to which I referred. I believe my testimony was that I indicated that I was not certain as to how the figures were compiled.

I have now ascertained that the figures which I gave for 1959 were computed by the Interstate Commerce Commission following a method which would eliminate distortions in comparisons between the years as a result of changes in consist. However, this method depended upon the Commission's One Percent Sample of railroad billing which sampling was discontinued following comparison based upon the 1963 analysis. In that year the decline from 1959 was from an index of 118 to an index of 109 and in this comparison there could be no distortion of the type that you suggested might exist. I attach a breakdown (Exhibit 1) which was developed by the Interstate Commerce Commission which would indicate the indexes by commodity groups for the period 1955 through 1963.

By 1967 the Interstate Commerce Commission estimated that the index had dropped further to 105, as indicated by the table which is also attached (Exhibit 2) showing miscellaneous indexes for the years 1939 through 1968. Unfortunately the index for the period 1964 through 1968 cannot be broken down but the economists of the AAR have indicated that the manner in which these indexes were compiled indicated that they would be accurate within reasonable limits and would not be materially affected by the changes in consist of traffic. The index of 109 figure for 1969, which I gave in my testimony, likewise was estimated, utilizing the same method employed by the Interstate Commerce Commission for the period following the year 1963 indicated on the attached. Here again AAR economists have assured me that the possibilities of distortion as the result

of consist change is not serious. I am sorry that I was not able to furnish a breakdown throughout the entire period. Hopefully activities of the Department of Transportation in the area of traffic sampling will again provide people interested in transportation matters with statistics from which they can evaluate matters of this type.

In going over other parts of my testimony I find that I misspoke myself on the matter of possible diversions which take place as a result of rate increases. I indicated in my testimony that our best estimates indicate that a diversion factor is "around a 10 per cent loss of business as a result of the rate increases". I did not mean to say this at all but as I indicated somewhat later I intended to say that there is a 10 per cent loss of *increased revenue* as a result of the rate increases. I have made this correction in the transcript and I respectfully request that it be authorized. Our experience in the past has indicated that at no time has a freight rate increase produced anything like a 10 per cent loss of business and we certainly do not expect anything of this type during the current inflationary period.

Needless to say, I appreciate the courtesies extended me by the Subcommittee in connection with my testimony.

Very truly yours,

J. M. SOULEY, JR.

TABLE 1.—INDEXES OF AVERAGE FREIGHT RATES FOR COMMODITY GROUPS AND SELECTED COMMODITY CLASSES, 1955-63

Commodity group and class	Index (1950=100)								
	1955	1956	1957	1958	1959	1960	1961	1962	1963
All commodities.....	108	112	118	121	118	116	114	112	109
Group I—Products of agriculture.....	109	112	117	119	114	112	111	110	107
Class 001 Wheat.....	112	115	121	126	127	124	123	121	117
003 Corn.....	111	116	124	124	110	105	108	104	100
033 Cotton in bales.....	115	108	105	109	108	106	105	106	103
085 Potatoes, other than sweet.....	110	112	120	118	110	109	109	108	105
101 Sugar beets.....	125	126	137	145	145	142	154	165	158
199 Products of agriculture, NOS.....	109	117	120	124	120	112	112	117	112
Group II—Animals and products.....	112	116	123	122	118	116	113	110	106
Class 203 Cattle and calves, S.D.....	114	118	127	133	131	128	127	127	127
215 Meats, fresh, NOS.....	113	118	125	119	118	117	112	107	101
Group III—Products of mines.....	107	110	115	118	117	115	116	114	112
Class 301 Anthracite coal, NOS.....	108	109	113	115	112	111	111	103	102
305 Bituminous coal.....	105	109	111	113	111	110	111	109	105
307 Coke.....	107	110	113	118	118	117	120	119	118
309 Iron ore.....	110	115	125	138	138	138	141	137	138
323 Clay and bentonite.....	114	119	129	136	136	133	132	132	131
325 Sand, industrial.....	108	113	121	128	128	127	127	126	125
327 Gravel and sand, NOS.....	109	110	116	118	116	114	113	114	114
329 Stone and rock: broken, ground and crushed.....	108	111	117	118	116	115	116	114	114
331 Fluxing stone and raw dolomite.....	113	117	129	136	139	140	142	141	142
339 Asphalt.....	109	112	117	122	122	116	112	108	105
341 Salt.....	108	109	112	118	115	114	113	108	102
343 Phosphate rock.....	105	108	111	106	100	95	95	95	96
339 Products of mines, NOS.....	110	114	124	129	129	127	128	130	128
Group IV—Products of forests.....	113	117	124	127	125	124	124	121	119
Class 401 Logs, butts, and bolts.....	110	116	125	138	144	144	147	145	145
403 Posts, poles, and piling, wdn.....	114	118	126	127	117	114	114	110	111
409 Pulpwood.....	109	112	118	119	120	122	125	123	121
411 Lumber, shingles, and lath.....	113	117	124	127	124	123	123	119	118
499 Products of forests, NOS.....	117	121	133	141	138	135	131	131	130

EXHIBIT 2—COMPARISON OF BLS CONSUMER PRICE AND WHOLESALE PRICE INDEXES WITH ICC INDEX OF RAILROAD CONSTRUCTION COSTS AND FREIGHT RATE INDEXES 1950=100

Year	Consumer price	Wholesale price	Annual railroad construction costs index	Railroad carload freight rates
1939	57.8	48.6	52.1	(1)
1940	58.2	49.5	53.5	(1)
1941	61.2	55.1	57.3	(1)
1942	67.8	62.2	65.6	(1)
1943	72.0	65.1	69.4	(1)
1944	73.2	65.6	69.8	(1)
1945	74.8	66.7	72.6	(1)
1946	81.1	76.2	80.6	(1)
1947	92.8	93.5	89.6	80
1948	100.0	101.3	98.3	93
1949	99.0	96.2	98.6	99
1950	100.0	100.0	100.0	100
1951	108.0	111.4	106.2	102
1952	110.4	108.3	109.4	109
1953	111.2	106.8	113.2	111
1954	111.7	107.0	113.9	109
1955	111.3	107.4	116.7	108
1956	113.0	110.8	125.7	112
1957	116.9	114.1	132.3	118
1958	120.2	115.7	135.4	121
1959	121.1	115.9	138.2	118
1960	123.0	116.0	138.5	116
1961	124.3	115.6	137.8	114
1962	125.8	115.9	137.5	112
1963	127.3	115.6	137.2	109
1964	129.0	115.8	137.2	107
1965	131.1	118.1	137.8	105
1966	134.9	122.0	140.3	104
1967	138.7	122.2	142.7	105
1968	144.5	125.2	(1)	² 109

¹ Not available.

² Preliminary.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index—United States: All items, 1913 forward—series A and all commodities wholesale price index; Interstate Commerce Commission, Bureau of Accounts, schedule of annual indices for carriers by railroad, 1914 through 1967; Bureau of Economics, Statement RI-1, indexes of average freight rates on railroad carload traffic and staff estimates; U.S. Department of Commerce, Office of Business Economics, survey of current business.

Senator HARTKE. The hearings are adjourned.
(Whereupon, at 11:45 a.m., the hearing was adjourned.)

ADDITIONAL STATEMENTS, LETTERS, AND ARTICLES

STATEMENT OF HON. MILTON R. YOUNG, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, I would like to express my deep appreciation to you and other members of the subcommittee for scheduling hearings on this important legislation.

The transportation industry is the nation's second largest. It touches the life of every American and changes within the industry can add or detract from the opportunities available to individuals or areas greatly.

The cost of transporting commodities to terminal markets has been a critical factor in the scheme of farm operations for years. The creation of the Interstate Commerce Commission came about largely because of the inequitable treatment accorded farmers by the railroads. Throughout the history of the Commission, among the toughest problems they have been called on to deal with have been those dealing with rates and service in our agricultural areas.

In recent years, technology has brought about vast changes in the transportation patterns and systems throughout the country. These changes have been just as great in agriculture as in other industries.

Unfortunately, the rate structure for freight shipments have not kept pace with these developments. Many rate adjustments—upward and downward—have been made with little or no regard for the equity afforded shippers. Other rate changes have created artificial barriers which have locked agricultural producers out of natural markets.

In many cases, adjustments in rail freight rates have been made to meet the competition of other modes of shipping—particularly water transport. In an effort to offset these reductions, freight rates in other areas where water compelled rates are not available have been left at high levels, and, at times, even increased.

The combination of shifting patterns of transportation, uncoordinated rate adjustment and rapidly advancing technology have brought us to a point of unbelievable confusion in the shipment of agricultural commodities.

As I have indicated, shipping costs are a critical item in the farmer's cost of operation. American agriculture is caught in the toughest cost-price squeeze in history at the present time. A major contributing factor to this is the fact that the nation's railroads have, in the last six months, been granted one general rate increase of 6% and have recently requested another similar increase.

We are overdue, Mr. Chairman, for a far reaching look at the nation's transportation industry and the rate structures under which it operates. The maintenance of existing markets for the nation's farm products and the development of new ones depends on fair and equitable shipping rates. The very existence of many of our farms and rural communities is tied to this matter.

The Commission on Freight Rates for Farm Commodities proposed by S. 2355 would provide the basis for decision making on rate structures and system realignments of the future. Such comprehensive information is unavailable today and, in its absence, there is not objective basis for planning by government agencies, shippers, or the transportation industry.

This matter is of vital importance, not only to rural America, but to the entire nation. I know that the information developed through these hearings will clearly show the great need and justification for the creation of this Commission, and I urge the prompt and favorable consideration of S. 2355.

STATEMENT OF HON. LEN B. JORDAN, U.S. SENATOR FROM IDAHO

Mr. Chairman and members of the Subcommittee on Surface Transportation.

I am grateful for the opportunity to present my views of S. 2355 which would establish an Advisory Commission on Freight Rates.

Among other things this bill would require such Commission to make a full and complete study of charges for the transportation of freight for the pur-

pose of determining whether all departments, agencies and instrumentalities of the Government are properly carrying out the national transportation policy, as stated in the Interstate Commerce Act and the Federal Aviation Act, and whether the national transportation policy, as so stated, is adequate in view of modern conditions. I have tried to determine what the national transportation policy is as stated in these two Acts. As with so much of our statutory law now accumulated on our Federal law books, it is difficult to ascertain a clear-cut national transportation policy. This is particularly so when one also takes into account the Congressional declaration of purpose contained in the Public Law passed in 1966, establishing the Department of Transportation.

Therefore, if the enactment of this bill into law resulted in nothing more than the formulation of an articulate national transportation policy, it would be well worth the legislative effort. It seems to me important that the jurisdiction and responsibilities of the Department of Transportation, the Interstate Commerce Commission, the Federal Aviation Administration and other instrumentalities of the federal government involved in transportation problems be clearly established and defined.

The economy of the Inland West, in which my State is located, is heavily dependent upon surface transportation and particularly the railroads. Many of my shipper constituents regularly complain of the frequency of railroad freight rate increases without concomitant improvements in service, and oftentimes that such rate increases are established without adequate hearings or notice. In fact they uniformly allege that, in general, the service of freight hauls by the railroads is rapidly deteriorating, especially from the West to Eastern destinations.

To point up some of these specific complaints for consideration by the Subcommittee, I would like to include with your permission, the attached copies of typical communications from my State as a part of my statement for insertion into the record.

In conclusion, I wish to state that I wholeheartedly agree with the following words of Senator Burdick of North Dakota, expressed by him at the time of the introduction of S. 2355:

"Rate structures must be structured to respond to changes in cost as well as changes in the value of service or the value of the commodity. * * *

* * * It is fast becoming obvious that fragmented government administration of the transportation industry is no longer constructive. An industry which so clearly needs to begin the journey toward functional coordination and cooperation must first be confident in a national transportation policy which facilitates efficient service. The role of government in this partnership must be thoroughly reviewed before embarking down more untried highways."

BASS AND HURLEY, INC.,
Idaho Falls, Idaho, November 14, 1969.

DEAR FRIENDS: The November 1st potato production report issued by the U.S. Department of Agriculture on November 12th showed no change in Idaho production and only minor changes elsewhere, resulting in a slight reduction for the 26 fall states.

As we go further into the handling of potatoes from storage it now appears that some lots are showing more field frost damage than was earlier expected. Such lots are generally being consigned to processing plants and the handling for fresh packing is restricted to lots showing much less to practically no damage. All of this will add to total shrinkage, however, and is causing producers to feel quite bullish about their stocks of pre-frost potatoes. At the present rate of removal of potatoes from storage that have varying amounts of frost damage it will take the balance of November and probably all of December to clean them up. Last week the Potato Growers of Idaho requested the U.S.D.A. to inaugurate a diversion program for a period of sixty days to clean up all of the frost damaged potatoes. While it is anticipated that such a program will be authorized, nothing has been announced as yet. If the program does become effective within a few days it will probably help somewhat to clean up all of the frost damaged potatoes prior to January 1, 1970.

Next Tuesday rail freight rates will be increased 6% across the board. The Idaho potato industry was represented in Washington, D.C., at the hearing on this matter last Wednesday. The basis of our protest was that these percentage increases work a particular hardship on our industry because we are located far from the principal areas of consumption while most of our competition is com-

paratively nearby and moves little by rail. If some hold down is applied to perishable products it will no doubt be months before any announcement is made. Meanwhile, the rail carriers have already announced their intention to seek further increases next year after they know what settlements are made with organized labor, and the outlook for material and supplies costs, taxes, etc.

With three rate increases in a relatively short time, nevertheless rail service continues to deteriorate. We are receiving more and more reports of delayed shipments and a lack of interest on the part of railroad personnel in satisfying their patrons. Many railroads are using their capital funds for diversification, rather than to maintain their physical plant. The Union Pacific is providing good service in Idaho, but many things seem to happen when cars leave Union Pacific rails.

One problem we do have locally is in securing an adequate supply of cars suitable for potato loading, and this is a situation that will obviously worsen quite rapidly. Despite our appeals over the past four years, the P. F. E. Company and its owners, the Southern Pacific and Union Pacific Railroads, have done nothing to provide new, suitable equipment for Idaho potato loading. Both lines are diversifying into other business, however. There are incentive rates on mechanicals to induce shippers and receivers to use these cars which should be loaded to 80,000 lbs. to efficiently use their large cubical capacity, and apparently they are in short supply. No replacement of R. S. cars has been made with similar sized cars, and R. S. cars are phasing out rapidly. We have made what we considered to be many worthwhile suggestions over the years, none of which has as yet been accepted. The future of rail transportation of Idaho potatoes, still 88% of the total movement, is dark.

We appreciate hearing from all of you buyers and prospective buyers of our products. Call us station to station at Idaho Falls, Code 208, 522-5297.

Yours sincerely,

DON BASS.

IDAHO GROWER SHIPPERS ASSOCIATION, INC.,
Idaho Falls, Idaho, November 20, 1969.

Senator LEN JORDAN,
New Senate Office Building,
Washington, D.C.

DEAR LEN: I would like to express our appreciation for your action in requesting a congressional investigation for the need of the last three increases in freight rates granted by ICC. We are enclosing some material which we think will be of interest.

Our Association was formed forty-one years ago, primarily, for the purpose of protecting Idaho potato interests in transportation matters. Traffic and physical distribution is still the major interest of the Association at the present time. Our membership represents in excess of 85% of all potatoes moved in interstate commerce, whether fresh or processed.

Our principal objection to the rate increases is the formula for their application—percentage increases with specific hold-downs for agricultural commodities.

With the exception of the last two rate increases (X-259-B and X-262), the Commission has long recognized the depressed nature of an industry, particularly agriculture, as an important factor to be considered in general rate increases. In Ex Parte rate increase proceedings, the economic condition of agricultural endeavors has been a ground for relatively lower increases and appropriate hold-downs on farm and food products. Consideration has consistently been given to the need for promoting, in the national interest, freedom of movement of the products of agriculture at the lowest possible level of rates.

The late potato crop in Idaho is now being marketed over a period of eleven months. Using February as the midway point in marketing, the following is a comparison of average price received by farmers for potatoes in Late States, for the years of 1965-68, competitive to Idaho:

States	1968	1967	1966	1965
Maine.....	\$1.20	\$2.55	\$2.10	\$3.85
New York.....	1.63	2.59	2.60	4.32
Ohio.....	2.10	2.85	3.00	4.50
Wisconsin.....	2.10	2.80	2.55	4.75
Colorado.....	1.90	2.20	1.60	4.80
Idaho.....	1.40	1.74	1.65	3.15
Average, United States.....	1.59	2.37	2.07	4.11

From the above you will note that Idaho is consistently below the national average: 9%—1968; 7%—1967; 8%—1966; 8%—1965. This is considerably below our competition which has heavy truck movement—not affected by percentage rail increases.

Further evidence from the application of percentage increases can be observed for RAIL unloads of IDAHO potatoes in representative Eastern and Southern markets for the crop years of 1967—1966 and 1965:

Cities	1967	1966	1965	Percentage decrease 1967/1965
Boston, Mass.....	453	360	486	9
Chicago, Ill.....	1,987	2,035	2,134	9
Cincinnati, Ohio.....	426	452	534	20
Dallas, Tex.....	391	379	636	40
Kansas City, Mo.....	217	211	324	33
Memphis, Tenn.....	149	107	263	45
Milwaukee, Wis.....	274	265	365	25
Pittsburgh, Pa.....	310	302	383	20
St. Louis, Mo.....	762	689	829	9
San Antonio, Tex.....	354	385	473	25

Potato rail unloads in 41 U.S. cities—July through June—for 1965 was 67,898—1967 was 62,984 or DOWN nine percent.

The above clearly indicates the loss movement of IDAHO potatoes, as a result of the application of percentage increases. Further, the increased loss of markets for IDAHO potatoes being supplied from the competitive areas of Wisconsin and Colorado, which move mostly via truck.

Percentage application for increased rail rates is inconsistent with the Commission's position of hold-downs on agricultural products to maintain rate relationship between producing areas, and, the free movement of those products.

Comparing Idaho shipments, for example, with Wisconsin for 1967—68 potato crop, Idaho shipped 28,217 rail cars and 3,001 trucks. Wisconsin shipped 1,783 rail cars and 11,933 trucks. It is to be particularly noted that nearly 90% of the shipments of potatoes from Idaho are subject to rail increases, while only about 15% of shipments from Wisconsin are so affected.

Continued rail increases on a percentage basis—without hold-downs—will definitely demoralize rate relationships between producing areas. In reality, this places the Commission, as well as the rail carriers, in the position of dictating area potato production through preference and prejudice by distortion of rate relationships. These inherent advantages to other competitive areas will further curtail rail shipments of potatoes from Idaho!

Further, during the above comparative period, we have increased per car loadings from 40,000 pounds to 50,000 pounds in order to obtain more favorable rail rates. The percentage application of X-259-B of 5%, plus X-262 of 6% will more than eliminate any rate advantages for heavier loading from Idaho.

According to USDA, the average yield per acre for potatoes in Idaho Late production crop is 200 hundredweight sacks per acre. Approximately 100 hundred-weight sacks per acre are of U.S. #1 grade available for the fresh market. From the aforementioned, comparison of prices received by growers in Idaho average about \$2.00 per cwt., or approximately \$200.00 per acre for sales into the fresh market.

When Ex Parte 262 became effective on November 18, 1969, it resulted in an average increase of 14 cents per cwt. within a period of about a year. This means an increase of \$70.00 per carload a producer must absorb as additional cost of production from Idaho Falls to Chicago, Illinois. It further means that for every 10 acres produced and marketed from Idaho Falls, to Chicago would require in excess of three acres of production to pay the rail rate charges alone.

In view of the Commission's previous position of hold-downs for agricultural products, approval of the percentage increases has only aggravated the devastating cost-price squeeze which is demoralizing the financial stability of the farm economy.

Other areas mentioned for comparative purposes are not generally confronted with these discriminatory increases due to predominately non-regulated truck transportation.

Rate relationships between producing areas may not be in keeping with rate making under present sophisticated conditions, but from a fresh marketing point-of-view, it is absolutely imperative that it be re-established to maintain competitive conditions. Otherwise, it is only a matter of time until we will be priced out of the fresh markets.

The maximum hold-down cent rate should not exceed 50 percent of the percentage increase. In other words, X-262 recently approved, provides for a 6% increase, or 6¢ on the dollar. The hold-down increase for potatoes on a \$1.00 rate should not exceed 3¢—a \$1.50 rate should not exceed 4½¢, etc.

Farmers are trapped in a vicious price-cost squeeze. Farmers are unable to pass on their cost increases as can other industries. For this reason, other segments of the economy provided increased costs are also placed upon their competitors, are not as concerned and directly affected as are farmers. Potato sales account for about one-fourth of the produce tonnage sold at retail.

The railroads claim that there is an emergency—they need immediate revenue relief—that they are operating with a serious working capital position. We challenge the rail carriers to submit positive proof to substantiate these claims! Where are the railroads getting the money to acquire unrelated nontransportation business concerns and become conglomerates if it is not from freight revenue that we must pay? Further, the rail carriers plea that inadequate levels of income and net working capital will inevitably be reflected in reduced levels of service, equipment supply and capital expenditures.

Since 1965 the eastern carriers in particular have not maintained any schedule of delivery. Transit to Boston or New York can be anywhere from 7 to 17 days. How do you maintain customers for Idaho potatoes under these conditions? The trade orders truck loads of potatoes from Wisconsin—we lose the business!

The whole subject of rate increases, inadequate equipment and demoralized service should be thoroughly investigated. If we can be of additional service to you in your endeavors to accomplish reasonable rates, service and equipment for Idaho potatoes, please so advise.

Kind personal regards.

Sincerely,

EDD MOORE, *Executive Manager.*

IDAHO GROWER SHIPPERS ASSOCIATION, INC.,
Idaho Falls, Idaho, March 9, 1970.

Re File-Increased Rail Rates Ex Parte 256-259-262.

Senator LEN JORDAN,
New Senate Office Building,
Washington, D.C.

DEAR LEN: We wish to supplement our letter of November 20, 1969, on the above file to further assist in your congressional investigation endeavors.

Our Board of Directors has unanimously adopted, along with the United Fresh Fruit & Vegetable Association, Washington, D.C., the following resolution, which was directed to President Nixon early last month:

"Mr. President, we call your attention to a national freight transportation emergency which is disrupting the orderly flow to market of fresh fruits and vegetables causing gluts and famines in the marketplace, with unwarranted financial losses to farmers and distributors, all to the detriment of the consumers.

"This emergency is the product of the eastern delivering railroads, whose on-schedule delivery record during the past five years has been deplorable, and presently has reached catastrophic dimensions. You, Mr. President, are our court of last resort, since this industry has repeatedly conferred in good faith with railroad executives to no avail. The situation has deteriorated to such an extent that railroad officials virtually ignore please for locating delayed or lost freight cars loaded with perishable merchandise.

"We respectfully request—in this situation of despair—that you call a White House Conference on Railroad Freight Service at the earliest practicable date, and that a committee of consumers, freight service users, railroad and government representatives to be appointed to advise you.

"Ours is a perishable, nonprice supported food industry. We seek our parity price only in the marketplace. Orderly marketing is impossible with demoralized freight service.

"Our products represent 25% of the food consumed in the United States. This emergency, therefore, is a national food emergency and we desperately need your help".

Prior to rail carriers rejection of guaranteed schedules in 1964 and with the adoption of "reasonable dispatch" (which means absolutely nothing), service from Idaho to New York City was six or seventh morning. Today, we are lucky to get a two-week service and in many instances it takes 20 to, in some cases, 30 days to get delivery on Idaho potatoes. Such deteriorated services makes it nearly impossible for our growers and shippers to service the chains with dependable supplies, therefore, other Russet producing areas nearer to major consuming markets is getting the business—mostly by truck transportation.

Carriers have received three rate increases within the past two years and are now seeking the fourth increase amounting to six percent. If this increase is granted by the ICC, within two years the rate from Idaho Falls to New York City will have increased \$195.00 per carload of potatoes and the service is PITTABLE!

Without a question, the lack of efficient management as the result of mergers and conglomerate ownership is substantially contributing to the retrogradation of dependable service. Apparently holding companies are more interested in stockholders than shippers.

The method of determining operating costs by railroads is long overdue for revision, especially since they have become conglomerates or departmentalized. If any function of the railroad-conglomerate operation is unprofitable, who pays the loss—the shipping public through increased freight rates. Increases of late have been on a percentage basis, which completely destroys any competitive relationship between potato producing areas.

If president Nixon appoints an advisory committee as suggested by the fresh fruit and vegetable industry, I certainly would like to serve on that committee.

Kind personal regards.

Sincerely,

EDD MOORE, *Executive Manager.*

MONANGO, N. DAK., March 16, 1970.

HON. QUENTIN N. BURDICK,
*Old Senate Office Building,
Washington, D.C.*

DEAR SENATOR BURDICK: If my information is correct, there will be a hearing on a bill you introduced S. 2355, before the Surface Transportation Subcommittee of the Senate Committee on Commerce on March 16-19 in Washington, D.C.

I would like at this time to call to your attention the problem we have in discrepancy in railroad freight rates which we have for shipping our grain from my home town of Monango. On twenty five (25) mile straight run from the South to the North in carload lots of the same commodity by the same railroad, we have this freight cost per hundredweight differential; Ellendale \$0.33 cwt., Monango 12 miles north, \$0.38 cwt., and Edgeley 13 miles north \$0.36 cwt. on grain going to the terminal markets.

We the farmers in the Monango area, own the Cooperative Elevator at Monango, through which we market our grain from this area. As we in this area are also citizens of the state and the United States, I would appreciate any help you could give us in this community in correcting the unjust higher freight rates that we have to pay when our grain is moved out of this community. The end result being that it lowers the net income of all farmers who sell grain in this area unjustly lower. The directors of the Monango Elevator have also been working with Public Service Commissioner Bruce Hagen to get some relief from these unjust railroad freight rates for this community.

Sincerely yours,

SYLVESTER RADERMACHER.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., March 16, 1970.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is to record our reservations with respect to S. 2355, to establish an advisory commission to make a study and report with respect to freight rates.

We are not opposed, as such, to the conduct of a study of the type proposed, nor do we suggest that the freight rate structure as presently constituted might not be improved upon. But we do believe strongly that, in view of the agencies presently in being, and capable of conducting the type of study envisaged by the bill, the creation of still another transport body, the commission proposed by the bill, is unnecessary and unjustified.

We believe the Interstate Commerce Commission is entirely capable of conducting a study such as that proposed by S. 2355. We think that its decades of experience with all phases of transportation would be a considerable asset in the conduct of the study, an asset which would not be possessed by any newly-formed body such as the commission proposed by S. 2355.

It might be argued that the ICC could not be entrusted to conduct an "objective" study because it is the agency responsible for regulation of the rates of all but one of the modes of transport covered by the bill. We do not think such an objection would be well taken; we are confident that the Commission, under appropriate Congressional guidelines, could capably perform the task called for by S. 2355. In order to cover air transport rates, the ICC could cooperate with the CAB in any manner deemed desirable by Congress. But if, for any reason, Congress did not want to entrust the job to the ICC, then why not the Department of Transportation?

The provisions of the Department of Transportation Act, particularly Section 4, direct the Secretary of Transportation to "provide leadership in the development of national transportation policies and programs, and make recommendations to the President and the Congress for their consideration and implementation; promote and undertake development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation; . . .". We find it somewhat puzzling, since one of the main arguments for creation of the Department of Transportation was to remove this important segment of our national life from regulation by a plethora of agencies, and concentrate it in only a few of them, that Congress should now seriously be considering the creation of another transport agency, albeit one of the relatively limited scope and, hopefully, of the short duration envisaged by S. 2355.

Sincerely,

W. A. BRESNAHAN,
Managing Director.

WILLISTON, N. DAK., *March 25, 1970.*

HON. QUENTIN L. BURDICK,
U.S. Senator,
Washington, D.C.

DEAR QUENTIN: In your recent newsletter and on radio I notice that you are giving a great deal of consideration to the current rate and structure of the inequity that exists today with freight movement.

This is a subject that I have spent several months researching as we depend primarily on shipping our products into Montana and would like to share this information with you.

You will note that the information was given to me by two truck and one rail firm, and the more you compare this area to the eastern Montana area the more you will see the position that we are in.

EXHIBIT A

You will note the "above minimum" rate from Chicago to Williston is \$5.37, while just across the line at Bainville Montana the rate is \$4.64, while the rest of the state remains under \$5.00. You will note it would be less expensive for us to ship to Billings and back to Bainville, with about 600 extra miles of transportation (6.25 to 7.28).

EXHIBIT B

Chicago, Ill. to Williston N. Dak. \$5.69 however if we go another few miles and cross the state line the rate is \$5.06.

EXHIBIT C

At a minimum rate. . . Williston to Bainville Montana \$6.36 40 miles at the same time Great Falls to Bainville \$3.35 and 400 miles.

I hope this information will fit into your schedule and if there is any additional information that I may have, feel free to let me know as I am quite concerned about the future of this part of this country.

Kindest Regards,

NORRIS D. OVERBO.

AMERICAN RETAIL FEDERATION,
Washington, D.C., March 31, 1970.

Re S. 2355—To Establish an Advisory Commission to Study and Report on Freight Rates.

HON. VANCE HARTKE,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN HARTKE: Thank you for the invitation to appear at the hearing on the above bill on which, unfortunately, the Transportation Committee of the Federation had no policy and which had to await the following determination made at a scheduled meeting.

It is the belief of the committee that a study of the freight rate structure as contemplated in Sec. 2 of the above bill is a commendable objective. To have value, particularly for consumers and the retail users of transportation services, the study should include all competitive freight rates on all traffic. Every mode of transportation should be included.

Members of the committee were of the view that a new commission or study group need not be set up. There are many qualified agencies, boards, or departments of the federal government now in existence that should be permitted to undertake this survey. This should result in a satisfactory and less costly appraisal.

It is our hope that you will be able to incorporate these views in the consideration given the bill by your subcommittee. Thank you.

Respectfully,

CHARLES A. WASHER,
Transportation Counsel.

FREIGHT FORWARDERS INSTITUTE,
Washington, D.C., April 2, 1970.

HON. VANCE HARTKE,
*Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee,
Washington, D.C.*

DEAR SENATOR HARTKE: Your Subcommittee recently held hearings on bill S. 2355 which proposes the establishment of an advisory commission to study freight rate-making practices.

When bill S. 2355 was first introduced, I addressed a letter to Senator Quentin N. Burdick and requested that freight forwarders regulated as common carriers by the Interstate Commerce Commission be given the recognition that other regulated common carriers receive. Senator Burdick replied on July 18, 1969 as follows:

"Thank you very much for your letter concerning including a representative of the freight forwarding industry on the proposed advisory commission to study transportation pricing. Your point is very well taken, and is of particular concern to the small businessman. I certainly will take all of this into account."

Testimony presented by the ICC in the statement of George M. Stafford, Chairman, on March 17, 1970, commenting on the bill, stated:

"Furthermore, to accomplish the stated purpose of the proposed legislation, it appears that all regulated modes of transportation and the administrators of the acts under which they operate should be included in the statute. For example, section 1 (a) (3) should include freight forwarders regulated pursuant to Part IV of the Interstate Commerce Act, and ocean carriers regulated pursuant to, the Shipping Act, 1916, as amended, and Inter-Coastal Shipping Act,

1933, as amended. Accordingly, the Federal Maritime Commission should be added to paragraph (5) of that section, as a party represented on the proposed body."

It is respectfully requested that your committee give consideration to having a regulated freight forwarding industry representative appointed to any advisory commission which may be established under bill S. 2355 and that copies of this letter be made part of the printed record in the hearings on this proposed legislation.

Respectfully,

CHARLES D. ROCHE,
Executive Vice President.

THE SHERWIN-WILLIAMS Co.,
Williston, N. Dak., February 10, 1970.

HART MOTOR EXPRESS, INC.,
Williston, N. Dak.

DEAR SIR: I am in the process of making new plans for the future and would like the following information. Freight rates to and from various parts of Western North Dakota and Eastern Montana.

PAINT

	Minimum	Above minimum
Chicago to Williston, N. Dak.	\$10.62	\$5.37
Chicago to Bainville, Mont.	6.54	4.64
Chicago to Great Falls, Mont.	6.65	4.72
Chicago to Billings, Mont.	6.54	4.64
Chicago to Glasgow, Mont.	6.65	4.72
Billings, Mont., to Bainville, Mont.	3.35	1.59
Great Falls, Mont., to Bainville, Mont.	3.35	1.71
Billings, Mont., to Glasgow, Mont.	3.35	1.42
Fargo, N. Dak., to Williston, N. Dak.	3.50	2.12
Fargo, N. Dak., to Bainville, Mont.	5.80	2.40
Minneapolis, Minn., to Williston, N. Dak.	8.88	4.32
Minneapolis, Minn., to Bainville, Mont.	5.80	3.69
Minneapolis, Minn., to Glasgow, Mont.	5.80	3.81
Williston, N. Dak., to Bainville, Mont.	5.80	1.91
Williston, N. Dak., to Glasgow, Mont.	5.80	2.78
Williston, N. Dak., to Billings, Mont.	5.80	2.78

Please fill out and return to the Sherwin Williams Company as soon as possible.

Thank you,

NORRIS D. OVERBO, *Store Manager.*

UNITED-BUCKINGHAM FREIGHT LINES,
Williston, N. Dak., February 24, 1970.

SHERWIN WILLIAMS CO.,
Williston, N. Dak.

Attention: Norris D. Overbo, Manager.

Per your letter request of Feb. 10 on rates to various points—they are as follows:

From—	To—	Under 100#	Minimum 150#	Over 150#	Rate per hundredweight	
					Under 500#	500\$ to 1,000#
Chicago	Williston	10.62			5.69	5.09
Do	Bainville	7.70	8.80	10.85	5.06	
Do	Great Falls	7.90	9.05	11.20	5.15	
Do	Billings	7.70	8.80	10.85	5.06	
Do	Glasgow	7.90	9.05	11.20	5.15	
Billings	Bainville	3.35			1.72	
Great Falls	do	3.35			1.82	
Billings	Glasgow	3.35			1.74	
Fargo	Williston	4.00			2.36	
Minneapolis	do	8.88			4.58	3.99
Do	Bainville	7.10	8.05	9.80	4.03	
Do	Glasgow	7.10	8.05	9.80	4.16	
Williston	Bainville	6.10	6.80	8.05	1.03	
Do	Glasgow	6.70	7.55	9.10	3.04	
Do	Billings	6.70	7.55	9.10	3.04	

These rates are presently in effect and are subject to change without notice.

Very truly yours,

ROBERT G. WOOD,
Terminal Manager.

THE SHERMAN-WILLIAMS CO.,
Williston, N. Dak., February 10, 1970.

GREAT NORTHERN RAILWAY CO.,
Williston, N. Dak.

DEAR SIR: I am in the process of making new plans for the future and would like the following information. Freight rates from and to various parts of Western North Dakota and Eastern Montana.

	Minimum	Above minimum
Chicago to Williston, N. Dak ¹		
Chicago to Bainville, Mont ¹		
Chicago to Great Falls, Mont ¹		
Chicago to Billings, Mont ¹		
Chicago to Glasgow, Mont. ¹ (via Great Falls)	\$3.35	
Billings, Mont., to Bainville, Mont. (via Sidney)	(2)	³ \$1.62
Great Falls, Mont., to Bainville, Mont.	3.35	⁴ 1.71
Billings, Mont., to Glasgow, Mont.	3.35	⁵ 1.59
Fargo, N. Dak., to Williston, N. Dak.	4.00	⁶ 2.01
Fargo, N. Dak., to Bainville, Mont.	6.36	1.83
Minneapolis, Minn., to Williston, N. Dak.	6.36	2.41
Minneapolis, Minn., to Bainville, Mont.	6.36	2.32
Minneapolis, Minn., to Glasgow, Mont.	6.36	2.71
Williston, N. Dak., to Bainville, Mont.	6.36	⁷ 1.12
Williston, N. Dak., to Glasgow, Mont.	6.36	2.19
Williston, N. Dak., to Billings, Mont.	6.36	1.93

¹ No LCL service.

² \$3.35 plus \$6.36.

³ 3,000 \$1.81, 6,000 \$1.62, 10,000 \$1.34.

⁴ 3,000 \$1.88, 6,000 \$1.69, 10,000 \$1.59.

⁵ 3,000 \$1.77, 6,000 \$1.58, 10,000 \$1.48.

⁶ 2,000 \$1.82, 5,000 \$1.74.

⁷ 3,000 \$1.33, 6,000 \$1.21, 10,000 \$1.13.

Please fill out and return to Sherwin Williams Company as soon as possible.
Thank you,

NORRIS D. OVERBO, *Store Manager.*

		FROM—							
		Williston, N. Dak.	Chicago, Ill.	Minneapolis, Minn.	Fargo, N. Dak.	Billings, Mont.	Great Falls, Mont.	Bainville, Mont.	Glasgow, Mont.
To—	Williston, N. Dak.:								
	Minimum.....		\$10.62	\$8.88	\$3.50				
	Above minimum.....		5.37	4.32	2.12				
	Chicago.....								
	Minneapolis.....								
	Fargo.....								
	Billings:								
	Minimum.....	\$5.80	6.54						
	Above minimum.....	2.78	4.64						
	Great Falls, N. Dak.:								
	Minimum.....		6.65						
	Above minimum.....		4.72						
	Bainville, Mont.:								
	Minimum.....	5.80	6.54	5.80	5.80	\$3.35	\$3.35		
	Above minimum.....	1.91	4.64	3.69	2.40	1.39	1.71		
	Glasgow, Mont.:								
	Minimum.....	5.80	6.65	5.80		3.35			
	Above minimum.....	2.78	4.72	3.81		1.42			

FROM—

	Williston, N. Dak.	Chicago, Ill.	Minneapolis, Minn.	Fargo, N. Dak.	Billings, Mont.	Great Falls, Mont.	Bainville, Mont.	Glasgow, Mont.
Williston, N. Dak.:								
Under 100 pounds.....		\$10.62	\$8.88	\$4.00				
Rate cwt.....		5.69	4.58	2.36				
Chicago, Ill.....								
Minneapolis, Minn.....								
Fargo, N. Dak.....								
Billings, Mont.:								
Under 100 pounds.....	6.70	7.70						
Rate cwt.....	3.04	5.06						
Great Falls, Mont.:								
Under 100 pounds.....		7.90						
Rate cwt.....		5.15						
Bainville, Mont.:								
Under 100 pounds.....	6.10	7.70	7.10		\$3.35	\$3.35		
Rate cwt.....	5.03	5.06	4.06		1.72	1.82		
Glasgow, Mont.:								
Under 100 pounds.....	6.70	7.90	7.10		3.35			
Rate cwt.....	3.04	5.15	4.16		1.74			

To—

FROM—

	Williston, N. Dak.	Chicago, Ill.	Minneapolis, Minn.	Fargo, N. Dak.	Billings, Mont.	Great Falls, Mont.	Bainville, Mont.	Glasgow, Mont.
To—								
Williston, N. Dak.:								
Minimum.....	\$6.36		\$6.36	\$4.00				
Above minimum.....	1.93		2.41	2.01				
Chicago, Ill.....								
Minneapolis, Minn.....								
Fargo, N. Dak.....								
Billings, Mont.:								
Minimum.....	\$6.36							
Above minimum.....	1.93							
Great Falls, Mont.....								
Bainville, Mont.:								
Minimum.....	6.36		6.36	6.36	\$3.35	\$3.35		
Above minimum.....	1.12		2.32	1.83	1.62	1.71		
Glasgow, Mont.:								
Minimum.....	6.36		6.36		3.35			
Above minimum.....	2.19		2.71		1.59			



