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REVIEW OF THE EMERGENCY RAIL SERVICES ACT OF 1970

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

A REVIEW OF THE "EMERGENCY RAIL SERVICES ACT OF 1970," AN ACT TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO PROVIDE FINANCIAL ASSISTANCE TO CERTAIN RAILROADS IN ORDER TO PRESERVE ESSENTIAL RAIL SERVICES, AND FOR OTHER PURPOSES (P.L. 91-663)

MARCH 9, 10, AND 11, 1971

Serial No. 92-4

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

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REVIEW OF THE EMERGENCY RAIL SERVICES ACT OF 1970

TUESDAY, MARCH 9, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

Late in the last Congress, we held hearings in order to effect legislation to guarantee loans to railroads in reorganization under section 77 of the Bankruptcy Act. Trustees for the Penn Central Transportation Co. came before us and made it very clear that their company would not be able to continue to operate throughout the winter without assistance afforded by the loan guaranty legislation.

In those hearings last December, their projections were that it would be necessary to come forward again early in this Congress to seek additional aid in order to continue operating the railroad through 1971.

I have been informally advised that the financial situation of the Penn Central Transportation Co. is not as bleak now as it was last December. Personally I welcome any good news with respect to our transportation systems so far as their financial independence is concerned.

In the hearings commencing today, we are seeking a review of the emergency legislation and a prognosis for the near and indefinite future.

Our first witness will be Mr. Jervis Langdon, Jr., a trustee of the property of the Penn Central Transportation Co.

Mr. Langdon, it is a pleasure to welcome you to the committee. Would you introduce your associates, and proceed in your own fashion with your testimony.

STATEMENT OF JERVIS LANGDON, JR., TRUSTEE, PENN CENTRAL TRANSPORTATION CO.; ACCOMPANIED BY ROBERT BLANCHETTE, COUNSEL TO THE TRUSTEES; A. PAUL FUNKHOUSER, VICE PRESIDENT-PUBLIC AFFAIRS, J. A. McDONALD, VICE PRESIDENT-STAFF, S. H. HELLENBRAND, VICE PRESIDENT-REAL ESTATE AND TAXES

Mr. LANGDON. Yes, Mr. Chairman. Mr. Blanchette, sitting behind me, is counsel to the trustees. In addition, we have three senior officers

of the company who are here, Mr. McDonald, Mr. Funkhouser, and Mr. Hellenbrand. Their specialties in turn are: Planning, and for Mr. Hellenbrand, real estate and other properties, and for Mr. Funkhouser, he has had very immediate concern with Railpax, which is a very important aspect of our future operations.

I am representing the four trustees here, because two of them, sir, Mr. Bond and Mr. Baker, are today in New York on a very important and long-standing date, which is concerned, hopefully, with the ultimate sale and disposition of the Pennsylvania Co.

We all concluded that it was terribly important to try to move along in that direction and that the conference that they have set up today should not be postponed.

Mr. Wirtz is at the moment in Europe and will be back on Monday.

So that is the reason why today there is only the one trustee here.

Sir, would you care to have me read this 11-page statement I have, or would you prefer to have it summarized?

Mr. JARMAN. I think the 11-page length makes it possible to read it at this point, since we had not received copies and had not had a chance to go over the statement in full. So I think it would be better if you would read it.

Mr. LANGDON. Yes, sir.

Mr. Chairman and members of the committee:

This opportunity to give a brief status report concerning the Penn Central Transportation Co., which has been operating in bankruptcy since June 21, 1970, is appreciated.

In the closing days of the 91st Congress, there was enacted the Emergency Rail Services Act of 1970, which authorized the Department of Transportation to guarantee trustee certificates in the maximum amount of $125 million for the purpose of enabling bankrupt railroads to continue in operation. Subsequently, the sale by Penn Central of $100 million of trustee certificates, guaranteed by the Government, was approved by the court, and the proceeds were deposited on January 26, 1971, to the account of the trustees. Since then, the company has drawn down a total of $65 million (including $5 million scheduled to be drawn down on March 31). This money has been used for operating expenses, including retroactive wage increases for 1970 amounting (so far) to $34.8 million, as provided for in Joint Resolution 220.

Thus did the Congress come to the rescue of this stricken transportation system. As is apparent from an examination of the cash flow statement for the first quarter of 1971, appended hereto as exhibit 1, Penn Central, in the absence of this congressional help, would have been forced to close down by the end of January for lack of cash.

At the time of the hearings on December 15, 1970, before this committee in connection with the emergency rail services legislation,[1] the trustees testified (pp. 489–490) that cash infusions of between $175 million and $250 million would be needed to sustain full operations during 1971 and that a comparable amount would probably be required to carry Penn Central through the 2-year period of 1972–73.

[1] "Emergency Rail Services Legislation," Serial No. 91–86 (pt. 1) and Serial No. 91–87 (pt. 2), hearings before the Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics, 91st Cong., 2d sess.

By the end of 1973 the trustees were hopeful that Penn Central's viability would finally be established and a firm basis for reorganization emerge. In short, according to the presentation of the trustees last December, a total Government commitment of as much as $500 million over a period of 3 years might be needed. If that commitment were to take the form of further guarantees, an additional request for enabling legislation would be necessary at the present time.

The trustees' ongoing analysis of the long-range potential for Penn Central indicates that, provided certain tough conditions can be met, viability can be attained more imminently. Within the private enterprise system, a viable Penn Central rail network is possible upon the realization of relatively specific premises in the areas of passenger service, changes in route and service patterns, regulatory provisions, and labor relations.

If these premises are met, and met promptly, further loans to meet day-to-day operating expenses of the railroad should be avoidable. Conversely, if Government and labor cannot assist the trustees in materializing these premises, the imposition of added debt, with no real prospect of ultimate viability, serves no useful purpose for either the public or the equitable owners of the estate under the charge of the trustees.

In a "Preliminary Report of Trustees Concerning Premises for a Reorganization" filed last month with the Bankruptcy Court (a copy of which is attached hereto as exhibit 2), it was pointed out that Penn Central's earnings could be favorably affected to the extend of $200 million to $400 million a year if:

(*a*) the passenger service is handled in accordance with the broad principles of the National Railway Passenger Service Act of 1970;

(*b*) the freight service plant is rationalized;

(*c*) changes are made in the regulation of freight rates; and

(*d*) employment and labor policies are significantly modified.

If Penn Central can be operated as a business enterprise and under terms and conditions that are directly related to the efficient discharge of its public service responsibilities, and without any so-called extra costs, its present situation can be significantly improved and go to a point where there emerges at least a basis for reorganization.

Turning to a more detailed statement of the four conditions to Penn Central's viability:

A. Passenger service

On May 1, Penn Central's intercity passenger service is expected to be taken over and operated by the National Railroad Passenger Corp. (Railpax). While negotiations are still in progress, there would appear to be a difference between the basis of compensation sought by the trustees and that offered so far by the Railpax incorporators, a difference measurable in terms of tens of millions of dollars a year to the Penn Central. In order to protect the constitutionality of the contemplated takeover against attacks by creditors and others, Railpax should be able to compensate Penn Central for all costs that can be identified as related to its intercity passenger service, including a reasonable share of joint and common costs. It may well be that the funding of Railpax by the Federal Government should be increased to permit the takeover and subsequent operation to be accomplished on a sound and fair basis.

B. Plant rationalization

Hundred of miles of Penn Central line can be identified as uneconomic and should either be abandoned or subsidized. To enable such a program to move along rapidly, the trustees are preparing and will soon seek the opportunity of presenting to the Congress appropriate amendments to the Interstate Commerce Act.

Already, applications for the abandonment of 83 segments of line, totaling 819 route miles, have been presented as necessary to the court and are being filed with the Interstate Commerce Commission. Today, however, there is no provision for subsidy in the case of "loser" lines, the continued operation of which is required in the public interest. Moreover, the present procedure of moving these applications, one by one before the Interstate Commerce Commission, is cumbersome and could take years. Appropriate changes in the provisions of the Interstate Commerce Act are urgently needed.

C. Price restructuring

Here, the trustees' proposals go in the direction of broader regulation rather than deregulation, and include:

(1) An affirmative provision in the Interstate Commerce Act that no rate can be lower than the long-term variable cost of the service. Such a provision would automatically require the raising of hundreds of below-cost rates that in the case of Penn Central are providing losses of more than $80 million a year.

(2) Authority to publish so-called agreed charges following the pattern in Canada. Contract carriage is freely available on the highways and waterways and should be equally available on the railroads where it would be appropriate protection to cover service arrangements, including assigned equipment which are negotiated with shippers.

(3) A requirement that in the publication of freight charges a separation be made between terminal and line-haul services. This would permit a railroad such as Penn Central, which has sustained a disproportionate increase in terminal expenses (as compared with line-haul expenses) to adjust its charges accordingly. As it has been, with percentage rate increases which assume the same cost increases in terminal and line-haul services, the effect has been to under-price the shorter hauls (which predominate on Penn Central) and over-price the longer hauls.

D. Labor

Labor costs on the Penn Central, in relation to either total revenues or expenses, are much higher than on other railroads and have gone up even faster since merger. This reflects, in part, the nature of Penn Central's service which includes the largest concentration of terminal operations in the country.

It also reflects Penn Central's wide participation in passenger services, both intercity and commutation. Each is heavy in its demands on manpower, and neither lends itself readily to greater productivity as the result of increased volume.

Of the total payroll, the trustees have determined that approximately 10,000 employees are retained by Penn Central solely because of (1) the retention in three States (Indiana, Ohio, and New York, in which Penn Central has large operations) of full crew laws—which

most other States have repealed because they do not make sense under present circumstances; or (2) various work rules which have been repeatedly considered by various Presidential boards or commissions and have uniformly been found to be unjustified; or (3) other work rules which in the light of modern conditions can no longer be justified by management. The extra cost of these employees to Penn Central was $120 million in 1970 and will be $165 million by the end of 1972 if the rules remain in effect and presently prospective wage increases are made. In a different category, hundreds of Penn Central employees receive special merger guarantee payments, an additional burden of approximately $28 million attributable to the merger rather than to current operations.

The rationalizing of employment and labor relation policies and costs is the most critical single condition to making the Penn Central viable and permitting its successful reorganization. The enterprise cannot carry the labor costs it does now. The choice, in practical terms, is between (1) establishing an effective procedure for reducing these costs to a rational basis, or if this cannot be done, (2) passing the bill for the extra costs to Government.

In the judgment of the trustees, the first step is to organize, with the concurrence of labor, internal machinery for the resolution of all proposals concerning work rules. Hopefully, this would take the same form as the standing committee recommended by Presidential Emergency Board No. 178, with a neutral as chairman, and there would follow a systematic review of the whole disputed work-rules area. In the trustees' preliminary report to the court, it was recommended that in the absence of agreement, the vote of the neutral be controlling. The alternative would have to be Federal legislation creating better machinery than the Railway Labor Act for the settling of labor disputes.

CONCLUSION

Thus are the trustees proposing an affirmative program which, if it can be accomplished, ought to produce viability in Penn Central and put it in a position to be reorganized, thus avoiding the need for further loans guaranteed by the Government.

The time element, however, is critical. By the end of March, there should remain $35 million of the $100 million loan to be drawn down against a continued negative cash flow, and at the rate of the cash drain during the first quarter, $35 million would not last long. But the experience during the first quarter is not regarded as representative because (1) it included heavy retroactive wage payments, (2) first quarters on Penn Central are traditionally subnormal, and (3) volume was off more than seasonally.

The trustee's judgment is that the $35 million will sustain a negative cash flow for about 6 or 7 months, or until October or November.

The trustees believe that such a 6- to 7-month period should be long enough to test the acceptability of their program for viability as

set forth in exhibit 2 (attached hereto). Depending on the reaction of Congress, labor, and the public, they further believe that, by the end of that period, they will be able to say with much more confidence whether Penn Central can be made viable or whether it cannot be made so. Either a positive cash flow will then be appearing, presumably as the result of the acceptance, at least an important part, of the trustees' program for viability and supported by the vigorous self-help measure of the new management under W. H. Moore, or a negative cash flow will then be persisting, with no real acceptance of the viability program by those affected. (Appended hereto as exhibit 3 is Mr. Moore's recent report dealing with self-help measures taken by Penn Central's new management during the period since bankruptcy.)

In brief summary, 6 or 7 months from now, Penn Central's future should be much clearer than it is today. Either a traditional reorganization based on a positive cash flow will then be in sight, or such a reorganization will not appear to be possible.

It is of course conceivable that, by the end of this period, a further guarantee of trustee certificates would be justified if the end of the tunnel were then clearly in sight. But the chances are that the answers will be apparent before the 6 months are up. The trustees would repeat that this answer will depend upon the extent to which Penn Central has been able (1) to make a sound arrangement with Railpax; (2) to begin the abandonment of uneconomic lines (or receive subsidies to cover their losses); (3) to modify its pricing practices and eliminate loss traffic; and (4) to change work rules that require the employment of 10,000 more people than necessary in an efficient operation.

If at the end of the 6- to 7-month period, the answer is negative and a traditional reorganization appears impossible, the alternatives (which postulate the indispensable character of Penn Central service which must continue in any event) are several, including:

(1) A broad program of Government contract or subsidy which, taking any one of many possible forms, would be designed to assure the continuance of public services regarded as essential.

(2) A careful plan for the breakup of Penn Central into segments which could logically be absorbed by connecting lines.

(3) A Government purchase of Penn Central's right-of-way, with lease back to Penn Central for operation under reasonable contract terms.

(4) Outright nationalization.

In the final analysis, the choice between a traditional reorganization of Penn Central and some other solution for its bankruptcy depends upon the success which, during the next 6 or 7 months, attends the trustees' efforts to effectuate the viability program set forth in exhibit 2 (attached).

That, sir, is the conclusion of the prepared statement of the trustees.

(Exhibits 1, 2, and 3, referred to, follow:)

EXHIBIT 1

PENN CENTRAL TRANSPORTATION COMPANY: CASH FLOW, 1ST QUARTER 1971

[In millions]

	January actual	February preliminary actual	March estimate
Receipts:			
Revenues collected by Penn Central	$149.6	$139.8	$163.0
Collections from other RR's	21.2	19.7	23.0
Government collections	5.6	6.5	7.0
Salvage	1.6	1.6	1.2
Miscellaneous accounts receivable	4.3	4.3	5.0
Rents	4.0	3.4	2.5
Dividend and interest	.4	.3	.2
Sale of property	.1		
Tenants' tax escrow	3.1		
Divisional escrow A/C fidelity	9.1		
Trustees' certificates drawdown	15.0	35.0	15.0
Total receipts	214.0	210.6	216.9
Disbursements:			
Revenue due other RR's	27.9	21.5	33.0
Mileage and per diem	8.9	8.4	11.0
Claims to other RR's	3.0	1.0	4.0
Car repairs	1.1	1.0	1.0
Other accounts payable	2.7	3.3	3.0
Utilities, services, etc. (A/P)	26.2	29.4	32.6
Fuel oil, material and supplies	19.1	18.3	20.8
Loss and damage claims	2.0	2.4	2.7
O.C. claims, pvt. mileage, etc	4.8	1.7	6.5
Paychecks	52.7	57.0	65.7
Withholding taxes—F.I.T	10.5	14.3	11.0
RR retirement—employer	12.8	11.9	8.2
Unemployment insurance		4.4	
Employees savings bonds	.4	.4	.4
Debt service—Principal: equipment obligations	4.8	7.7	8.3
Debt service—Interest: equipment obligations	1.5	6.2	2.6
Equipment leases	10.0	2.9	3.6
Leased line rentals	.1		
Injuries to persons	1.8	1.4	2.5
Freight and Passenger agents checks	1.9	1.6	2.5
Employees travel and business expenses	1.0	1.0	1.0
Retroactive wage settlements	4.8	25.2	4.8
Miscellaneous—Net	.5	1.0	
Total disbursements	198.5	222.0	225.2
Net change	15.5	(11.4)	(8.3)
Beginning cash	18.9	34.4	23.0
Ending cash, Feb. 26, 1971	34.4	23.0	14.7

Mr. JARMAN. I think it is a good, concise general statement of the present situation and the needs and objectives.

What else can you tell the committee as to when Penn Central will be in a position to make the specific recommendations of changes that you feel should be made?

Mr. LANGDON. Within 2 or 3 weeks, sir, we ought to have the proposed changes in the law we would like to see, insofar as abandonments and changes in the Interstate Commerce Act dealing with rates are concerned.

The reason why they are not ready today is we are undertaking to coordinate these with other interests concerned, so when we come here, hopefully we will have something on which there may be general agreement. We don't want to propose something here which is going to cause a long controversy.

We want, insofar as we can, to make these changes noncontroversial and of a kind that Congress can consider, and consider fairly rapidly, as being in the interest of transportation as a whole.

I don't want, in other words, to get in a fight with the truckers or anybody else about this thing. I think we can work out—and this is what we are doing now—a program that the various forms of transportation and the users of transportation, can agree upon as being sound.

EXHIBIT 2

IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 70-347

In the matter of

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

PRELIMINARY REPORT OF TRUSTEES CONCERNING PREMISES FOR A REORGANIZATION

In Proceedings for the Reorganization of a Railroad

It is appropriate to report to the Court the Trustees' conclusions regarding the necessary conditions to a successful reorganization of the Penn Central.

The creation of sufficient viability in Penn Central to permit its satisfactory reorganization has its starting point in the ordinary elements of good management: improvements in the productivity of its plant, equipment, and labor; the effective marketing of its services through the use of sound commercial pricing principles; the elimination of unprofitable operations; and the maintenance of sound fiscal policies.

A real beginning (on which a separate report will be made to the Court shortly) has been made under Penn Central's new management. Employment last December was down by more than 5,000 when compared with a year ago, and there are solid plans for a further reduction of 5,000 employees during the current year. Shippers are now commending Penn Central's freight service and even our connecting railroads at the major gateways, highly critical of Penn Central in the past, are taking notice as its service becomes more reliable and competitive. Track maintenance has been upgraded, and equipment maintenance programs have been accelerated. Utilization of equipment has been improved substantially. Practices have already been changed to eliminate waste and to modernize the operation of the railroad. Other improvements await capital money, or the approval of public authority.

Another forward step has been the streamlining of the management organization, including a reduction in vice presidencies from 34 to 11, and the phased elimination of more than 1,000 supervisors and support personnel in the several departments. Further streamlining is planned.

Moreover, Penn Central is moving forward with an aggressive campaign to sell its service. For this, we should have more new equipment but even so, freight service should meet constantly higher standards, and the new management is dedicated to bringing this about. The pricing of the service will be an important part of this campaign, and we are developing several new approaches to improvement of the railroad's competitive position which suffered greatly under the merger.

But despite the solid progress already made and planned for Penn Central's recovery, a great deal more is needed before this giant property can become viable. For it is a fact that Penn Central is presently locked by circumstances beyond managerial control into a situation which had best be recognized *now* as completely precluding viability unless certain constraints are removed, or other arrangements are made to compensate for their effects.

Six months' experience and analysis indicate that the Penn Central can be made viable and that the traveling and shipping public can at the same time be more effectively served if: (a) the passenger service is handled in accordance with the principles of the National Railway Passenger Service Act of 1970; (b)

the freight service plant is rationalized; (c) changes are made in the regulation of freight rates; and (d) employment and labor policies are significantly modified. The assumption underlying all of these conditions is that the property and enterprise be responsibly and effectively managed.

A central principle emerges from this experience and analysis. It is possible now to identify "rational terms"—those consistent with sound business principles *and* the public interest—with respect to Penn Central plant, service, employment, and rate practices; and to identify, at least approximately, the "rational costs" of operation on this basis. It is recognized at the same time that various forces and circumstances may prevent achieving these rational terms, at least temporarily; and to the extent this is true there will be resultant "extra costs." The essential central principle of making the Penn Central viable is that the enterprise be required to carry only the rational costs; and that provision be made for some different form of compensation for any extra costs incurred for reasons beyond the control of those responsible for the enterprise.

This rational cost principle, which underlies this report, has several particular applications:

A. Passenger Service

The rational cost principle is reflected already in the creation of the National Railway Passenger Corporation.

Penn Central will contribute to Railpax what is believed to be unique in the railroad industry: passenger service in the Northeast Corridor that produces a positive cash flow. Obviously, this should be taken into account when payments by the government for the take-over are calculated. To the extent that Railpax designates Penn Central passenger service for inclusion in the system, Penn Central will be prepared to identify the relevant costs. A special team of experts has been in the field for this special purpose.

One crucial requirement is adequate funding of Railpax by the federal government to permit the take-over and subsequent operation to be accomplished on a sound and fair basis.

B. Plant Rationalization

It is estimated that Penn Central's plant should be reduced by about 40 percent in terms of route miles. Nearly 20 percent of present route miles can already be identified as redundant. More lines will become surplus in response to changes in railroad operating methods, pricing, and the requirements of shippers and receivers. The economics of transportation dictate that most of the traffic now moving on light density rail lines should be handled by truck and/or piggyback trailers and containers.

The current regulatory procedures for branch line abandonments co-mingle two quite separate issues:

1. Whether a loss is being sustained by the railroad, and
2. Whether public convenience and necessity require that the branch line continue in operation.

Moreover, these procedures are cumbersome and time-consuming and call for consideration of each line sought to be abandoned on a separate record that can be tied up in litigation for years.

The problems of the carrier and the community could be resolved by requiring the Interstate Commerce Commission first to determine the facts as to losses incurred by the carrier. If losses are established, the railroad would at once be compensated by public payments which would in effect constitute a subsidy to the communities and to the users of the service. Such payments would continue unless or until a subsequent decision authorized abandonment. In either event the railroad would be able to eliminate the loss.

C. Price Restructuring

In recent years various proposals have been advanced to relax railroad rate regulation, and it is understood that further proposals may be submitted to the Congress this coming spring. In the past this has been a highly controversial subject, and nothing of significance has been accomplished. In three directions, however, it ought to be possible to move constructively and with a minimum of controversy, and Penn Central would be greatly benefited.

First.—The Congress should condemn as unlawful any rate, whether interstate or intrastate, which is below the cost of providing the service and should

adopt long-term variable costs as the absolute floor for rate making by all regulated carriers. This would automatically require the raising of hundreds of below-cost rates that in the case of Penn Central are producing losses estimated at more than $80 million a year. In those instances where the below-cost rates are required in the maintenance of relationships deemed essential in the public interest, the authority enforcing the below-cost rates should be required to respond with a subsidy to cover the related carrier losses.

Second.—There should be authority for all regulated carriers to publish "agreed charges". Here the United States could follow the experience in Canada where today about 30% of railroad freight traffic moves on "agreed charges" which are similar to contract rates, but they are published and open to all shippers similarly situated. Contract carriage is freely available on the highways and waterways in this country and should be equally available on the railroads. It is peculiarly adapted to those many instances where special service arrangements, including assigned equipment, are negotiated by rail shippers.

Third.—In the transition to more effective pricing policies, provisions should be made to separate through rates between the elements covering (1) terminal services and (2) line haul between terminals. The reason is clear. In recent years terminal costs have increased three times faster than line haul costs, and yet the general percentage rate increases which the railroads, with the authority of the Interstate Commerce Commission, have made effective have proceeded on the assumption that both elements have increased uniformly. The result has been that the Penn Central, which has the heaviest concentration of terminal operations of any major U.S. railroad as documented in the Trustees' testimony before the Senate Commerce Subcommittee in November, 1970, has not been compensated for its skyrocketing cost increases. In order to have a cost-oriented pricing system for the railroads, including Penn Central, it is vital to have the terminal and line haul elements of all through rates separately stated in the tariffs. Rate increases could then be appropriately matched with cost increases. This form of rate publication would also help in the elimination of below-cost rates.

D. Labor

Penn Central labor costs (wages, payroll taxes and fringe benefits) in 1970 were approximately $1.1 billion. This exceeded by at least $120 million anything which could be considered a "rational cost" figure.

Labor costs at Penn Central are running at 66 percent of railroad operating costs. This increased from 63 percent in 1960 (using combined *Pennsylvania, New York Central,* and *New Haven* figures for comparison).

In 1969 (the most recent year for which industry-wide figures are available), the Penn Central figure (66 percent) exceeded the industry-wide average (58 percent) by a large margin.

Escalating wage rate levels (the current prospect is for increases of about 37 percent during the three-year period 1970–72) are only one part of this problem. The particular difficulty which has developed in aggravated degree at Penn Central because of its labor-intensive terminal operations, arises from the "work-rule" situation.

Penn Central's average mid-month employment count in 1970 was 94,000. The average cost per employee is $12,500 per year.

Of this 94,000 total, approximately 10,000 employees were retained solely because of (1) the retention in three States (Indiana, Ohio, and New York in which Penn Central has large operations) of full crew laws—which all other states except Arkansas have repealed because they do not make sense under present circumstances; or (2) various work rules which have been repeatedly considered by various Presidential Boards or Commissions and have uniformly been found to be unjustified; or (3) other work rules which in the light of modern conditions can no longer be justified by management. The "extra cost" of these employees to Penn Central was $120 million in 1970 and will be $165 million by the end of 1972 if the rules remain in effect and presently prospective wage increases are made.

In a different category, hundreds of other Penn Central employees receive special merger guarantee payments. Altogether, in terms of "rational cost" analysis, the 1970 operation at Penn Central carried a burden of approximately $28 million properly attributable to the merger rather than to current operations.

The rationalization of the Penn Central plant (see Point B above) will mean that fewer employees will be needed, although no reliable estimates of *net* economies is possible on the basis of present information.

The rationalizing of employment and labor relation policies and costs is the most critical single condition to making the Penn Central viable and permitting its successful reorganization.

If the present terms and conditions of employment at Penn Central were the result of free collective bargaining—or if there were the prospect of effective bargaining as a means of working out the critical work force and work rule issues the Penn Central faces—the "rational cost" concept would properly accept the working of that procedure. But there is not that history, and the prospect of relying on collective bargaining for effective disposition of these problems in the future depends on making basic changes in the way it works.

As far as the past is concerned, there is no point in detailing what is familiar. The development of employment terms and conditions and the settlement of labor disputes in the railroad industry have become a combination of negotiation, mediation, arbitration, litigation and legislation which is condemned on all sides. The classicly asserted right of the unions to strike and of the carriers to lock-out has been reduced by repeated legislative and judicial action (perhaps often necessitated by immediate circumstances) to a deceptive and dangerous myth. The centralized organization on both sides of the bargaining table has developed along lines which often do more to prejudice responsible settlement than to promote it. The short of it is that collective bargaining is not working in the railroad industry.

Yet the prospects for putting the Penn Central on a sound basis depend, in an important degree, on resolving the problems. The enterprise cannot carry the labor costs it does now. The choice, in practical terms, is between establishing an effective procedure for reducing these costs to a "rational basis" or—if they are to be maintained, passing the bill for the extra costs on the Government.

The estimate that $120 million of annual costs, over and above "rational costs", are involved here only indicates roughly the magnitude of the problem. The definitive figure—and the ultimate answer to the problems it measures—will not be reached by unilateral management analysis of the situation. Terms and conditions of employment are properly determined by a process in which representatives of the employees—and the public where necessary—also participate effectively.

In the judgment of the Trustees it is imperative, if this situation is to be resolved, that there be acceptance of both a procedure and a principle which experience clearly indicates to be needed.

The procedure is essentially that proposed unanimously last November by Presidential Emergency Board No. 178, to be applied, however, to the particular situation at Penn Central. This would mean the establishment of a joint labor-management Standing Committee at Penn Central, with a neutral member as Chairman, to review the whole disputed work-rules area, and the Trustees propose, with the Court's approval, to authorize and instruct the Penn Central officers to attempt to establish this type of procedure by agreement with the unions.

General wage levels would not be considered within the authority of the Standing Committee.

It would be contemplated that all pending, unresolved work rule issues raised by either the Company or the Unions would be taken up by the Standing Committee. Procedures would be developed for settlement within the Committee on a fully agreed basis of as many of these issues as possible, hopefully all of them. Provision would be made, at the same time, for the resolution of issues where necessary by a majority vote of the Committee, with the Chairman participating. The Committee determinations would be accepted by the parties.

It is essential that the agreement establishing the Committee also include a negotiated understanding regarding the principles which are to be applied by it in resolving the work rule issues. The Trustees accordingly propose, subject to the approval of the Court, to authorize the development in negotiation with the Unions of this dual principle of reciprocal equity:

On the one hand, any employee affected by a change in work rules will accept any changes in assignment which reasonable considerations of economical and efficient operation warrant and which place no undue burden on the employee.

On the other hand, full equitable compensation is to be made to any employee who loses his job or whose earnings opportunities are reduced as a consequence of changes in work rules.

The development of this principle would necessarily be subject to negotiation. Its implications are far reaching. It is essential, however, to the effectuation of the changes which efficiency and effectiveness of operations require, with due regard to the individual equities which are involved. If it turns out, as it may, that the resultant costs of applying this principle are more—during a transitional period—than the enterprise can at the particular time afford, the Trustees will be prepared to make proposals for the allocation of those costs consistent with a recognition of the public interest in implementing change.

CONCLUSION

At this point in time, it is not possible to measure precisely the gains to Penn Central of affirmative action on each of the conditions to viability set forth above. Obviously, timing is of critical importance, and in certain instances the amount of gain will be affected by the time scale of implementation. It must also be recognized that planning towards reorganization cannot be done in isolation. The changes necessary for Penn Central survival interrelate with, and may often depend on, concurrent changes elsewhere in the industry, and especially in the framework of public policy, regulation, and labor agreements which constitute the "rules of the game."

Nevertheless, tentative estimates of what might be expected from fulfillment of the conditions for viability as described above range from $200 million to $400 million annually.

When gains of this magnitude are taken into account, the effect on earning power, even when discounted for the known impact of continuing inflation, is substantial, and a basis for the reorganization of Penn Central begins to emerge.

It is appreciated that the conditions to Penn Central's viability are hard and introduce factors that go far beyond the normal boundaries of the railroad reorganization proceeding under Section 77. But in the firm opinion of the Trustees nothing less has a chance.

Penn Central of course is a merger of three major railroads, no one of which had any railroad earning power prior to the merger in 1968—1969.[1] The New Haven was then in bankruptcy and slowly being liquidated, and the Pennsylvania and New York Central entered the merger with marginal earnings that depended on so-called "other" income—income from sources other than the railroad (such as Norfolk & Western dividends in the case of the P.R.R. and Park Avenue properties in the case of the N.Y C.). Add to this record of poor pre-merger earnings the post-merger spiralling of Penn Central's terminal expenses and deficits from passenger service and there comes into focus a clearer picture of what it takes to create Penn Central viability.

But the overriding problem of Penn Central remains—the problem that must be overcome if it is to stay in the private enterprise system. It is found in an obligation to perform as a public service company in certain areas and under certain conditions which simply do not lend themselves to profitable operations, no matter who the operator is, or how efficient. The only possible remedy here is for public authority to lend its hand to a speedy elimination of the conditions which produce the losses, or respond with adequate compensation if it insists upon a continuance of the conditions.

Respectfully submitted.

GEORGE P. BAKER,
RICHARD C. BOND,
JERVIS LANGDON, Jr.,
WILLARD WIRTZ,
Trustees of the Property of the
Penn Central Transportation Co., Debtor.

ROBERT W. BLANCHETTE,
Council for the Trustees.
EDWIN P. ROME,
Blank, Rome, Klaus & Comisky,
Special Counsel for the Trustees.
FEBRUARY 10, 1971.

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[1] During the period 1960–1967 the rates of return on the net investments of the P.R.R. and N.Y.C. were 1.20 percent and 1.41 percent, respectively.

EXHIBIT 3

A PROGRESS REPORT ON PENN CENTRAL TRANSPORTATION COMPANY—MARCH 1, 1971

William H. Moore, President and Chief Executive Officer,
Penn Central Transportation Company

The new management of the Penn Central Transportation Company completed on March 1, 1971, its first six months on the formidable job of revitalizing the railroad, increasing the effectiveness of management, and improving efficiency of operation and productivity of the work force.

Precise measurement of the numerous and varied improvements on the railroad during these past six months is difficult to make. Some efforts are short-range, yielding quick results, while others are in various stages of planning, development and implementation and will take several years to reach fruition.

Nevertheless, there is a vast difference between the railroad today and the way it was in the several weeks following June 21, 1970, the date on which Penn Central Transportation Company went into reorganization. During that period, the organization was somewhat in a state of shock from the financial collapse. The railroad's competitive position and its share of market were dwindling. Employe morale and productivity suffered in this uncertain, unprecedented situation.

Service was poor, with many locomotives and much equipment out of service, and "per diem" cost for use of cars belonging to other lines unusually high. Maintenance on track and facilities was restricted because of insufficient funds.

Not all of these problems have been completely solved, but remedial action has been planned and initiated, and substantial progress has been made in implementing the remedies.

Following are some of the major areas in which significant changes have been made:

1. Employe Morale and Productivity.—Recognizing that employe attitude and performance are essential to revitalizing the railroad, an intensive program of management-employe communications was initiated.

Immediately upon taking office September 1, the president and chief executive officer attacked this problem. Within two months the president personally visited 20 of the key locations throughout the railroad system, speaking directly to some 16,000 employes and their wives (as well as to groups of Penn Central's largest shippers).

In evening meetings with employes, the president emphasized the need for overcoming the defeatist attitude, rallying confidence in the company's ability to become viable, building teamwork and improving individual job performance. Questions from employes and shippers were answered forthrightly.

A weekly "Penn Central Report"—a one-page summary of information about the company—is now posted on 6,500 bulletin boards throughout the system, supplementing the monthly employe newspaper which stresses reorganization efforts. Employes are being urged to express their opinions and offer suggestions for improvements.

A study of Penn Central employee productivity has been completed. This analyzes in particular the work performed over-the-road and in yards and terminals. This study has been converted into a slide presentation which will be the basis of a systemwide improvement program. Up-to-date records of performance will be kept charted in order to get accurate comparisons as a measurement of improvement.

2. Realignment of Management.—Prompt steps have been taken to streamline the railroad's managerial and administrative structure. This continuing program is being implemented in every department in order to reduce expenses, simplify procedures and increase efficiency. The number of vice presidents has been reduced from 34 to 11, and assistant vice presidents from 39 to 21. The management team is now more compact, more tightly coordinated, with more precisely defined lines of authority and responsibility.

In the operating department, a new vice president-operation is completing the organization of a closely-knit team. The administration of the railroad system has

been divided into operations-east and operations-west, with an assistant vice president heading each section of three operating regions. Renewed emphasis is being given to first line supervision at the divisional level.

Yard and terminal operations, the worst area for rising costs, inconsistent productivity and train delays, are now under the full-time responsibility of an assistant vice president. Congestion is being significantly reduced and the movement of freight is being speeded.

Realignment of accounting and related data processing will be completed by mid-1971. Data processing will be concentrated at Detroit, Pittsburgh and Philadelphia, in place of the present six locations. Accounting and data processing at Chicago, Indianapolis and New Haven are being eliminated. This will reduce payroll costs, rental of computers and redundant paper work.

3. Improvements in Facilities.—Despite limited funds, improvements in facilities are proceeding with the objective of enhancing freight service. Buckeye Yard, situated near Columbus, Ohio, has been completed and is reaching its potential. It is the sixth large automated yard in the railroad system and replaces five obsolete, inadequate yards at a crossroads of Penn Central's southcentral trunk lines.

Morrisville Yard, in the Philadelphia-Trenton area, has been upgraded with automatic switching, weight responsive retarders, centralized train control and revised track layout.

A major new connection near St. Louis, to expedite interchange with the Alton & Southern Railway, is under construction.

As of February 1, Penn Central leased and began operating a new marine terminal at Port Newark-Elizabeth built by the Port of New York Authority. It will expedite and increase containerized freight traffic between railroad flatcars and ocean-going ships.

At Weehawken, N.J., Penn Central has opened the first piggyback terminal in the East exclusively for handling refrigerated piggyback trailers of fresh meat received from the West.

Two yards—Edge Moor at Wilmington, Del., and Bayview at Baltimore—are being rebuilt as flat switching yards, with expanded classification, receiving and departure tracks.

A $532,000 improvement program of the locomotive shop at Enola, Pa., will enable it to turn out 37 repaired units a day, instead of the present 30 units.

Penn Central is now receiving bids on construction plans to lower the tracks in its Detroit River tunnel to allow higher clearance for larger cars, such as high-cube boxcars and tri-level auto rack cars. By routing this traffic through the tunnel (which connects Detroit and Windsor, Ontario) instead of over circuitous rail lines, the company expects to increase traffic and revenues and achieve additional compensation from another railroad with trackage rights in the tunnel. Cost of the project will be about $2 million.

The total of yards and terminals consolidated since the merger has reached 36, and 25 connections have been made between the formerly separate systems.

4. Motive Power Fleet.—In 1970, 147 new locomotives were received and placed in service, and 102 new units ordered under 1970 programs are scheduled for delivery during the first quarter of 1971. Minimum needs for additional motive power in 1971 are estimated at 126 new units, together with major overhaul of 137 units. The backlog of locomotives awaiting heavy repairs has been reduced more than 30 percent since last September.

5. Freight Car Fleet.—In 1970, Penn Central's own shops rebuilt or made heavy repairs on 5,300 freight cars. A total of 1,838 new freight cars were acquired. The ratio of unserviceable freight cars was 7.4 percent at the end of 1970. The goal for 1971 is to cut this to about 4 percent. This will require repair and upgrading about 20,000 existing cars at a cost of nearly $80 million. If funds can be provided, the railroad has plans to acquire about 7,300 new freight cars, costing about $123 million, in 1971. About $10 million is programed for capital improvements and additions and betterments to existing equipment.

The repair program currently is giving special attention to gondola cars, which are in heavy demand by steel shippers. Shop schedules now call for returning 60 bad-order gondolas a day to active service.

6. Plant Improvements.—The immediate need for plant rationalization was expressed in the Trustees' "Preliminary Report Concerning Premises For A Reorganization," dated February 10, 1971.

It is estimated that the railroad plant ultimately should be reduced by about 40 per cent in terms of route miles. Approximately 20 per cent of present route miles have already been identified as redundant. The company is proceeding as rapidly as possible to retire little-used branch lines and to reduce multiple track areas on trunk lines such as Philadelphia-Pittsburgh, Pittsburgh-Chicago, and Pittsburgh-St. Louis.

Almost 3,500 route miles of light density line have been specifically identified for study leading to abandonment proceedings.

Petitions for abandonment have been filed or will be filed before the end of March, 1971 with the Interstate Commerce Commission covering more than 800 miles of these lines.

It is expected that by April 30, 1971, an abandonment analysis of approximately 2,660 more route miles will have been made.

Another program will be the phasing out of a number of manually attended block stations and control towers, which will be replaced by more modern centralized traffic control installations. Overall operating efficiency will be improved.

7. Transportation.—A number of new trains hauling carload and piggyback freight have been put into service, providing more convenient loading schedules and more timely deliveries. So far this winter, over-the-road traffic has been moving more expeditiously than a year ago. Maintenance work scheduled for the spring will remove "slow order" restrictions on train speeds along several principal routes.

Operating flexibility and utilization will be improved by elimination of automatic train stops and cab signals from locomotives. The Federal Railroad Administration of the U.S. Department of Transportation has granted permission for eliminating automatic train stops with resulting savings of $1.4 million annually. An application to the FRA to remove cab signals in other than electrified territory is being prepared.

Reciprocal arrangements for preblocking large groups of freight cars permits bypassing yards at several principal interchange locations. This does away with time and expense required for reclassifying at enroute yards.

Improved car tracing and car inventory information is bringing a reduction in "per diem" costs of freight cars on the Penn Central belonging to other lines.

Utilization of freight cars is improving and time on our railroad of foreign-line cars is being reduced. During the last 15 days of December, 1970, Penn Central originated and received from connections almost identically the same number of loads as the same period in 1969. Yet, on January 1, 1971, there were over 16,000 fewer cars on line. During the first part of this January, Penn Central handled more freight than last year, but on January 15, 1971, there were 12,000 fewer boxcars on line, 1,000 fewer covered hoppers and 6,600 fewer gondolas, than on the same date in 1970.

An Assigned Car Control Center was placed in service by Penn Central at its Philadelphia headquarters last fall to improve utilization and profitability of the railroad's specialized cars. More than 50 operating and sales personnel are working together in the center to achieve optimum utilization, turnaround and general day-to-day surveillance of specialized equipment.

Reliability of train movement has strengthened steadily. On-time performance and making interline connections is expected to improve.

8. Transportation and Billing System (TABS).—Implementation of a new, advanced on-line freight transportation and billing system is beginning on the Penn Central. When fully developed, the computerized system will gather and then dispense instantaneously on command a variety of information on the location and movement of all on-line freight cars. It also will aid immeasurably in expediting the preparation of freight bills. Immediate benefits of the system will be fewer car movement delays, more efficient empty car distribution, reduced working capital required for unbilled shipments and significant clerical force reductions. The expense reduction from realignment of accounting and related data processing operations now in progress will offset many times over the cost

of the TABS system. The principal source for financing the TABS installation will be the savings realized through this realignment.

9. Phaseout of Floating Operations.—The company is making a concerted effort to phase out inefficient and deficit freight car floating operations—and that effort is paying dividends.

An agreement has been made with the Long Island Rail Road, effective March 1, to substitute a land bridge (the Hell Gate Bridge) interchange for freight traffic between the Bronx and Queens, as opposed to expensive marine operations. Some 340 freight cars per day are now being transferred from Penn Central to Long Island and vice versa via the bridge.

Meanwhile, the company has petitioned the ICC for abandonment of freight car ferry service across the Straits of Mackinac (Michigan), jointly owned with the Soo Line Railroad.

It is also seeking financial aid for car ferry service across Chesapeake Bay between Cape Charles and Norfolk, Va. A joint study is proceeding in cooperation with the Virginia Port Authority and the Norfolk Southern Railway Company to develop a plan for leasing or selling the float operation to the VPA, or obtaining VPA financing for new and more efficient equipment. Unless such aid can be obtained, the railroad may have to request abandonment of the service.

A study is also being made to substitute other services for car floating between the Brooklyn Eastern District Terminal and Penn Central's New Jersey yards.

10. Sales and Marketing.—Recognizing the need for a greater volume of profitable traffic, the Penn Central is intensifying sales efforts and marketing programs. An advertising campaign has been resumed, emphasizing the restoration of good service and the importance of Penn Central to shippers. The president has been participating with sales and marketing officers in conferences with numerous Penn Central shippers.

The marketing department and other task force groups are re-analyzing costs of furnishing many types of service, as a basis for revisions of rates to provide adequate compensation.

New markets and techniques are constantly under development. As an example, Penn Central participation is being expanded in the advanced unit train concept, not only for coal and grain traffic but for other commodities which are susceptible to bulk movement. Marketing programs have been initiated to recover high-rated traffic such as household appliances and bottled goods.

Penn Central's marketing objective for 1971 is to regain the share of the transportation market lost since the merger. The railroad now has a better product to sell and will capitalize on this new opportunity.

11. Intercity Passenger Service.—In preparation for transfer of intercity passenger service to Railpax in May, the Penn Central is joining other passenger-carrying railroads in assisting the new semi-public corporation. The vice president-public affairs is vice chairman of the railroad industry's ad hoc steering committee to establish procedures to be used in negotiating contracts for operating trains designated as part of the national network. The company also has a Railpax task force which is preparing information for negotiating Penn Central's operating contract with Railpax.

In the meantime, the quality of passenger service has shown improvement, especially in cleanliness, courtesy of crews and functioning of equipment. On the main passenger route between New York and Boston, the DOT TurboTrain now operates from Boston into Penn Station (instead of Grand Central) for direct north-south connections with Metroliners to and from Washington.

Many improvements have occurred in information and ticketing services at major stations. A new computerized information retrieval system has been installed at Penn Station in New York, satellite ticket offices have opened in Washington, and the new Capital Beltway Station was opened in the Washington area. A similar Metropark station, in New Jersey, where the railroad crosses the Garden State Parkway, is scheduled to begin service in June.

A new shop at Sunnyside Yard near New York City is being built to service Metroliner and Jersey Arrow equipment. Mechanical changes are being made in

Metroliner cars to increase reliability and utilization, and to reduce maintenance costs.

At Boston, Penn Central is consolidating and streamlining its passenger car and locomotive servicing facilities at a cost of $1.75 million. At Trenton, in conjunction with the State of New Jersey's Department of Transportation, a new passenger station has been designed for construction with public funds.

12. Suburban Passenger Service.—Since January 1, Penn Central has been operating its rail commuter service between New Haven and New York City under contract with the New York Metropolitan Transportation Authority and the Connecticut Transportation Authority. The equipment and facilities have been transferred to these authorities and the railroad now receives an annual management fee of $100,000 while the authorities assume all costs and deficits. A similar arrangement with the MTA is being negotiated for Penn Central's Hudson and Harlem commuter lines.

The Southeastern Pennsylvania Transportation Authority, for whom Penn Central now operates commuter service in the Philadelphia area, is preparing an order for 130 new multiple unit commuter cars. Penalty payments for operating failures and behind-schedule performance have been reduced drastically as compared to a year ago.

In both the New York City and Philadelphia areas, suburban services are being operated by Penn Central regional groups which are responsible for the commuter operations alone, having been relieved of freight train and intercity pasenger responsibilities. This new method of administration is winning significant public approval because of better service, station improvements and refurbished equipment.

Commuter service in northern New Jersey into Penn Station, New York, is receiving increased participation by the State of New Jersey's Department of Transportation. Supervision and service have been improved with the infusion of state funds.

The concept of support of commuter service by local governmental authorities is gaining in acceptance, but it is not progressing fast enough to relieve Penn Central of commuter service deficits during the crucial period of reorganization.

* * * * * * *

In summary, a significant start has been made toward recovery. Management has been realigned and redirected with the objective of improving productivity of people and equipment. Physical plant and equipment are being upgraded as financing permits, with priority given to improvements producing high return and better service. Primary consideration is being focused on the company's true function—furnishing efficient transportation. Sales and marketing activities are oriented to service, profit, and regaining the company's market share. Passenger services, both suburban and intercity, are being adjusted to public service programs and public financial support. Perhaps most important, the company's problems have been analyzed thoroughly and solutions are being expedited.

The combined effect of the programs outlined briefly in this report clearly shows substantial progress. Regrettably, however, these recovery programs amount to little more than treading water in the vast flood of Penn Central's basic problems. Penn Central Transportation Company, by itself, can go only so far. The four conditions to Penn Central's viability set forth in the Trustees' Report to the Court of February 10 are sound and must be satisfied if Penn Central is to have a proper base for reorganization.

Mr. JARMAN. I can assure you this subcommittee and the full Interstate and Foreign Commerce Committee will be standing by to receive your specific recommendations and give them most careful consideration.

Let me ask one question as to Railpax. You mentioned it in your general statement. When will the final decision be made as to whether

Penn Central contracts with the National Railroad Passenger Corp., or approximately when?

Mr. LANGDON. It should be very shortly, sir. May 1 is the scheduled transition date, and we, of course, are negotiating almost around the clock with Railpax right now.

You will appreciate, sir, whatever we negotiate has to be approved, of course, by the court; and undoubtedly there will be a hearing, and whatever, as I say, we recommend to the court must, to avoid litigation with creditors and others who are watching this thing very carefully to see that the kind of contract we make is in their interest as well as in the interest of service to the public.

So we have a tough problem here. The Railpax concept is fine. We have a very strong feeling, however, that it is underfunded and not in a position really to make the kind of a deal that would avoid litigation, I will put it that way.

Mr. JARMAN. Thank you.

Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

With reference to your passenger services, your statement does not contain information as to whether you either made money or lost money on the Metroliner. Can you give me any information on that?

Mr. LANGDON. Yes, sir. Well, I can't segregate the Metroliners from the entire corridor service. The corridor service in which the Metroliners predominate produces a positive cash flow of roughly $10 million a year, but the expenses that are taken into account in computing that cash flow are not the full expenses. In other words, there is no contribution to maintenance of track, although maintenance of equipment is included, and there is no depreciation and only limited station expenses, but nevertheless, I may be wrong about this. I have the feeling that it is probably the only service, rail passenger service, in the country that is producing, even on that limited basis, a positive cash flow, sir.

Mr. PICKLE. The point I want to make is, and I think you have given me the information, that you actually make about $10 million a year on the Metroliner, the corridor services.

I recognize there must be some accounting to amortize this particular income or to write off, but at the same time, it is a profitmaking thing at this point.

I would like to know at a later point, and I wish you would submit for this committee, information about where this money is going.

It ought to be known that it can be a profitable enterprise, and is at this particular point. So will you submit that information? I want to know how much you made, and give me whatever accounting you can to balance how you arrive at the figure and where you put the money.

Can you give us that information for the committee?

Mr. LANGDON. Yes, sir.

(The following table was received for the record:)

METROLINER OPERATIONS—REPORT OF SELECTED ITEMS

	Month of December 1970	Preliminary year to date
Salable seat miles operated	30,264,200	336,593,430
Occupancy (percent)	63.2	64
Direct revenue: Total passenger revenue	$1,426,707	$15,017,646
Contractually defined operating expenditures:		
Direct road crew labor	86,737	886,054
Equated cost of electric power	72,461	734,530
Direct parlor attendants labor [2]	20,929	169,518
Net food service receipts	8,472	[1](107,426)
Direct yard and shop train crew labor	9,570	110,190
Direct Washington terminal joint facility	69,007	791,551
Direct car repairs, inspection and servicing	422,916	3,388,522
Incremental station expense	57,517	546,390
Incremental train control expense		
Property damage insurance	11,007	128,295
Injuries to persons insurance	11,091	141,819
Gross receipts and personal property taxes	7,653	91,833
Direct accounting and other costs	6,205	49,467
Muzak, PA system, etc	7,899	93,300
Incremental M. of W. expenses [3]	102,634	679,331
Ticket reservation system	25,000	300,000
Current advertising	47,373	138,256
N.e.c. coordinators task force	35,308	337,869
Employee training	7,358	128,954
Technical support fees	45,000	518,923
Rental:		
Lease of metroliners (20 years)	111,900	1,318,340
Total	1,166,037	10,445,716
Net contribution per accounts [4]	260,670	4,571,930
Memorandum charges:		
Deferred start-up costs attributable to current operations	49,605	541,923
Provisions for equalizing amortization of leased equipment	37,134	470,068
Remainder [4]	173,931	3,559,939
Imputed interest costs at prime rate on new R.R. investment	277,396	3,721,069

[1] Food service costs understated, being revised; will be a debit.
[2] Partially estimated.
[3] Klauder Associates has not yet provided data under terms of contract. Field estimates provided.
[4] Not comparable with net incremental revenue determined under terms of demonstration contract for profit-sharing with DOT.

Mr. LANGDON. Of course, when you say "profitable enterprise," sir, I would like, with your permission, to emphasize again that the positive cash flow or so-called profit, if it can be called that, is only after what we call "above-the-rail expenses," in other words, the expenses of the crew, fuel expenses, and maintenance of equipment, etc. There are a number of other properly assignable expenses which are not comprehended. I just don't want to misstate the situation to you, sir.

Mr. PICKLE. I understand that, and I understand your statement.

One other point with reference to rates, your statement said that presently your system is losing some $80 million because of improper rate structure, improper rates, and now, as I understand it, it must have been long-term contracts that have been in existence for many years. This comes as somewhat new, if not startling, information that your system has actually been losing $80 million a year because you have too cheap a rate structure.

Why has that come about and been allowed to exist without anybody ever raising a complaint about it?

Mr. LANGDON. Well, sir, I don't think, in the first place, that the Penn Central is unique in this. I think that our situation is true also of other railroads. There are, in other words, certain commodities and certain shipments throughout the country that are moving at rates that are less than the long-term variable costs of moving the traffic. In fact, there was a study made of one of the relatively prosperous lines in the Midwest not too long ago, which indicated that the majority of their individual shipments during the first quarter of a recent year, moved at less than cost, if you included in the cost the replacement cost, that is, of the equipment.

We have what I think, sir, is a crazy-quilt rate structure pattern in this country. So-called "loss" traffic is found pretty much across the board, although there are certain items of traffic that identify themselves as loss traffic on not only Penn Central but on a great many other railroads.

Mr. PICKLE. Why is it that your organization and other organizations, if this is a national problem, have not complained to the Interstate Commerce Commission or have not brought this matter to our attention in Congress?

I did not know you were actually losing, your one line, because of rates that were below cost of service, $80 million. Have you complained to the Interstate Commerce Commission?

Mr. LANGDON. This is a problem in the industry that we should have taken care of ourselves. Today, however, it has become an integral part of, and wrapped into the general rate structure, and the competitive situation, one railroad versus another, is such that I think it would help tremendously if the Congress, in effect, would tell us, "You cannot put in a rate or publish a rate that is less than the cost of moving the traffic."

Mr. PICKLE. I would say, sir, we ought to make that statement, and I think we ought to as a matter of policy. I think you ought to give your proposal to the Interstate Commerce Commission.

As I stated many years ago, these low rates were established because a great deal of the freight moved from the east to the west coast. Now, over the years, this has sort of reversed itself. Now a great deal of the traffic comes from the west to the east coast, but because of low rates being established by the power structure many, many years ago in the East, now, in some sense, the power structure has gone westward and now they are keeping the low rates.

Now, whatever is the history of it, surely we ought to say very clearly to the Interstate Commerce Commission, and you people operating under the rules, that we ought not to have a rate structure below the cost of service. I hope that is given.

The only thing I would say in conclusion is that we need to know what proposal you would have to bring that kind of reduction about, or elimination of that below-cost service.

Mr. LANGDON. Yes, sir. If I may add, sir, I think your reference is to the transcontinental rates that were lower in the early days—they were made so—under that provision of the law which, assuming the competitive situation justifying it, allowed lower rates to further distant points than applied at the intermediate points. For instance,

we—and I mean Penn Central, as an example—participated in rates to the Pacific coast that were lower than those to the intermediate mountain territory, and this was because of the competitive situation of the Panama Canal.

That is not really what I am talking about here. What I am talking about here is that we have a wide range of commodities—they are either light loading, balloon freight, or in certain cases sand and gravel, and even bituminous coal, for all types of hauls, including particularly shorter hauls, and we are just not making our costs.

What we want—and frankly, this is something which in our own industry, if we are able to work constructively as an industry in this respect, we ought to be able to do—is a mandate from Congress that, in effect, tells a railroad or any form of transportation that it is illegal to publish a rate that is less than the cost of providing the service.

This would be, quite frankly, as I conceive it now, noncontroversial. A simple provision in the Interstate Commerce Act to this effect might be in the ratemaking rule. I am not quite sure where it goes, but it is not going to be an elaborate proposal, as I see it now.

Mr. PICKLE. I would like to pursue this later, but I yield.

Mr. JARMAN. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Langdon, it is refreshing to detect a note of optimism in your prepared statement, particularly where you say if certain conditions are met, it will not be necessary for you to ask up to half a billion dollars for the next 3 years.

I note one of the key areas of concern, of negotiation being necessary, undoubtedly has to do with repeal and amendment or modification of certain work rules.

Mr. LANGDON. Yes.

Mr. DEVINE. As you well know, that seems to be the subject of much of the controversy in collective bargaining currently going on in an effort to resolve certain disputes in the industry. Do you feel optimistic that something can be done along these lines, from a cooperative standpoint, between management and labor, in the hope of survival?

Mr. LANGDON. Yes, sir; I am optimistic. One very important aspect of this problem will be decided next week, or maybe this week, out in Indiana, where there is a proposal, sir, to repeal the full-crew law, under which for all trains over 70 cars operating in Indiana we have to have a full crew. That means one engineer, a fireman, a conductor, and three brakemen.

Mr. DEVINE. I think you pointed out that 10,000 employees are involved in Indiana, Ohio, and New York?

Mr. LANGDON. Yes. Those full-crew State operations are included, but there are also included other work rules. For instance, two rules under consideration now are in the emergency board report, namely, the radio rule and the interdivisional run. They happen to be of relatively minor importance as far as Penn Central is concerned.

But we have a whole book of rules that, in addition to the full-crew laws, contribute to and make necessary the employment of these 10,000 or more employees.

If we are successful here, sir, we want to be sure these employees are taken care of, I mean equitably, by attrition or some fair way of

separating them. We would not, even if we could, eliminate the jobs overnight. We want to move in the direction of eliminating the rules that require the surplus in employment, and then, assuming we are successful here, move very fairly and equitably, and presumably, by attrition.

We have already agreed, in Indiana, for instance, if the full-crew law is repealed, this will not cause anybody to lose his job the following day. It would simply mean we will not hire people in the period ahead to the extent that it is necessary to make up full crews, and the people who now have jobs will continue to have jobs.

Mr. DEVINE. But you are speaking on behalf of the trustees and you feel that these work rule problems with "no rate below cost" and so forth are not insurmountable and can be resolved?

Mr. LANGDON. Yes, sir; I think so. I hope so. I will put it that way.

Mr. DEVINE. Thank you.

Mr. JARMAN. Mr. Podell?

Mr. PODELL. Thank you, Mr. Chairman.

Forgive me if some of the questions I ask are a bit naive. My arithmetic bothers me somewhat after examining your cash flow for the first quarter. Perhaps you could enlighten me, sir. Your estimates for March are some $24 million above the actuals for February. In addition there are additional benefit of savings on retroactive wage settlements for that month of $20 million, which gives you added income of some $48 million between the months of February and March.

Now it would appear to me that you are still losing money. This is not a very optimistic note for envisioning a viable railroad for tomorrow when tremendous increase in revenues are coupled with advantages of retroactive benefits without still being able to make it go. Just what is there that would make you feel you could succeed within the next 6 months?

Mr. LANGDON. We hope, sir, we will be moving forward on these four conditions to viability, as I described them in exhibit 2.

Mr. PODELL. May I interrupt one moment? It appears to me you make a fuss over the fact that the full-crew law is so important, yet wages have only increased between the actual of February and potential of March to $8 million which is not a substantial increase in wages when you talk about the total additional benefit of $48 million. It seems insignificant.

Mr. LANGDON. The total wage bill increase, sir, for 1971 over 1970 is $165.9 million, and that it the total wage bill increase, assuming that everybody, all of the crafts, go along on the Emergency Board report. That is the increase.

Actually, in March, and during the first quarter, you see, we drew down $65 million, as shown in that line just before the designation of total receipts, in trustees' certificates drawn down, and had we not drawn down that $65 million we would have been underwater, of course.

I want to emphasize two things here—the first quarter in our opinion is not representative. More important than that, however, is our feeling that this company is not viable and has no chance of being viable, unless we can move forward constructively on the four conditions to viability

in exhibit 2, in Railpax, rate changes, abandonments, and most importantly, the 10,000 people who are on the payroll because of work rules that in our opinion should be modified.

Mr. PODELL. Is the major cause of losses on the railroad because of passenger service? Would you say that?

Mr. LANGDON. That is an important contributor, yes, sir.

Mr. PODELL. What percentage do you attribute to passenger service?

Mr. LANGDON. Our passenger losses currently on a fully allocated basis are running in the neighborhood of between $140 and $150 million. Today, and of course, we are caught in the worst possible situation in that we have not yet got the relief under Railpax, and at the same time we have not been able to take off the trains that are not carrying anybody, including 14 trains that the Commission found not to be needed in the public interest but which were caught up by Railpax under that provision which says, in effect, you cannot take off any trains until Railpax designates the trains that are to be run and then presumably you can take off the trains that are not designated.

Mr. PODELL. I would just like to pinpoint this. What percentage, if you know, sir, of your total losses, would be attributable to passenger service? Do you have any figure? Is it 30 or 70 percent, or what?

Mr. LANGDON. Our loss for 1970, on a fully allocated basis, prebankruptcy basis, including payment of interest and taxes, expenses which of course in bankruptcy are not being paid, is going to amount, although the books are not closed yet, to about $345 million.

So, on that basis, with $150 million attributable to the passenger service, let's see, that would be about 40 percent.

Mr. PODELL. And don't you feel if Railpax takes away the major problem of passenger service, it might solve your problem?

Mr. LANGDON. It is going to be a very important contributor, if they take it over on a basis which, as I say, goes beyond a reimbursement of the out-of-pocket expense of running the trains and includes reimbursement also for part of the common expenses.

You see, Penn Central, so far as passenger service is concerned, is quite different from the other railroads. We have a large part of our railroad, large parts of the railroad, that are devoted almost entirely to passenger service. On Penn Central, passenger service is not a by-product, but a service that is a large part of our business.

For instance, between Philadelphia and New York, we operate, in large part, six tracks, and if only the freight service were being operated, we could probably get along with a single track if there was central traffic control, or at least two tracks. We have tunnels under the Hudson River that are used exclusively by passenger trains. In other words, an important part of our business is the passenger service and a great deal of maintenance and other common expenses can be identified with the passenger service.

If Railpax in the takeover will recognize the rather peculiar and different situation of Penn Central, I am sure that the answer to your question is yes, it will be an important factor in the recovery of Penn Central. If, on the other hand, they take a narrow view, Railpax, while possibly helpful, will not be the difference between viability and nonviability.

I want to emphasize again, in any event, whatever deal is made, it has to meet the approval of the court and is going to be open to criticism and contests by creditors.

Mr. PODELL. That is all.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

I would like to say also you have done a very fine job here of focusing on the problem that faces us at the present time.

In speaking of your desire to abandon these lines on the part of the service of Penn Central, you speak of the alternative of a subsidy. I notice that you not only do a good job in your statement, but also in the exhibits following the statement, and particularly in this regard on page 5 of exhibit 2, you speak of subsidy, and you say there, and I quote:

> If losses are established, the railroad would at once be compensated by public payments which would in effect constitute a subsidy to the communities and to the users of the service.

My question is: Is there any present mechanism set up in the Government for such subsidy to be made? Would this be something totally new?

Mr. LANGDON. I think so, sir. I think we need to have an affirmative provision in the law.

I should also point out that right now we have pending a case where since 1964 we have been trying to abandon an operation. It has been bitterly contested. There is no question but that this line is a loser, and an important loser. Recently, there have been some suggestions by the State in which the communities served by this line are located, that for a period at least of 2 years they might come forward with a subsidy, that in effect, if we can work it out, would cover the losses.

Now if we can work out something like this, this is fine. We are in the railroad business, and we want to provide service, provided we can make our costs.

Mr. HARVEY. Maybe I don't understand you. Are you suggesting that the subsidy should come from the State or local government or what?

Mr. LANGDON. On this I think it would be highly appropriate for the communities that continue to receive the service to come forward with the subsidy if they don't want to see the line abandoned. In other words, if they want to continue the service, and if it is a loser, I think they might properly be responsible for a subsidy.

If, on the other hand, this is politically impossible, maybe it is a responsibility that the Department of Transportation could assume.

Mr. HARVEY. I think the answer to my question is that there is no present mechanism by which a subsidy can be paid?

Mr. LANGDON. You are right. But there is no reason why, in a proper case, assuming it can be worked out, that we couldn't consummate a deal for subsidies locally.

Mr. HARVEY. I have one other question.

On page 5 of your statement, you ask for an affirmative provision in the Interstate Commerce Act that no rate can be lower than the long-term variable cost of the service.

Isn't the effect of that saying that we should abandon control of rates? How do you know what long-term variable costs are? How do you establish it?

Mr. LANGDON. These are now pretty well established, sir. There have been years and years of cost research on the part of individual railroads, on the part of the Interstate Commerce Commission, and we are pretty generally agreed on the techniques that are employed to show the costs over the long term of moving traffic. I refer to "long term" because we have to include, I think, the cost of equipment.

Mr. HARVEY. When you say "we," do you mean Interstate Commerce Commission people and Bureau of Transportation?

Mr. LANGDON. No; I am speaking only of Penn Central. I think, however, this is generally agreed by the railroads as a whole. I don't think there is any dissension on this point, sir.

Mr. HARVEY. In other words, you feel that it is fairly easy to prove?

Mr. LANGDON. Yes. That was not true 20 years ago; there was bitter litigation. But today I think it is pretty well settled as to what the proper cost formula is.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. I will defer, Mr. Chairman, until those who were present have asked questions. I apologize for being late, but I was testifying before another committee.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. For the record, Mr. Langdon, the recommendation was made by the Board, and is that unanimous, including Mr. Wirtz, former Secretary of Labor in the Johnson administration?

Mr. LANGDON. Sir, I have to say he has not seen it. He has been in Europe and is coming back Monday. I will be glad to tell you after he reviews it whether he concurs.

It is specifically concurred in by the other two, and the judge has also read this. I don't think there is any reason to believe that Mr. Wirtz won't agree, too, but I have to say he has not had a chance to see it, sir.

Mr. KUYKENDALL. There are suggested changes in the work rules, a part of which are under litigation in the present negotiations going on, hopefully, right now! Would not all of your suggested changes have to be general throughout the industry and not just specifically for Penn Central?

Mr. LANGDON. Well, I don't think so, sir, because I think many of the rules we have are peculiar to Penn Central. Railroads are not uniform in their work rules. In most cases it is highly appropriate, in my judgment at least, and I think it is true also in the feeling of other trustees, to negotiate about work rules on the individual property.

For instance, in the case of the rules that are under discussion now, the old Pennsylvania part of the Penn Central has no problem about interdivisional runs. They worked that out some years ago. Again, railroads, in the use of radio, whether it justifies extra compensation or not, the railroads have different rules and practices.

Again, the only radio pay that we have on the Penn Central, I think, is limited to switch crews on the old New York Central. There is no radio pay on the old Pennsylvania, although they have requested

radio pay, and there is a section 6 notice which has been pending for a couple of years. They want 1 day's pay for the use of radio.

Mr. KUYKENDALL. May I switch?

Are you suggesting, on continuing of losing routes into a given community, that there be a subsidy here covered preferably by the local community? Are you familiar with the Railpax law that does require a local community that asks for and receives service that is not in the system, as proposed by DOT, that the community has to subsidize it? Are you familiar with that part of the law?

Mr. LANGDON. I am glad you brought it to my attention. That might furnish a precedent.

Mr. KUYKENDALL. That is what I want to say. It is in the Railpax law that a community that demands service not normally given must subsidize; and I might ask, is the subsidy rate 60 percent?

Mr. ADAMS. Up to 100 percent.

Mr. KUYKENDALL. So when a community gets together and demands passenger service not in the system, they must be prepared to pay for the losses, and that is in the Railpax bill.

Mr. LANGDON. That is a very helpful suggestion.

May I go back to the original question about Mr. Wirtz, and Mr. Blanchette reminds me, and I remember distinctly, he expressly concurred in exhibit 2, the basis of my testimony; namely, the preliminary report to the court. In fact, he wrote that part of it having to do with labor, in the preliminary report to the court.

So I am sure, since this presentation of mine really does no more than to bring forward the recommendations in the preliminary report to the court, that he would concur, sir.

Mr. KUYKENDALL. Mr. Langdon, I am certain you don't have it on the tip of your tongue in toto, but I would like to have for the record your estimate of the 10,000 reduction in force, and would like to know what part of that 10,000 you expect to replace simply by attrition, and what part by early retirement, and what part by separation.

These would have to be, of course, your own educated estimates, but we would like it for the record, and if you cannot give it to us now, supply it later.

Mr. LANGDON. Sir, the only thing which bears on your question that I know of at the moment is that, since the merger, which was more than 2 years ago, there has been attrition to the extent of 14,000 or 15,000 employees.

In other words, although the rate of employment has been slowly coming down, there have been that many new people since the merger. On that basis, then, I suppose 10,000 could be pretty well taken care of by the end of 3 or 4 years. It probably would be fairly well taken care of, sir, in that period. But I will be glad to, if you will give me a little time, study this specifically.

Mr. KUYKENDALL. I think you can see, as far as our working with this, this is probably going to be one of the two or three most vital points we are interested in, because we are interested in people before anything else.

Mr. LANGDON. Certainly.

(The following letter was received for the record:)

PENN CENTRAL TRANSPORTATION CO.,
Philadelphia, Pa., March 18, 1971.

Hon. DAN H. KUYKENDALL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KUYKENDALL: At pp. 33–34 of the transcript of the hearing held by the Subcommittee on Transportation and Aeronautics, March 9, 1971, in connection with the Emergency Rail Services Act of 1970, you inquired as to how the proposed reduction of 10,000 people in Penn Central's work force would be accomplished.

I should appreciate an opportunity to make a more precise reply than I gave at the time of the hearing.

In my statement I said that approximately 10,000 employes were retained because of the retention of State Full Crew Laws; work rules that have been found by Presidential Boards or Commissions to be unjustifiable; and other work rules which in the light of modern conditions can no longer be justified.

The bulk of the more than 10,000 employes are retained because of the combination of State Full Crew Laws and existing Agreement crew consist rules which preclude the Penn Central from determining the number of crew members actually needed to operate its trains. The existence of such state regulatory barriers and crew consist agreement restrictions requires Penn Central to employ approximately 8,800 unnecessary employes. Other work rule changes which should be made in agreements account for another 1,800 employes.

With respect to the disposition of those employes, as I stated at the hearing, they could be absorbed by normal attrition in a relatively short time after removal of the above barriers without undue burden placed upon the employes involved or the finances of the Company. The breakdown for such absorption does not contemplate any severance allowances, and is estimated to be as follows:

1. Compulsory Retirement: 1,200 positions, 1st year only. (Required rule changes).
2. Early Retirement: 600 positions, 2 years.
3. Normal Retirement: 7,000 positions, 2 years.
4. Deaths, Dismissals, Resignations: 1,800 positions, 2 years.

If you or other members of the sub-committee have any further questions with respect to this matter, I will be happy to answer them.

Sincerely,

JERVIS LANGDON, Jr.

Mr. KUYKENDALL. Lastly, I have heard none of our friends in Labor make such a statement, but I have definitely heard, in fact, from the national press, some of the national labor leaders who are not directly in transportation actually suggest the nationalization of the railroads.

Have you heard any such suggestion from any of the leaders that you know connected with transportation?

Mr. LANGDON. No, sir; I have not heard directly, but indirectly I have been told, as you have apparently, that some of them do favor nationalization. But I have not heard them say so directly.

In the contacts that we have had so far, and we have not seen all of them, but in the last 2 or 3 weeks, we have tried to see some of the labor leaders, and by "we," I mean Mr. Moore and myself, and when Mr. Wirtz comes back he will join us, there has been no suggestion of nationalization, and in fact in two prominent cases I know of, nationalization as a solution was rejected.

Mr. KUYKENDALL. Well, my friends in the labor movement have said this, and I would hope people in the labor movement who are

dreaming of the possibility of nationalization would realize that in the long pull, railroad management is a whole lot easier to deal with than a bunch of disgusted taxpayers or a hesitant Congress.

Mr. LANGDON. Yes, sir.

Mr. JARMAN. Mr. Skubitz?

Mr. SKUBITZ. Mr. Chairman, Mr. Pickle has asked some questions I had in mind.

Mr. Langdon, am I to understand by your statement that the trustees have recommended an additional $500 million be provided by the Government to take care of the losses that might come up in the next 3-year period?

Mr. LANGDON. No, sir. In our original presentation last December, the trustees suggested that over a 3-year period, 1971, 1972, and 1973, a total Government commitment of as much as $500 million might be needed in an effort to test viability.

This $500 million, I might explain, includes an amount of roughly $180 million or $190 million for the resumption of taxpayments by Penn Central—State and local taxpayments.

Our program now, however, is that we don't think that there should be any more guaranteed loans, and that the $100 million that we have already succeeded in obtaining will last long enough to see whether the company, through the acceptance of the four conditions I have been talking about, can be made viable, and that this determination ought to be ready, ought to be made about October or November.

In other words, we are convinced that within the next 6 months we ought to be able to determine whether viability is within reach or not. It is possible of course, that we might get to October and viability would be almost within reach and only a small accommodation would be necessary to get us to that point. But we are going to have to be positive in our proof in this respect, and convinced ourselves that viability is within reach in order to justify any more loans.

Mr. SKUBITZ. Whether the program is viable will depend upon a number of factors, and one is being able to discontinue routes; is that correct?

Mr. LANGDON. Well, sir, we have a number of branch lines and auxiliary operations that are losing money, and where we think there ought to be abandonment, unless the communities want, through subsidy or otherwise, to make up the difference and pay us what amounts to a subsidy.

Mr. SKUBITZ. What I am trying to say is, this is one factor that will have to be determined?

Mr. LANGDON. Yes.

Mr. SKUBITZ. The second factor will relate to reaching agreement with the Railroad Brotherhood with respect to the various orders or work rules that you have?

Mr. LANGDON. Yes, work rules.

Mr. SKUBITZ. The third will relate to getting increased rates from the Interstate Commerce Commission?

Mr. LANGDON. No, sir; I wouldn't put it quite that way. If you don't mind my interrupting at this point, what we are seeking from the Congress is a mandatory provision that no rate be less than cost.

This will actually mean that rates will in certain cases come up, but they will only come up to the level of the cost of providing the service.

Mr. SKUBITZ. Would the rates be uniform over the whole country and apply to all railroads? How do you figure whether a rate is above cost or more than cost rate, or less than cost?

Mr. LANGDON. It will be done on a railroad-by-railroad basis.

Mr. SKUBITZ. You mentioned work rules. You spoke of the full-crew law, I believe that is the statement.

Mr. LANGDON. Yes, sir.

Mr. SKUBITZ. Will you define what you mean by "full crew"? What constitutes a full crew?

Mr. LANGDON. Well, three States that we operate in; namely, Indiana, Ohio, and New York, each has provided for what we call a full crew, a crew, that is, that is larger than we think is necessary to operate the freight train, or in the case of yard services, the switch operation, or switching operation.

The full crew consists, in Indiana, of an engineer, fireman, conductor, and three brakemen on all trains over 70 cars, which of course predominate in Indiana.

Mr. SKUBITZ. This is what I wanted—a full crew applies when over 70 cars are involved.

Mr. LANGDON. In Indiana, yes, sir, but in other States it is different.

In Ohio, the full crew consists of the engineer, fireman, conductor, and two brakemen. The same is true in New York. In other words, in none of these three States have we been able in any instance to eliminate the firemen, as other railroads have been able to eliminate them.

In fact, only on 34 percent of our trains have we been able to eliminate the firemen as we were supposedly permitted to do in the National Arbitration Case known as No. 282, which was 4 or 5 years ago, as you recall, sir.

So today a higher proportion of freight trains on Penn Central has firemen than on other railroads because of its extensive operations in these full-crew States.

Mr. SKUBITZ. Doesn't the full-crew rule apply only when the train itself is composed of 70 cars or more?

Mr. LANGDON. That is true in Indiana, sir. The third brakeman is dropped in Indiana on trains of less than 70 cars. Also, in the yards in full-crew States, in certain States, you have to provide a foreman and two helpers. That is aside from the engine crew.

So we figure that, in connection with the full crews that are required by State statute, as well as the other rules, that we believe in the interest of efficient operation should be modified, there are 10,000 more jobs on the railroads than are really required for an efficient operation.

Penn Central has a much higher labor cost than any other railroad in the country. We have 68 percent of our costs that are labor costs, as compared with 58 percent for the railroad industry generally. Part of the problem there is our extensive operations in these full-crew States.

Mr. SKUBITZ. I understand your problem, but you are not quite answering my question.

If 70 cars in the State of Indiana required the hiring of a full crew, what happens when there are only 69 cars? Do you drop any employees?

Mr. LANGDON. One brakeman.

Mr. SKUBITZ. Suppose it gets down to 25, what happens?

Mr. LANGDON. I am not positive, I think it is the same.

Mr. SKUBITZ. Suppose it is 150 cars that are on the trip, are you required to put more people on?

Mr. LANGDON. No.

Mr. SKUBITZ. You operate with five people?

Mr. LANGDON. Six.

Mr. SKUBITZ. With six. Is that right?

Mr. LANGDON. In Indiana; yes.

Mr. SKUBITZ. In Indiana. If there are 90 or 100 or 125 cars or 150 cars on this train trip, you still have to hire only six people, is that correct?

Mr. LANGDON. That is right.

Mr. SKUBITZ. Do you feel as a matter of safety this is the proper thing to do?

Mr. LANGDON. Yes, sir, our safety experience in those States where we don't have full-crew laws and have only four-man crews is just as good as in the full-crew States. I realize the labor people may feel differently about this, but in our survey of the problem you can't really say that safety is influenced by the size of the crew.

Mr. SKUBITZ. We will get to the labor people.

Mr. LANGDON. Yes. I don't think you can relate the size of the crew to any specific difference in safety experience.

Mr. SKUBITZ. Thank you.

Well, I have one other question, I am sorry. I think you mentioned that an additional $28 million for losses are due to the merger; is this correct?

Mr. LANGDON. Yes, sir, this is the case where, in the merger agreement, and it was made a condition of the Commission's order approving the merger, no employee today, after the merger, can get less than his pay during a certain test period preceding the merger, plus the regular increases.

This means that if an employee was on overtime during this test period he continues to be paid on an overtime basis, even though he actually is not on overtime.

Mr. SKUBITZ. But a governmental agency approved that merger with that proviso in it?

Mr. LANGDON. Yes, sir.

Mr. SKUBITZ. That is all, Mr. Chairman.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Mr. Chairman, thank you.

Mr. Langdon, I appreciate your being here and I would also appreciate it if your office will, as they have in the past, keep the committee and this member abreast of your cashflow charts and preliminary reports to the courts, so we can follow them during the course of the next 6 months.

I am very disturbed about your timing. You indicate October and November as the time when you will know whether the Penn Central

can survive, and if the Congress adjourns, as it usually does in October or November, you may well go into a state of financial collapse at the time the Congress is out of business and there won't be anybody around to help you.

So I would hope that you will have a report for us sometime in June or July. Taking your exhibit 1, and I know the first quarter under Penn Central is always bad, you indicate a decreasing cash position. Your net change drops $11 million in February, $8 million in March, and you have drawn down or will have drawn down $65 million, so you only have $35 million left.

I am not satisfied that your four conditions can go into effect fast enough to save you by October. So will you keep us informed on your cashflow position during June and July?

Mr. LANGDON. Yes, sir.

Mr. ADAMS. Now let me go to another thing quickly. The second thing is this:

You indicate you need a change in freight rates, and in particular you want covered terminal cost as well as line-haul cost. I understand the problem of Penn Central having basically the more expensive terminal charges, as compared to "through freight", but is it your opinion or your request that we might do this by an amendment to the emergency Penn Central legislation or are you recommending that we do this across the board for all railroads through amendments to the Interstate Commerce Commission legislation?

Mr. LANGDON. Well, sir, I think it would have to be done across the board. I think this is a problem that exists with the other railroads, particularly those in the East. They may not have realized it. What has happened here, if I may explain it, sir, in recent years our terminal expenses, as distinguished from our line-haul expenses, have gone up much faster than the line expenses.

Mr. ADAMS. All right; I know that and know what that problem is. What I want, so we have the information before the committee, is how big a bite we have to take. As you know, every time we get one of these bills on the floor, it goes off like a rocket, and to try to do something for the Penn Central is a much smaller problem than to try to have industry and labor nationwide agree on an amendment to the Interstate Commerce Commission rules.

Mr. LANGDON. It may be possible, sir, to work this out through changes in tariff rules or provisions of the Interstate Commerce Commission. This is one of the things we have under active consideration at the present time.

In effect, they would require that in the publishing of rates there be a separation between line and terminal.

Mr. ADAMS. On that point, if we go in with an amendment on costs being recovered, if we placed that provision generally in the Interstate Commerce Commission, that would pick up and cover and protect your terminal costs, wouldn't it?

Mr. LANGDON. Yes; it would, sir. The real reason, if I may add this, and you are absolutely right in your answer, but the real reason why we think it would be smart to separate line and terminal is, as we move ahead, if there are increases in terminal expenses but not in line expenses, then we could make appropriate increases in the ter-

minal portion of the rate, as opposed to the line portion. We could actually, as I am sure would be justified now, make an across-the-board increase in the terminal charge.

In other words, we could pinpoint the rate increases to the places where there are cost increases.

Mr. ADAMS. Quickly on that point, I understand you favor, as many of the industry people do, a selective type of freight rate increase rather than, as we do now, generally across-the-board 5- or 6-percent increase on everything?

Mr. LANGDON. I have favored that, sir, for 30 years, but the problem there is that you never can get the industry to agree, and so, as a practical matter, and with the competitive situation being different on the different railroads, the only alternative is to do what I think is the wrong thing; namely, make across-the-board increases.

Mr. ADAMS. All right. You have mentioned also in their contract charges, you want authority to do contracting, which is very controversial in all of the modes, and you would of course expect that within that there would be the same limitation that it must be at least above cost?

Mr. LANGDON. Exactly, sir. It should also be published and available to all similarly situated.

Mr. ADAMS. That is the next thing. In other words, you would require your contract rates to be published?

Mr. LANGDON. Yes.

Mr. ADAMS. The next thing, on abandonment of lines, which you mentioned as one of your four conditions of viability, are you anticipating abandonment of freight lines as well as what would be authorized as abandonment of service under Railpax?

Mr. LANGDON. Yes, sir.

Mr. ADAMS. In other words, you have a certain number of freight lines that are subsidiary lines that you would request abandonment of, and you would want it in the legislation, as well as the legislation you have now for abandonment of service under Railpax?

Mr. LANGDON. Yes, sir. The amendment that I had in mind would be an amendment to section 1, paragraph 18, of the Interstate Commerce Commission Act. That is where this could go.

Mr. ADAMS. I will ask them when they come in.

The next question is this: Where are you in your negotiations with Railpax? I know that nationwide there are a series of teams doing this. Are you going to make the May 1 deadline?

Mr. LANGDON. We have a schedule, sir, that would enable the May 1 deadline to be met. Now it is very close. Of course, when we get to court, anything could happen. We have to go to court, and the provisional schedule we have contemplates our going to court very much at the last minute.

Mr. ADAMS. All right. Do you think you have sufficient authorization already under Railpax to either abandon or change your passenger service in terms of, if not abandonment of a line at least a changing of service on it?

Mr. LANGDON. Yes, sir. But this does not mean it won't be contested. We probably will be faced with all kinds of complaints before State

Public Service Commissions and maybe the Interstate Commerce Commission and anywhere there is possible jurisdiction, about the takeoff of trains that Railpax does not designate as part of their system and which, theoretically at least, under Railpax we are then entitled to take off.

We are going to have litigation all over the place on that, I am afraid.

Mr. ADAMS. You will have drawn down $65 million by the end of March, which leaves only $35 million of guaranteed loans available, and as I remember, your cash losses are still continuing; is this an operating loss?

Mr. LANGDON. Yes.

Mr. ADAMS. Day by day?

Mr. LANGDON. Yes.

Mr. ADAMS. Does that figure lasting into October include within it a calculation based upon what, at least as I understand it, has been agreed to by three or four major unions as a wage increase that will become effective sometime within the next 2 months?

Mr. LANGDON. Yes, sir. It contemplates the April 1 part of the increase and then, whether in October we can absorb the increase that is scheduled for that date, that is, October 1, is at the moment questionable. We can, without question, absorb the April 1 increase.

Mr. ADAMS. It is my understanding that your October date for survival is a very contingent one, but it is better than when you reported to us in December.

Mr. LANGDON. Yes, sir; I think that is right.

Mr. DINGELL. Will you yield for one question?

This is still talking about the $100 million without any drawing on the last $25 million?

Mr. ADAMS. Yes. You remember the legislative history made it clear that the $25 million was for other railroads.

Mr. DINGELL. We are not sure other railroads will claim it. It does, though, enter into the discussion, and I wonder if you are getting yourselves in the box, and you almost did last time, Mr. Langdon, and is that $25 million going to be enough to carry you to the first of the year if there is a problem that arises?

Mr. LANGDON. We understand, sir, that as pointed out in Chairman Stafford's memorandum, most of the $25 million has already been spoken for by the Boston & Maine, Central Railroad in New Jersey, and maybe one other railroad. There is maybe $11 million that under the applications pending today is still uncommitted.

So that in making the October projection, I had not counted on any part of that additional $25 million, although the October projection does take into account the drawdown of the remaining part of $100 million, which will be accomplished about June.

Mr. ADAMS. Thank you, Mr. Langdon. I just wanted to state one of the reasons we want to know by June or so where you are, is that there is possibly another alternative, which is some type of COMSAT or Railpax or Government type consortium of railroads and financing to take over the operating part of Penn Central. I throw out as something that at least this member has thought about. If we have to crank something like that up, we need time.

Mr. LANGDON. I appreciate that, and we will move fast here. Our whole purpose is to try to avoid the borrowing of money to pay operating expenses, any further borrowing. It is not right to do it, and we recognize it, and we are trying, as I say, to propose substantive changes to make this unnecessary, and if we cannot accomplish those changes, we will have to find some other answer for Penn Central than a traditional reorganization along the lines I suggested in my testimony.

We won't let it come to the last minute. I think, frankly, in the next 2 or 3 months we will know pretty well what the picture is going to be. We are going to be right on top of it. I don't want to put you on the spot at the last minute, and we won't.

Mr. ADAMS. Thank you; and thank you, Mr. Chairman.

Mr. JARMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Continuing the questions raised by my friend, Mr. Adams, we found ourselves to be very much pressed last year for this matter to be handled just in the last 2 or 3 days before adjournment and get it through the Senate, and our staff was with the legislation the better part of many nights.

I want to commend you on the fact you have kept this committee generally informed the way these matters are proceeding.

Isn't it possible for you to give us perhaps a monthly statement of how you are faring, and I think that would help us.

Mr. LANGDON. Right.

Mr. DINGELL. I think that would help us. We would then have capacity in this committee to arrive at an orderly judgment as to when the crisis will come.

Mr. LANGDON. I will be glad to do it, and in fact come down every month and talk with whomever you say, and bring them up-to-date, in addition to a statement.

Mr. DINGELL. I think your time is too valuable for that.

Mr. LANGDON. No, after all——

Mr. DINGELL. If we can get it on the telephone——

Mr. LANGDON. No, it is not. I would be glad to do it, Mr. Wirtz or some one of us, to keep you up to date. We want to maintain close liaison to the extent it does not impose on your time.

Mr. DINGELL. Now, you have indicated on page 10 of your statement a sequence of cost savings and benefits that could be attained through a sequence of changes: a sound arrangement with Railpax, abandonment of uneconomic lines, recovering their losses, and so forth, modified pricing practices, and eliminating loss traffic, and changing work rules requiring employment of 10,000 more people than necessary in an efficient operation.

I believe in item 3 you have given estimates as to savings to the corporation. Can you give us some understanding of what the savings from items 1 and 2, your arrangement with Railpax and abandonment of uneconomic lines, would be?

Mr. LANGDON. Yes. Start with 1, Railpax, this could, depending on the contractual arrangement finally negotiated with approval of the court, this could range from an improvement over our present position of roughly $35 million to $40 million a year, to maybe $125 million or even $150 million a year, in that range. So that the improvement there

depends entirely upon the cost basis which is finally accepted by Railpax as proper for reimbursing Penn Central. But the improvement as a minimum would be $35 to $40 million a year on an annual basis.

Now, this is, however, before the so-called initiation fee that we are going to have to put up and also the separation pay that we are going to be responsible for, for employees on trains that are discontinued as a result of Railpax. It is hard to estimate what the initiation fee is going to be, but it will be in the neighborhood of $40–$50 million payable over a 3-year period, and apparently this can be borrowed.

Mr. DINGELL. Or paid for in the service on equipment?

Mr. LANGDON. On equipment, I understand, sir, their latest plan is to lease it. We counted on turning in our equipment and we estimated it would be worth, not an exact figure, but a substantial part of the entry fee would be payable in equipment, but I think they have changed signals on that and are planning on leasing equipment.

As far as separation pay is concerned, it won't be payable all at once, but over a period of a couple of years, and this will run as much as $30 million.

Railpax may not benefit us at the beginning, but it does promise, if it works and is viable and is properly funded, it does promise to make an important contribution to viability for Penn Central as a heavy passenger-carrying line, and that contribution, once these initiation fees are taken care of and labor is separated, may range anywhere from $40 million to $50 million each year to more than $100 million.

Insofar as abandonment of uneconomic lines or receiving of subsidies, this is probably the least important from a money standpoint. There is going to be an estimated $25–$30 million of salvage from our program on the first 3,600 miles, and 1,000 miles of yard and side tracks.

Of course, this salvage will be claimed by the bondholders. So we don't see much of that coming through to the railroad. The operating savings, mostly in maintenance, that will come about through the abandonment applications we are now in the process of filing, will be in the magnitude of $2.5 million a year. This will be stepped up as we proceed with further abandonments down the road.

So far as No. 3 is concerned, the modification of pricing practices and elimination of loss traffic, the elimination of loss traffic alone, in our opinion, will benefit us to the extent of $80 million a year if we keep the traffic. If we lose the traffic, the benefit will still be substantial.

Now insofar as the modification of pricing practices is concerned, this depends on the imagination of our own people. If we can, with these changes in the law, do the kind of job that is possible here, they may mean a great deal. On the other hand, if we proceed along the line that has been followed in the railroad business in the past, they may mean very little.

Mr. DINGELL. You alluded to the business of modifying pricing practices and eliminating loss traffic, and does this have to be done by regulatory action of the Interstate Commerce Commission or do you need statutory changes?

Mr. LANGDON. We have to have, or at least we think we have to have changes in the statute to require that no traffic be carried at less than the cost of moving the business.

Mr. DINGELL. Will you submit to this committee what you regard as appropriate legislative changes?

Mr. LANGDON. Yes; that is what I promised to do within a couple of weeks. The reason it is not here today is that I am trying or we are trying to coordinate it with the other interests that are affected, so that when we do propose it to you, we can say it meets the concurrence of the other railroads.

Mr. DINGELL. Railroads?

Mr. LANGDON. Yes; railroads, other shippers and truck lines and others who might be concerned.

I would like to come here with something that is noncontroversial.

(The following proposed amendments were received for the record:)

PROPOSED AMENDMENTS TO PART I OF THE INTERSTATE COMMERCE ACT (49 USC §1 ET SEQ.) TO FACILITATE ELIMINATION OF NON-COMPENSATORY CHARGES OF RAILROADS IN REORGANIZATION

1. Amendment to Section 1(4) of the Act to exempt railroads in reorganization from the obligation to participate in joint rates which produce revenue for the railroad less than its long run variable costs.
2. Amendment to Section 13 of the Act by adding new paragraphs "b" and "c" to provide that increased intrastate rates and charges which result from efforts of a carrier in reorganization to eliminate non-compensatory rates shall not be subject to suspension.
3. Amendment to Section 15(7) of the Act to provide that increased interstate rates and charges which result from efforts of a carrier in reorganization to eliminate non-compensatory rates shall not be subject to suspension.
4. Amendment to Section 1 of the Act by adding new paragraph 23, which defines procedures and standards in abandonments proposed by railroads in reorganization.

AMENDMENT TO SECTION 1(4) OF THE ACT TO EXEMPT RAILROADS IN REORGANIZATION FROM THE OBLIGATION TO PARTICIPATE IN JOINT RATES WHICH PRODUCE REVENUE FOR THE RAILROAD LESS THAN ITS LONG RUN VARIABLE COSTS

Sec. 1(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers; *provided, however, that a carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (11 USC § 205) shall not be required to continue its concurrence in and participation in joint rates and charges if the trustee of said carrier certifies to the Commission that in the Trustee's opinion the revenues received by such carrier from such joint rates and charges are less than its long run variable costs of performing the service required of it on such joint rates and charges and that the loss caused by participation in such rates adversely affects the carrier's ability to reorganize, and shall be permitted to cancel its participation in such joint rates and charges by the filing of tariff schedules in the manner provided in Section 6 of this Act, except that a carrier which cancels its participation in joint rates or charges may, after hearing, be required by the Commission to reestablish joint rates prescribed by the Commission, which joint rates are to be divided on a basis prescribed by the Commission in conformance with Section 15(6) of the Act, the basis of divisions so prescribed to apply for the period subsequent to the cancellation of participation in the joint rates.*

AMENDMENT TO SECTION 13 OF THE ACT BY ADDING NEW PARAGRAPHS "B" AND "C" TO PROVIDE THAT INCREASED INTRASTATE RATES AND CHARGES WHICH RESULT FROM EFFORTS OF A CARRIER IN REORGANIZATION TO ELIMINATE NON-COMPENSATORY RATES SHALL NOT BE SUBJECT TO SUSPENSION.

Sec. 13b Whenever the trustee of a carrier subject to the provisions of the Act which is in reorganization under the provisions of Section 77 of the Bankruptcy Act (11 USC § 205) certifies to the appropriate state authority that in the trustee's opinion intrastate local rates and charges of the carrier are less than its long run variable costs of performing the service required on such rates and charges and that the loss caused thereby adversely affects the carrier's ability to reorganize the carrier may file schedules increasing such local rates or charges for the performance of intrastate service with the state authority of the involved state and such increased local rates or charges shall become effective on the date specified in the schedules which shall not be less than thirty days after filing, the law of any state or the decision or order of any state authority to the contrary notwithstanding. Nothing in this provision shall be deemed to deprive state authorities of their jurisdiction to investigate the lawfulness of said increased local rates or charges under the statutes of the state involved and to enter orders in respect to said local rates and charges as a result of said investigation, and the carrier shall refund, with interest, to the persons in whose behalf such amounts were paid, such portion of the increased rates or charges as by the valid decision of the state authority may be found not justified, provided however, that refund shall not be made during the pendency of any proceeding under paragraphs (3) and (4) of Section 13 of this act involving such increased intrastate rates and charges and shall not be made if inconsistent with the ultimate findings of the Commission in such proceeding. Nothing in this paragraph shall be interpreted as modifying the provisions of paragraphs (3) and (4) of Section 13 of this Act.

13c A carrier subject to the provisions of this Act which is in reorganization under the provisions of Section 77 of the Bankruptcy Act (11 USC § 205) shall not be required to continue its concurrence in and participation in joint rates and charges for the performance of intrastate service if the trustee of said carrier certifies to the appropriate state authority that in the Trustees' opinion the revenues received by such carrier from such joint rates and charges are less than its long run variable costs of performing the service required on such joint rates and charges and that the loss caused by participation in such rates adversely affects the carrier's ability to reorganize, and if any increased charges result from the cancellation by a carrier in reorganization of participation in such joint rates or charges such increased charges shall become effective thirty days after filing of tariff schedules with the appropriate state authority, the law of any state or the decision or order of any state authority to the contrary notwithstanding; provided, however, that nothing in this provision shall be deemed to deprive state authorities of their jurisdiction to investigate the lawfulness of such increased through charges under the statutes of the state involved and to enter orders in respect to said local rates and charges as a result of said investigation, and the carrier shall refund, with interest, to the persons in whose behalf such amounts were paid, such portion of the increased rates or charges as by the valid decision of the state authority may be found not justified, provided however, that refund shall not be made during the pendency of any proceeding under paragraphs (3) and (4) of Section 13 of the act involving such increased intrastate rates and charges and shall not be made if inconsistent with the ultimate findings of the Commission in such proceeding. Nothing in this paragraph shall be interpreted as modifying the provisions of paragraphs (3) and (4) of Section 13 of this Act.

* * *

AMENDMENT TO SECTION 15(7) OF THE ACT TO PROVIDE THAT INCREASED INTERSTATE RATES AND CHARGES WHICH RESULT FROM EFFORTS OF A CARRIER IN REORGANIZATION TO ELIMINATE NON-COMPENSATORY RATES SHALL NOT BE SUBJECT TO SUSPENSION

Sec. 15(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or new individual or joint classification, or any new individual or joint regulation or practice affecting any

rate, fare, or charge, the Commission shall have, and it is hereby given, authority either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective, *provided, however, that if the trustee of a carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (11 USC § 205) certifies to the Commission that in the trustee's opinion the revenue received by such carrier from divisions of joint rates or charges or from local rates and charges is less than its long run variable costs of performing the service required of it on such joint or local rates and charges, and that the loss caused thereby adversely affects said carrier's ability to reorganize the Commission's power to suspend may not be exercised in respect to increases in through charges that may result from the cancellation of participation in joint rates by said carrier on increases in local rates or charges filed by said carrier, which increases must be permitted to become effective.*

If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period, but in case of a proposed increased rate or charge, *including increased rates or charges filed by a carrier in reorganization or increased charges resulting from the cancellation of participation in joint rates by a carrier in reorganization,* for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may be further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

AMENDMENT TO SECTION 1 OF THE ACT BY ADDING NEW PARAGRAPH 23, WHICH DEFINES PROCEDURES AND STANDARDS IN ABANDONMENTS PROPOSED BY RAILROADS IN REORGANIZATION.

23(a) Anything in paragraph 20 of this section to the contrary notwithstanding, a carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (49 USC § 205) which pursuant to order of the court having jurisdiction of the carrier in reorganization files notice of abandonment of one or more lines of railroad or the operations thereof with the Commission and with the Governor of each state in which the line or lines of railroad are situate and posts notice of abandonment at every freight depot on said line or lines of railroad sought to be abandoned at least thirty days in advance of the proposed abandonment may abandon the line or lines of railroad or the operation thereof pursuant to said notice except as otherwise ordered by the Commission pursuant to this paragraph.

Upon the filing of such notice the Commission shall have authority during said thirty-day notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed abandonment

and pending such investigation and the decision thereon, the Commission may by order prohibit the abandonment of operations of the line or lines of railroad for a period not longer than four months beyond the date when such abandonment would otherwise have occurred. If prior to the date when the abandonment would otherwise have become effective the Commission institutes an investigation without requiring continued operation of the line or lines sought to be abandoned, the carrier shall not remove the line or facilities from place during the four-month period immediately following the date on which the abandonment would otherwise have occurred. If the Commission does not complete its investigation during the four-month period immediately following the date on which the abandonment would otherwise have occurred, the carrier may discontinue operation of the line if it has not previously done so. If the Commission does not complete its investigation during the seven-month period immediately following the date on which the abandonment would otherwise have occurred, the Commission shall be deemed to have approved the abandonment at the end of said seven-month period and the carrier may abandon said line or lines of railroad.

In its investigation the Commission shall determine whether the line involved is being operated at a loss, as that term is defined in subparagraph (b) of this paragraph 23. If the Commission determines that such line is being operated at a loss, the Commission, prior to the expiration of said seven-month period, and with or without a hearing officer's report, shall approve the abandonment unless the Commission finds that funds are immediately available to eliminate such loss in the operation of the line through participation in state, local or federal programs for the financial support of the operation or maintenance of such line or otherwise. If the Commission determines that the line is not being operated at a loss or determines that the loss has been or immediately will be eliminated by State, local or federal programs, the Commission shall issue an order requiring the railroad to continue operation of the line or lines involved, which order shall be without prejudice to the subsequent filing of a notice of abandonment of said line under this paragraph or the filing of an application for a certificate of public convenience and necessity under paragraphs 18–22 of this section.

(b) In this paragraph 23 "being operated at a loss" in relation to any line means that abandonment of the line would permit a reduction of the railroad's avoidable costs, including depreciation on equipment and structures and the costs of rehabilitation during the following five-year period, or would produce other economic benefits, in an amount exceeding the probable revenue loss which would result from such abandonment during said period.

(c) All suits to set aside or review the action or inaction of the Commission under this paragraph 23 shall be brought before the court having jurisdiction of the carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (49 USC § 205), the provisions of 28 USC § 2284, 2321, 2324, 2325 to the contrary notwithstanding.

Mr. PICKLE. Will you yield?

Mr. DINGELL. Glad to.

Mr. PICKLE. In line with submission to us of a proposal of rates that would not be below the cost of service, I see the Chairman of the Interstate Commerce Commission will be here and is scheduled to testify, I assume, tomorrow.

Mr. JARMAN. Yes.

Mr. PICKLE. I would hope, although he has a prepared statement here already to present to the committee, that he might now be able to give us his recommendations or the Commission's recommendations particularly as applies to across-the-board rather than just to Penn Central alone.

Mr. DINGELL. One more question, Mr. Chairman.

I observe also you have suggestions with regard to separating your line-haul and terminal service?

Is this a matter that must be done inhouse, must be done by ICC, or statutory change or some combination?

Mr. LANGDON. I think, sir, that we should exhaust the possibilities of administrative action on this through the ICC before we come here with this suggestion. I put it in the form of a statutory change, but it may be possible to work it out administratively with ICC, if they concur, sir. This is peculiarly a Penn Central proposal and may meet a storm of criticism.

The whole point, of course, is, as I said before, that terminal expenses respond directly to volume and the more terminal business you have the higher the unit terminal cost because terminals get congested and there is not the same opportunity with volume increases to modify and affect favorably the unit terminal expenses.

Line, on the other hand, when there is more business, there are more cars on the train and you have an opportunity to bring down to net a substantial part of the increased revenue that you get as a result of increased volume. This is not true in terminals and since we are the biggest terminal operator in the country these general rate increases have not compensated us, because, as I say, the terminal expenses have gone up much faster than line.

If we had separated terminal and line in our ratemaking, I think the overpricing of the long haul would have been detected and the underpricing of the short hauls which predominate on the Penn Central would have been detected also.

Mr. DINGELL. I would like the request made by my friend, Mr. Pickle, Mr. Chairman, that the gentleman from the ICC be prepared to discuss this point when they are before us.

One other question. Have you given any thought to, or made applications for, general revisions of your rate structure in the light of your findings so far and if you have not done so, when do you anticipate doing so?

Mr. LANGDON. As soon as the Commission decides the pending rate increase case, the final phase of the so-called ex parte 267 proceeding which involves 7 percent of the original 15-percent increase application that we applied for some time ago, then Penn Central is prepared to move, depending on the outcome of that case, with a proposal for a terminal charge, that will be deducted and kept by us before being prorated with other lines. This is actively under consideration at the moment.

In the meantime we are undertaking revision of our piggyback rates. I don't think they are right and we are trying to consider what revision should be made in our piggyback rate structure. We have other rate changes in mind, too. Those are the most important ones.

Mr. PICKLE. Are your piggyback rates too low or too high?

Mr. LANGDON. At the moment I am afraid they are too high.

What happened is, and of course piggyback is the most directly competitive part of our service with motor carriers, that the motor carriers, despite the cost increases that they apparently incurred, have not increased their rates to the same extent as the railroads and the result is, the railroads are hurting.

Mr. DINGELL. Thank you very much and thank you, Mr. Chairman.

Mr. PICKLE. Mr. Chairman, may I ask a question?

Mr. JARMAN. Certainly.

Mr. PICKLE. Sir, can we expect any relief from the liquidation of assets of the Pennsylvania Co.?

Mr. LANGDON. I wish we could confidently look forward to that, sir. We are working overtime trying to dispose of those nonrailroad assets. We have a number of problems.

The first problem is that everybody who is interested in these things believe that they are attending a "fire sale," and we have not had any offers yet although we have been actively promoting the disposition of this property, that remotely approaches the value. We are hoping, though, that through some other means we may be able to dispose of the Pennsylvania Co. in its entirety.

We will take back the railroads that are now part of the Pennsylvania Co., but let the whole thing go—and we are trying to work out an arrangement whereby the railroad has some advantage from this. Of course, we realize there is not going to be a dime come through to the railroad. The creditors are all going to move in. There is going to be litigation, whatever happens. There is going to be litigation, tying the thing up almost indefinitely.

The prospect of cash is just nonexistent.

Mr. PICKLE. Well, I simply observe, as I am sure we are all in agreement, it took a considerable amount of effort on behalf of this committee and the leadership on both sides of the aisle to pass emergency legislation last December.

There is a strong feeling by many Members of Congress and the public that Penn Central and its subsidiaries have ample cash if they would just liquidate it. Unless that information is fully given to the public, we will have difficulty going forward in this field. It is something we must recognize and you must be able to give us the latest complete full information as you go along.

Mr. LANGDON. We appreciate that and I couldn't agree with you more, sir.

Mr. JARMAN. Mr. Langdon, we very much appreciated your being with us and we count on staying very close with you subsequently and the subcommittee will now stand adjourned until 10 o'clock tomorrow.

(Whereupon, at 11:50 a.m. the subcommittee adjourned, to reconvene at 10 a.m. of the following day, Wednesday, March 10, 1971.)

REVIEW OF THE EMERGENCY RAIL SERVICES ACT OF 1970

WEDNESDAY, MARCH 10, 1971

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

The subcommittee met at 10 a.m., pursuant to notice in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

Today we will continue our hearings on review of the Emergency Rail Services Act of 1970. Yesterday, we heard from Mr. Jervis Langdon on behalf of the trustees of the property of the Penn Central Transportation Company.

Today, our first witness will be Chairman George Stafford of the Interstate Commerce Commission.

Mr. Chairman, I know that you were here yesterday morning and I am sorry that the subcommittee was unable to reach you at that time. If you would introduce your associates, and please proceed with your testimony in the order that you prefer.

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY FRITZ R. KAHN, GENERAL COUNSEL; THADDEUS W. FORBES, ASSOCIATE DIRECTOR, OFFICE OF PROCEEDINGS; MATTHEW PAOLO, DIRECTOR, BUREAU OF ACCOUNTS; AND JOSEPH FITTIPALDI, CHIEF, SECTION OF RATES

Mr. STAFFORD. Thank you, Mr. Chairman.

We have several of our staff here with us. At the head table this morning, I have Mr. Fittipaldi, who will be in the area of rates; and, of course, our general counsel Fritz R. Kahn, who has been here a number of times; and Ted Forbes, our financial section representative. And, of course, we have Mat Paolo, accounting section, who is in charge of a great deal of this work.

If I may, in view of what was said yesterday, I would like to summarize my statement a bit because it is a bit redundant, and do a little of what you gentlemen call educated reading.

Mr. JARMAN. The committee will be glad to accept the statement in full. Please proceed as you wish.

Mr. STAFFORD. Penn Central Transportation Co. last year found itself in critical need for outside funding in order to keep oper-

ating. Responding to that need, Congress passed the Emergency Rail Service Act of 1970. That act allowed railroads undergoing reorganization to apply to the Secretary of Transportation for authority to issue trustee certificates guaranteed by the Federal Government. The act limits the total amount of outstanding guarantees to $125 million.

The Penn Central immediately applied for issuance of $110 million trustee certificates guaranteed under the new law.

On January 9, this year, we approved that application. The Department of Transportation, upon consultation with the Commission and after attaching a number of conditions, approved a $100 million guarantee on January 13 of this year. Thus within a period of a few days the Department and the Commission were able to proceed and dispose of the application.

There are now two pending applications by other railroads for a portion of the remaining loan guarantee available under the new act. The Boston & Maine Corp. has received court approval to apply for $3.4 million, and the Central Railroad Co. of New Jersey has applied for $10 million in Federal guarantees of trustee certificates. Both applications are now being processed by the Department and the Commission.

If both applications were fully granted, this would only leave approximately $11.6 million in unused guarantees under the Emergency Rail Service Act of 1970.

Turning now to our appraisal of Penn Central Transportation Co., that railroad started this year with cash of only $18.7 million, or well below the $30 million it needs for orderly operations. On January 26, this year, its trustee certificates were sold for $100 million, and the next day it could ask the U.S. District Court for the Eastern District of Pennsylvania for permission to use $15 million of the proceeds for payrolls and related expenses.

Additional amounts drawn down were $20 million on February 16, $15 million on February 26, $10 million on March 2, leaving $40 million available for future needs. The company income forecasts by months for calendar year 1971 did not include the $100 million from the sale of these certificates, and we have adjusted the company's cash forecast to include the $100 million.

As adjusted, the company's cash balances are expected to decline to $27.3 million as of April 30, and in absence of additional loans to $19.7 million by the end of 1971. It is obvious that the cash shortage will continue during the remainder of 1971, even though most of the company's debts and interest payments are suspended during the reorganization period.

As to other railroads, there are of course many variables which affect railroad viability. One important external factor will be health of the national economy in 1971. Railroad traffic tends to match the change in real economic growth. If business continues to recover, as many expect, it is probable that railroad traffic will move upward. Such improvement, together with the application of rate increases already

authorized in ex parte 267, and those still under consideration by the Commission to the extent granted should help to ease some of the difficulties being experienced by marginal roads.

Railroad revenue ton-miles held up well during 1970, considering the business downturn. The estimate is a loss of less than 1 percent from 1968. Thus far, in 1971, rail ton-miles have decreased about nine-tenths of 1 percent over the comparable period in 1970. Railroads which failed to earn net income in 1969 or in 1970 should be considered marginal. There are two sets of tables attached to my statement which provide a general summary of the operating and financial condition of these railroads. The tables contain the latest information reported by these railroads.

Attachment I shows a quarter trend in revenue ton-miles for each of the 18 marginal railroads, beginning with 1967. These trends may be compared with figures for total United States as well as for the geographical regions in which the railroads operate. For all class I railroads, revenue ton-miles moved upward over the period, rising 3½ percent in 1968 over 1967, 3.1 percent in 1969, but decreased nine-tenths of 1 percent for 1970.

As can be seen from the tables, most of the increase over this period occurred in the South and West, while ton-miles in the East showed a decline in 1970. Traffic volume of marginal railroads, but especially those having traffic declines in 1969 and 1970 should be watched carefully as 1971 progresses.

Declines in their traffic in the face of general economic recovery, signal increased difficulty for them. The long-term decline in ton-miles for certain railroads causes even greater concern. Attachment II provides a set of pertinent data and ratios to gain a quick impression of the 18 individual marginal railroads' financial condition. The total assets and total operating revenues indicate the relative sizes and importance of the individual railroads. The list includes seven railroads with assets of $100 million or more, two having in excess of $500 million, and these are Chicago Northwestern and the Milwaukee.

As of the end of 1970, these railroads were in precarious condition. Continuations of inflationary pressures, which had spread work stoppages on railroads or in particular industries or a major national disaster might be enough to push some over the brink. We cannot predict bankruptcy, yet we know it could happen. We are alert to the seriousness of this situation and will advise you of significant developments.

Assuming no other railroads are forced to apply for Federal guarantees within the next few months, it is our hope that the remaining $10 to $15 million of authority will be sufficient to meet Penn Central's short-term needs as well as those of the Boston & Maine and Central Railroad of New Jersey.

Because of Penn Central's impaired cash position and the poor financial health of some other eastern railroads, we do expect that sometime in the future the Congress will be apt to grant additional amounts of Federal guarantees to railroads in reorganization. However, it would be my hope that a request of that nature be considered within the framework of the overall needs of surface transportation.

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Such an approach would take into account the ever-increasing demands for surface transportation facilities, quality and quantity of service rendered, and the prices charged the consumer for those services.

Thank you.

(Chairman Stafford's prepared statement and attachments I and II follow:)

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Subcommittee: We are pleased to have this opportunity to appear before you for the purpose of discussing with you the present needs for emergency loan guarantee legislation for the aid of railroads in receivership. I am accompanied by several staff members and they are available to be of assistance to the Subcommittee if the need arises. If you would like, I can have their names and positions submitted to the reporter for the record.

In accordance with your request, my statement includes the latest information that is available to the Interstate Commerce Commission on the status of financially distressed railroads, with particular emphasis on the Penn Central Transportation Company.

Last June we appeared before you in support of the railroad loan guarantee legislation you then were considering. We noted that many railroads were experiencing financial difficulties and that they might have need for Federal assistance to finance equipment acquisitions and capital improvements. By December, one of these—the Penn Central Transportation Company—found itself in critical need for outside funding in order to keep operating.

Responding to that need, Congress passed the Emergency Rail Services Act of 1970. That Act became Public Law 91-663 on January 8, 1971. Briefly, it allows railroads undergoing reorganization pursuant to section 77 of the Bankruptcy Act upon court approval to apply to the Secretary of Transportation for authority to issue trustee certificates guaranteed by the Federal Government.

The Secretary, after consultation with the Commission, has authority to require conditions to insure that the proceeds from the sale of the certificates guaranteed under the Act will be applied to the fullest extent possible to maintain service and to pay expenses that necessarily must be met to keep the railroad going.

The Act limits the total amount of outstanding guarantees to $125 million.

The Penn Central immediately applied for issuance of $110 million of trustees' certificates guaranteed under the new law, and on January 8, 1971, we approved that application. The Department of Transportation, upon consultation with the Commission and after attaching a number of conditions, approved a $100 million guarantee on January 13, 1971. Thus within a period of a few days the Department and the Commission were able to process and dispose of the application.

There are now two pending applications by other railroads for a portion of the remaining loan guarantees available under the new Act. The Boston and Maine Corporation has received court approval to apply for $3.4 million and the Central Railroad Company of New Jersey has applied for $10 million in Federal guarantees of trustee certificates. Both applications are now being processed by the Department and the Commission. Even if both applications were fully granted, this would only leave approximately $11.6 million in unused guarantees under the Emergency Rail Services Act of 1970.

Turning now to our appraisal of the Penn Central Transportation Company, that railroad started this year with cash of only $18.7 million or well below the $30 million it needs for orderly operations. On January 26, 1971, its trustees' certificates were sold for $100 million, and the next day the Company asked the United States District Court for the Eastern District of Pennsylvania for permission to use $15 million of the proceeds for payrolls and related expenses. Additional amounts drawn down were $20 million on February 16, $15 million on February 26 and $10 million on March 2, leaving $40 million available for future

needs. The Company's cash and income forecasts by months for the calendar year 1971 did not include the $100 million from the sale of trustees' certificates, and we have adjusted the Company's cash forecast to include the $100 million. As adjusted, the projected cash balances are expected to decline to $27.5 million as of April 30, and, in the absence of additional loans, to $19.7 million by the end of 1971.

It is obvious that the cash shortage will continue during the remainder of 1971, even though most of the Company's debt and interest payments are suspended during the reorganization period.

The Company's 1971 forecasts were based on the following major assumptions: (1) that freight volume would increase approximately eight percent, (2) that a freight rate increase of seven percent will become effective May 1, 1971, (3) that the recommendations of Emergency Board No. 178 will apply to all labor disputes remaining unsettled in 1970 and to the wages payable in 1971, namely, four percent effective April 1, 1971, and five percent effective October 1, 1971, (4) that work rule changes in 1971 will follow the Emergency Board No. 178 ruling, (5) that Railpax will be operational by May 1, 1971, and will include all of Penn Central's intercity passenger service, and (6) that the Metropolitan Transit Authority (MTA) and the Connecticut Transit Authority (CTA) will take over the former New Haven commuter operations.

With these assumptions the Company's income forecast for 1971, projects a net income deficit of $188.2 million. While the projected loss is substantial, encouragingly it represents an improvement over the $309.2 million lost for 1970.

We believe that these assumptions were reasonable when made; however, as with any forecast, revisions are necessary from time to time. For example, the Trustees previously have expressed concern that the Nation's economy may not improve sufficiently to provide the eight percent increase in the freight volume originally forecast. They also have indicated their concern that the recent general rate increases even though beneficial to the industry as a whole, in the case of Penn Central may result in pricing the transportation of certain commodities at rates which will divert the business to other modes.

We are somewhat apprehensive about the ability of the National Railroad Passeneger Corporation to become fully operational by May 1. Its timetable was extremely short, and the burden of preparing to assume operating responsibility for a large portion of the Nation's rail passenger service is an enormous one. More particularly, we are concerned about the ability of the Railpax incorporators and the Penn Central to agree to terms under which the Corporation would take over all of Penn Central's intercity passenger service—and especially that in the northeast corridor.

As to other railroads, there are, of course, many variables which affect railroad viability. One important external factor will be the health of the National economy in 1971. Railroad traffic tends to match the change in real economic growth. If business continues to recover, as many expect, it is probable that railroad traffic will move upward. Such improvement together with the application of rate increases already authorized in Ex Parte No. 267 and those still under consideration by the Commission, to the extent granted, should help to ease some of the difficulties being experienced by marginal roads.

Railroad revenue-ton miles held up well during 1970 considering the business downturn; the estimate is a loss of less than one percent from 1969. Thus far in 1971, rail ton miles have decreased about 0.9 percent over the comparable period in 1970.

Railroads which failed to earn net income in 1969 or in 1970 should be considered marginal. There are two sets of tables attached to my statement which provide a general summary of the operating and financial condition of these railroads. The tables contain the latest information reported by these railroads.

Attachment I shows the quarterly trends in revenue-ton miles for each of the 18 marginal railroads, beginning with 1967. These trends may be compared with figures for total United States as well as for the geographical regions in which the railroads operated. For all Class I railroads, revenue-ton miles moved upward over the period, rising 3.5 percent in 1968 over 1967, 3.1 percent in 1969, but decreased 0.9 percent for 1970. As can be seen from the tables, most of the increase over this period occurred in the South and West, while ton miles in the East showed a decline in 1970.

Traffic volume of marginal railroads, but especially those having traffic declines in 1969 and 1970, should be watched carefully as 1971 progresses. Declines in their traffic in the face of general economic recovery could signal increased difficulty for them. The long-term decline in ton miles for certain railroads causes even greater concern.

Attachment II provides a set of pertinent data and ratios by which to gain a quick impression of the eighteen individual marginal railroad's financial condition.

The total assets and total operating revenues indicate the relative size and importance of the individual railroads. The list includes seven railroads with assets of $100 million or more—two have in excess of $500 million, the Chicago North Western and the Milwaukee.

Long-term debt and shareholders' equity are important indicators of a railroad's capital structure. The ratio of debt to equity is quite high for several of the railroads including the Erie-Lackawanna, the M–K–T, and the Western Pacific.

Earning ability is measured at different levels by the several income figures and ratios including the operating ratio, net railway operating income, and income available for fixed charges, and net income after the payment of fixed charges. While some of the marginal railroads were able to produce net railway operating income and some income for payment of fixed charges, all failed to produce net income in 1970 except for small profits reported by two railroads. In some instances, the net deficits for 1970 were severe compared to 1969. The Erie-Lackawanna, Reading, Rock Island, M–K–T, and Western Pacific are of particular concern for this reason.

A primary test of financial viability is whether income is available to cover fixed charges. The relationship is measured by determining the number of times fixed charges are earned. Only the Bangor & Aroostook and the Erie-Lackawanna earned fixed charges in 1969 but by 1970 even these two carriers had earnings below fixed charges.

Net working capital and the current ratio are important indicators of a railroad's ability to meet current obligations. Only four of the eighteen marginal railroads had current assets in excess of current liabilities at the end of 1970. All the others had net working capital deficits. Only three railroads showed even modest improvement over the December 31, 1969, working capital position.

Another major test of financial health is whether net income plus cash flow from depreciation and other non-cash items is sufficient to meet payments on long-term debt. Excluding certain railroads noted in the tables whose debt is held by controlling railroads, only five railroads had sufficient funds from 1969 net income plus depreciation to meet long-term debt payments of 1970. The situation substantially worsened during 1970 for five of the larger railroads (Erie-Lackawanna, Reading, Rock Island, M–K–T, and Western Pacific).

Net deficits and low cash flow make it difficult to repay or refund large debt maturities as they come due. The Erie-Lackawanna has debt maturities, excluding equipment obligations of $12.5 million due in 1971 and a total of $40.5 million due in 1971–1978. Maine Central has $13 million in bonds due in 1978.

As of the end of 1970, these railroads were in a precarious condition. Continuations of inflationary pressures, widespread work stoppages on the railroads or in a particular industry, or a major natural disaster might be enough to push some over the brink. We cannot predict bankruptcy, yet we know it could happen. We are alert to the seriousness of this situation and will advise you of significant developments.

Assuming no other railroads are forced to apply for Federal guarantees within the next few months, it is our hope that the remaining $10 to $15 million of authority will be sufficient to meet Penn Central's short-term needs, as well as those of the Boston & Maine and Central Railroad of New Jersey.

Because of Penn Central's impaired cash position and the poor financial health of some other Eastern railroads we do expect that sometime in the future the Congress will be asked to grant additional amounts of Federal guarantees to railroads in reorganization. However, it would be my hope that a request of that nature be considered within the framework of the overall needs of surface transportation. Such an approach would take into account the ever-increasing demands upon surface transportation facilities, the quality and quantity of service rendered, and the prices charged the consumer for those services.

Thank you for this opportunity to appear.

ATTACHMENT I

REVENUE TON MILES BY QUARTERS

[In millions]

	U.S.		Districts					
			East		South		West	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago
1967:								
1st quarter	177,249	----------	63,358	----------	32,516	----------	81,375	----------
2d quarter	183,997	----------	66,622	----------	33,137	----------	84,239	----------
3d quarter	174,895	----------	62,432	----------	29,778	----------	82,685	----------
4th quarter	182,609	----------	65,843	----------	32,552	----------	84,215	----------
Year 1967	719,397	----------	258,254	----------	127,982	----------	333,160	----------
1968:								
1st quarter	181,776	2.6	63,604	0.4	32,691	0.5	85,482	5.0
2d quarter	191,458	4.1	69,293	4.0	33,544	1.2	88,621	5.2
3d quarter	183,630	5.0	63,495	1.7	31,181	4.7	88,954	7.6
4th quarter	188,023	3.0	62,637	−4.9	33,463	2.8	91,923	9.2
Year 1968	744,479	3.5	259,469	0.5	130,878	2.3	354,131	6.3
1969:								
1st quarter	184,638	1.6	61,391	−3.5	34,323	5.0	88,924	4.0
2d quarter	196,489	2.6	68,310	−1.4	35,534	5.9	92,645	4.5
3d quarter	188,757	2.8	63,058	−0.7	33,135	6.3	92,564	4.1
4th quarter	197,893	5.2	66,789	6.6	36,265	8.4	94,839	3.2
Year 1969	767,867	3.1	259,700	0.1	139,256	6.4	368,911	4.2
1970:								
1st quarter	186,377	0.9	61,618	0.4	34,907	1.7	89,852	1.0
2d quarter	198,570	1.1	67,984	−0.5	35,622	0.3	94,964	2.5
3d quarter	189,198	0.2	61,497	−2.5	33,873	2.2	93,828	1.3
4th quarter					35,632	−1.7	88,959	−6.2
Year 1970	[1] 761,100	−0.9	----------	----------	140,034	.5	367,603	−0.4

[1] Per AAR.

Note: Data for 1970 are preliminary.

REVENUE TON MILES BY QUARTERS—EASTERN RAILROADS

[In millions]

	Ann Arbor		Bangor and Aroostook		Central Vermont		Chicago and Eastern Illinois	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago
1967:								
1st quarter	114	----------	175	----------	114	----------	644	----------
2d quarter	121	----------	171	----------	117	----------	834	----------
3d quarter	115	----------	121	----------	105	----------	820	----------
4th quarter	116	----------	129	----------	114	----------	875	----------
Year 1967	465	----------	596	----------	450	----------	3,173	----------
1968:								
1st quarter	117	2.6	155	−11.4	107	−6.1	812	26.1
2d quarter	122	.8	161	−5.8	119	1.7	839	.6
3d quarter	121	5.2	115	−5.0	102	−2.9	890	8.5
4th quarter	138	19.0	146	13.2	118	3.5	953	8.9
Year 1968	498	7.1	577	−3.2	446	−.9	3,609	13.7
1969:								
1st quarter	149	27.4	149	−3.9	123	15.0	928	14.3
2d quarter	168	37.7	151	−6.2	118	−.8	929	10.7
3d quarter	154	27.3	109	−5.2	98	−3.9	488	[1] −45.2
4th quarter	167	21.0	151	3.4	108	−8.5	567	[1] −40.5
Year 1969	637	27.9	559	−3.1	447	.2	2,913	[1] −19.3
1970:								
1st quarter	146	−2.0	149	0	112	−8.9	525	[1] −43.4
2d quarter	167	−.6	143	−5.3	107	−9.3	624	[1] −32.8
3d quarter	149	−3.2	109	0	92	−6.1	610	25.0
4th quarter	155	−7.2	111	−26.5	101	−6.5	601	6.0
Year 1970	616	−3.3	512	−8.4	412	−7.8	2,320	−20.4

[1] Not comparable—sold Evansville-Chicago line.

REVENUE TON MILES BY QUARTERS—EASTERN RAILROADS—Continued

[In millions]

	Erie Lackawanna		Grand Trunk Western		Illinois Terminal		Maine Central	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year age
1967:								
1st quarter	3,341		675		116		272	
2d quarter	3,493		714		130		263	
3d quarter	3,534		623		109		225	
4th quarter	3,642		714		119		243	
Total year 1967	14,010		2,725		474		1,003	
1968:								
1st quarter	3,607	8.0	736	9.0	120	3.4	262	−3.7
2d quarter	3,806	9.0	751	5.2	126	−3.1	264	0.4
3d quarter	3,651	3.3	661	6.1	120	10.1	232	3.1
4th quarter	3,875	6.4	743	4.1	119	0	252	3.7
Total year 1968	14,938	6.6	2,890	6.1	485	2.3	1,011	0.8
1969:								
1st quarter	3,888	7.8	742	0.8	115	−4.2	271	3.4
2d quarter	4,111	8.0	718	−4.4	119	−5.6	280	6.1
3d quarter	3,662	0.3	747	13.0	109	−9.2	246	6.0
4th quarter	3,844	−0.8	743	0	130	9.2	254	0.8
Total year 1969	15,505	3.8	2,949	2.0	474	−2.3	1,051	4.0
1970:								
1st quarter	3,485	−10.4	711	−4.2	129	12.2	266	−1.8
2d quarter	3,830	−6.8	774	7.8	146	22.7	249	−11.1
3d quarter	3,836	4.8	648	−13.3	120	10.1	215	−12.6
4th quarter	3,889	1.2	592	−20.3	124	−4.6	220	−13.4
Total year 1970	15,039	−3.0	2,724	−7.6	518	9.3	950	−9.6

	Monongahela		Pennsylvania-Reading Seashore		Reading	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago
1967:						
1st quarter	(1)		41		1,386	
2d quarter	(1)		38		1,321	
3d quarter	(1)		34		1,132	
4th quarter	(1)		34		1,247	
Total, year 1967	(1)		147		5,086	
1968:						
1st quarter	153		31	−24.4	1,300	−6.2
2d quarter	139		35	−7.9	1,239	−6.2
3d quarter	131		28	−17.6	1,240	9.5
4th quarter	114		31	−8.8	1,188	−4.7
Total, year 1968	536		125	−15.0	4,967	−2.3
1969:						
1st quarter	111	−27.5	29	−6.5	1,125	−13.5
2d quarter	130	−6.5	29	−17.1	1,293	4.4
3d quarter	89	−32.1	31	10.7	1,086	−12.4
4th quarter	113	−0.9	38	22.6	1,105	−7.0
Total, year 1969	443	−17.4	126	0.8	4,609	−7.2
1970:						
1st quarter	120	8.1	31	6.9	1,058	−6.0
2d quarter	118	−9.2	36	24.1	1,063	−17.8
3d quarter	91	2.2	36	16.1	1,093	0.6
4th quarter	117	3.5			1,197	8.3
Total, year 1970	446	0.7			4,402	−4.5

[1] Not class I.

REVENUE TON MILES BY QUARTERS—WESTERN RAILROADS

[In millions]

	Chicago, Milwaukee, SP&P		Chicago & North Western		Chicago, Rock Island & Pacific		Fort Worth & Denver	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago
1967:								
1st quarter	4,212		4,525		4,458		387	
2d quarter	4,005		4,851		4,440		367	
3d quarter	4,228		4,552		4,048		292	
4th quarter	4,296		4,680		4,338		421	
Total, year 1967	16,740		18,608		17,283		1,466	
1968:								
1st quarter	4,312	2.4	4,432	−2.1	4,741	6.3	431	11.6
2d quarter	4,202	4.9	4,553	−6.1	4,689	5.6	376	2.5
3d quarter	4,401	4.1	4,085	−10.3	4,364	7.8	312	6.8
4th quarter	4,281	−0.4	4,728	1.0	4,835	11.5	327	−22.3
Total, year 1968	17,196	2.7	17,798	−4.4	18,629	7.8	1,447	−1.3
1969:								
1st quarter	4,036	−6.4	4,282	−3.4	4,590	−3.2	318	−26.4
2d quarter	4,390	4.5	4,431	−2.7	5,014	6.9	393	4.5
3d quarter	4,322	−1.8	4,821	18.0	4,776	9.4	353	13.1
4th quarter	4,441	3.7	5,091	7.7	5,224	8.0	356	8.9
Total, year 1969	17,188	−0.047	18,625	4.6	19,604	5.2	1,420	−1.9
1970:								
1st quarter	4,221	4.6	4,419	3.2	5,353	16.6	418	31.4
2d quarter	4,533	3.3	5,108	15.3	5,288	5.5	383	−2.5
3d quarter	4,569	5.7	4,993	3.6	4,955	3.7	311	−11.9
4th quarter	4,187	−5.7	5,028	−1.2	4,961	−5.0	381	7.0
Total, year 1970	17,510	1.9	19,548	5.0	20,557	4.9	1,493	5.1

	Missouri-Kansas-Texas		Northwestern Pacific		Western Pacific	
	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago	Ton miles	Percent change from year ago
1967:						
1st quarter	1,088		94		1,109	
2d quarter	1,125		147		1,064	
3d quarter	1,055		119		1,123	
4th quarter	1,191		149		1,102	
Total, year 1967	4,459		510		4,440	
1968:						
1st quarter	1,446	32.9	136	44.7	1,110	0.1
2d quarter	1,216	8.1	165	12.2	1,180	10.8
3d quarter	1,159	9.9	154	29.4	1,310	16.7
4th quarter	1,212	1.8	143	−4.0	1,298	17.8
Total, year 1968	5,034	12.9	599	17.5	4,898	11.3
1969:						
1st quarter	1,140	−21.2	154	13.2	1,231	10.9
2d quarter	1,316	8.2	148	−10.3	1,173	−.6
3d quarter	1,217	5.0	95	−38.3	1,253	−4.4
4th quarter	1,200	−1.0	92	−35.7	1,231	−5.2
Total, year 1969	4,873	−3.2	488	−18.5	4,886	−.2
1970:						
1st quarter	1,251	9.7	109	−29.2	1,166	−5.3
2d quarter	1,371	.1	121	−18.2	1,197	2.0
3d quarter	1,228	.9	107	12.6	1,248	−.4
4th quarter	1,203	.3	88	−4.3	1,190	−3.3
Total, year 1970	4,999	2.6	425	−12.9	4,802	−1.7

ATTACHMENT II

SELECTED FINANCIAL DATA

[In millions]

	Date	Eastern district railroads								
		Ann Arbor [1]	Bangor & Aroostook	Central Vermont [1]	Chicago & Eastern Illinois [1]	Erie-Lackawanna	Grand Trunk Western [1]	Illinois Terminal [1]	Maine Central	Monongahela
Total assets	Dec. 31, 1969	$25.4	$64.9	$24.8	$76.0	$468.3	$137.5	$25.5	$70.5	$25.3
Total operating revenues	1969	9.5	13.4	8.8	37.6	251.3	75.5	10.4	25.2	6.1
	1970	10.1	13.0	8.9	30.4	262.2	70.3	11.6	25.9	5.3
Long term debt	Dec. 31, 1969	13.0	26.0	47.2	15.1	334.2	232.9	11.6	28.4	6.9
Shareholders' equity (deficit)	do	9.6	35.6	(26.2)	51.2	60.6	(147.5)	7.9	34.9	15.2
Operating ratio	1969	92.7	100.3	79.2	84.4	79.5	89.6	80.0	87.6	63.1
	1970	85.0	110.1	78.0	80.8	80.9	105.1	76.3	86.5	73.2
Net railway operating income (deficit)	1969	(.8)	1.6	(.09)	(1.1)	9.0	(17.1)	(.06)	.1	.8
	1970	(.2)	.7	.4	.8	(.3)	(27.9)	.4	1.1	.06
Income available for fixed charges (deficit)	1969	(.8)	1.6	.04	.4	13.4	(17.8)	.2	.5	.9
	1970	(.1)	1.1	.7	1.6	2.5	(27.4)	.6	1.5	(.1)
Fixed charges	1969	.6	1.2	.7	1.5	11.8	2.7	.6	1.4	1.9
	1970	.7	1.3	.7	.8	11.5	2.7	.5	1.3	1.5
Times fixed charges earned	1969		1.27		.26	1.14		.34	.34	.46
Net income (deficit)	1968	(.5)	.09	(1.6)	(1.8)	(1.3)	(11.3)	(1.4)	.3	(.9)
	1969	(1.4)	.1	(.6)	(5.7)	1.3	(20.5)	(.4)	(1.4)	(1.2)
	1970	(1.0)	(.4)	(.4)	.8	(10.9)	(30.7)	.07	(.5)	(1.6)
Net working capital	Dec. 31, 1969	.6	.5	.9	2.2	(2.8)	(2.9)	(3.1)	.4	.8
	Dec. 31, 1970	(.2)	(.4)	.4	6.4	(15.4)	.8	(2.8)	.2	(.1)
Current ratio	Dec. 31, 1969	1.23	1.15	1.71	1.28	.94	.84	.44	1.06	1.55
	Dec. 31, 1970	.95	.89	1.25	1.85	.73	1.05	.54	1.03	.94
Net income plus depreciation (deficit)	1969	(.8)	2.0	(.4)	(3.7)	11.6	(18.9)	.1	.1	(.9)
	1970	(.5)	1.6	(.1)	2.4	(.5)	(29.3)	.5	1.5	(1.4)
Long term debt due within 1 year	1970	.5	2.0		1.6	11.1		.5	1.0	
Large bond maturities (selected)		1995—5.2	1973—.2 1976—6.5		2054—1.7	1971—13.2 1972—2.3 1973—25.7 1974—2.3 1975—2.3 1976—2.3		1987—7.4	1978—13.0 1980—2.1 2008—2.8	

[1] Both the Central Vermont and Grand Trunk Western are owned by and their debt is held by the Canadian National Railway Co. The Fort Worth and Denver is 99.9 percent owned by the Colorado & Southern Railway Co. which in turn is controlled by Burlington Northern, Inc. Fort Worth and Denver bonds are unconditionally guaranteed as to principal and interest by the Colorado & Southern. The Northwestern Pacific is owned by the Southern Pacific Transportation Co. and its long-term debt is held by affiliated companies. The Monongahela is owned jointly by, and its long-term debt is held by the Penn Central, the Pittsburgh & Lake Erie and the B. & O. The Illinois Terminal is jointly owned by several connecting railroads; these railroads jointly and severally guarantee the principal and interest on its outstanding bonds. The Ann Arbor is owned 99.9 percent by the Detroit, Toledo & Ironton RR. Co. which is in turn owned (99.99 percent) by the Pennsylvania Co. The Chicago & Eastern Illinois is controlled by the Missouri Pacific. The Pennsylvania-Reading Seashore is owned 2/3 by Penn Central Transportation Co. and 1/3 by the Reading and its debt is primarily to affiliated companies.

Note: Data for 1970 are preliminary Year 1970 figures for Monongahela and Pennsylvania-Reading Seashore are for 1st 9 months of 1970

SELECTED FINANCIAL DATA—Continued

[In millions]

	Date	Eastern district		Western district railroads						
		Pa.-Reading Seashore [1]	Reading [1]	Chicago, Rock Island	Chicago & North Western	Fort Worth & Denver [1]	Chicago, Milw., St. P&P	Missouri-Kansas-Texas	Northwestern Pacific [1]	Western Pacific
Total assets	Dec. 31, 1969	$15.6	$351.6	$460.2	$820.6	$64.6	$688.2	$218.6	$34.2	$19.2
Total operating revenues	1969	8.4	108.2	259.6	286.0	17.8	269.1	66.7	10.3	67.8
	1970	9.0	114.2	273.5	313.9	19.5	277.5	69.4	9.6	68.5
Long term debt	Dec. 31, 1969	146.6	107.1	124.8	278.0	16.0	267.1	109.1	50.0	66.3
Shareholders' equity (deficit)	do	(141.9)	194.4	270.3	426.9	40.5	359.9	8.3	(17.8)	132.7
Operating ratio	1969	109.8	85.5	81.4	88.0	85.1	85.7	76.9	71.3	92.3
	1970	118.2	86.0	81.1	81.3	83.8	85.5	75.8	82.9	94.1
Net railway operating income (deficit)	1969	(3.8)	(.6)	(7.9)	(18.4)	.2	(10.2)	(1.4)	(.08)	(.04)
	1970	(4.5)	(2.3)	(14.4)	8.5	(.09)	(7.9)	(.7)	(1.2)	(6.0)
Income available for fixed charges (deficit)	1969	(3.6)	2.6	(6.2)	(9.3)	.4	(.9)	(.2)	.2	1.7
	1970	(3.1)	.3	(12.8)	17.5	.1	2.0	.8	(.7)	(4.9)
Fixed charges	1969	.7	5.9	3.1	13.2	.6	7.8	2.8		2.7
	1970	.5	5.9	2.9	16.8	.6	7.4	2.9		2.6
Times fixed charges earned	1969		.44			.57				.62
Net income (deficit)	1968	(4.6)	(3.8)	(4.8)	(.1)	(1.4)	2.6	(3.0)	1.2	5.7
	1969	(4.5)	(3.4)	(9.8)	(18.8)	(.3)	(11.6)	3.2	.2	(1.6)
	1970	(3.6)	(12.2)	(16.6)	(4.5)	(1.9)	(11.8)	(5.0)	(.7)	(11.8)
Net working capital	Dec. 31, 1969	(3.5)	(5.4)	(2.0)	(11.5)	(.7)	2.1	(4.3)	(.02)	(3.1)
	Dec. 31, 1970	(4.0)	(8.5)	(10.8)	(2.2)	(.7)	(5.7)	(3.6)	(.8)	(2.5)
Current ratio	Dec. 31, 1969	.53	.83	.96	.85	.89	1.04	.73	.99	.86
	Dec. 31, 1970	.50	.73	.82	.98	.89	.91	.79	.54	.88
Net income plus depreciation (deficit)	1969	(4.1)	5.0	.8	4.3	.5	6.7	5.9	.5	3.5
	1970	(3.3)	(4.7)	(6.3)	20.9	(1.1)	6.3	(2.5)	(.5)	(6.6)
Long term debt due within 1 year	1970	.3	6.4	4.8	15.2	.4	14.1	1.2		4.6
Large bond maturities (selected)			1995—59.1	1980—32.7	1976—.3	1982—10.8	1994—67.7	1971—.4		1981—16.9
				1983—14.8	1985—13.3		2019—25.2	1972—3.5		1984—11.2
				1995—50.3	1988—6.2			1973—3.5		
					1989—46.6			1974—3.5		
								1975—6.5		
								1976 1978 14.6		

[1] Both the Central Vermont and Grand Trunk Western are owned by and their debt is held by the Canadian National Railway Co. The Fort Worth and Denver is 99.9 percent owned by the Colorado & Southern Railway Co. which in turn is controlled by Burlington Northern, Inc. Fort Worth and Denver bonds are unconditionally guaranteed as to principal and interest by the Colorado & Southern. The Northwestern Pacific is owned by the Southern Pacific Transportation Co. and its long-term debt is held by affiliated companies. The Monongahela is owned jointly by, and its long-term debt is held by the Penn Central, the Pittsburgh & Lake Erie and the B&O. The Illinois Terminal is jointly owned by several connecting railroads; these railroads jointly and severally guarantee the principal and interest on its outstanding bonds. The Ann Arbor is owned 99.9 percent by the Detroit Toledo & Ironton R.R. Co. which is in turn owned (99.99 percent) by the Pennsylvania Co. The Chicago & Eastern Illinois is controlled by the Missouri Pacific. The Pa.-Reading Seashore is owned 2/3 by Penn Central Transportation Co. and 1/3 by the Reading and its debt is primarily to affiliated companies.

Note: Data for 1970 are preliminary. Year 1970 figures for Monongahela and Pa.-Reading Seashore are for 1st 9 months of 1970.

Mr. JARMAN. Thank you, Mr. Chairman. You were, I know, present yesterday during Mr. Langdon's testimony. Mr. Langdon mentioned four areas where changes could favorably affect the earnings of the Penn Central, and he mentioned the possibility of affecting it to the extent of $200 to $400 million a year.

These areas, as you remember, are—and I might say he conditioned it on if (a) the passenger service is handled in accordance with broad principles of the National Railway Passenger Service Act of 1970, (b) the freight service plant is rationalized, (c) changes are made in regulation of the freight rates and (d) employment and labor policies are significantly modified.

It would be helpful to the subcommittee if you could give us your comments on these items.

Mr. STAFFORD. Well, of course, we too are hopeful, on the first one, on passenger service. We, too, are hopeful that there are sufficient funds in the account. I believe he suggested some question as to the manner of settlement between his railroad and the Railpax Corp., or the National Railway Passenger Service setup.

These matters of course, still have to be ironed out as between themselves and the Railpax Corp. We do have some concern ourselves that there will be insufficient funds in this account, but hopefully I will be wrong.

On the freight service plant rationalization, meaning of course his suggestions of getting rid of considerable mileage, I believe he said he thought this was probably the least important of all of them. I believe that was his comment yesterday. Yet it is an important one.

About all I can say there, if he wants to make those applications to us, we will go into them, although we are bound by the law on that. And I believe his indication or hope was that if these particular sections of track, or if they were losing money over those sections of track, that they would be permitted to drop that. Of course, the public interest is involved, as the present law and procedures are set out.

Now, they have already filed some 16 applications with us. This is part of that 3,800 miles. Those 16 applications amount to 394.5 miles, and we will move forward rapidly on these. In fact, if there is no opposition filed to these, in other words, communities being concerned about it, or other strong opposition, then I can see—and I might add, if their applications have been finalized—then I can see us handling those within 30 days.

All right, the third one was, changes are made in regulation of freight rates. I believe yesterday he suggested that he would hope that something could be done toward breaking down the rates or the charges as between their line haul and their terminal areas. I believe he said their terminal area costs skyrocketed. And of course this is true not only in the railroad area, but other forms of transportation as well.

I have a feeling he may have oversimplified it a little bit. I have no doubt this is a proper request or suggestion, but we must of course consider rates on a nationwide basis. Generally speaking, breaking them down as between line haul and terminal rates will be quite an issue in the industry itself throughout the Nation.

This of course results because there is not always agreement between the long-haul type railroads and the eastern railroads; but we are willing to consider anything of this type, if they file such a request.

Employment and labor policies, I believe, is the fourth one which he spoke to. We are, of course, involved a very great deal whenever there are any work stoppages of any kind, or because the cost of labor becomes part of the rate requirements. And yet, we do not feel that at the Interstate Commerce Commission we have the expertise or authority to get involved deeply in a matter that belongs in another agency; but we do feel that we should be concerned with these things.

Mr. DINGELL. Mr. Chairman, permit me to interrupt.

You mentioned here, Mr. Stafford, you don't feel you should be deeply involved in a matter involving another agency. The whole question of railroads is a matter which should be of most deep concern to you, and I think you should be deeply and intimately involved. And I hope you clarify that statement for the benefit of this committee.

Mr. STAFFORD. We are deeply concerned with it. I am just trying to show a difference between our authority in labor relations as compared to the Department of Labor. I believe the courts themselves have suggested in years past there is a difference in our authorities in this thing.

But we are concerned and we will continue to be concerned in this area. We hope that Congress will be able to resolve some of these questions for us, for the country.

Those are about all the things I have to say in a general way on those four items.

Mr. JARMAN. I understand. One other question at this time. Do you feel the loan guarantee legislation should be extended or expanded?

Mr. STAFFORD. The railroads are going to need more money as time goes on, I feel certain. However, I would hope that instead of continuing on a bailout approach, that perhaps you could consider making this a part of a total package. I think it is necessary for us to have a profitable railroad system in this country. That is, no matter what form of transportation or mode of transportation may be involved, it is still to the benefit of all people of this country and all modes of transportation to see that we do have a financially viable transportation system.

So I would think that this might be one of the things that should be considered at this time.

Mr. JARMAN. Thank you.

Mr. Adams?

Mr. ADAMS. That concerns me very much, Mr. Stafford, because I understand your agency is the one in charge of setting rates and seeing that the railroad industry remains viable. Yet, by your testimony, 18 of the railroads in the United States are marginal. And we had testimony yesterday that the rates are below cost.

Now, why is that so?

Mr. STAFFORD. If there are any rates below cost, I am not, or I don't believe we are responsible for them. It may be that they are.

Mr. ADAMS. Why not?

Mr. STAFFORD. It may be that they are, but there is a quick way they can remedy this. They can drop those rates or come to us for an increase. But I am sure you must know that a great deal of those below-cost rates perhaps emanate from State regulations.

Mr. ADAMS. Why? You have regulations over the rates that are basically interstate and most of our railroads are interstate. What bothers me about your testimony is that your testimony indicates, at least to this member, that the railroad industry of the United States is in a position where its debt-to-equity ratio is such that it cannot survive, and that all of them that you mentioned, which are some 18, are operating at basically a rate of return that will not allow them to fund their present long-term debt, or to remain in operation.

Now, we have only one of three choices. I want to know from you which one you favor. One is to let them go down and wipe out the equity positions and the debt positions. And believe me, that is favored by a great many Members of Congress who believe that these railroad empires—and this goes back historically; it is an emotional failing as much as anything—are improperly set up; that they are holding companies on holding companies; that they are inefficient and they ought to be wiped out and let go through bankruptcy and start all over.

The second thing is to come in with some kind of bailout. At least I don't see how we are going to pass that again.

The third is that your agency gives them enough money with their present structure and has enough confidence in their present structure that they get a rate that allows them to get a return.

Which of the three do you prefer? Or have you another one? Tell me if you have.

Mr. STAFFORD. I think there are probably several problems with all of them.

First, I would like to say we have instituted Ex parte 270, as we call it; a study to arrive at the costs of rail transportation among the various commodities or various items and various areas of this country, to get to the basic problem that is involved here.

Second, you know that the rates that we handle must be initiated by the railroads themselves. They must make their own requests and justification for these rates. In this last filing, we have this situation.

Mr. ADAMS. Don't you have the authority if a railroad—and you have indicated that at least 18 of them, which I assume is a majority part of the country—if they are in a position where they will financially fail, to require them to place themselves in a position so they are viable? Is not that your agency's authority?

Mr. STAFFORD. We are charged with the responsibility of keeping them viable. But I don't know whether we are charged with responsibility of keeping every railroad in the country viable.

Mr. ADAMS. Now, that is what I want to know. Do you also have authority to require adjustments in equity debt ratios within that company to make it a viable company; in other words, to require, for example, the long-term debt holders or junior security holders or equity holders retreat in their position until it is a viable entity or else goes out of business?

Mr. STAFFORD. They go into bankruptcy then.

Mr. ADAMS. Anyone can answer.

Mr. STAFFORD. All right, Mr. Forbes.

Mr. FORBES. We have no authority to change the corporate structure of the railroad or their debt, except through reorganization and if the railroad files under section 20(b) of the act known as the Mahaffie Act. Section 20(b) is a voluntary filing by the carriers. Of course, reorganization is always voluntary or involuntary by the carriers.

Mr. ADAMS. What do you do when you arrive at the position, and you have on page 6 of your testimony here, for example, that Erie-Lackawanna, Reading, Rock Island, M. K. & T., and Western Pacific are going into worse trouble; and you give as an example that the Erie-Lackawanna cannot meet its debt maturities—at least I think that is what you are saying on page 8—what do you do at that point when a railroad is going under?

Mr. STAFFORD. Of course, when they go under, it is to a great extent determined by their business judgment if they decide to go under.

Mr. ADAMS. But what do you do?

Mr. STAFFORD. But a number of these roads are making arrangements with their financial houses on these things whenever there needs to be set aside their debt for a month or two until they are back into an ability to handle their debt. We have to approve that.

Mr. ADAMS. I want to know what you do and whether we have to have a change in your authority or if there is to be a whole new way of looking at these railroads. I want to know what you do in terms of these railroads going under. Do you stand and watch them? Tell us what is your authority.

Mr. STAFFORD. Our general counsel can answer that.

Mr. KAHN. Mr. Adams, Mr. Langdon yesterday referred to approximately $80 million annually that the Penn Central Transportation Co. estimates it was losing because of the below-cost rates.

Mr. Langdon did not further identify these as between interstate and intrastate rates. Mr. Langdon, I am quite sure, would be the first to acknowledge that in either case the bulk of these rates were initiated by the railroads for competitive reasons—this is wholly consistent with the general pattern of the Interstate Commerce Act, which leaves the initiative with the carriers.

Mr. ADAMS. Yes, but not for below-cost rates. The whole purpose of having an agency regulate the truckers, regulate the bargelines, regulate the railroads, regulate the airlines is that the Government is giving them a monopoly and you are to prevent below-cost rates which put everybody out of business.

I thought that is what we were all about. If not, let's abolish the agency and start over.

Mr. STAFFORD. We are speaking primarily of Penn Central at the moment, I believe.

Mr. ADAMS. Yes.

Mr. STAFFORD. We noted recently in some of our studies it would take a 33-percent rate increase for the Penn Central to get into—I mean if they can take it all—to get into a position of having the proper income. And yet, competitively, they couldn't possibly take that much, nor could we give that much based on relationships with competing railroads.

Mr. ADAMS. I have this question, and then I will stop and come back, Mr. Chairman. But this is the whole point.

Do you need, for example, authorization? And certainly with something like the Penn Central Railroad, we can, as the Congress, in governing interstate commerce, give you authority over all rates, even though between one point and another within the State—and you can check me on this, Counsel, but I am sure we can do that as part of an interstate system in order to make a regulatory system available. Do you need that authority? Because it looks to me like if you don't have an overall rate authority we are going to face a series of continuing bankruptcies.

Mr. STAFFORD. Mr. Fittipaldi?

Mr. FITTIPALDI. If I may answer. And I might say I was not here and don't know in detail Mr. Langdon's testimony, but referring to his statement—and I have a copy—particularly referring to the $80 million loss on below-cost rates, the first question, rather than seeking any type of legislation on this particular point, the Penn Central can on their own initiative raise those rates themselves.

Mr. ADAMS. I thought they had to go through a long hearing before you to do it and it can be opposed by anyone who wants to oppose it and it takes weeks and months. Isn't that right?

Mr. FITTIPALDI. Sir, the way it would work as a practical matter, they would file a tariff increasing these particular rates. In all probability, somebody would object to the increases, and then it would be our job to decide whether we should let these increased rates go into effect on the 30-day statutory notice requirement, or to hold a hearing.

Now this is where it becomes long and drawn out if the Commission suspends these rates and institutes an investigation to obtain the facts to determine, for example, whether these rates are in fact below cost. Because, I am sure, Mr. Adams, some of the shippers would argue that they are not. But be that as it may, this is where we get the factual issue which does take time to present and takes time to adjudicate.

Now, so the first answer, sir, is they can at least initiate the increase in these rates if they are interstate rates.

Mr. ADAMS. Well, now, what do you mean interstate rates? If you are running an interstate system and even though it is from one point to another within the State, I want to know if you are telling me you do not have authority to set any of those intrastate rates on the Penn Central?

Mr. FITTIPALDI. We do, sir, if the carrier filed a petition under section 13, we have a right to be involved in a strictly intrastate rate to the extent it may prejudice or prefer an interstate shipper, or to the extent it may discriminate against interstate commerce or to the extent it may cause an undue burden on interstate commerce. But our statutory authority to attack an intrastate rate is limited.

Mr. ADAMS. Is there any question in your mind after the collapse of the Penn Central that all rates on the Penn Central should be subject to your control in order to make available transportation system for the Northeast part of the United States? Is there any question in your mind? If there is, we need to know it, because we will start on legislation. Is there?

Mr. FITTIPALDI. Sir, Mr. Adams, I wouldn't want to make a statement on it because I am not too familiar with the facts in relation to the past matters.

Mr. ADAMS. You don't have to go to specifics of Penn Central. The largest railroad in the country collapsed. It connects with 139 lines. In fact, as I understand it, every railroad in the country connects with it except the Union Pacific. It is in the process of going out of business and in here to ask us to bail them out, so they will have operating cash. Now I want to know if there is a question in your mind as a Commission that you have authority to go in and set any rate any place on the Penn Central system. Because you have certainly interstate shippers and interstate commerce involved, and if you don't have such authority we want to know it and we will go to work on the statute.

Mr. FITTIPALDI. Mr. Adams, our authority as far as intrastate rates are concerned is limited to, I think, three precise areas.

Mr. ADAMS. You told me that.

Mr. FITTIPALDI. Right. Now, the point as to whether we could, in answering your question as to whether we need additional authority, sir, I can't answer because I don't know how much revenues of the Penn Central are tied up in these intrastate rates.

Mr. ADAMS. Mr. Chairman, I have other questions, but I certainly want the other members to have their chance and I will come back later. I apologize.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Stafford, I would like to get back to our chairman's original question relative to Mr. Langdon's testimony yesterday before the committee and to the four things that he recommended at that particular time. I gathered from what you have told us in your statement that if I had to summarize your observations of what he had to say, you would say by and large he was too hopeful in the four things he recommended. Is that correct?

Before you answer, let me say he said first of all he depended on Railpax, and you said in your statement that you thought maybe he was a little optimistic; that Railpax would be operational by May 1. He expects to get rid of certain mileage or else get a subsidy from the local communities, apparently, and I gather you feel he is too optimistic in that regard. You have not said that precisely, but generally from what you said I gather you feel that.

Now I gather the same thing is true with regard to his dependence on changes in the rate structure and also with regard to a change in the work rules. I would gather from what you have said you feel he is a little too hopeful and optimistic.

Mr. STAFFORD. Well, I was trying to speak to each item as we came to them. I would rather hate to generalize on the whole thing and say he was too optimistic, because you recall on Railpax he was saying that he thought that Railpax people were being too limited in their interpretations as to what costs they should take over. He was, as I recall, saying he had six tracks I believe going into New York, of which he perhaps only needed two for the freight service and that four of those tracks and tunnels, I believe also he was speaking of yesterday, should in his opinion become part of the costs to be taken over by Railpax.

I don't believe there is enough money in Railpax at this moment to take over all those costs. So I think there is a lot of interpreting to come about as between the railroads—I keep calling it Railpax—before they can start arriving at whether they have enough money to meet this need.

Now, on getting rid of the mileage of tracks. I think he indicated that some of that mileage he was wanting to get rid of had no opposition or little opposition. And if this is true and if their applications are complete, then he can have it out of the way certainly in about 30 days. So I don't say that is too optimistic, if the facts are as I understood him to say. I may be a great deal wrong.

Now, on the rate structure, all railroads in this country will probably want to become very definitely involved in any breaking down the rates as between line hauls and terminal costs. I don't believe that we can make a decision effective as to one railroad without considering the effects and considerations provided by the other railroads.

Mr. HARVEY. I gather Mr. Langdon's statement contemplated a fairly immediate decision in that regard. I say that it is there that you feel he is too hopeful. Is that correct?

Mr. STAFFORD. It would be hard for me to think in that case there could be a quick answer on it, because it would be a little hard for me to believe that the other railroads of this country would not want to be heard. Perhaps, to the contrary, considerably to the contrary, I would imagine.

Mr. HARVEY. I gather from what you have already stated that you feel your department does not have authority with regard to changes in the work rules, and that you are not optimistic about any immediate change in that regard.

Mr. STAFFORD. Well, I don't know that I have any knowledge from which to say that I think that I should be optimistic or not about that. I would hope that some settlement could be worked out where we would not have to face these stoppages every so often in our transportation system.

Mr. HARVEY. Well, do you think Mr. Langdon's recommendations here are going to solve the problem over the long run?

Mr. STAFFORD. I would say that if all of these recommendations he has made were possible, that they would probably be helpful to their railroad.

Mr. HARVEY. Well, that is not exactly what I asked. Let me ask you this question, Mr. Chairman. Do you know of any recommendations you feel have been overlooked by Mr. Langdon?

Mr. STAFFORD. Well, I don't. To get back to the rate breakdown, a number of railroads are not going to think it is going to be helpful to them in the short run or long run. I would have to guess at those again. I think I indicated in my statement it would be the Southern—no, I didn't indicate that in my statement, but I would guess perhaps the Southern and Western roads would have some question about the advisability. It is a question of between the long haul and the short haul.

Mr. DINGELL. Will the gentleman yield?

I think you asked a good question, but would you allow me to go ahead?

Mr. HARVEY. I will be glad to yield to the gentleman.

Mr. DINGELL. Can you tell us whether the Interstate Commerce Commission has any proceeding pending down there to look at the rate structure of Penn Central?

Mr. STAFFORD. Yes, we have 270; that is, 270 is pending, looking at all of these rate structures. But this goes to the entire national picture.

Mr. DINGELL. The entire railroads? How long will it be you are going to be going on that?

Mr. STAFFORD. Do we have a report?

Mr. FITTIPALDI. Sir, if I may say, the Commission issued an order on December 15, starting an investigation into the railroad rate structure nationwide. We requested response from the public and we asked everyone; all of the railroads, consumer groups, and everyone we thought would be interested, to give us their ideas as to the nature of this investigation. Because it could conceivably include most every commodity that is moving in transportation.

Mr. DINGELL. I am intruding on my colleague's time. But what are you going to cover in your statement?

Mr. STAFFORD. We hope to break this down by commodities and items to get into the major items, to get into coal and grain and this kind of item, which becomes kind of a major part of hauling.

Mr. DINGELL. I want to thank my friend for allowing me to intrude on his time, I am grateful to him.

Mr. STAFFORD. I think you will find a great deal of benefit from this, Congressman.

Mr. HARVEY. Mr. Chairman, I have one more question, if I might. You concluded your statement to the chairman, Chairman Stafford, by telling us you felt the railroad trustees were going to need more money in the future years. But then you said, I believe, that you hope that requests of that nature would be considered within the framework of overall needs of surface transportation.

I am a new member on the subcommittee and I wonder if you would care to explain that and what the framework is?

Mr. STAFFORD. What I am really trying to get at is I would hope that Congress would try to make or put together a program with advice and consent, or advice, rather, of the Department of Transportation, Interstate Commerce Commission, and others toward an overall program that is not just a bailout program, because that will never succeed. It would just continue to be a bailout program. I think you need to go into tax items, and into various other areas. Perhaps you should go ahead and pass this.

Mr. HARVEY. Were you thinking of other modes of transportation?

Mr. STAFFORD. I was speaking only to the railroad system as of today.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Metcalfe?

Mr. METCALFE. No questions.

Mr. JARMAN. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

It is good to see you, Mr. Chairman.

Mr. STAFFORD. It is good to see you.

Mr. PICKLE. We are glad to have you here and we know you are as concerned as the rest of us about trying to find an answer. We do

need leadership and some strong recommendations, and I think you sense from this committee that we want more of this from the Interstate Commerce Commission.

Now, I want to ask you a question pertaining to a speech that you made, I assume recently, published in the "Traffic World," and you make this statement—

> The trustees of the Penn Central in a statement recently made to the Bankruptcy Court suggested that Congress condemn any rate that is below the cost of providing the service. To me it is appalling that below-cost rates are in effect, and it would seem clear that where they are published voluntarily by the carriers they should be rooted out of the tariff.

Mr. STAFFORD. That is right.

Mr. PICKLE. Now, that to me indicates the fact that there is below-cost rate service, you say. You say it comes as a surprise, yet your testimony here this morning is you are very much aware of these problems?

Mr. STAFFORD. Our testimony was written considerably after this earlier statement was made.

Mr. PICKLE. Now, are you saying that you didn't know that railroads were having below-cost service rates before you did this?

Mr. STAFFORD. I think we knew there was some. What I am saying, if the railroads got some below-cost figures they should get rid of them right now; they should immediately drop them and/or come to us to ask us to intervene with the States who may be forcing low rates on them.

Mr. PICKLE. You say, quote, "Where they are published voluntarily by the carriers."

Now, are you saying that the carriers then have rates which are not published; that is, the railroads?

Mr. STAFFORD. No; they must have.

Mr. PICKLE. What do you mean? You say it would seem clear that where they are published voluntarily; that is, where regulated by the Commission, that it should be rooted out. You are assuming, I have to assume, that you say they have rates below the cost of service.

Mr. STAFFORD. They apparently have a number of rates below, if we permitted any low rates we should be aware of it. I mean if we granted them the right to publish them.

Mr. PICKLE. Isn't it fair for me to assume you know that the Commission knows they do have rates below the cost of service from this statement, and have known it for perhaps years?

Mr. STAFFORD. Let me ask the rate expert down here what the situation is.

Mr. FITTIPALDI. Mr. Congressman, I don't think we could, in all fairness, say we do know of any specific rates or any group of rates below cost.

Mr. PICKLE. Perhaps they have not come to you and hit you over the head with a bat and said, "We do have some of these rates." But isn't it reasonable to assume you must have known this?

Mr. FITTIPALDI. No; I wouldn't say it is reasonable to assume it. If I may digress and give you an idea as to how this thing works as a practical matter, I might be able to make the point a little better.

These carriers file hundreds of rates a month and nobody generally looks at them at the Commission, because we don't have people to look

at these tariffs that are filed. If nobody objects to the rates, they generally become effective.

Mr. PICKLE. I can see how this is operated, because that is the system. I think what we are doing, though, is that you, by being quiet or by following a policy of acquiescence, are allowing rates to go along that are not only below cost but are illegal. I say that we must expect more leadership from the one agency that we have to rely on for recommendations for improvement of these services.

Mr. KAHN. May I interrupt, Congressman Pickle, to point out two things that might help this discussion? First, when Mr. Langdon was talking about below-cost rates, he defined them as—well, the costs that he referred to as long-term variable costs are not necessarily the out-of-pocket costs incurred by the railroads in rendering the service. And as he defined below-cost rates there may be a broader, a larger number of rates that are below costs than would normally be deemed to be below costs.

Secondly, however, I think the problems of Penn Central and its cost structure cannot be looked at in isolation. It would do Penn Central no good to publish higher rates between Chicago and New York if the C. & O. and B. & O. system can competitively cut its rate to perfectly compensatory rates, and capture all of the traffic.

Mr. PICKLE. Aren't all rates published?

Mr. KAHN. All rates, yes, are published.

Mr. PICKLE. All regulated?

Mr. KAHN. Yes, regulated, and in the case of the railroads you will find through their conference ratemaking they are all on precisely the same level. The shipper normally has his choice, either Penn Central or C. & O. and B. & O., in obtaining services between Chicago and New York.

Mr. PICKLE. I want to ask another question now as to cost of service rate. If you, the Interstate Commerce Commission, at our suggestion, or approval, did pass regulations on all rates so that none would be below the cost of service, are we tampering with free competitive enterprise? Are we doing it much good or more harm than we would if we let it operate as it is now?

Mr. STAFFORD. I think in most instances you would be telling the State utility commissions that in effect they could not bring about lower ones.

Mr. PICKLE. Actually, when we talk about the State and these regulatory commissions within the State, we really must not ascribe to them a major portion of this problem, because approximately 90 percent of all of our tariff, or traffic are in interstate matters, are they not?

Mr. STAFFORD. Yes; but for instance when we give a rate increase to the railroads, then the States have to then approve new intrastate rates. And we find a number of States who are rather slow in getting around to permitting them to have them. In fact, we figure if we give a rate increase to the railroads that we should figure in an area of, or figure that they only get about 82 percent of that. Because, among other things, of the States being slow or because of other reasons not permitting these to be approved. I believe that is right.

Is that right, Mr. Fittipaldi?

Mr. FITTIPALDI. I don't know the figures; but this is the problem we have afterwards.

Mr. STAFFORD. It seems to me, then the railroad, after a while, should come back to us and petition us to intervene in the State.

Mr. PICKLE. Now, it seems to me that for over 50 years the Congress has given to you the authority to regulate rates and you, as a judicial body have sat there and ruled on them when they have been thrown into your lap. Otherwise, because of lack of staff, as you said, you have not really concerned yourself too much about rates.

Now, that is perhaps understandable as policy when everything was downhill with the wind and traffic moved on our rails. But this is a different time, and we are in a national crisis and it would therefore seem to me that the Congress must say to you, "Give us your recommendation for rate structure and all other improvements that you see ought to be approached in the rail industry."

We have to look to you. Now, we can shoulder our own share of responsibility because you weasled out as to operating as an agency and creature of Congress. But we together must do more than this, because the entire system will go out of business if we don't take action.

Mr. STAFFORD. We will soon be coming up with a rather extensive legislative package.

Mr. PICKLE. Yesterday we asked you to give us your recommendations. I was hoping you might tell us something this morning more specifically about what kind of rate changes there would be, if it is that complex we can leave it.

Mr. STAFFORD. Well, our legislative package has not been approved by the Commission as yet. We still have to go through the process of the Commissioners themselves deciding whether these items, meaning numerous items that are to be considered by us, should then become final and a part of the package to be presented to the Commission. This is not a prerogative of the Chairman of the Commission.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Chairman, getting back to the question of rates with relation to your State regulatory agencies, would it not be true if you granted, with a clearcut regulation, or at all, if it was legislated, that it would say in black and white that no rate may be below the cost of doing business, even on or above the track basis, or on a continuing basis like Penn Central suggested yesterday, would it not be true that if such a law were passed or even under the present rules, if railroad X comes in and asks for a rate increase based on the cost of doing business and you granted it under a Federal statute, would it not be mandatory then for the State on that basis only?

Mr. STAFFORD. It depends on how the State is going to interpret it, I presume.

Mr. KUYKENDALL. Wouldn't you be like the Supreme Court in this case where the Federal law says you cannot sell below the cost of doing business? Would you grant an increase on that basis?

Mr. STAFFORD. There have been a number of recommendations made that we do away with State regulation of rates, but we have not considered it in any manner.

Mr. KUYKENDALL. Does the State have to rule on interstate rates that comes through their State, or is it just intrastate only?

Mr. STAFFORD. That is right.

Mr. KUYKENDALL. I suppose that you would automatically waive the cost of doing business provision if railroad X was more efficient than railroad Y and railroad X has a cost of doing business which would make railroad Y's rate, if the same, illegal. I suppose you would be bound because of competition to waive the situation, if the ability to operate efficiently of the two railroads competing with each other over the same route is not the same, then one of them could operate below cost legally as long as the other one is operating above cost. Isn't this correct?

Mr. STAFFORD. That is right.

Mr. KAHN. Of course, I tried to make this point before, Penn Central's problems may be because of greater inefficiency than competing modes of transportation which are contending for this traffic. But, as you posed in your earlier question, I think you really put your finger at the heart of the problem. You posed a question of the chairman, "What might the Commission do if the railroads came to the Commission with compensatory rates?" And I think this is really the nub of the problem, sir.

In the Interstate Commerce Act of this Congress, when this Congress approved it, it left initiative for establishing rates with the carriers. The Commission's task is not to prescribe rates, except when they are found, upon complaint or upon its inquiry, to be unjust and unresponsible.

No railroad deliberately prices its services to become a bankrupt corporation. Managerial judgment has indicated that certain rates should bear more of the burden of transportation costs than others. If Mr. Langdon now finds that the prior management had priced its services improvidently, Mr. Langdon of Penn Central has the means of correcting that situation very promptly.

Beyond that, the Commission does have an inquiry underway—*Ex Parte 270*, in which a very large issue is the distribution of the transportation burden. And the Commission will, I am sure, be able to make a far better judgment at the conclusion of that proceeding as to whether rates should not be brought up to higher levels than presently.

Mr. KUYKENDALL. Let me ask you to comment on a discussion I sat in on yesterday, and the meat of it was this: A railroad, of course that you would know about, was discussing with a Member of Congress the fallacy of giving automatic percentage increases across the board on commodities on everything hauled instead of being more selective. He said, "For instance, my per car gross income on chemicals, bulk chemicals, is good and we make good money." He said, "Every time I put a car of grain on the track, I lose money."

Of course, this particular man competes with other modes and yet he, who is in trouble, who has been one of the railroads that has testified here about the financial plight of the railroad, said to a Member of Congress that, "Every time I haul a carload of grain I lose money, every single time." So he was discussing the fact that your across-the-board increases did not solve his problem with grain and increased the burden on the car of chemicals because the price was higher and therefore the percentage increase made the dollar increase higher, it made the burden greater where he didn't particularly need the help

and gave him practically no help because of the fact the margin of loss was greater than the increase in the first place. And the price of grain is so low that the margin percentage awarded didn't help that much.

Would you like to comment on that mess?

Mr. KAHN. I think you aptly illustrated, sir, the rate structures are very complicated and no matter how one approaches it, someone is bound to be complaining, someone is bound to conclude that the increases on his traffic were unwarranted and disproportionate.

Mr. KUYKENDALL. Will you yield right here and let me ask you to comment on this specifically? Is it not true, however, that when you use flat blanket percentage increases that the expensive freight commodity automatically bears a disproportionate share of the burden in dollars? You remember in railroad labor they were taking cents increases for many, many years and it finally caught up to them in the opposite way; that their top paid people were simply not getting enough money because they used the cents instead of the percentages. You are doing the opposite, and using straight percentages instead of dollars, and therefore you don't seem to give so much relief where the area is in trouble and give all of the relief in the sector not in trouble.

Mr. FITTIPALDI. If I might stick my foot in it, so to speak, again these two carriers are the ones that react toward the percentage increase.

Mr. KUYKENDALL. I will say a lot of them don't know what is good for their own business and maybe you need to help them.

Mr. FITTIPALDI. The second thing is they don't have to take the increases on chemicals. This is a permissive order that the Commission issues in the general increase.

Mr. KUYKENDALL. I think it comes down to this: You prevent them from getting together and doing anything jointly, because it becomes collusion and violation of a trust, and you don't tell them how to operate and one does not dare operate alone. So where are we?

Mr. FITTIPALDI. Sir, they have the right to make rates in concert.

Mr. KUYKENDALL. You mean four or five railroads can get together?

Mr. FITTIPALDI. Yes.

Mr. KUYKENDALL. So antitrust laws do not apply?

Mr. FITTIPALDI. No, sir. These proposals and the last group I am not up to date, one group of railroads, eastern railroads, asked for different increase than the southern railroad and there is nothing to bar the railroads from coming in and asking for a 10-percent increase on grain and 2-percent increase on chemicals.

Mr. KUYKENDALL. They have just not done it that way?

Mr. FITTIPALDI. That is true. But I don't want to just duck our whole responsibility. We can, in this case tell the carrier, "Yes, you can take 2 percent; although you ask for 6, we will only give you 2 on chemicals and maybe the entire 6 on grain."

We could do it on the ex parte increases. This is our responsibility and we have done it.

Mr. KUYKENDALL. You see every railroad operator we ever talked to, if we are talking about the profit-and-loss statement, complains to us about below cost selling. And yet, on the other hand, when

talking about the barge competition they want the right to sell below cost to meet barge competition.

Mr. FITTIPALDI. That is our dilemma.

Mr. KUYKENDALL. We don't get much help either, because it seems all of the parties involved contribute to the problem rather than to the solution.

Mr. STAFFORD. I would like to say involved in this is the importation problem that is involved in all rates which is being upheld by the courts, and this creates a problem with ratemaking.

Mr. KAHN. Let me comment further, Mr. Kuykendall, that so far as I know the Commission, in the contested rate proceedings, has never allowed below-cost rates. There may be one or two isolated instances, but by and large we have condemned this situation.

Mr. KUYKENDALL. But to have investigated an existing rate, charges have to be brought by another carrier. Correct?

Mr. KAHN. I was referring to the kind of situation with which you were concerned, in railroads meeting barge competition with below-cost rates.

Mr. KUYKENDALL. I have seen a lot of rates which a railroad, if they could operate that efficiently, would all be rich on some of their other rates. I know that.

Mr. KAHN. Yes.

Mr. THOMPSON. You mentioned, in response to a question by the gentleman from Washington, it would take a 30-percent increase by Penn Central to break even?

Mr. STAFFORD. I don't know if I said break even.

Mr. THOMPSON. Do you know this for a fact? Is this a ball park figure?

Mr. STAFFORD. No, it is pretty clear.

Mr. THOMPSON. All right, you also made the statement, "But they could not competitively possibly make such a rate increase even if there were no objections to the increase from other sources?"

Mr. STAFFORD. I doubt that they would ever ask for that much, because they would probably start losing traffic.

Mr. THOMPSON. You used the word "competitively" they could not possibly take that much.

Mr. STAFFORD. For competitive reasons.

Mr. THOMPSON. Then is it the position of the Commission that we in Congress should look forward to a sick Penn Central Railroad simply because compensatively they cannot put the rates into operation that are necessary for self-supporting operation and that we should expect you and other members of the Commission to come before us asking for relief?

Mr. KAHN. If I may point out, Mr. Langdon said that he wanted an industrywide declaration from the Congress that there should not be below-cost pricing.

He understood perfectly well that Penn Central alone could not increase its charges and hope to continue to participate in the competition for traffic.

Mr. THOMPSON. What competition would they have that would make it impossible for them putting the necessary rates into effect? Would it be the truck lines?

Mr. STAFFORD. As we suggested, runs from Chicago to New York with competing railroads.

Mr. THOMPSON. This would be competing railroads and not truck?

Mr. STAFFORD. It could be both.

Mr. THOMPSON. Let me say this then. Is it the position of the Commission then that you are willing for the U.S. Government to, in effect, support an industry which cannot operate on a break-even basis because of competition from some other source?

In other words, if it is not efficient, if it cannot maintain its own operations because of some other competition, then we in Congress should be called upon to make the necessary arrangements, whatever would be the situation, guaranteeing trust certificates that eventually would have to be redeemed to keep them solvent; is that your position?

Mr. STAFFORD. I think, of course, there is a certain amount of subsidization for all forms of transportation, and the question of where it goes and what to do with it I might say is in your hands.

Mr. THOMPSON. Then, as I read your answer, you are basically saying, "Yes, we should look for a Federal subsidy, continuing Federal subsidy, operational subsidy for a railroad such as the Penn Central?

Mr. STAFFORD. Well, the airlines have a very heavy subsidy.

Mr. THOMPSON. I am not speaking about the airlines, but Penn Central right now, and I would like to know what the Commission's viewpoint is?

Basically, your viewpoint is that we in Congress should look forward to a continual operational subsidy because they simply cannot competitively put the rates into effect that would allow them to break even?

Mr. STAFFORD. No. The gentleman who appeared yesterday made a number of recommendations that he would hope would improve at least his operations to make them so cost oriented that, with an upturn in business, they could compete so they would not be coming here for further help.

Mr. THOMPSON. You still have not answered my question. You are evading the point I am making, and I am making a very pointed question, and that is simply this, that if Penn Central cannot, because of competitive reasons, put in a rate structure necessary to support their own operation, then we, in Congress, should look forward to a Federal subsidy, continual Federal subsidy, to support the deficiency; is that the viewpoint of the Commission?

Mr. STAFFORD. I think that is about right.

Mr. THOMPSON. You also made the statement that only 82 percent of any rate increase goes to a railroad because of State action.

Mr. STAFFORD. I said that was one of the factors that is involved. We have a rule of thumb that indicates from past studies, as a general rule industry will not, railroad industry will not, get a full 100 percent.

Mr. THOMPSON. In response to the gentleman from Tennessee's question, "Can a State overrule the Commission's action?" I did not feel you gave a clear answer on it.

Is it a fact that you do not obtain 100 percent of the rate increases because of the inaction of the Commission on insisting that your increases are going into effect, or do the States have legal authority on which they can overrule the Commission?

Mr. KAHN. The Interstate Commerce Commission has been vested with jurisdiction only over interstate rates, and, under an act of Congress, to bring up to the level of the interstate rates, intrastate rates that are found to be burdensome on interstate commerce.

Constitutionally, of course, the Congress can only act to regulate interstate commerce.

Mr. THOMPSON. May I ask this question along that point? If we can tell a wheat farmer in Kansas that he is affecting interstate commerce when he grows wheat unless he has a quota, can you not tell an intrastate railroad that they are affecting interstate commerce and therefore your rate does apply, or is the language that broad in the act?

Mr. KHAN. As I said a moment ago, sir, we have jurisdiction to invalidate a State rate upon a finding that it is burdensome, unduly burdensome on interstate commerce.

Mr. THOMPSON. Then, in effect, the 82-percent figure given is because of the Commission acquiescing to the objections of the State? Would that be a fair statement?

Mr. STAFFORD. Probably, because the railroads have never come in to petition us; that would be my guess.

Mr. THOMPSON. Well, your statement was it was because of State action that only 82 percent went in.

Do you ever acquiesce when a State says, "Well, we are not going to put this into effect even if it is required to have a profitable operation on intrastate, that it simply is not going into effect?" Does the Commission ever stand up and say, "Well, you are going to put them into effect?"

Mr. KAHN. The Commission has done it many times. We have been challenged in court and consistently sustained by the courts.

Mr. THOMPSON. In effect, you do have authority over interstate as well as intrastate?

Mr. KAHN. Insofar as we can make a statutory finding of undue burden on interstate commerce.

Mr. THOMPSON. Well, today's court decisions should not be very difficult because almost everything affects interstate commerce.

Mr. KAHN. We have encountered no difficulty.

Mr. STAFFORD. Congressman, could I go back a second to the previous thing you stated where I said, "Yes," and what I was trying to say in connection with that was that Mr. Langdon yesterday pointed out four areas in which he hoped that by their institution he could make his railroad a viable institution and so based on that, if those things come about, then he thinks that it will not be necessary, and then I will say in that case I agree.

Mr. THOMPSON. Well, the thing that concerns me about a continuing operating subsidy is that we have seen them in the airline industry, we see them now being asked for in metropolitan transit operations, rapid transit, even the local bus operations, the railroads; who is going to pay all of the money? We see in the Post Office that everybody says we ought to have Federal subsidy.

I frankly think when a service is provided, the people using that service should pay the cost of it. This is my philosophy, unless there is some great overriding reason, and I do not see why this should not apply to the transportation of goods by the railroad.

It will increase the cost of products eventually because it is going to have to be paid. Further, it concerns me when you indicate that competitively a rate increase may not be able to go into effect because of overriding competition.

I do not want to continually support a sick system. If management changes cannot be made to make it a profitable operation, certainly we should not have a continuing subsidy. That is the reason I asked you your question and I was concerned by your answer, and I appreciate your clarifying it.

Mr. STAFFORD. Based on what he said, I would agree with him it would not be necessary to come back.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Mr. Chairman, I would like to ask Mr. Stafford a few questions. I am a new member and these will be more or less informative questions to help me be updated since you had had hearings during the previous Congress.

The first one is this: What happened in the period to railroads after aviation took a lot of their business away and railroads were then in a good financial position, and then after that, we saw the necessity, from a business point of view of the merging of the Penn Central Railroad, we thought at that time, at least the general public thought at that particular time, it was just another merger in order to strengthen the services, but I guess actually it was a matter of finances?

Now, why is it, or what has happened in that interval that causes the railroads to be in such a precarious position that they now have to come before the Congress and ask for a subsidy?

From what I have heard in yesterday's testimony and today's testimony, there is no clear answer as to what the future of the railroads will be as a result of the information that I have gotten.

What happened in there when they were a viable business, profit-making industry, and now they are in such a serious condition?

Mr. STAFFORD. Well, in the first place, the New York Central and the Pennsylvania Railroad both had very low earnings at that period of time.

The reason I am a little slow is that I was not a member of the Commission at the time all of this took place. I have to look back on it.

But you say now what has happened to it since they have gone into the merger?

Mr. METCALFE. I am not restricting my remarks to the Penn Central.

While it is germane in this part of our public hearings today, I am thinking generally in terms of the railroad industry, because I mean, not only what is happening to the Penn Central, but the other railroads I gather are also in a delicate position financially.

Mr. STAFFORD. Some are, but some are very strong.

Mr. METCALFE. But they can be weakened, and if the Penn Central has been weakened, what assurance do we have that the others will not?

Mr. STAFFORD. Well, of course, basically the long-haul roads are in a considerably better position generally.

Mr. KUYKENDALL. Will you yield? Mr. Metcalfe, I will continue with a supplementary question that I think might help.

What is the relationship between the amount of total revenue 15 years ago that was involved with passengers and the present health of the railroads?

Mr. STAFFORD. Of course, your passenger system has become a costly item and this is the reason the Congress saw fit to pass the so-called Railpax legislation, to take the extreme cost off of the backs of the railroads and yet help the people of this country maintain passenger transportation.

Whereas transportation of people was at one time a very major source of income for the railroads, since that time we have built all of these airways with public funds helping all of this; we have built tremendous highway systems, and the love of the automobile by the owner, his desire to get into that car and drive rather than riding a train, has just killed off the passenger system.

Mr. METCALFE. No; I mean you have indicated that all of the railroad companies are not in the same financial position as the Penn Central is, which means they must have some system of operating.

Now you mentioned about the long haul. But I am talking about what has happened in the last 2 or 3 years, I mean, because we have had our system of highways, I mean we have had competition from the trucking industry, we have even had competition from barges, but what has happened, I mean in there, because they were losing, or the railroads were losing passenger service and it is true that they did not update their equipment, I mean, to be in competition with the airlines, but they were still a viable going commodity or business.

Mr. STAFFORD. Of course, this is not the first downturn we have had and it appears to me that if you have even a very slight downturn in the economy it creates problems first for the railroads.

This is because your carloading is affected first. When the carloading drops, there goes the profitability.

This is what has been the situation, there has been a downturn, as I stated in my prepared remarks here, that 1970 had a downturn in the carloadings and in the profit picture, and this was particularly true in the eastern part of the country.

As I then said, as soon as business generally begins to pick up, and I think it will very shortly, then I think this will be one of the best things that can happen to the railroads, to get them started, and I don't think it is a final answer because I think some of these other steps that you gentlemen are considering will have to be given some further thought.

But I do think an upturn in economy is going to show some marked effect on the marginal roads.

Mr. METCALFE. What is wrong with my thinking, if I follow you logically, then, according to the economy, whether there is an upturn or a downturn, that Congress will eventually and will continuously feed more money into it when there is a downturn in the economy?

Is this what I am hearing you say, and is this the future, I mean, for our country?

Is this what Congress has to be faced with right now?

Mr. STAFFORD. Hopefully not. You did it in 1958, sir, you set this up under part V, I believe.

Mr. METCALFE. What I want to find out is, whether or not, I mean through your Commission, you have been aware of these trends and have taken any precautionary steps in that particular direction?

Particularly am I concerned about the rate increase. Of course, we know that there are some commodities that are carried where there is a larger profit. Why isn't that carried like any other business?

I mean why aren't the rates based upon a larger margin of profit for one commodity and then anticipating that if you are going to be in a competitive market that you have to have a smaller rate for the others?

I don't think this has been done, and I am appalled at why it has not been done.

Mr. STAFFORD. This is the old business know-how, to try to compete with his opposition. Could I have Mr. Fittipaldi answer?

Mr. FITTIPALDI. I am not quite sure, sir, I have your question.

As I take it, you are pointing up the fact that some commodities bear a larger burden of the transportation system than other commodities, is that it?

Mr. METCALFE. Well, that is the specifics of it, but the real question I have is, why is it that the railroads have not been on a more sound base of operation in terms of anticipating what the percentages of loss are going to be?

I just used the rate structure as one example of why they are in the position they are in right now.

Mr. FITTIPALDI. Again, sir, I don't think I can answer the question as to the extent of why they couldn't, why the railroads couldn't anticipate the problem.

Mr. METCALFE. The reason I raise the question about why they couldn't is because I am concerned about what we are going to do for the present and future of our country, and I think I need to know those answers before I can give intelligent judgment as to what direction we need to go to in the future.

Mr. FITTIPALDI. Right, sir, but on that particular point I couldn't very well state why they failed to anticipate the downturns and upturns and so on.

Mr. METCALFE. I know, but you, as a Commission, isn't that your responsibility to determine these, because, as you issue rate increases, as you regulate intra- as well as interstate, that these would be the factors involved?

Mr. STAFFORD. Congressman, I am afraid I may be getting a little too morbid on this stuff, but I do foresee a very bright future for the railroads. Some of them of course will continue to have problems, but competition has a very great deal to do with it.

Mr. METCALFE. Of course, you have a more vast knowledge of it, but I don't share that enthusiasm or optimism, and this is the reason for my questioning.

Thank you very much, Mr. Chairman.

Mr. JARMAN. At this point, may I mention that we have scheduled the Department of Transportation for testimony this morning also, and witnesses are standing by.

Are there additional questions?

Mr. Adams?

Mr. ADAMS. I have just one area, Mr. Chairman, and I will make it very brief.

Have you intervened in the Penn Central bankruptcy proceedings in Philadelphia as a party?

Mr. STAFFORD. Did we intervene?

Mr. KAHN. Not yet, sir.

Mr. ADAMS. Why not?

Mr. KAHN. There has been no occasion for intervention. We have followed that proceeding very closely. We have received in our office copies of all pleadings and orders entered by the court. There is no occasion for a formal entry in that proceeding as yet.

Mr. ADAMS. Do you have an administrative procedure or do you need additional legislative authority to go to the 18 railroads that you have testified to in order to require correction of their capital structure so they can be competitive?

Mr. KAHN. We have presently no authority to amend on our initiative the capital structure of the railroads.

Mr. ADAMS. I just posed this because, Mr. Chairman, from what the gentleman from Tennessee mentioned, you simply take the position of letting the private enterprise system work and that these railroads go into reorganization and the debt people and equity people are wiped out and the roads are squeezed down to a size where they are competitive and therefore do not have to have the rate increase?

What I want to know from you is whether or not that is the position that the committee should take. Should Congress give you authority in those areas to let those who lose, lose, and those who win, win? Or we should continue throwing peanuts to the elephant? Which is like what we have done with the Penn Central?

Mr. KAHN. I think the primary concern of the Interstate Commerce Commission is, as it has been in the past, to assure that transportation services are rendered to the shipping public at a fair and reasonable price.

Mr. ADAMS. I know that. I mean that is all final. Do you want us to give you authority or do you need authority so that this system shakes out or are you going to come in with a subsidy program?

Mr. KAHN. I think it is relevant, Congressman, and the reason is that if a railroad has to go through bankruptcy and there is no threat to continuing service to the public, then this may be an appropriate way to assure the future profitability of the operation.

Mr. ADAMS. That is in the 77 reorganization; that is what the 77 reorganization was all about.

Mr. KAHN. Yes, but as was the case on the New Haven, when there was a distinct threat of the cessation of service, that had an altogether different posture.

Mr. ADAMS. Mr. Stafford, do you agree with what he has said, that maybe we let the private enterprise system function with its downs as wells as ups?

I know it is hard, but we are going to face it with Penn Central before October and we want to know which way you can, which way you recommend we go. Then I will be finished, Mr. Chairman.

Mr. STAFFORD. I will try to give you a Commission position on that shortly.

Mr. ADAMS. Would you, please.

(The following letter was received for the record:)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 31, 1971.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN JARMAN: During the March 10th hearings before your subcommittee, Mr. Adams raised a question on how to correct the capital structure of financially foundering railroads and restore them to a competitive status. He asked specifically whether administrative procedures have been established for that purpose or whether additional legislative authority is needed. I agreed to seek a Commission consensus and report thereon to the Committee.

As we view the colloquy (transcript, pp. 112–113), Mr. Adams portrays the problem in terms of two alternatives: government aid or reorganization (more precisely, "shaking out" excess debt and equity and "squeezing down" the railroad to a competitive size). And he appears to envision a possible answer in a regulatory power to force the carriers to correct their capital structure; and, in the exercise of that power, to let the chips fall where they may.

We do not believe the problem or the answer is reducible to those simple alternatives—so long as this country remains committed to the private enterprise system. Nor do we believe all situations are susceptible of the same remedy.

In two pending railroad reorganization proceedings under section 77 of the Bankruptcy Act, we have heard parties and the reorganization court speak of such things as conserving the estate for the creditors, of liquidation, and of confiscation violative of the Constitution. Even the Supreme Court of the United States, noting these statements in passing, seemed unperturbed. Yet, all these ideas are, at least in some degree, inimical to continued performance of service for the public by a financially distressed railroad. And the very fact that they have been voiced in places of authority is significant indication that no simple solution lies in a statutory authority to step in and, by administrative fiat, force a financial restructuring, or in precipitating a section 77 bankruptcy.

One of the principal reasons for the enactment of section 77 of the Bankruptcy Act was to provide a ready remedy for overhauling a railroad's financial structure without impairing its primary responsibilities as a regularly functioning carrier. See *St. Joe Paper Co.* v. *Atl. Coast Line R. Co.*, 347 U.S. 298, 309 fn. 12 (1954). Unfortunately, section 77 has turned out to be neither an inviting nor a ready remedy.

Owners and managements are hesitant, in the first place, to file in reorganization for fear of forever foreclosing their interest. And once in reorganization, the new managements under supervision of reorganization courts seem both reluctant to rationalize the operations and physical plant and incapable of devising acceptable plans for scaling down debt to manageable size.

In addition, section 77, conceived for statesmanship rather than disparity, contains (1) numerous steps for passing a reorganization plan back and forth repeatedly among the Court, the Commission and the security holders, and (2) procedures for repeated reopenings on the basis of new facts. It has been said that section 77 is a lawyers' paradise, a railroad statute with no terminal facilities.

Thus, the processes of "shaking out" and "squeezing down"—even to let the chips fall where they may—can go on and on almost interminably. It took 23 years (with the help of a "war-boom" economy) to bring the Missouri Pacific out of reorganization; 38 years for the Boston and Providence. In the meantime, we walk the tenuous line between the maintenance of essential public service by rail and the undue consumption of private property for public purposes without just compensation.

This raises the question of what is essential service. It might be advanced that loss-producing services should not be sustained; but we would warn against such a proposition for indiscriminate application. Essentiality of a service should not be determined solely on the basis of a particular carrier's costs in producing it. The Commission has regularly considered other factors.

The problem seems not so much in determining the question as in having it duly brought to the Commission. Before bankruptcy, a railroad is free to survey its business, identify the low-volume non-productive lines, and seek their abandonment under section 1(8)–(20) of the Interstate Commerce Act. After bankruptcy, section 77(o) of the Bankruptcy Act contemplates that the trustee and reorganization court will likewise seek the abandonment of unneeded lines. But in neither circumstance has the Commission thus far been overwhelmed with abandonment applications.

The railroad industry in its recent Astro Report, and railroad spokesmen throughout the land have cited excessive facilities and operations as a serious cause of the industry's current malaise, and have indicated the beginnings of a major effort to eliminate the alleged redundancy. In anticipation, the Commission has taken special steps internally to deal expeditiously with an increased workload in this area. We shall keep a close watch on developments, and in the event the need for staff or budgetary augmentation or for statutory change becomes evident, we shall be prepared with a timely proposal for Congressional assistance.

I would also point out that section 77 of the Bankruptcy Act contemplates the rapid submission by the debtor railroad of a feasible plan of reorganization. Just as section 77(b) contemplates a scaling-down of the debt, section 77(o) specifically provides for reduction in the size of the debtor's plant. Yet, in several recent instances, the debtors in reorganization have been disinclined to propose plans for rationalizing the railroad and its operations, choosing instead to rely on the hope that all its services and all its financial obligations might be included in and taken over by another, healthier, rail system. Thus we find that sufficient utilization has not been made of section 77(o), even though, in some instances at least, its use might well have brought a speedier end to the proceedings. This failure to exploit the means provided by section 77 for whittling down debt and plant may be due in some part to the many difficult collateral problems relating to a debtor road's bonded indebtedness, which trustees and reorganization courts must face.

The Bankruptcy Act contemplates in section 77(d) that a reorganization plan be devised and submitted rather quickly—within six months of the court order approving the petition for reorganization. But this section also permits the court to grant extensions for periods up to six months, and, in fact, repeated extensions appear to be the normal course. As a result it takes much longer than six months before reorganization plans are presented to the Commission for consideration. Perhaps what is needed, and this is something the Commission will continue to explore, is some revision of section 77 which would impose a clear duty upon the parties to produce a reorganization plan and, if they are unable to do so within a specific time, to direct a government agency—either the Commission or the Department of Transportation—to promulgate a plan which would be binding upon all the parties and upon the Bankruptcy Court. It may also be that other modifications of section 77 to eliminate some of the opportunities for delay should be considered at this time.

Turning to Mr. Adams' reference to "subsidy" as the alternative to regulatory action, I will make just two points and leave further comment to our legislative program soon to be presented. First, we believe it is inaccurate to consider the guaranteed loans a subsidy, and second, we would remind you that Congress itself has attributed the railroads' difficulties in part to the massive and outright public subsidies given the competitor modes.

The guaranteed loans were used to pay the wages of labor, to provide essential maintenance work and to buy essential equipment—in other words, to keep the service going for the benefit of the public and not to protect excessive debt. Moreover, of the $242.5 million of total loans in our Part V program, almost one-third has been fully repaid and more than $92 million is current. The part in default, some $71 million, is in the hands of the Department of Justice for collection and much of that will be recovered.

We believe our upcoming legislative proposals, when taken together with other bills we are commending to you and with administrative actions being undertaken, will provide a sound course for dealing with the major problems in transportation.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

I want to express my apology for being called away for another committee of which I am a member. If these questions have been asked, gentlemen, I want you to indicate.

Mr. Stafford, I read your statement in between my trips to and from the committee, and reading pages 5, 6, 7, and 8, it looks like the Interstate Commerce Commission is just standing aside and letting nature take its course preparing not at all for the winter or deluge that is sure to come when these other people go under.

I would like to have you tell us, if you please, what power you need, first of all, or what power you have to see to it the rate structures of railroads now in bankruptcy and then railroads going into bankruptcy are compensatory and adequate, first of all, to secure viability of the railroads, and I am asking about you doing it on your own and not waiting until someone files a pleading before your agency, and do so expeditiously, to eliminate the complaints the Penn Central trustees were discussing yesterday with regard to the below-cost rates.

What specific powers do you have in the Interstate Commerce Act or related acts and what powers do you need?

Mr. KAHN. We believe adequate powers now, but, as we responded, I believe perhaps while you were out of the hearing room, the problems of the Penn Central in bringing the prices it charges to a compensatory level cannot be looked at in isolation. They must be viewed in the context of the railroad competition with other railroads and other trucking concerns.

If it were simply a matter of Penn Central raising its rate to a compensatory level, I assure you it was worked on a good long while ago and it can be done now.

Mr. DINGELL. That is a very good statement, and your answer is you have enough power to handle the problem and to see to it the rates are brought up and so forth.

Can you do it expeditiously? I am sorry, Mr. Stafford, I have heard your comment, but I want to hear his answer for the record in full. Can you do it expeditiously?

Mr. KAHN. Definitely.

Mr. DINGELL. Then your time limit is October, November, or December of this year before they go bankrupt and look for more money?

Mr. KAHN. Mr. Langdon's testimony, as I understood it, was if these four areas showed some promise of success, they will not be back ever.

Mr. DINGELL. No, his statement was they were going to be back if these four areas don't show promise, that is, they would be in to recommend to us we do something about dissolution of the railroads in one of the series of enumerated fashions set out in the statement.

Mr. THOMPSON. Will you yield?

While you were out of the room, I asked a question concerning the statement it would take a 33-percent rate increase in order to bring rates up to a breakeven point and it was pointed out competitively the Penn cannot.

Even if the Commission has authority to impose this rate, are they going to impose a rate that would cause the Penn to lose their competitive position?

It appears to me as though we are faced with a continued subsidy considering the position taken by the Commission.

I just wanted to make that observation since you might have been out of the room.

Mr. DINGELL. I observed, you have informed me through a note you have a proceeding pending down there with regard to Penn Central, and I assume this is the one you referred to earlier, which deals with the question of the rate structure at Penn Central. Am I correct?

Mr. KAHN. We were referring to two proceedings. We have a separate investigation of Penn Central and the circumstances that led to its bankruptcy and another proceeding, ex parte 270, an inquiry into the rate structures of the railroads, including Penn Central.

Mr. DINGELL. All right, when will these be concluded?

You know this committee is going to be looking to you gentlemen, with your substantial staff and capability, to inform us so we can make proper judgment when the matter is back before the committee in the fall, and when do you anticipate the two studies will be completed to give guidance to the committee?

Mr. KAHN. I don't think the Commission's opportunity to render assistance to the committee is necessarily limited to the proceedings.

Mr. DINGELL. I assume the proceedings, though, will answer a lot of the important questions before the committee with regard to Penn Central and other railroads.

Mr. KAHN. Yes, sir.

Mr. STAFFORD. I would like to make one other point in helping Penn Central. They have to cut their costs and this is what he spoke to yesterday to a great extent.

Mr. DINGELL. He spoke to cutting costs but also spoke toward getting a rate structure which will be compensatory, about eliminating below-cost rates. Some of the other things were matters in which you indicated the Interstate Commerce Commission does not have primary jurisdiction. I am not holding you, insofar as regards labor costs, and things of this kind, but I want to know when you are going to have the two studies you have alluded to completed, so they may bear on the considerations of this committee with regard to a request for significant further guarantees.

We have already guaranteed $100 million and we might be called on to guarantee as much as $500 million, and I am sure these studies will be highly relevant.

When will they be completed so the committee will have the benefit of judgments that the Interstate Commerce Commission will make with regard to whether or not we are going to make further loan guarantees?

Mr. STAFFORD. There was just put before me the order of our hearing on the Penn Central, which will start on April 15, with the filing of a verified statement on the matter, and we hope then to start supplying certain information.

Mr. DINGELL. Well, can you tell us when you will have those judgments made or when will you have those finished so we can have benefit of your guidance on these matters?

Mr. STAFFORD. This depends a great deal on legal procedures which are forces that are outside of our control.

Mr. DINGELL. I am aware of that and am aware of the difficulty you have in answering this, but you know in October, November, December, this committee is going to be considering whether we will extend further guarantees.

Now, Mr. Wirtz has said it may well be that he will make a recommendation to the committee and to the court that the whole matter be allowed to go under.

Mr. KAHN. Mr. Langdon yesterday was appealing to the help of this committee to get industrywide increases of rates, not simply the Penn Central's, and for this no further hearings are required.

Mr. DINGELL. Don't you people have inhouse authority to go into these matters on your own?

Mr. KAHN. Very definitely; but we do not have a congressional declaration that costs which are below long-term variable costs should not be permitted.

If the Congress makes that determination, the Commission will administer that program.

Mr. DINGELL. You don't have authority in this particular area then?

Mr. KAHN. We have no legislative standards that suggest that the rates below the long-term variable costs should not be permitted.

Mr. DINGELL. What steps are you taking to see there is no default with regard to something which would create liability on the part of the Treasury?

We had an unhappy experience with the Interstate Commerce Commission with regard to New Haven. What steps are you taking to assure the rate structure is going to be such there will be no default which will lead to liability on the part of the United States under the guarantee?

I would like to have you name specific steps.

Mr. KAHN. If you are referring to the $100 million authorization.

Mr. DINGELL. With regard to the $100 million guarantee, yes.

Mr. KAHN. I think, Congressman, that question had better be addressed to Secretary Beggs, since the loan authorization was approved by the Department of Transportation and not the Commission.

Mr. DINGELL. Well, I saw to it that it was done in consultation with the Commission so as to impose a responsibility on you and Mr. Beggs and on the Department of Transportation and have it coordinated.

I get the feeling you folks are sitting idly back calling balls and strikes rather than causing affirmative action.

This kind of impression, let me say, is not good when there is an active move on the Hill to abolish the Interstate Commerce Commission. It may be, if I see your agency continuing to proceed in the fashion that I get the impression it is proceeding with regard to this loan guarantee and the rates and other matters, I may just join that particular stampede.

Mr. KAHN. Well, Congressman, certainly the Commission is fully aware of the needs of the Penn Central and we are processing their rate increase applications and we are set to receive their abandonment applications and doing everything that I think the law permits us to do to be of assistance to Penn Central.

All of this, of course, will permit it to become a viable operation and hence to make the repayment of the trustee certificates guaranteed by the Government.

Mr. DINGELL. Well, now, in conclusion, Penn Central said that they were going to have to make some judgments in 6 or 7 months as to whether or not there would be a careful plan for breakup of Penn Central.

Does your Commission have any orderly steps so you can guide the Congress at the time this 6- or 7-month period is up and the Penn Central trustees are going to be making some recommendations with regard to further actions by the Federal Government?

Are you taking any steps so you will be ready when that judgment is forced upon you?

Mr. STAFFORD. We think we will have, as soon as the Commission acts on our legislative proposals.

Mr. DINGELL. On your legislative proposals?

Mr. STAFFORD. Yes, sir. We will have several. In addition, we have the program underway right now preparing for what we call wholesale applications for doing away with certain mileages of track.

Mr. DINGELL. That is all well and good, but it still does not get us at the below-cost problem.

The fundamental question is do the recommendations which will beset the Congress when the trustees come forward, if they do, with regard to the sequence of alternatives, that I have alluded to and you have not comforted me at all with regard to this particular, and I think really you have a responsibility to start gearing the Commission up to come forward with appropriate recommendations or to conduct day-to-day supervision of the matters related to Penn Central insofar as you have responsibility, which I understand is the rates, and you have a duty to coordinate your approaches to the Department of Transportation to see what they are going to do and how they are conducting these matters, and I must tell you again I just do not get the impression you folks down there are doing this job, and I have been seeking some comfort in it, and I must say you have given me very cold comfort this morning.

Mr. STAFFORD. We think we are working closely with Penn Central in trying to help them.

Mr. DINGELL. I know our chairman has problems on time and I have been delayed. Suppose you give us a memorandum in response to a communication I will direct to you and ask to have inserted in the record at this point, outlining these particular matters.

I just want you to know, Mr. Stafford, I am not satisfied on the basis of the record as I see it at this time and on the basis of your statement that you have properly and fully carried out your responsibilities to anticipate the future circumstances.

Certainly, the situation as it arose last fall with Penn Central rushing into bankruptcy on relatively short notice and the demand by trustees that there be a guarantee of hundreds of millions of dollars of certificates, I don't believe was adequately anticipated by your agency, and I don't honestly believe you have shown us circumstances which would indicate that you are anticipating future outrages of this kind.

Mr. STAFFORD. We will be happy to have you—I believe you said you would send a written request?

(The following correspondence was received for the record:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
RAYBURN HOUSE OFFICE BUILDING,
Washington, D.C., March 12, 1971.

Hon. GEORGE STAFFORD,
Chairman, Interstate Commerce Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I am certain that you will recall our colloquy on March 10, 1971, when you appeared before the Subcommittee on Transportation and Aeronautics with respect to the Emergency Rail Services Act of 1970. It was suggested to you that you bring the discussion that we had to the personal attention of each member of your Commission.

Be assured that my dissatisfaction with the operation of the Interstate Commerce Commission is not directed at you but rather at the full Commission and past Commissions for too many years. You explained to me as candidly as I believe you could why you were not able to answer all of my questions the other day. I recognize that you have to consult and clear many, many projects with the other Commissioners. I firmly believe that consultation and clearance in the Commission is working more ill than good.

In order to expedite the work of the Commission, I am introducing a bill to reduce the Commission from 11 members to 5 members (a draft is enclosed). Of course I do not expect this to solve all of your problems, but it should bring some solutions to the surface sooner. In addition to answers to the specific questions I asked the other day concerning when your studies will be completed and what the Commission proposes to meet the needs of the railroads, we should have your legislative proposals now. They will not be of much help if 18 roads go under while your proposals await clearance.

I make the point here that my evaluation of the Commission for some time has been that it operates in fields of primary nonaction and secondary reaction. In short, this should be turned around and we should have an *action* Commission actively pursuing its regulatory responsibilities and not a "study" Commission or a service organization for the carriers. We are at a crossroad where we must choose to either improve regulation or to choose a new course. What do you suggest? Your early responses will be appreciated.

Sincerely yours,

JOHN D. DINGELL, M.C.

Enclosure.

A BILL To provide for a gradual reduction in the membership of the Interstate Commerce Commission from eleven members to five members

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, upon the expiration of the term of office of any member of the Interstate Commerce Commission on and after the date of enactment of this Act, the President shall not appoint an individual to fill the vacancy so created until the number of members of the Commission is reduced from eleven members to five members. Thereafter the qualifications of the members and the manner of payment of their salaries shall be as already provided by law.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 24, 1971.

Hon. JOHN D. DINGELL,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN DINGELL: Thank you for your recent letter which refers to my March 10 appearance before the Subcommittee on Transportation and Aeronautics. Your remarks and the attached copy of your bill, which has been enrolled as H.R. 6229, have been reviewed by all of the Commissioners.

We are determined to present a timely package of constructive legislative proposals which would enable the Commission to effectively deal with some of our Nation's more pressing transportation problems. Mindful of the pressing nature of these problems, each of the Commissioners is actively engaged in

this priority enterprise. For your information, I have scheduled the matter for Commission conference on March 26 to finalize our legislative proposals. I anticipate that we will tender our proposals to the Congress shortly thereafter.

We are not unmindful of your criticisms. However, I am confident that our legislative program will attest to the constructive value of teamwork and fully acquit the extensive and conscientious deliberations which have preceded the final product.

You may be assured that we are eager to cooperate with the Congress to the end of achieving an adequate and economical national transportation system.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

Mr. DINGELL. But I also want the dates when you anticipate these studies will be concluded. You have some questions before you and you have not been able to tell us who is going to need $100 million, or something like that, more than the guarantees than you have before us, and what is the fundamental information we are going to need and when will it be available?

Mr. STAFFORD. We gave you the report today on 18 roads that were very close to bankruptcy. Management can make that determination anytime they desire.

Mr. DINGELL. That is one of the things that makes me apprehensive. Here you are telling us this morning these 18 roads are close to bankruptcy, but to the best of my knowledge we had no advance warning of 18 roads on the brink of bankruptcy.

But we have known for a long time there were a bunch of them. Here this morning there is flying into us that there are 18 roads in trouble.

Frankly, on the basis of your statement and colloquy with my good friend, Mr. Adams, I come to the conclusion they are in serious trouble. I think we are going to have to consider, are we going to do guarantees, or, as Mr. Adams mentioned, let them go under.

Penn Central's situation is, in my view, about 50 percent rascality, and 50 percent stupidity, and yet they rush in and try to stimulate this committee into guarantee of loans under all manner of circumstances that would perpetuate what is clearly a continuing pattern of outrage.

I don't get the feeling you are giving the kind of guidance and help we need, and after all, you are an arm of Congress, so we can arrive at appropriate anticipatory judgments so we not find others in bankruptcy with demands for guarantees and others rushing in here for guarantees. I think it is a very bad performance, sir.

Mr. STAFFORD. Congressman, of course a lot of this has been brought on by the inflationary problems we have.

Mr. DINGELL. I am aware of it. I am aware of it because you folks are the custodians of the welfare of railroads. The Interstate Commerce Commission Act charges you with the duty to see to it that the railroads remain in reasonably good financial health.

You can't protect against criminality and stupidity and pyramiding of assets into A to Z-type blue-sky castles but nevertheless you must do something to protect us in this matter and give us guidance, and I don't see any sign that you have given us guidance and I see no kind of therapeutic guidance that you have given.

I don't mean just you; you have a goodly number of Commissioners; and you have not been doing what you are supposed to. I very much mean that, and I am very much distressed.

Mr. PICKLE. I want to comment that I have the distinct feeling that you, the Commission, also would like to have a specific directive, legislative statement from the Congress that you are to do these things and perhaps this is also an order of things.

Mr. STAFFORD. That would be very helpful.

Mr. DINGELL. I hope you will get such requests up here because this committee is anxious to work with you and give you the help you need to do the job. We are not just criticizing you, but we are begging you to tell us what help you need and how we can work together to head off further Penn Centrals and work together to see to it that taxpayers are preserved and we are not going to have to nationalize the railroads.

Mr. STAFFORD. I think an increase in business will be the first thing that will help.

Mr. DINGELL. That is not within the power of anybody in this room I know of.

Thank you, Mr. Chairman.

Mr. JARMAN. Let the Chair announce now that time limitations being what they are this morning, and the House going in at 12, we have had to schedule the Department of Transportation spokesmen for 10 o'clock tomorrow morning.

Are there any additional committee questions before the Interstate Commerce Commission leaves?

Mr. ADAMS. No, Mr. Chairman.

Mr. JARMAN. The subcommittee will stand adjourned until 10 o'clock tomorrow.

(Whereupon, at 11:55 a.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, March 11, 1971.)

REVIEW OF THE EMERGENCY RAIL SERVICES ACT OF 1970

THURSDAY, MARCH 11, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

Today we expect to complete this series of hearings on a review of the Emergency Rail Services Act of 1970. Our witnesses today are from the Department of Transportation and are Mr. James M. Beggs, Under Secretary of Transportation, and Mr. Carl V. Lyon, Acting Federal Railroad Administrator.

Gentlemen, I know that you were here yesterday and I regret that we were unable to receive your testimony then. However, as I am sure you are aware, the status of the Nation's railroads is a subject of great importance; therefore, the Chair did not wish to cut your presentation short by attempting to work you in, in the last few minutes of yesterday's session.

Thank you for your patience and now you may proceed as you see fit.

STATEMENT OF HON. JAMES M. BEGGS, UNDER SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY CARL V. LYON, ACTING ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. BEGGS. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, let me say in the beginning that we in the Department of Transportation are indeed very much concerned about the railroad situation in the country today and have been ever since we came into town 2 years ago.

I am pleased to appear before you today to discuss the Department's activities under the Emergency Rail Services Act of 1970, particularly with respect to the Penn Central Railroad.

Before examining Penn Central's situation, I would like to review briefly the general earnings picture in the rail industry. The preliminary figures for railroads earnings in 1970 vary little from what we had expected. While gross operating revenues reached a record high of $12 billion, the increase in expenses outpaced revenues. We

believe the final figures will show net railway operating income of about $500 million, as compared to $655 million in 1969.

Net ordinary income is expected to be about half the $514 million of 1969 and return on investment will decline to 1.76, the lowest since 1938.

We are hopeful that both traffic and earnings will improve in 1971. However, there is no discernible trend in either from the figures available for January and February. Any optimism is contingent on many imponderables.

Revenue will increase in 1971 as a result of freight rate increases and hopefully major gains in carloadings and revenue-ton miles, but operating expenses will continue to climb. The recent wage settlements and those yet to come, plus increased material costs, are major factors influencing any projection of recovery or further decline in 1971.

At this point, I am not optimistic that any really significant improvement in the industry's revenue-costs ratio will occur in 1971. Therefore, for those roads in reorganization or on the brink of bankruptcy, the picture continues to look very bleak.

The Penn Central witnesses have given you their latest estimates of cash needs and cash resources. I think it is clear to all that the railroad is running today because this committee and the Congress acted to provide the emergency loan guaranty assistance.

On January 7, 1971, the trustees filed an application with the Department under the provisions of the Emergency Rail Services Act of 1970 for the guarantee of trustee certificates in the principal amount of $110 million. The purpose of the guaranty was to meet payroll and other expenses necessary to prevent cessation of essential transportation services. The trustees advised that without the guaranty of certificates they would have a cash deficit of $5.3 million by the end of January which would necessitate the termination of service.

On January 11, 1971, we advised the trustees that, in addition to information contained in the loan guarantee application, we would need to examine alternative means of generating cash, including the factoring of accounts receivable, equipment refinancing, the prospects of divestment of affiliated companies, and the possible sale of real estate. In other words, all sources of funding had to be fully explored. This material was furnished in a supplemental submission received in the Department on January 12, 1971. We had analyzed Penn Central's actual cash flows between July 1 and December 31, 1970, and its forecasted cash flows through March 31, 1971, and determined that a minimum operating cash balance of between $20.1 and $22.3 million should be maintained to assure operational liquidity.

After examination of all relevant data, and after consulting with the Interstate Commerce Commission and other executive departments, we concluded that the guaranty of trustee certificates in the principal amount of $100 million were justified. Accordingly, the Secretary approved the guaranty of trustee certificates, subject to the terms and conditions set forth in exhibit A to the agreement on terms and conditions. A copy is attached to my testimony, and I request that it be made a part of the record.

Mr. JARMAN. The committee will be glad to receive it.

Mr. BEGGS. The agreements for the guarantee and sale of the certificates were executed on January 26, 1971. The proceeds from the sale

were placed in short-term Government securities and bank certificates of deposit and made immediately available to the trustees to be drawn out as needed. The trustees are required to give the Secretary advance notice of their intention to make a draw down and to consult with him regarding the need for the draw down.

The trustees drew down $15 million on January 28, 1971, which was applied to cover payroll and associated payroll costs due on January 28, 29, and February 2, 1971. On February 16, 1971, the trustees were authorized to draw down $50 million to meet the 1970 retroactive wage increase and associated payroll costs. These funds were disbursed to employees beginning on February 16, 1971.

Under the terms and conditions, the trustees were required to submit, within 30 days from the execution of the guaranty agreement, a plan for the sale of nontransportation assets of the company and its corporate subsidiaries. This would include security holdings. That plan was due on February 25, 1971. On February 23, 1971, we received a telegram from the trustees requesting a postponement of the filing date. An extension of 18 days, from February 25, 1971, to March 15, 1971, was granted.

A plan for abandonment of uneconomical lines of railroad was also requested by February 25, 1971. The trustees submitted phases I and II of a three-phase plan outlining proposed abandonments. Phase I consists of 16 lines or segments of line in four States and one Province in Canada, consisting of 114 route miles varying in length from 1 or 2 miles up to 60 miles. Applications for abandonment of these lines have already been filed with the Interstate Commerce Commission and the Transport Commission of Canada.

Phase II of the program consists of 67 lines or segments of line comprising a total of 705 route miles. The trustees have petitioned the reorganization court for authority to abandon 63 segments comprised both of Penn Central and leased line ownership, and in the interim to file applications with the Interstate Commerce Commission for certificates permitting such abandonments. Appropriate abandonment applications for these 63 segments, as well as four additional segments of affiliated companies, are being prepared and are expected to be filed with the Commission this month.

The trustees have advised that a study is underway to determine the lines which will be included in phase III of the immediate abandonment program. This determination involves analysis of approximately 2,662 route miles. It is expected that the specific content of phase III will be decided by April 30, 1971, and a request for authority filed with the reorganization court. Subsequent phases will be developed and processed promptly. The trustees estimate that the total program will ultimately result in a reduction of about 5,000 route miles, or 25 percent of the present total.

As to Penn Central's future cash requirements, it is anticipated that the $100 million will carry Penn Central through the third quarter of 1971. We are carefully watching Penn Central's operations and its cash flow and will keep the committee fully advised.

The Central Railroad of New Jersey and the Boston & Maine also have filed applications for guarantees of trustee certificates in the principal amounts of $10 million and $12 million, respectively. These

applications are now under consideration and it is expected that decisions will be reached within the next 2 weeks.

Mr. Chairman, this completes my prepared statement. I shall be pleased to answer any questions the committee may have.

(The attachment to Mr. Beggs' statement, "Agreement on Terms and Conditions," follows:)

AGREEMENT ON TERMS AND CONDITIONS

This Agreement is made this 26th day of January 1971, by and between the Secretary of Transportation of the Department of Transportation of the United States (the Secretary) and George P. Baker, Richard C. Bond, Jervis Langdon, Jr., Williard Wirtz, as trustees of the property of Penn Central Transportation Company, as trustees and not individually (the trustees).

The trustees have applied to the Secretary, pursuant to Section 3(a) of the Emergency Rail Services Act of 1970 (P.L. 91-663) (the "Act"), for a guaranty of their Certificates in a principal amount not to exceed $100 million. The Secretary has made the findings required by Section 3(a) of the Act and, on this date, is entering into a Guaranty Agreement with the trustees.

The Secretary has established certain terms and conditions to be observed by the trustees as a condition to the making of the guaranty, said terms and conditions being attached hereto and made a part hereof as Exhibit A. Pursuant to the authority granted them by Order No. 124, dated January 13, 1971, in proceedings for the reorganization of Penn Central Transportation Company under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania (the reorganization court), the trustees are authorized to comply with said terms and conditions.

In consideration of the foregoing and of the agreements made herein, the parties agree as follows:

1. The trustees shall observe the terms and conditions set forth in Exhibit A hereto, subject to the jurisdiction of the reorganization court over specific actions of the trustees under the provisions of the Bankruptcy Act.

2. The guaranty fee required by Section 3(b) of the Act shall be ⅜ of one percent of the principal amount of the Certificates guaranteed. The fee shall be payable, pro rata, on the maturity dates, or cancellation following redemption, of the Certificates guaranteed. In the event that such sum shall not be paid, the Secretary may treat such amount not paid in the same manner as he may treat amounts paid by him on account of outstanding Certificates pursuant to Section 3(b)(4) of the Act.

3. Prior to notifying parties in interest of their intention to withdraw proceeds from the sale of their Certificates, the trustees shall advise the Secretary of their intention to apply for said withdrawal and shall consult with the Secretary thereon.

4. Nothing herein shall be deemed to affect the rights of holders of trustee Certificates issued pursuant to Order No. 124 of the reorganization court and to the Guaranty Agreement of January 26, 1971.

JOHN A. VOLPE,
Secretary of Transportation.
GEORGE P. BAKER,
RICHARD C. BOND,
JERVIS LANGDON, JR.,
WILLARD WIRTZ, *Trustees.*
By JERVIS LANGDON, JR.

EXHIBIT A

TERMS AND CONDITIONS TO BE OBSERVED BY THE TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY

DEPARTMENT OF TRANSPORTATION, OFFICE OF THE SECRETARY

Section 3 of the Emergency Rail Service Act of 1970 ("Act") authorizes the Secretary of Transportation to guarantee the timely payment of principal and interest on certificates issued by the trustees.

Section 3(b) of the Act directs the Secretary to establish certain conditions precedent to a guarantee. Section 3(d) of the Act further authorizes the Secretary to prescribe such other terms and conditions as he deems appropriate.

Accordingly, the following terms and conditions are hereby prescribed:

(1) The proceeds of the sale of certificates guaranteed under this Act will be used solely for meeting payroll and other expenses which, if not met, would preclude continued provision of essential transportation services by the company.

(2) Other revenues of the company will be used to the fullest extent possible for such expenses.

(3) Proceeds from the sale of assets will be devoted to the fullest extent possible, to the provision of essential transportation services by the company.

(4) In the event of actual or threatened cessation of essential transportation services by the company, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the Commission pursuant to the provisions of section 5 of the Interstate Commerce Act, but in no event shall the rendition of services by the Secretary or his assignee await the outcome of proceedings before the reorganization court or the Commission.

(5) The trustees shall, prior to the last day of the month following the first full month following execution of the Guarantee Agreement, and prior to the last day of the month following each month thereafter, until otherwise directed by the Secretary, furnish the Secretary six copies of a monthly cash flow statement and a monthly income statement.

(6) The trustees shall, on March 31, 1971, and each calendar quarter thereafter, furnish to the Secretary six copies of a balance sheet accurately reflecting the financial condition of the company together with such supporting documents as the Secretary may require.

(7) The trustees shall, within three months from the date of execution of the Guarantee Agreement, submit to the Secretary their plan for assuming and exercising such control of corporate subsidiaries of the company as necessary to insure the greatest financial benefit to the company and facilitate its emergence from reorganization.

(8) The trustees shall, within 30 days from the date of execution of the Guarantee Agreement, submit to the Secretary a plan for the sale of non-transportation assets of the company and its corporate subsidiaries (including, but not limited to, security holdings).

(9) The trustees shall, within 30 days from the date of execution of the Guarantee Agreement, submit to the Secretary a plan for the abandonment of lines of railroad of the company which are uneconomical and, in their judgment, not required by the public interest.

(10) With respect to conditions 7, 8, and 9 above, the trustees shall initiate and diligently pursue such actions as may be required to carry out the plans submitted and any recommendations of the Secretary with respect thereto.

(11) The trustees shall permit the Secretary, as necessary, to inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of the company concerning any matter which may bear upon (1) the ability of the company to repay the certificates guaranteed within the time fixed therefor, (2) the interest of the United States in the property of the company, and (3) to insure that the purpose of the Emergency Rail Services Act of 1970 is being carried out.

JOHN A. VOLPE,
Secretary of Transportation, Department of Transportation of the United States, as Guarantor.

JANUARY 13, 1971.

Mr. JARMAN. Let me ask Mr. Beggs, will Mr. Lyon have any testimony to submit at this time?

Mr. BEGGS. No, sir; not at this time, sir.

Mr. JARMAN. Certainly one thing that concerns us is that if as you indicate, this $100 million carries Penn Central through the third quarter of this year, we then arrive at a time of the year when Congress may not be in session, and in a position to consider and to act on this very serious problem.

It is of such great importance to us on this committee and in the Congress to have as much information as possible on this, as much information as possible as to what can be done by the railroad or by the railroads in trouble, and you have mentioned three, and there are others certainly that we know about that face financial problems.

Would you have any comments to make on the items mentioned by Mr. Langdon in his testimony as to things that he felt conceivably may help the Penn Central situation and perhaps other railroads in the country?

Would you comment as to whether from a practical standpoint we can hope for results in time to be helpful in this situation that confronts us?

Mr. BEGGS. Mr. Chairman, Mr. Langdon touched on four major points in his testimony and I will address them one at a time. Some of these, of course, are things that it is incumbent on the railroad to take the initiative and some of them, of course, require the Federal Government to take the initiative.

Insofar as the passenger service is concerned, and this has been a cash drain as near as we can tell in the order of $40 to $50 million a year, we fully expect the Railpax Corporation to be operational by May 1.

I have been personally following this with David Kendall, chairman of the incorporators of the corporation, and with my deputy, John Olsson, who is also an incorporator and who has been keeping me advised on a daily basis. It is a tight schedule. We knew when the schedule was written into the statute that it would be a tight schedule.

We felt that the urgency of the problem demanded that we move ahead on that schedule and we believe that it can still be met. It will require a great deal of hard work between now and May 1 in the negotiations with the railroad.

I might add here that it has been stated by several individuals, including Mr. Langdon, that the corporation is underfinanced. I do not believe that that is the case at the present time.

I think it is overlooked sometimes in the comments on the financing of the corporation that, in addition to the $40 million in direct Federal aid that the Congress put into the statute for the organization of the corporation, and the $100 million Federal guarantees on loans to the corporation, the railroads themselves make contributions to the corporations based on their avoidable losses on their passenger services. So there is approximately an additional $200 million in capital which will flow into the corporation over the coming 3 years. To assure that these payments could be made, the statute authorizes Federal guarantees of loans to the railroads.

So I think there is sufficient capital available at this time to adequately finance the corporation. Let me say that even if this happens, and as I say, I expect it to happen by May 1, it will result in a stemming of the cash flow in the Penn Central of perhaps in the order of

$2 or $3 million a month in the early stages while the program gets underway.

Ultimately, of course, it will result in cash savings in the order of $40 to $50 million a year. This will be realized only over a period of time so it is not a very large immediate cash help to the corporation although in the long term it is very, very significant.

So, in regard to that comment by Mr. Langdon, I think we are on schedule and will do what he has suggested is necessary to be done to help the Penn Central unburden itself from what has been a very severe burden on passenger service.

The second point he mentioned relates to the freight service plant and the need to rationalize that plant, particularly in regard to its terminal operations.

In my simple way, I look on transportation as being a relatively simple business in its essence but made terribly complex by the decisions that have been made over the last 60 or 70 years.

Basically a railroad makes money if it can haul its trains fully loaded in both directions and can run them over long hauls. In the case of the Penn Central, of course, most of the hauls are short and there is a lot of handling in their various yard services and terminal operations. That has been a very severe problem to the railroad. Right from the beginning of the merger it was a severe problem.

Mr. Moore, since he has come aboard, has moved quickly to attack the most serious problems the railroad has. He has been working on the terminal operations, automating where he can and consolidating where he can to cut the losses.

In our review of the program that they have, we have been assisting wherever we can through the research and development capability we have in the Department, but basically that is a job they have to do themselves.

Insofar as the railroad itself is concerned, they have had a problem in maintaining rolling stock up to the standard that they need and holding down their bad order cars or their cars in the shop for repair. Here, again, Mr. Moore has moved quickly to try to improve the repair service and I think they are doing a good job in getting that accomplished.

I think it is significant, highly significant, that the Penn Central share of market has increased in the last six months and that, while the loadings for the competitor railroads in the eastern district were down, those for the Penn Central were up.

I think that reflects the actions that Mr. Moore and the trustees have taken with the railroad to improve service and to improve the ability of the road to handle the traffic.

Now, the third point he addressed was the regulation of rates. As the committee knows, there have been a number of freight rate increases over the last 12 months. As a matter of fact, there have been a number dating back to 1967.

In August 1967 there was a 5-percent increase. In November 1968 there was a 3-percent interim increase which finally was increased to an average of 5 to 6 percent. In November 1969 there was a 6-percent increase. In November 1970 there was an additional 6-percent increase. And then in November of this past year there was an 8-percent

increase applied on a request for 15 percent with the other 7 percent held in abeyance pending further information.

The Department of Transportation has supported the railroad in their recent requests for increases.

However, in supporting across-the-board increases, we have urged the commission to undertake a long-term study of the total freight rate structure because in our studies of this situation, it appeared that a very significant percentage of the tonnage being carried by the railroads was being carried at noncompensatory rates. And indeed, in many cases, well below compensatory rates. By that I mean that they were suffering an out-of-pocket loss below long-term variable cost.

Mr. KUYKENDALL. Mr. Chairman, would the gentleman yield for a question right at this point of your answer?

Mr. Beggs, I know you were here yesterday and I know you heard testimony from the gentleman from Penn Central, one of the trustees. I am sure you must have been aware that there was considerable difference of opinion as to what the request for an enforcement of the total compensatory rate would do.

The ICC pretty much brushed it off as being any benefit at all and the trustees think it is of great importance. Would you comment on this dilemma that we of the committee are faced with because we have rather contradictory testimony. I seem to be putting you in the middle.

Mr. BEGGS. That is where I usually am, Mr. Kuykendall. The studies we have made in the Department indicate that there are a very significant number of commodity rates which are very much below cost. They further indicate that for much of this traffic being carried by the railroads, there is little likelihood of diversion from the railroads.

For example, as near as we can tell, the railroad industry hauled sand and gravel last year at a net out-of-pocket loss of something like $20 million.

Clearly, sand and gravel is not going to move by any other competitive mode, except where barge service is available. So the prospect of this kind of tonnage moving at noncompensatory rates when the railroads are in such severe trouble is just incredibly bad. It is just not the kind of thing that they should be doing.

Let me say that this is a very complex situation. It is made complex by the way the railroads have charged for their services. The railroads have rate books which, if you look at them, are like a 5 foot shelf and it takes a well trained clerk to pick up the applicable rates for any specific commodity, moving in a specific district, in any specific way. As a matter of fact, I had some experience with this when I was with the Westinghouse Corp. as their corporate executive in charge of purchases and traffic. We kept a crew of clerks busy just checking invoices because you could sometimes make significant savings by adjusting the rates. This is familiar to anyone who has done a good deal of shipping.

The point I am making is that the rate structures are extraordinarily complex and to change them is an extraordinarily complex job. This is why we asked the ICC to make a complete study of this rate structure. And the assessments that you make of whether the rates are compensatory or noncompensatory is difficult as well, but we have done a number of studies dating back to the time when Dr. Cherington

was with the Department. As nearly as he could tell from his analysis of the situation, upwards of 40 percent of the tonnage was moving at noncompensatory rates and that is incredible in view of the situation that the railroads are in.

Let me conclude by saying there is no real reason that the whole rate structure and the way the railroads charge for their services could not be changed to a cost basis if they wanted to do it.

The plain facts are that it cost the railroads in many cases very little more to move one commodity versus another commodity, but because one commodity has a high value, it carries a higher rate, and the other commodity has a lower value, it carries a lower rate. That whole structure could be changed and indeed I think that is something that has got to be addressed as we try to come to grips with a major overhaul of the railroad rate structure.

Mr. KUYKENDALL. Thank you.

Mr. JARMAN. Thank you.

Mr. BEGGS. Mr. Chairman, do you want me to conclude on the four points?

Mr. JARMAN. Yes.

Mr. BEGGS. Now, the question of rate regulation as I have stated before is one of extraordinary complexity and I sympathize with the Interstate Commerce Commission in the analysis of this. It does require almost a complete model of the system before you can come to grips with rationalizing the rate structure. Nevertheless, it has to be done and we did suggest that it be done and I am pleased to say that the ICC has started such a study. It will take some time for that to happen.

In the matter of noncompensatory rates we are giving a lot of thought in the Department to possible changes that we might recommend to the Congress in the area of noncompensatory rates.

However, I would like to point out to the committee that guidance to the Commission that, when reviewing rates for any specific commodity, they should use as a guide for the minimum rate the long-term variable costs, might correct a lot of the problems today.

In plain fact there has not been an overhaul of the total rate structure of the railroads in many, many years and, except in those cases where competitive pressures or competitive operations require some modifications, suggesting that long-term variable costs should be used as the criterion for the floor might be a way of solving this problem.

Beyond that we are giving thought to some changes in the rules of rate making to relate them more to costs as opposed to charging for value of service or value of commodity.

The fourth point that Mr. Langdon raised was the labor problem and I think that this is a very significant problem for all of the railroads. It is made particularly significant in view of the recent wage increases that were put into effect.

The problem here is of long standing. It relates not simply to wage-rates but also to work rules that have been negotiated between railroads and unions over a number of years.

Work rules, of course, are of two classes. One extends across the industry and the second is specific work rules negotiated between the unions and the individual railroads.

The Penn Central has a large number of the latter and this puts them in a peculiarly difficult position to adjust to their current situation because they have so many work rules that are peculiar to the railroad. In addition to that there are, I believe, three States that have full crew laws that are troublesome to the railroad.

In one of these, Indiana, the matter is now under review by the legislature and there is hope that it might be repealed. But the point is that the Penn Central is required to carry a significantly larger work force than any of its competitors as a result of the specific work rules applied to that road alone.

There are a number of ways of getting at this problem. First, I think it is necessary for the road itself to negotiate hard with its various unions to try to get some of the work rules that were put into effect at the time of the merger relaxed, or perhaps get a rescission of those work rules.

Second, I think that there is a necessity for the Federal Government to take a hard look at the question of the negotiations with the unions on wage rates and, perhaps, come up with a proposal that will get at the problem.

As you know, the recent negotiations the Labor Department has been holding with the management and the unions has suggested, as a part of the settlement, an arbitration procedure to decide on and to get rid of some of the rules. The unions have not agreed to that as yet.

However, I understand that at least it is a subject that is being negotiated. They are willing to talk and there is some hope that we can arrive at an approach to the problem through this negotiation.

Third, I think there is a need to reexamine the Railway Labor Act in the long term to perhaps bring more rationality into the bargaining process. I would suggest that the two statutes that have been sent up by the administration both last year and this, as well as perhaps a consideration of the more direct applicability of the work rule problem, might be a good thing for the Congress to look at this session.

This in general covers the way I see Mr. Langdon's four proposals. I think he is talking about the problems that are the most serious for him.

There are a lot of subsidiary problems but these are the major problems, and if he could get a handle on these problems and make significant improvement in them, then I think that the viability of the Penn Central would be very significantly improved. I think there would be a very good chance that the railroad could survive and could become again a profitmaking organization.

Mr. JARMAN. Thank you for your comments.

Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Secretary, when this committee will consider this particular act later this summer, or at whatever time it comes before the committee, what do you anticipate will be your request in the amount of money you will ask us to appropriate to keep this act continuous?

Mr. BEGGS. Mr. Pickle, I would like to be able to give you a definitive number. Unfortunately I don't think I can.

Chairman Stafford testified yesterday that there are about 18 class I railroads that are in serious difficulties. We are conducting an analysis

of where those railroads stand today as well as where the Penn Central stands today. When we made the guaranty of the trustee certificates earlier in the year, we made an analysis of the cash flow projections and the forecast that the trustees have made of traffic and expenses in 1971.

I will say to you that some of the projections looked a little optimistic, some of them looked a little pessimistic. On balance it looked like a good forecast and one that we could have faith in.

Now since that time there have been a couple of straws in the wind that make us question whether the forecast was accurate. At that time we thought that the $100 million could conceivably carry the railroad through the end of the year and into 1972.

As Mr. Langdon testified, it now appears to him that in the third quarter he might need additional financing. However, that is by no means clear. It depends pretty much on the way loadings hold up for him and the prospects of cutting some of his expenses in this freight service rationalization.

Mr. PICKLE. Mr. Secretary, I don't want to be too insistent but you have not given me even a ball park figure.

Mr. BEGGS. Let me put it this way.

Mr. PICKLE. You must have a general idea. We heard the testimony of the gentleman. Now you are the parent agency here, so to speak. What is your estimate?

Mr. BEGGS. Mr. Pickle, I have basically not changed my mind from what we said when we sent the original loan guaranty bill up last year. At that time we had done an assessment of where we thought the industry was and what the results, if any, of section 77 reorganization might mean and at that time we talked in terms of $750 million.

Since that time the Penn Central has gone into a reorganization and, of course, part of our projection was based on the situation then existent. With a change in the management of the Penn Central, we felt that it might be better to keep them out of reorganization rather than put them in.

Nevertheless, that is past history. They have gone into reorganization so there needs to be a reassessment of the amount. That obviously lowers the amount because with the suspension of debt service, there is no particular need to go that high.

Mr. PICKLE. What is the amount then?

Mr. BEGGS. I would guess in the order of $500 million or so.

Mr. PICKLE. Then this committee has the prospect of considering, in general figures, appropriations in the sum of around $500 million to supplement and keep this act current, the Renewal Act?

Mr. BEGGS. Those would be authorizations, Mr. Pickle, not appropriations. We still haven't changed our mind that loan guarantees are the way to go as opposed to the direct Government loans.

Mr. ADAMS. Mr. Secretary, you were talking about the original loan guaranty which was to grant money to railroads regardless of whether they were in reorganization, whereas the bill that we have before us has required that they go into reorganization. Isn't that correct?

Mr. BEGGS. That is correct, sir. That is why I say the $750 million figure is probably too high at this time and I would come back to $500 million or so. But we do believe that should be in the nature of loan guarantees, not direct loans.

The financial community has indicated that they will market these securities if a guarantee is applied.

Mr. PICKLE. What is our prospect, if 18 of these major lines are in financial trouble, serious trouble as indicated by ICC testimony yesterday, what is our prospect here as far as this committee is concerned? What approach do you recommend we take on both of those lines and the general railway service in the country?

Mr. BEGGS. I think that there are two things that the Congress needs to address in priority fashion. One is this question of regulation itself.

The current regulations on rate making, on entry and exit from the field, abandonments of trackage and this class of things, the various rules under which the railroads have to operate, were set at a time when the railroads were operating as basically a monopoly service. That, of course, has changed rather drastically in the last 25 years particularly and probably will continue to change.

Therefore, I believe that changes in the regulatory process in its entirety are warranted at this time, returning at least to some extent, not to a full extent, but at least to some extent, to bringing to bear the discipline of the marketplace as opposed to a straight regulatory process.

I must emphasize though I am not talking about complete deregulation. I am talking about something in between. And I think that if that is done, that over a period of time, the situation will improve and the railroads will start to earn satisfactory returns on their investment.

Mr. PICKLE. I wonder if you could tell me where the responsibility lies. We have a situation where a large number of the railroads are in serious financial trouble. The ICC yesterday testified that they recognized this and they were looking into it and you said you think they ought to have a study of these rates.

Whose responsibility is it to see that the railroads and indeed other forms of transportation do operate at a profit and that they do not become insolvent or go into bankruptcy? Is any one agency charged with seeing that this protection is afforded in advance, if possible?

Mr. BEGGS. Well, I don't think that specifically has been made clear to the ICC but if I read the statute correctly, the ICC is responsible for setting rates so they are compensatory for the railroads.

If I understand the powers of the ICC correctly, they have a complete authority to handle all aspects of the things that either make a railroad viable or make it unprofitable. They can, for example, authorize the abandonment of route miles which may not be necessary.

May I say in this regard the railroads as an industry are operating 200,000 route miles. That has not changed significantly. As a matter of fact, it has not changed more than 2 percent in the last 25 years.

In spite of that, the railroad share of the market, their share of the total tonnage carried in this country has declined from something in the order of 60 percent down to 40 percent so that clearly they have too much plant. They are operating with too much.

And so the ICC is the body charged with hearing and deciding on the abandonment request.

It is my understanding in the past 10 years there have been less than 5,000 or 6,000 miles abandoned. Of course, the railroads must file with

the ICC requesting abandonment before the ICC can act. But they must act to do that.

In the ratemaking area the ICC has rather complete authority to decide when a railroad files for a rate increase, or the industry files as an industry for a rate increase whether that rate increase is justified or not.

In addition, if a railroad decides that one or more of the commodity classifications are providing less than compensatory return, they can file with ICC and request an increase. I must say that in many cases the railroads have not taken the initiative and this has not enabled the ICC to act accordingly.

But I do think that in terms of the charge you have given the ICC, they do have the responsibility for studying this situation and deciding what the proper kind of rate structure should be.

Mr. PICKLE. Mr. Secretary, I am not trying to pin the tail on the donkey with respect to ICC or to ask you to, but I do appreciate your statement that in their responsibility and control of rates they probably have more to do with solvency and health of railroads than all of the other agencies, than any other agency.

Now, if they are going broke though, and if we are getting in serious trouble, do you think that the Department of Transportation has an overriding responsibility? Do you think you can sit by and ask them to study, with us having just a few months, maybe a year, to know which course we are going to take?

Study alone is going to have to be translated into quick action and it seems to me like the DOT must give strong leadership in this field. Do you have a legal responsibility in this field?

Mr. BEGGS. Yes, sir; we do. The Secretary is charged by statute with advising the President and, of course, advising the Congress on all matters of transportation, particularly with regard to the health of the system.

Certainly we have responsibility here and we intend to exercise that.

Mr. PICKLE. I would certainly hope so.

What will be the DOT position, not with just reference to the four points that Mr. Langdon has made reference to, but in the general area of trying to find a relief here?

If it is a recommendation for changes in work rules, if it is a recommendation to raise rates, if it is a recommendation for abandonment of lines, is the DOT going to support the trustees of Penn Central?

Mr. BEGGS. Insofar as the trustees' recommendations are related to the overall industry problem, and the problems that must be met to return that road to economic viability, yes, sir, we will support the trustees.

We intend as a Department to continue our review of the situation. As I stated earlier, it is an extraordinarily complex situation. While the industry itself is relatively simple, by the time you get into all of the past decisions and all of the regulatory processes that have been set up, it gets just unbelievably complex.

We have been wrestling with this. Mr. Lyon has a group now working together with Mr. Baker, our Assistant Secretary for Policy, trying to come up with some recommendations which will bring, ra-

tionalize, if you will, the regulatory process and will rationalize as well as the overall system under which the railroads try to operate.

Insofar as the labor problem is concerned, this is a problem that the Department of Labor must address. They have, as I said before, sent two bills to the Congress dealing with the labor issue.

Secretary Hodgson has made several speeches in which he stated that he considers one of the high-priority items of his Department for this year to be a modification or perhaps a new approach to the Railroad Labor Act.

But it is the intent of the administration to try to come up with some recommendations to the Congress as to how these various laws can be changed.

Mr. PICKLE. Mr. Chairman, I will forgo my questioning because I know other gentlemen will have questions.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. I have two or three fairly quick questions.

First, Mr. Beggs, for the record, you are not now anticipating or recommending guaranties to railroad entities not in receivership, is this correct?

Mr. BEGGS. That is correct, sir.

Mr. KUYKENDALL. Is your primary reason for that the fact that only in a receivership does the Government guaranty cover a first mortgage and therefore makes it palatable to the taxpayer as being a responsible type activity?

Mr. BEGGS. Yes, sir; that is one factor. We also feel that there probably is a better chance of solving many of the problems that the railroads have, such as the diversion of financial resources to nonrailroad enterprises, when they are in reorganization.

I should point out though that it is somewhat more difficult to handle the problem when the road is in the courts than it is if it is out of the courts. But we do believe that is the way it should be done.

Mr. KUYKENDALL. You may want to submit this in the record and, in fact, please do.

First you mentioned the two small railroads, Central of New Jersey, and Boston and Maine, in your statement as having asked for total of $22 million. How much will the Railpax affect that and is the $22 million figure to your knowledge taking into consideration Railpax or not?

Mr. BEGGS. Well, it will not affect either of those two railroads.

Mr. KUYKENDALL. They have no passenger service at all.

Mr. BEGGS. No, sir; not any intercity service.

Mr. KUYKENDALL. We would like to know to what extent the figure of 18 railroads suggested by Mr. Stafford yesterday would be affected by the relief coming from Railpax.

Mr. BEGGS. We can submit that for the record, sir.

(The following information was received for the record:)

EFFECT OF RAILPAX ON THE 18 FINANCIALLY MARGINAL RAILROADS

Most of the 18 railroads mentioned by Chairman Stafford before this committee would not be substantially affected by Railpax. Railpax has application only to carriers with intercity passenger service. The following twelve carriers

either have no passenger service whatsoever, or provide commuter service which is excluded from Railpax:

(a) Ann Arbor.
(b) Bangor & Aroostock.
(c) Central Vermont.
(d) Chicago & Eastern Illinois.
(e) Erie Lackawanna.
(f) Illinois Terminal.
(g) Maine Central.
(h) Monongahela.
(i) Pennsylvania-Reading Seashore Lines.
(j) Reading.
(k) Fort Worth & Denver.
(l) Missouri-Kansas-Texas.
(m) Western Pacific.

Five carriers would be affected by joining Railpax. The following table represents the number of intercity trains per day that would be dropped, and the most recent loss figures available for those carriers on Rail Form A.

Railroad	Number of trains per day, intercity, to be dropped in 1971 [2]	1969— Loss (entire railroad)	Passenger loss [1] (solely related)	Passenger loss [1] (fully allocated)
North Western Pacific	4/7	+$213,310	($42,580)	($63,793)
Grand Trunk Western	8	(17,799,599)	(1,948,239)	(4,169,128)
Chicago & North Western	10	(9,333,226)	+3,645,877	(253,277)
Chicago, Rock Island & Pacific	4	(6,172,346)	(5,560,744)	(9,500,201)
Chicago, Milwaukee, St. Paul & Pacific	14	(942,520)	(11,769,748)	(11,886,148)

[1] The C. & N.W., C.M.St.P. & P., and C.R.I. & P. passenger operations include sizable commuter services—which are not affected by the Railpax plan—but which are included in the figures shown above. The amount of actual commuter profit or loss on these roads cannot be determined from the form A supplied to the ICC.
[2] Figures in this column indicate the number of intercity trains now being operated, and do not necessarily indicate the number that will be operated after May 1, 1971, at the request of Railpax.

Mr. KUYKENDALL. I want to clarify a followup on the questioning from the gentleman from Texas. Either this Congress or the Department of Transportation requires of, in the case of the Congress, requests of in the case of the DOT, I believe that is correct, a study of cost as compared to rates from the railroads.

The study determines that a whole family of commodities is consistently being sold or being handled below cost.

Being in fairly close business to yours during my business career, I found some unbelievably low costs in the South where they would use some freak interpretation.

I happened to have been in the edible fats business and we found a freak interpretation given by the ICC that showed that because soybeans were raised in the Midsouth and processed in Dallas, that they could haul from Dallas back to Memphis at a rate about one-half of their cost.

This is ridiculous. I used it rather extensively in my business but it is unbelievable that this type thing does exist.

You run a study that determines that a whole family of commodities is being hauled below cost. Now, does the fact that this was a directed study and the ICC as a result of their study finds that the law is being violated by selling below cost, does then the ICC still have to wait for a complaint from the railroads or may they, because the law is being violated, proceed on their own initiative?

Mr. BEGGS. I have to get the advice of counsel here, Mr. Kuykendall.

Mr. KUYKENDALL. Please do. This is important.

Mr. BEGGS. My general counsel is suggesting we answer for the record. Let me say this.

Mr. KUYKENDALL. I think you can see that because of the discussions of the ICC and the fact that I tried to put you in the middle

a while ago, and the receivership and the statements that you have made, that we really get down to the point, may the ICC ever act on its own initiative even when it found out that a law is being violated?

Mr. BEGGS. We did do some studies starting about a year and a half ago and about 6 months ago we asked the American Association of Railroads to call together their railroad presidents and financial officers and to come in and give us a chance to present to them the results of our study.

Dr. Cherington came down from Harvard and Mr. Baker and several others for 1 whole day, and we presented to them the way we saw their rate structure and told them that it made no rational sense the way they were charging for much of their tonnage carried and that they should forthwith go to the ICC and file to get the rates raised in the areas where they were noncompensatory.

The railroads in general I think have gone back and are taking a hard look at that. As yet we have seen no flood of petitions to the ICC. I would say that insofar as I know the functions of the ICC, that certainly if in a look-see they found that certain rates were below cost, that it would be their responsibility to suggest to the industry at least——

Mr. KUYKENDALL. It is your opinion that they do not now have the authority to proceed on their own, is that correct?

Mr. BEGGS. I would like to look into that one. Mr. Lyon says he has the answer.

Mr. LYON. Mr. Kuykendall, I think it is fairly clear from the Interstate Commerce Act that in circumstances like this ICC does have the authority to act on its own initiative. It can institute an investigation, it can suspend and it can take an action on its own initiative.

Mr. KUYKENDALL. Mr. Lyon, from what you know about the legislative mandate of the ICC, would you suggest that the ICC needs more authority from this committee or possibly needs a little nudge from this committee in the form of more authority?

Mr. LYON. I think that either way would be very helpful particularly from the standpoint of the ICC. I believe that the problem is one of examining a large number of individual rates and if they have a clear mandate, it will be much simpler for them to do this on the basis of criteria set for them.

Mr. PICKLE. Will the gentleman yield?

Mr. KUYKENDALL. Yes, I will yield.

Mr. PICKLE. I want to go one step further. We would like to welcome DOT into that club.

Mr. LYON. We don't have that authority, Mr. Pickle.

Mr. BEGGS. We have suggested that.

Mr. PICKLE. The Secretary says you do have legal responsibility in this field. Neither of the agencies can point the finger. We have to have some action.

Mr. BEGGS. We are not ducking our responsibility to provide leadership in this area and I should point out, Mr. Pickle, that we have suggested to the ICC that they do this.

As I sat and listened to the chairman yesterday, and his colleagues, it was obvious that they have not had and do not now have the capability of deciding whether a rate is noncompensatory or not.

I think they need to get that capability and if they need additional resources to acquire that capability, I think they ought to have them. Given a good computer programer to do this examination in a very quick and efficient way, it seems to me that they should be set up to run all of the rates through.

That is an enormous job and it will have to go on computer if it is going to be done, but I think if ICC needs resources to do that, that they ought to be given those resources.

Mr. KUYKENDALL. Mr. Beggs, I have one more question that I would like you to comment on.

You roughly divide the Nation's railroads into the eastern, southern, and western railroads. Time after time all three parties who have testified here in the last 3 days have talked about the profitability of the long-line hauls.

It is my observation, and correct me if my observation is wrong, it is my observation that the vast and disproportionate part of the $500 million net operating profit that the whole industry was able to report, a disgracefully small figure, came from the southern railroads. Obviously the western railroads have the longest runs, the eastern railroads have the shortest but it was not the ones with the longest runs that showed the best profit, it was the ones from the southeast part of the country who are more or less in between.

Maybe the fact that you brought the gentleman from the southern railroads to help us solve Penn Central was an indication of your respect for this activity, but can you with any judgment point out why it is that the family of railroads in the southeast quadrant of the United States seem to make money and be healthy?

Mr. BEGGS. Obviously the southern railroad is making money because it has had consistently good and efficient management. There is no question about that.

I might point out that several of the western roads do earn a reasonable, well, I shouldn't put it that way, they do not earn a reasonable return, and as a matter of fact, the southern railway system does not earn a reasonable return. But if they are to replace the capital equipment and to maintain their road to a satisfactory level—nevertheless, they earn significantly better return that the rest of the industry.

And the Santa Fe and the Southern Pacific also earn better than average rates of return, but it is also true that many of the western roads do not, and at least one of them is in serious financial difficulties. But I think it is oversimplistic to say that just because a road has long hauls, it is going to be profitable and I didn't mean to imply that in my simplistic statement on the problems of the industry. What I was trying to illustrate was that, if you did have a large number of terminal operations and you had a great amount of handling of your equipment, it made it more difficult to operate efficiently and at reasonable profit levels. It is perfectly possible, and unfortunately it is happening every day, that some of our long haul roads are not earning equivalent returns to that which is possible in other situations.

Mr. KUYKENDALL. Mr. Chairman, the gentleman from Washington looks ready to spring, so I will let him have it there.

Mr. JARMAN. The Chair recognizes Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman, I have been asked by our colleague, John Dingell, to pose this question to you, and I know Mr. Adams is next, so you may want to submit it for the record.

But Congressman Dingell wants me to ask this specific question. He wants to know if the Department of Transportation has prepared the national transportation policy as demanded or required by the Airport and Airway bill, and if you haven't prepared it for Congress, what steps are you taking to give it, where are you in its preparation?

Would you care to comment or do you want to submit it for the record?

Mr. BEGGS. I can comment.

Mr. PICKLE. Only briefly. And then submit it to us for our consideration.

Mr. BEGGS. We are in the final draft of that publication. The Airport and Airways Act asked that we submit it by May. Unfortunately some of the chapters, not related to the railroads particularly, but some of the chapters are being reworked now as a result of the President's recent proposals on revenue sharing.

Mr. PICKLE. You think by May you will have this policy?

Mr. BEGGS. Yes.

Mr. PICKLE. We would hope so, because this was promised in December 1969. We didn't get it during 1970 and now again we have required it by May, so you expect it will be prepared by May?

Mr. BEGGS. Yes, sir; it will be prepared by May.

Mr. PICKLE. I am reminded that the Airport and Airway bill didn't request but it said the secretary shall report to us by May.

Mr. BEGGS. That is correct, sir.

Mr. PICKLE. I would suggest that perhaps we are reaching a point when that policy is announced that might relate itself to this problem.

If rates are raised in one section for railroads, there must be probably a corresponding raise in other medias or they must be related to be competitive. And perhaps your policy might concern yourself with that very problem.

Mr. BEGGS. Yes, it does address to some extent this problem. Unfortunately, it is not clear that a raise in the rates of a lower rated commodity will make any great change in the overall market level of the movement of those commodities.

What I think is suggested here is perhaps a more equitable rate structure throughout. Whether that comes down to talking about rates based on costs or rates based on value of commodity shipped, I think still would require that the whole structure be rationalized and that may or may not raise the whole market level of the rates.

I think at least there is a strong possibility that it will not.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman. It is a pleasure to see you here, Mr. Beggs and Mr. Lyon.

First, I will make a statement and then I will ask three questions.

Sometime during the course of this summer a number of us on this committee are going to face the unfortunate problem that we did in November of last year, which is sitting down and drawing a bill.

Now, we worked it out with you last year to reject the original approach of loan guarantees to the industry. This had been suggested

by a number of people. It has also been suggested that we create a Reconstruction Finance Corporation for the railroads.

I have discussed of the Astro Plan with a number of railroad executives and people in the industry.

Now what specifically we need on this committee is a three-step operation which starts in about May. And I need to know from you specifically what you are either going to do for us, or with us, in the process.

The three steps are these: One, we are going to have to do something in terms of legislation to either put money into the present Emergency Rail Services bill, which is for the benefit of the Penn Central, the Jersey Central and Boston & Maine, or we are going to have to redraft that bill.

That problem hits us, I gather from your testimony, probably about May because if they are going to go out of business by October, it will take us from May to October to get a bill through the House, through the Senate, through conference, back to your Department and to have something happen.

If it is going to be just a straight money increase, I want to tell you right now that trying to get it through the Congress is going to be desperately hard.

That is our first legislative problem. You tell me what you people want to do with it, what your recommendation now is or when you are going to give us your recommendation.

The second one is there are 18 class I railroads which, it has been indicated, are in trouble. What kind of specific program do you want us to go into with those? Our present program involves requirement of 77 reorganization on the very basis that you mentioned that we simply have not been able to go to the industry generally and say we will give you a lot of money because it ends up going through cracks in the wall and through the floor because of all kinds of archaic practices.

The third legislative problem is the sickness that generally permeates the industry.

The time frame I see for the final two steps is, depending upon how they stagger along, maybe the fall, maybe in the next year. In other words, you have indicated you can't predict when another one of these railroads may drop off and you have indicated that you are studying the industry generally so I assume you are telling us that we have got a year or two before the whole bill has to be worked up.

Some of us are prepared to start drafting this legislation but we need to know specifically what your Department, where it is going to be with us on it. You tell me that so we know what our drafting schedule is?

Mr. BEGGS. First, we made the loan guarantee to Penn Central late in January. The first good fix on where they are going to stand probably will be along toward the end of this month when we will get good hard financial figures as a result of the requirement we put into the terms and conditions of that guarantee.

I think it will take probably another month or two before we really are convinced but I would say by May, or early in May, we ought to have a reasonable fix on where Penn Central will stand this year, whether they are going to be able to get through the year with the

current financing, or whether they are going to need additional financing.

So I think there will be an answer we can give you early in May on that.

Mr. ADAMS. You will communicate then with our committee in appropriate fashion by sometime in May on what we are faced with? I am not trying to pin you down to a specific date but we have to know when we have the input to move on this.

Mr. BEGGS. Yes.

Mr. BEGGS. Now as for the other class I railroads in the industry, I don't think we have as good a fix there as to the timing on when they might be in serious enough trouble where they would have to file for reorganization.

We have been taking a continuing look at the finances of the railroads that are in trouble. There are five or six that are worse off than the others. Of the three that are in reorganization, I think we are in the same situation with the other two that we are in with Penn Central. Maybe even worse in one of those instances.

We should have, well, I think we have today a good analysis going of the two that are in reorganization.

Mr. ADAMS. Are those going to go into dissolution?

I heard there was a proposal for dissolution on the Jersey Central and the Boston & Maine haven't had a report on this but dissolution would of course mean destruction of the road entirely.

Mr. BEGGS. No, not necessarily.

Mr. ADAMS. In other words, you are starting then to sell off right-of-way and break up an operating entity?

Mr. BEGGS. That is right. There are two parts to the problem. There is the commuter service.

Mr. ADAMS. I understand that is the only southern entry into New York City for passenger service.

Mr. BEGGS. That is right and that is, of course, the reason the State has been putting money into the Central, to keep it going to sustain the commuter service.

Then there is the freight service and my understanding is that at least half or thereabouts of the route miles for the freight service is a reasonably good financial situation, that is, it has the prospect of being economically viable.

Mr. ADAMS. But that we just have to let happen? In other words, we put some money in it and as of now as far as the Department is concerned and this committee——

Mr. BEGGS. I think the judgment we have to make is whether, with a guaranty, they can, as the statute requires they do, return to economic solvency.

We are studying that problem now and there is a question as to whether they can ever be made economically viable. If they cannot, then the only solution is dissolution of the railroad, selling off the freight operations to one or the other of the railroads and probably turning over the commuter operations to some kind of regional authority as in the case of the New Haven.

Mr. ADAMS. Now, I gather then that with the eighteen class I railroads, we just have to all kind of stand and hold our breath during the

course of the rest of this year to see what happens, but I hope that the Department will keep the committee advised so that if we are going to have some major collapses, we can move on them.

There is the overall problem of what is going to be done about the structure generally, and this ties into Mr. Pickle's question on the national transportation policy.

What worries me most in the Congress is that we tend to study things too much. I think we may study this terminal case until what we are doing really is just performing an autopsy as to why it died, and I think we would rather avoid that.

Do you have any kind of a time frame for any generalized approach to that problem?

Mr. BEGGS. The third relates to the second as well. If we can come up with some reasonable recommendations on how to assist the entire industry in improving——

Mr. ADAMS. In other words, your Department is going to do that for us?

Mr. BEGGS. Yes, sir. Secretary Volpe has set in motion a group in the Department to come up with some recommendations on what we can propose to you to improve the overall industry operation.

By the nature of this thing, because it is so complex and because it needs to be debated both within and outside the administration, that it is rather a longer term prospect.

I just don't believe in giving you a date at this time for that kind of a thing.

Mr. ADAMS. In other words, we look off into the future for that?

Mr. BEGGS. I am hopeful we can get it up here in time so you can act on it this session.

Mr. ADAMS. That is what I wanted to know. I was going to request that you attempt to do so.

This member has in mind at least the two things that I think are both necessary and probably potential. One in the Penn Central matter is that we have to probably create some type of entity to take over the operating portion of it. I am not talking about nonoperating assets which would be left in bankruptcy but that the Government may well have to create some kind of semiindustry, semigovernment operation to take it over because I don't know of anybody else that can, and if it is approved in October, if you report to us that this does not have a chance of being viable, which I gather from both you and Mr. Langdon is a possibility, then 77 reorganization has to shift into some type of liquidation and at that point we need an entity.

The second thing is I would like your recommendation as to which way to go with regard to regulation. The railroad industry is saying deregulation. I don't think the present record of the industry is such that deregulation is warranted but that is just my opinion.

I think they would bankrupt themselves inside of less time than they have got. I hope you will consider regulation in the form of a public utility wherein rates and return to the companies are fixed, the lines and routes are fixed, and they are run by private industry just like the telephone company. But they are treated as a monopoly and their plant size is tailored so that they can become viable so that the people within them receive a return, and the shippers pay a fair amount which is

actually checked by Government agency which the ICC should have been doing for a long time.

So I hope you will consider that and we will see it before the end of the year because, as Mr. Pickle says, this idea of taking these things right at the last moment where it is either put up $100 million or we shut down service in 40 percent of the United States in 3 weeks is just not the way to legislate.

Thank you, Mr. Chairman.

Mr. JARMAN. The Chair recognizes Mr. Skubitz.

Mr. SKUBITZ. First I wanted to direct a question to my colleague.

This is my second day on this subcommittee so I am not familiar with the regulation, but I was under the impression that the very purpose of the ICC was to establish fair rates and fair return for railroads. Am I correct?

Mr. ADAMS. Mr. Skubitz, it was always my impression too but the hearings of the last day and the information that has come forth have established at least in this member's mind that that is not what they are doing.

I thought they were supposed to and I asked that they supply us with whatever language they needed for authority to do it. But the testimony is, and I think Mr. Dingell put it very well, that all they do is wait until somebody applies and they either reject or approve.

In other words, he says it is like they stand up as a referee and call balls and strikes and they have no idea whether the rates are compensatory or not, whether they are fair or not, but they just simply take the rate structure as it is presented by the railroads and say "Yes" or "No."

Mr. SKUBITZ. Basically the very purpose for establishing the ICC was to regulate rates and see that these things happened, that fair rates were established; isn't that correct?

Mr. ADAMS. That is correct.

Mr. SKUBITZ. What you are saying is that they fell down on the job?

Mr. ADAMS. I am not certain about that. There was an argument. They said they didn't think they had the authority to go in and look at rates unless somebody applied. This committee may have to come up with language that would amend the act to make it very clear and I hope after we are finished with this, the committee discusses it.

Mr. THOMPSON. Will the gentleman yield on this point?

This is for a point of information. We were told by Chairman Stafford that it would take a 33-percent rate increase for Penn Central for them to break even but yet the ICC have made no steps whatsoever to put these in effect.

He said if they did it, other lines would take their business and they would not be competitive. That is just for information.

Mr. SKUBITZ. Thank you.

Mr. Beggs, of course, in my opinion the railroads are the backbone of our transportation and I think they know it too and that is why they always feel they can come to Congress and be bailed out. We hear a lot of things said about the railroads and their problems over expansion of their lines, work rules, unfair taxes, need for rate changes, deregulation and what have you.

One thing I haven't heard mentioned, and I think we ought to be looking into is the effect that holding companies have on railroads. Shortly 18 other railroads may be coming before this committee because of their difficulties. I want to know who owns the railroads?

I am wondering if you can provide for the record who controls and owns the 18 railroads that are in difficulty today? Are they operated by a single railroad organization or are they a part of a holding company?

No. 2. How many of the 18 roads are controlled by other railroads that may or may not be in bad financial condition?

3. How many of the railroads are controlled by corporations that may in turn be controlled by another railroad? Can you get that into the record for us?

Mr. BEGGS. Mr. Skubitz, we will try to do that. May I say it is not as easy as we would like it to be because the ownership of many of these roads goes through a web. We tried to trace this down in a couple of cases and had great difficulty. We will give you what we have and what we can get on this thing.

(The following information was received for the record:)

CONTROLLING INTEREST IN THE 18 FINANCIALLY MARGINAL RAILROADS

Only four of the eighteen railroads cited by Chairman Stafford as being in financial difficulty are independent. They are: the Chicago, Milwaukee, St. Paul and Pacific; the Chicago Rock Island and Pacific; the Maine Central; and the Western Pacific. The remaining fourteen carriers are all controlled by other railroads or corporations as follows:[1]

(*a*) North Western Pacific.—Entirely owned by the Southern Pacific Transportation Company, which is 100% owned by the Southern Pacific Company.

(*b*) Fort Worth and Denver.—Virtually 100% owned by the Colorado and Southern Railway Co., which is 75% owned by the Burlington Northern.

(*c*) Reading.—Effectively controlled by the Baltimore and Ohio which owns 38% of the stock and which is controlled by the Chesapeake and Ohio.

(*d*) Pennsylvania, Reading, Seashore.—Controlled by the Penn Central Transportation Company which owns 66% of the stock, and the Reading Company which owns 33%.

(*e*) Illinois Terminal.—100% owned by a trust consisting of the:

1. Baltimore & Ohio.
2. Chicago & Eastern Illinois.
3. Chicago & North Western.
4. Chicago & Rock Island & Pacific.
5. Gulf & Mobile & Ohio.
6. Mississippi Valley Corp.
7. Norfolk & Western.
8. Penn Central Transportation Company.
9. St. Louis & Kansas City Land, Co.
10. St. Louis & San Francisco Railway Co.

(*f*) Grand Trunk Western.—100% owned by the Canadian National which is owned by Canada.

(*g*) Erie Lackawanna.—100% owned by Dereco, Inc., which is 90% owned by the Norfolk and Western Company.

(*h*) Chicago and Eastern Illinois.—52% owned by the Missouri Pacific Railroad Company, which is 60% owned by the Mississippi River Company, a holding company.

(*i*) Central Vermont.—Almost 100% owned by the Canadian National.

(*j*) Bangor & Aroostock.—Almost 100% owned by the Amoskeag, Co., a holding company.

[1] This data is correct as of the end of 1969, the last year for which data is fully available at the time of this writing.

(*k*) Ann Arbor.—Almost 100% owned by the Detroit, Toledo, and Ironton Railroad, which is 100% owned by the Pennsylvania Company.

(*l*) Monongahela.—Jointly owned 33% by the Penn Central Transportation Company, 33% by the Pittsburgh and Lake Erie, 33% by the Baltimore and Ohio.

(*m*) Missouri-Kansas-Texas.—Almost 100% owned by Katy Industries, Inc., a holding company.

(*n*) Chicago and North Western.—Almost 100% owned by North West Industries, Inc., a holding company.

Mr. SKUBITZ. If you don't have it you should get it. I think this should be one of your top jobs in the Department of Transportation. Find out who actually owns the railroads in this country.

Mr. BEGGS. The ICC does have an active program underway to do just this, that is, to look into the question of holding companies in railroads.

Mr. SKUBITZ. I asked the ICC for this information two years ago and I couldn't get it.

Mr. BEGGS. If I may make a general comment on the issue you raise here, the question of holding companies, particularly when they get into nonrailroad business, is one that we have given a good deal of thought to in the Department. It is by no means clear that this has been unfavorable to the railroad property.

In the case of the Penn Central, of course, which is the outstanding example and the one that has gotten all of the publicity, one can certainly say that the diversion of funds and the diversion of management interests from the railroad property was a significant factor in the problems that the railroad faced, but in many of the other cases that we have looked at it may well be possible, in fact, it is probable that the holding company has helped sustain the transportation company.

Mr. SKUBITZ. Well, let's stop thinking and get down to the business of finding out who owns the railroads. It may be profitable to the holding company but what happens to the railroad at that particular time? How many railroads, Mr. Beggs, where the profits have been used by the railroad at the expense of the line has been turned over to the holding company and it in turn has invested these profits in things not related to the railroad industry?

Mr. BEGGS. This is something that needs to be looked at very hard, and the question of the diversion of money that would otherwise go to transportation to something that is nontransportation is a very significant issue.

It needs to be addressed but it is not as simple as I would like to make it. For example, many of the railroads hold very significant properties in most of our major cities. The Penn Central, for example, had trackage and terminal operations in New York City.

The air rights on that property are very valuable and to ask a railroad, to ask a business man who is in the railroad business, not to take advantage of the money that he might be able to get, the income he might be able to get from developing those air rights I think is being unrealistic.

Mr. SKUBITZ. Right! If the funds go to the railroad. But what if the railroad company is a part of a holding company and the holding company takes the profits and invests it in radio stations and television

stations and in land development programs or in mutual investment programs at the expense of that railroad. No benefit accrues to the railroad.

Until you find out who actually owns the railroads, I doubt very much whether this committee is ever going to get to the place where we can do anything but to pass emergency legislation.

I am just a rookie on this committee but that is the way it looks.

Mr. BEGGS. I agree with you, sir. The idea of spinning off what has been railroad properties, or railroad interests, or railroad profits into a subsidiary corporation with an eye to separating them from the transportation company is bad. All I am saying is that, in the operation of a business where you have a tangible asset which can be developed and yield income to the railroad——

Mr. SKUBITZ. We are talking about a different thing at this moment. I have no objection to the railroad using its own money in order to do anything it legally can to make profit for the railroad company.

What I am talking about is a railroad that is controlled by a holding company that is getting control of the profits of the railroad and using those profits for the benefit of the holding company at the expense of the railroad.

Until you make a determination who actually owns the railroads, I don't think you will ever get at the problem.

Mr. ADAMS. Will the gentleman yield?

Mr. SKUBITZ. Yes.

Mr. ADAMS. Does the ICC have the power through its Accounts Division to require railroads to, in effect, toe the line? They are supposed to be a regulated industry and I want to know whether we have to draft a statute to get them the power or if they have it and haven't used it?

Mr. BEGGS. I don't think we have the answer to your question, Mr. Adams, but we will get it.

Mr. ADAMS. Would you get it? I want to know whether this thing runs like some of the utilities where they say this is a nonoperating property and then they shove it below the line and then once it gets below the line you can do anything you want with it and the agency can only regulate the operating properties.

If that is the situation, then I think Mr. Skubitz' point is well taken. We should give the authority to the appropriate governmental agency to say you cannot strip your operating entity in order to go into the other businesses and we are not trying to say they can't diversify by using their air rights and by using their other items.

They probably should, but that the Government that is supposedly setting the rates and getting the services provided should be looking at it to see whether it is in the public interest. Will you give us that?

Mr. BEGGS. Yes, sir.

(The following information was received for the record:)

ICC POWER TO UNCOVER THE CONTROL RELATIONSHIPS BETWEEN RAIL CARRIERS AND NONRAILROAD HOLDING COMPANIES AND TO PREVENT DIVERSION OF CASH FROM RAIL OPERATIONS TO NONTRANSPORTATION USES

The Interstate Commerce Commission has stated that it does not have all the power it needs to fully uncover the control relationships between rail carriers and non-rail holding companies. The Commission has also stated that it

does not have the power to prevent diversion of cash from rail operations to nontransportation uses. The Commission did submit draft legislation (H.R. 19720) to the 91st Congress to cure these deficiencies and is apparently resubmitting that package to the 92nd Congress. The proposed legislation would:

(*a*) Vest the Commission with jurisdiction over single-carrier acquisitions.

(*b*) Authorize the Commission to prescribe the accounts and reports to be rendered by affiliated noncarriers.

(*c*) Permit inspection of records of such noncarriers.

(*d*) Regulate intercompany transactions between major carriers and their noncarrier affiliates.

Mr. ADAMS. Thank you, Mr. Skubitz.

Mr. SKUBITZ. As you say, this is a difficult problem but it is the difficult problems that may be the major causes for the problem we are facing today with regard to Penn Central and may be a number of the other 18 railroads in trouble.

Mr. BEGGS. It is certainly a factor in the situation but I don't think you can claim that it is the major factor at the source of the railroad problem today. When you look at the railroad books and at the question of whether they are recovering sufficient amounts within the railroad property, quite aside from any amount that may be drained off, the profit return for the industry of 1.76 percent simply isn't adequate.

Mr. SKUBITZ. You are missing the point. You keep talking about the investments that the railroads are making. I am talking about railroads becoming controlled by holding companies or railroads becoming controlled by another corporation that is then controlled by another railroad.

I have no objection to railroads investing their own money, spinning it off into other areas because the railroad is still in control. It is still a part of the entire financial picture.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. SKUBITZ. Yes.

Mr. KUYKENDALL. This questioning, Mr. Beggs, came up several months ago and it has been repeated several times in this committee. I know you know there is a very definite correlation between the viable railroads in this country and the ones that stick to their knitting of running a railroad. There is definitely a correlation. You know that and I know that.

It seems to me that instead of getting into the tangibles right on the surface we are talking about here, what it really amounts to is that when the talent, the attention, the management ability of a group of people are kept to the business of running a railroad, they seem to be successful, and when they spin off and get to running Madison Square Garden with their best brains, they are not successful.

Mr. BEGGS. I agree with you completely, Mr. Kuykendall. The diversion of management talent from the basic job of running a railroad is very bad in this industry. The diversion of management attention to real estate operations, or to running radio stations or television stations, or some other nontransportation entity, is something that has contributed to the poor condition of those railroads which are involved with holding companies.

My point was that even the successful operations such as the Southern, the Sante Fe, the Southern Pacific, and the Burlington Northern,

even those railroads which I consider to be well managed by men who are dedicated to the job, are still not earning an adequate return to replace the capital as well as to attract the amount of money that they need from the financial markets to finance the future expansion of their roads.

When you get into a situation where even your better roads are paying 10 or 11 percent for money, then you have a very bad situation indeed. That is where you are today.

Mr. SKUBITZ. Mr. Beggs, in those instances a little help from the ICC in fixing rates may be the answer to the problem, at least part of their problem. But when you get a railroad controlled by a holding company or by some other corporation and railroad management scattering its interests, railroads become haulers of freight, and there is a big difference between the two. A clerk in the Peoples Drug Store doesn't try to sell anything, he just takes money for something that the customer wants to buy. But management of the drug store are interested in selling. I want the railroads back into the railroad business, selling transportation.

That is all, Mr. Chairman.

Mr. JARMAN. Mr. Metcalfe?

Mr. METCALFE. Thank you, Mr. Chairman.

Mr. Secretary, first I would like to ask you if this was a typographical error on page 9, the last sentence, in which I understood you to say that the 5,000 route miles, the last sentence, was 25 percent. And yet, according to my copy, it says 40 percent.

Mr. BEGGS. That was a typographical error, Mr. Metcalfe. The total route miles on the Penn Central is about 20,000. So, 5,000 is 25 percent.

Mr. METCALFE. Yes, sir. Thank you.

Now, in regard to your statement in which you indicated that the Penn Central had a record high of revenue, of some $12 million. Then you proceeded to say that "we believe the final figure will show a net railroad operating income of about $500 million as compared to $655 million in 1969." Would you expound a little bit on that and tell us why there is this savings of $155 million?

Mr. BEGGS. It is a drop in their net, which is a result primarily I think in 1970 of the problems that they have had in increases in expenses. Very basically, a regulated industry has trouble during a period of inflation because, as a general rule, its rates never fully recover the cost increases as a result of inflationary pressures on everything that they buy. And the railroad net has been decreasing steadily for the last 5 years, a very steady downward trend.

I think that is reflected in a couple of things that are related to inflationary pressures as well as a further deterioration in the ability of the railroads to maintain their plant at a high level of efficiency. Their labor costs have gone up. Their material costs have gone up. And their rates have always lagged from a year to 18 months behind the increases in those two factors. May I say, however, in the last 15 months they have had freight rate increases of 22 percent, which is very significant. But they are late in coming, and at the time that those rate increases came in you had a further increase in labor rates.

Mr. METCALFE. You indicated that you were hopeful in traffic. Then you state there is a discernible trend in the figures from January and February and, while you stated that you are hopeful, you said optimism is contingent upon many imponderables. What gives you this ray of hope as to all of these imponderables?

Mr. BEGGS. The tonnage on the railroad responds almost directly to activity in the economy. We in the administration are hopeful that the economy will improve substantially this year and, if it does, the carloadings will go up and the railroads will be able to earn more money. There are, of course, among those imponderables that I stated, in addition to the state of the economy, there is the situation with the labor unions. We have a negotiation which is still going on. We are not positive as to what the final labor rate increases will be out of that negotiation, and that is a very great imponderable.

On the average, labor costs are about 60 percent of the costs of running a railroad. So it is a very significant percentage and a relatively small increase in the labor rates can make a very significant dent in the return. When you are earning $500 million on sales of $12 billion, you are talking about less than 5-percent return. Even that can disappear awfully quickly with a labor rate increase.

In addition to that, of course, I mentioned that the railroads are sensitive to inflationary pressures, and their recovery depends on holding down increases in everything they buy. So there are many things that will affect it.

If the carloadings increase and get back on the treadline of being up about 6 percent a year, I think the railroads might have a significantly better year than they had in 1970. If, however, the labor negotiation comes in at a significantly higher cost than what has been projected thus far, it will have a deterrent effect on their earnings.

Mr. METCALFE. Moving to another area, did I understand you correctly to say that the Department of Transportation had requested of the ICC that they make a rate study and that, while you indicated it was complex, I did understand you correctly, did I not?

Mr. BEGGS. Yes, sir; you did.

Mr. METCALFE. In other words, you initiated the request by ICC to make the rate study?

Mr. BEGGS. That is correct, sir.

Mr. METCALFE. Do you have any idea as to the time factor, since we are working on a time factor here, as to how long it would take them to make this study, complex as it is? Pure conjecture?

Mr. BEGGS. My guess, Mr. Metcalfe, is that it would take well over a year to do a study of this type in any depth. And my further understanding is that very little of the current rate structure is computerized so it makes it difficult to run through any study of this type and get answers quickly. I am sure Chairman Stafford appreciates the urgency of the study and I know he is pushing his people to do it. But I think 12 months would be required at the very least.

Mr. METCALFE. Then I share the feeling that this is a very important step in the right direction to help us come up with the solution. But what troubles me is that yesterday Mr. Stafford was uncertain as to whether or not he had the authority to set these rates because of the conflict of whatever ICC may have as regards to what some local States may have.

Now, this leaves me in a complete quandary. If they are going to make a meaningful rate study, what good would the rate study be if they did not have the authority? The question is, do they have the authority to then set rate structures? Because this, to me, is one of the very important factors that we are considering.

Mr. BEGGS. Yes, sir; Mr. Metcalfe, our studies in the Department of Transportation indicate that the ICC has authority over something in excess of 80 percent of the rates. Those are the interstate rates. Something in the order of 15 to 20 percent of intrastate rates are under the authority of one or more of the State utility commissions. But the big end of the rate problem is with the ICC since about 80 to 85 percent of the rates are set by them or are determined by them on application of the railroads.

If I can go back a little bit in history, the original purpose of the ICC was to set rates which were fair to the shipper. At that time we were dealing with a monopolistic situation. As I understand the statute, it applies equally to setting rates which are fair to the transportation company as well, but I think the emphasis up until very recent years, up until the late 1950's certainly, was that the rates should be examined primarily from the point of view of what is fair to the shipper. I think this has caused some problems in the Commission when they hold hearings on rates, because they want to be absolutely sure that they do nothing that in any way, shape or form will injure any one of the shippers involved.

Mr. METCALFE. Following that same line, aren't we in a very precarious position? While they may have the legal authority to fix rates in 80 percent of the railroads that are interstate, then there is the possibility that they open the door wide for those 15 percent that is left that are within the States, in which there may be some cutthroat competition. And then we are right back where we have been before, I mean, where there is no comparable rate structure there.

Mr. BEGGS. Let me comment then——

Mr. METCALFE. What I am suggesting and hoping is that some place ICC will assume the responsibility and will have the authority to fix all rates. Otherwise, if there are any loopholes there, those people are going to be looking for them.

Mr. BEGGS. My understanding is that the rates that are not under their control are actually intrastate rates.

Mr. METCALFE. And in your opinion they do have the legal authority to set these rates?

Mr. BEGGS. That is correct, if the intrastate rates are found to constitute a burden on interstate commerce.

Mr. METCALFE. But they have not taken the initiative to do it?

Mr. BEGGS. Excuse me, sir.

Mr. METCALFE. I said they have not taken the initiative to do that. Even the mere fact that the Department of Transportation had to make a request for a study is quite significant, is it not?

Mr. BEGGS. We should be completely fair to the Commission. The problem of rate structure is one that has been examined from time to time by the Commission, but not in recent years. It was our view, as a result of the very large across-the-board rate increases that the railroads were asking in this past year, that the entire rate structure ought to be examined. And that is what we have suggested they do.

Our studies have indicated that a very significant percentage of the tonnage is being shipped at noncompensatory rates. This, of course, makes the study even more urgent, because when you see that kind of a thing developing, it is clear that we have a situation that can only get worse. If 30 percent or so of their tonnage is being carried at noncompensatory rates, it is hard to see how they can ever work their way out of the problem.

But getting back to the intrastate problem. I think the rates that the Interstate Commerce Commission set do more or less govern the way the State utility commissions act in their determinations on intrastate rates but I am not saying that they do not sometimes refuse to go along with rates set by the ICC. I will ask Mr. Lyon to comment further on that.

Mr. LYON. One of the problems associated with intrastate rates is the lag in adjusting the intrastate rate to the new interstate rate. There has been over the past few years, a very serious debate about the legal authority of the Commission to take authority, from the outset, over the intrastate rate as well as the interstate rate, on the legal grounds that the intrastate rate represents a burden on interstate commerce, because of the situation in the railroad industry.

As a matter of long judicial construction, I think it would be fairly clear that the ICC has not done this on any large, overall, carte blanche method, but has examined each rate or rates presented to it on an individual basis and determined whether such intrastate rate or rates constituted a burden on interstate commerce. And where it found it to be so, then it would find such rate or rates to be unlawful.

Mr. METCALFE. Because of the time factor, I am going to make one final comment. You have to take these losses in segments and then, when we see the figures that you have presented to us where the hauling of grain and gravel there was a loss of $20 million. I think it is significant that we look at these various losses and see. Otherwise, the railroads are going to continually be in a bad state financially.

Thank you very much, Mr. Chairman.

Thank you gentlemen.

Mr. JARMAN. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Beggs, you have stated at the very beginning that the cost of transportation in the eastern sector where there are short hauls is a little higher. It was pointed out that some of the western railroads are also in trouble. You also have alluded to the fact that it may be possible to go to a cost basis on rates, in other words, a rate based upon the actual cost of transporting the commodity.

Would there be any legal problems in a regional rate that may be higher in one area than another on particular commodities, because the cost of transporting with the short spurs, and so forth, would be higher? Is there any legal problem involved in that?

Mr. BEGGS. No, sir. There are rates of that sort in existence today.

Mr. THOMPSON. So in effect you could have in the short haul areas rates that would be higher than would be in other areas transporting the same commodities?

Mr. BEGGS. That is correct.

Mr. THOMPSON. Has there ever been any indication that, because of the diversification of the railroad companies into other fields, that

they have shown any favoritism toward a particular industry, a member of which may be owned by the same holding company in transporting their products or in trying to obtain a rate schedule for that particular type of commodity?

Mr. BEGGS. Not to my knowledge, Mr. Thompson. I will ask Mr. Lyon. As I understand the law, something like that would be a clear violation.

Mr. THOMPSON. Of course, in trying to get anything that clear, it is obvious that if something illegal were done, it would not be obvious in that area.

Mr. BEGGS. As a common carrier, they must offer their services to all comers at the same rate.

Mr. THOMPSON. I realize that, but at the same time there may be a particular area where the railroad would offer to all comers a particular low rate on a certain product and they may have an interest in a business in an area and that commodity may be transported at a substantial loss as opposed to others in which they may not have an interest. But any with that type product would be able to transport at the same rate.

Mr. BEGGS. I don't know of anything of that sort, Mr. Thompson. The thing that Mr. Kuykendall discussed earlier, that is, the wide variations in the way certain commodities can move in certain regions on certain routes at lower costs, or raw materials move at one rate and the finished product moves at quite another——

Mr. THOMPSON. Yes, I realize that. The point I am getting at is the conglomerate structure and the fact that we find the railroad industry a regulated industry oftentimes owned by a holding company that is engaged in nonregulated businesses. And in trying to separate the regulated from nonregulated, I am concerned that the public interest is not being protected as it should be.

Has the Department of Transportation ever at any time given any indication of an opinion as to whether the regulated portions should be the sole business? In other words, if a railroad is a regulated industry, then they should not be a nonregulated business at the same time. Has that ever been articulated?

Mr. BEGGS. No, sir; I don't think we have addressed that particular question. We have looked at the more general question of whether, in the operation of a transportation business, the financial ability of the company is either increased or inhibited by owning other properties.

Mr. THOMPSON. Or the management energy may be directed in a nonrailroad area because of other interests?

Mr. BEGGS. Yes. That is a very subjective thing.

Mr. THOMPSON. In the communications industry, the telephone industry is prohibited by law from actually engaging in a number of other types of businesses. I, for one, sense among some in Congress, a desire to nationalize the transportation system. I am very adamantly opposed to this, but I think that unless we in the Government come up with a better system for controlling our regulated industries, that this pressure is going to grow. The cost of transporting a product is going to have to be paid, either by the consumer of that product ultimately, or by the taxpayers as a whole; and I would rather for the consumers of that particular product to pay for it.

I, frankly, favor the concept that Mr. Adams of Washington made about a utility, and I think that we should look upon the railroads as a utility and possibly come up with legislation that would prohibit their engaging in nonregulated businesses, and then guarantee a fair return on their investment just as is done by the telephone company.

Do you have any comment along this line?

Mr. BEGGS. Well, I certainly think that what you describe is preferable to what we have today in terms of the way the industry operates. I don't know whether I favor a regulatory process like the utilities or not. I think I would like to give some thought to that.

Mr. THOMPSON. I would like to know if the Department cares to make a statement on that. But if a statement could be made, it would be a great help to myself and possibly other members of the committee.

(The following statement was received for the record:)

DOT VIEWS REGARDING OPERATING RAILROADS AS A REGULATED UTILITY

Railroads should receive a fair return on investment. The proceeding recently instituted by the Interstate Commerce Commission at the request of the Department (Ex Parte 270) should provide the information and analysis needed to restructure rates to assure that no substantial portion of the freight of the nation is transported at less than long term variable costs. Even when the rate structure is revised, however, so that individual commodities move at compensatory rates, this will not automatically guarantee a carrier an adequate return on investment. Its overall share of the total market may be inadequate, or it may be inefficient.

It would be extremely difficult to assure railroads a return on investment in the same manner as utilities. While utilities may have some competition from other sources of power, fuel or other service, they have no competition from other utilities of the same type. The essence of the utility franchise is regulated monopoly for that service in the particular area served. Railroads, on the other hand, have no monopoly except with respect to the properties they own, and even these in some cases are subject to ICC jurisdiction to permit other carriers to operate over the lines. The transportation market is intensely competitive within market areas. Railroads not only compete with one another, but with common carriers by truck, contract and private truck carriers, barges, and even air freight. While railroads do have certain monopolistic appearances where particular communities and shippers are served by a single carrier, it must be recognized that even in those instances the shipper may require the railroad to "short-haul" itself and have the shipment moved by another carrier. Most importantly, the great bulk of the freight movements are between large metropolitan areas. These are usually served by several rail carriers, as well as other modes.

Mr. BEGGS. I certainly think with regard to your comment on nationalization, many, many other countries have gone the route of nationalizing their transportation systems. In fact, in West Europe there are virtually no private systems left; they are all nationalized. The experience that the Europeans have had with their nationalized system is all bad. None of them operate at a profit and most of them require substantial subsidy, which means that the European taxpayer is paying for a service that he may or may not use.

Mr. THOMPSON. That someone else is receiving. We come down to a very basic premise. If there are other forms of transportation that are more efficient in a given area for transporting, should we subsidize the railroad industry to keep it in that particular area with the general taxpayers paying the money, or should we insist they get out of that particular segment?

Mr. BEGGS. We should do the latter, obviously, Mr. Thompson. That is one of the anomalies in this whole situation. The railroads, as I said

earlier, are operating about 200,000 route miles. And some of the experts in this area have stated that they only need about 100,000 route miles. The reason they have to operate 200,000 is that they have not been allowed to drop the excess mileage. They have to petition the ICC and get their permission before they can; and every time they petition, numerous interests show up and claim that they should not drop the excess mileage. So they are not permitted to drop it.

If a locality wants a route which is not profitable, the railroad has to carry the cost. I think this is unfair to the industry. They can't compete on that basis.

Mr. THOMPSON. I agree with you. May I ask you a further question? Has there ever been any indication that any of the shippers have exercised such influence over the railroad so as to obtain a lower rate to their advantage because of undue influence on management?

Mr. BEGGS. Well, I suppose in past history you could come up with examples of that, Mr. Thompson. I would say this with regard to the general problem that you pose. There are numerous examples today where a large shipper will get the railroad to lower his rates.

Don't misunderstand me. The lower rate is a common carrier rate that is applied to all. For example, he will get the carrier to lower his rate on the raw material shipping costs with the expectation that the rate on the finished product will be higher since it is a higher rated commodity. Now, once the lower rate has been set, there is nothing to prevent the shipper from shipping his finished product by any other competitive mode, and he might then divert his finished product to trucks, or to barges, or in some instances, to air cargo. There are numerous examples of this having been done.

Mr. THOMPSON. Has the Department of Transportation ever conducted a study as to the Government subsistence given to the various forms of transportation? I specifically am thinking of the barge transportation that in bulk matters are competing with the railroads, but yet they do not have to pay for maintaining their harbors or their waterways, and so forth. This is done strictly by the general taxpayers, whereas the railroads must maintain their tracks, and so forth.

Mr. BEGGS. Yes, sir; we have taken a general look at that problem. We have nothing in great depth, but we have been looking at the money that has been put into the waterways development, for example. Of course, the comparable issue on land is the highway program, which has been covered by user taxes. In the case of waterways, there are no user taxes. But nevertheless the railroads argue—and I think there is some merit in their argument—that while the highways are covered by user taxes and fully paid for, the trucking industry has not had to invest large sums of money in the creation of those highways and, as a consequence, do not have the heavy investment that the railroads have on which they have to earn an adequate return.

Mr. THOMPSON. I would say this may be true. It is not a land grant.

Mr. KUYKENDALL. In line with the question you just asked.

Mr. Beggs, it may not have reached you yet. On the bill of which I was the author, which passed before the first of the year, you and the ICC combined are under instructions to furnish a study on water transportation.

Mr. BEGGS. Yes, I am aware of that.

Mr. KUYKENDALL. That study is in that bill, and you are given a year to make the study.

So that answers your question. May I ask you something here in line with the subsidy, on areas where a community demands service. Is the section of the Railpax legislation which does require a community to subsidize the losses on service that a community demands that is not part of the system, is this the first indication that you know of where a community is given the responsibility for subsidizing losses that they demand? Is this the only case like it so far?

Mr. BEGGS. So far as I know, it is.

Mr. KUYKENDALL. Do you think this might have some future in overall transportation wider than Railpax?

Mr. BEGGS. Yes, sir; I think there is some applicability here. I think the problem is a little more complex than the one we were addressing in the passenger bill, but I think the principle applies; namely, that if the railroad has to maintain an unprofitable service, then someone else should pay.

Mr. KUYKENDALL. If industry asks for a siding, they have to pay for it if it is not profitable?

Mr. BEGGS. Yes, they do.

Mr. KUYKENDALL. If a community asks for a siding, they should have to pay for it, too, it seems to me.

Mr. BEGGS. They should at least have to contribute to the long term variable cost of the railroad in that instance.

Mr. KUYKENDALL. Thank you.

Mr. THOMPSON. Thank you, Mr. Beggs.

Mr. SKUBITZ. I was quite interested in Mr. Kuykendall's remark that you are required under a bill that he introduced to make a study and you are familiar with it. I hope that you will be more successful in your agency in getting help to make this study than the ICC has been in its past relationship with Congress. We have been beating the ICC over the back here for 2 days. It is quite interesting to note, Mr. Chairman, that in 1935 before the passage of the Motor Carriers Act, the ICC had 2,400 employees. Here we are 35 years later, the job of supervising and administering the Motor Carriers Act is as tremendous a job as was assigned to the ICC. Up to the time we passed the Department of Transportation Act they had 3,000 employees.

Now we have tranferred 600 of them over to the Department of Transportation—but only a portion of the ICC responsibility. Before we get too rough with the ICC, we as Congressmen had better find out just what we have done in providing them with the help they need to carry on their function.

Now, I would like to ask you, Mr. Beggs, about this matter of ratemaking. When a company asks for a rate increase, isn't it usually on the basis of a general rate increase, rather than on a commodity basis?

Mr. BEGGS. When they ask for a general rate increase?

Mr. SKUBITZ. When they ask for a rate case, how often do they ask for a rate increase on the basis of commodity X, Y, or Z? Or is it usually on the basis of rate increases across the board?

Mr. BEGGS. In the last 2 or 3 years there have been a number of industrywide rate increases requested and granted. However, the gen-

eral rule has been over a long number of years that the railroad file for specific commodity increases.

There are vast numbers of those. As a matter of fact, probably too many. That is one of the problems that the ICC has. They have literally thousands of filings for individual commodity rate increases and the ICC is required by law to examine and when necessary hold hearings on all of them.

Mr. SKUBITZ. You make my point. This isn't a very easy job for the ICC, is it? The minute a railroad asks for a rate increase, some other railroad hauling the same product comes in and says we have to have that too. And then some shipper along the line finds out that if his rate is increased he becomes noncompetitive and objects to any rate increase. Mr. Beggs, it is not a simple job in arranging the rate or determining a rate case.

Now, with regard to the general rate increase. If one railroad comes in as a rule and asks for an increase for its particular line, has it or has it not been the practice of the ICC to deny that and then give a general increase to all of the railroads irrespective of their financial condition? Am I right or wrong?

Mr. BEGGS. Well, generally you are right. But specifically, the ICC has, where there is competition between two routes, let the forces of competition work. As a matter of fact, I think Chairman Stafford stated yesterday that in most cases a general rate increase of 5 percent does not convert into a 5-percent increase in revenues for the road, because of the competitive pressures and because of their inability to apply the increase in certain cases because of competition from one or another modes.

Mr. SKUBITZ. The last three rate increases that you speak of, were they general rate increases for all of the railroads?

Mr. BEGGS. Yes, sir.

Mr. SKUBITZ. The reason I raise the point is that I have been interested in passenger discontinuance cases. Usually a company attempts to show how much money it has lost in its passenger service and if the line is discontinued, its financial structure becomes greatly enhanced.

Well, the passenger service is discontinued, but it also gets any general increase granted later. Is such a company entitled to it and should such rates be on the basis of the road that asks for the increase rather than a general, across-the-board increase?

Mr. BEGGS. I think that our view on this whole issue is that where you can—and I think in a large number of regions of the country you can do this now—you should rely on the discipline of the marketplace to supply a control on the rates. The facts are that the railroads have lost a significant amount of tonnage in the last 25 years. They have lost it to the trucks and they have lost some to barges and this has been a consequence of the way the rate structure has been set. The trucks have come in and taken off the higher rated commodities, and the barges have taken off some of the lower rated commodities.

I think the overall desire of this administration is to try to move in the direction of bringing the pressures of the marketplace to bear on these rates. I think that is the way you will get a more competitive rate structure and will get the mode that can most efficiently haul the commodity handling most of that commodity. I think in that kind of a

situation—and I am not suggesting that we dissolve all of the regulatory or watchdog functions that the ICC has—but I am suggesting that insofar as the rate structure itself is concerned, we try to bring the marketplace discipline to bear on it.

Mr. SKUBITZ. One more question and I am through. I was a little disturbed about a statement you made in response to one of my colleagues about a railroad discontinuing service.

Do you really feel, Mr. Beggs, that when a railroad which can go before the ICC and get a rate increase and run to Congress when they have financial trouble, has no responsibility to the general public to operate lines except in those instances where it can make money?

Mr. BEGGS. No, sir; I do not. The railroad has a public responsibility, that is clear. And I did not mean to imply that it should willy nilly be able to discontinue services. But I feel this way about it. If there are competitive modes available, if, for example, you have a branch line that can be adequately served by trucks and at competitive rates, and if the railroad is losing money on that service, then I think that where they can demonstrate it is a money loser, then the local community should pay at least the railroad's out-of-pocket losses if they want the service to continue.

If, however, the railroad is in a monopoly position and no other services are available, then I think the railroad has a public responsibility to maintain service. But in most of the excess track situations that we have, the railroads are operating in areas served by competitive modes.

Mr. THOMPSON. I should like to clarify. The question was, if there was another mode of transportation that was more efficient, more economical in a given area, should we subsidize a railroad just to have a railroad or should we allow them to discontinue it.

We would not in any way endanger the public welfare in so doing.

Mr. SKUBITZ. May I suggest to my colleague I didn't hear him say that? And if that is what he meant, that is all right.

Mr. THOMPSON. I think that is what the record shows.

Mr. JARMAN. If there are no additional questions, this will conclude our hearings.

Mr. Secretary and Mr. Lyon, we appreciate your being with us on this important subject.

The subcommittee will stand adjourned.

(Whereupon, at 12:25 p.m. the hearing adjourned.)

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