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HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 2083

TO AMEND SECTION 409 OF THE INTERSTATE COMMERCE ACT TO AUTHORIZE CONTRACTS BETWEEN FREIGHT FORWARDERS AND RAILROADS ON AN EXPERIMENTAL BASIS, AND FOR OTHER PURPOSES.

S. 2084

TO AUTHORIZE THE INTERSTATE COMMERCE COMMISSION TO REQUIRE ADEQUATE COMPENSATION FOR OWNER-OPERATOR FUEL COSTS IN A TRANSPORTATION EMERGENCY, AND FOR OTHER PURPOSES.

S. 2085

TO AUTHORIZE THE INTERSTATE COMMERCE COMMISSION TO APPROVE, ON AN EXPEDITED BASIS, POOLING ARRANGEMENTS BETWEEN CARRIERS THAT ARE NOT OF MAJOR TRANSPORTATION IMPORTANCE AND ARE NOT LIKELY UNDULY TO RESTRAIN COMPETITION, AND FOR OTHER PURPOSES.

S. 2086

TO AUTHORIZE THE INTERSTATE COMMERCE COMMISSION, AFTER INVESTIGATION AND HEARING, TO REQUIRE THE ESTABLISHMENT OF THROUGH ROUTES AND JOINT RATES BETWEEN MOTOR COMMON CARRIERS OF PROPERTY, AND BETWEEN SUCH CARRIERS AND COMMON CARRIERS BY RAIL, EXPRESS, AND WATER, AND FOR OTHER PURPOSES.

JULY 28 AND 29, 1975

Serial No. 94-37

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

57-666 O

WASHINGTON : 1975

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ICC REQUESTED LEGISLATION

MONDAY, JULY 28, 1975

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 10:20 a.m., in room 1318, Dirksen Senate Office Building, Hon. Vance Hartke presiding.

OPENING STATEMENT BY SENATOR HARTKE

Senator HARTKE. This is the first of 2 days of hearings on four bills requested by the Interstate Commerce Commission which it claims would improve the regulated transportation system by making it more energy-efficient.

The two most important bills which would permit the commission to require the establishment in joint rates and new routes between motor carriers and between motor carriers and rail and water carriers and which would allow freight forwarders to establish contract rates with the railroads are not new. These bills were before the Commerce Committee in a similar form most recently during the 92d Congress. The two other bills to permit expedited pooling of traffic between motor carriers and to regulate fuel contracts between motor carriers and owner-operators raise new issues.

These bills appear on their face to be rather esoteric in nature and, given this committee's prior inaction on these issues, one might ask why they are again before the committee. There are two basic reasons.

First, the bills raise issues about the basic nature of the common carrier system. Is the system designed to benefit individual carriers and individual modes or is it designed to provide the best possible transportation service to all shippers in like circumstances? I think the answer is the latter.

A successful common carrier system depends upon system integration and the establishment of specialized services which may adversely affect competition between particular carriers and enhance the overall quality of the common carrier system. All services cannot be performed by any particular mode and shippers who do not hold themselves out to provide services for all other shippers cannot be expected to have the same position in the transportation system as those who will serve all shippers.

Staff members assigned to these hearings: Thomas G. Allison and Paul A. Cunningham.

These bills, of course, also strike a more popular theme. The Commission claims these bills will induce a more energy-efficient transportation system. This, of course, is an increasingly important issue. However, without wishing to diminish the importance of the energy issue, I must stress that the question before this committee is not whether the system is more energy-efficient, but whether it is, all factors considered, the most efficient possible. These bills will not be judged alone on their ability to promote energy-efficiency, but on their contribution to the overall transportation system.

There is a second reason why these bills are again being seriously considered by this committee. An important aspect of transportation regulation is often forgotten in the current regulatory reform debate. That is, we forget that Congress provided a broad statutory mandate to the ICC.

Within that act, there is considerable room for the Commission to adjust to changes in the transportation system. These adjustments can be made by the Commission on its own motion or under pressure from outside influences. Yet, despite all the cries for deregulation, most of these cries seem to be for legislative action which should be unnecessary.

Thus, DOT has consistently proposed significant changes in the Commission's ratemaking standards that the Commission has power to change under the existing law. However contrary the design of the act, the Department has consistently come to Congress rather than gone to the Commission to ask that the Commission institute rulemakings for the purpose of establishing more modern regulatory procedures and standards.

While we wish to discourage legislative proposals where there is no demonstration that change cannot be accomplished under the existing law, we wish to encourage proposals from all parties such as those before us today where change is not possible under the act.

The committee will, therefore, be carefully considering these bills and the record of these hearings, and a prompt decision should be made as to whether legislative action is required on these issues.

(The bills and agency comments follow:)

94TH CONGRESS
1ST SESSION

S. 2083

IN THE SENATE OF THE UNITED STATES

JULY 10, 1975

Mr. HARTKE (by request) introduced the following bill; which was read twice
and referred to the Committee on Commerce

A BILL

To amend section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads on an experimental basis, and for other purposes.

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

3 That section 409 (a) of the Interstate Commerce Act (49
4 U.S.C. 1009 (a)) is amended to read as follows:

5 “(a) Nothing in this Act shall be construed to prevent
6 freight forwarders subject to this part from entering into or
7 operating under contracts with common carriers by railroad
8 subject to part I of this Act, or from entering into or con-
9 tinuing to operate under contracts with common carriers by
10 motor vehicle subject to part II of this Act, governing the

1 utilization by such freight forwarders of the services and in-
2 strumentalities of such common carriers by railroad or motor
3 vehicle and the compensation to be paid therefor: *Provided*,
4 That in the case of such contracts it shall be the duty of the
5 parties thereto to establish just, reasonable, and equitable
6 terms, conditions, and compensation which shall not unduly
7 prefer or prejudice any of such participants, any other freight
8 forwarders, or any shipper and shall be consistent with the
9 national transportation policy declared in this Act: *And*
10 *provided further*, That in the case of line-haul transportation
11 by common carriers by motor vehicle between concentra-
12 tion points and break-bulk points in truckload lots where
13 such line-haul transportation is for a total distance of four
14 hundred and fifty highway miles or more, such contracts
15 shall not permit payment to such common carriers by motor
16 vehicle of compensation which is lower than would be re-
17 ceived under rates or charges established under part II of
18 this Act.”.

19 SEC. 2. Section 409 of the Interstate Commerce Act
20 (49 U.S.C. 1009) is amended by the addition of a new
21 section (c) to read as follows:

22 “(c) The provision of paragraph (a) authorizing freight
23 forwarders to enter into contracts with railroads governing
24 the utilization by such freight forwarders of the railroads’
25 services and instrumentalities is effective only for a two-year

1 period commencing on the date of enactment of the amend-
2 ment which added this authorization to paragraph (a). The
3 Commission shall report to the Congress six months prior to
4 the end of said two-year period on the effect of this amend-
5 ment on the consumer, shipper, freight forwarder, and other
6 segments of the surface transportation industry and include
7 therein appropriate recommendations as to whether the
8 provision should remain in effect, terminate or be modified.”.

9 SEC. 3. The heading of section 409 of the Interstate
10 Commerce Act (49 U.S.C. 1009) is changed to read as
11 follows:

12 “UTILIZATION BY FREIGHT FORWARDERS OF SERVICES
13 OF COMMON CARRIERS BY RAILROAD AND BY
14 MOTOR VEHICLE”.

94TH CONGRESS
1ST SESSION

S. 2084

IN THE SENATE OF THE UNITED STATES

JULY 10, 1975

Mr. HARTKE (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To authorize the Interstate Commerce Commission to require adequate compensation for owner-operator fuel costs in a transportation emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 204 (e) of the Interstate Commerce Act (49
4 U.S.C. 304 (e)) is amended to read as follows:

5 “(e) Subject to the provisions of subsection (f) hereof,
6 the Commission is authorized to prescribe, with respect to
7 the use by motor carriers (under leases, contracts, or other
8 arrangements) of motor vehicles not owned by them, in the
9 furnishing of transportation of property—

II

1 “(1) regulations requiring that any such lease, con-
2 tract, or other arrangement shall be in writing and be
3 signed by the parties thereto, shall specify the period
4 during which it is to be in effect, and shall specify the
5 compensation to be paid by the motor carrier, and re-
6 quiring that during the entire period of any such lease,
7 contract, or other arrangement a copy thereof shall be
8 carried in each motor vehicle covered thereby;

9 “(2) such other regulations as may be reasonably
10 necessary in order to assure that while motor vehicles
11 are being so used the motor carriers will have full direc-
12 tion and control of such vehicles and will be fully respon-
13 sible for the operation thereof in accordance with appli-
14 cable law and regulations, as if they were the owners
15 of such vehicles, including the requirements prescribed
16 by or under the provisions of this part with respect to
17 safety of operation and equipment and inspection thereof,
18 which requirements may include but shall not be limited
19 to promulgation of regulations requiring liability, and
20 cargo insurance covering all such equipment; and

21 “(3) upon a finding that a transportation emer-
22 gency exists or is anticipated, regulations reasonably
23 necessary to insure that the party, who under the contract
24 or lease is responsible for the purchase of fuel, is ade-
25 quately compensated by the terms of such lease or con-
26 tract for fuel costs.”.

94TH CONGRESS
1ST SESSION

S. 2085

IN THE SENATE OF THE UNITED STATES

JULY 10, 1975

Mr. HARTKE (by request) introduced the following bill; which was read twice
and referred to the Committee on Commerce

A BILL

To authorize the Interstate Commerce Commission to approve, on an expedited basis, pooling arrangements between carriers that are not of major transportation importance and are not likely unduly to restrain competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 5 (1) of the Interstate Commerce Act (49
4 U.S.C. 5 (1)) is amended to read as follows:

5 “(1) Except upon specific approval by order of the
6 Commission as in this section provided, and except as pro-
7 vided in paragraph (16) of section 1 of this part, it shall
8 be unlawful for any common carrier subject to this part,

1 part II, or part III to enter into any contract, agreement,
2 or combination with any other such common carrier or car-
3 riers for the pooling or division of traffic, or of service, or
4 of gross or net earnings, or of any portion thereof; and in
5 any case of an unlawful agreement for the pooling or divi-
6 sion of traffic, service, or earnings as aforesaid each day of
7 its continuance shall be a separate offense: *Provided*, That
8 any party may apply for Commission approval of such an
9 agreement by filing said agreement with the Commission
10 not less than thirty days before its effective date. Prior to
11 the effective date of the agreement, the Commission shall
12 determine whether the agreement is of major transportation
13 importance and whether there is substantial likelihood that
14 the agreement will unduly restrain competition and if the
15 Commission determines that neither of these two factors
16 exists, it shall, prior to the effective date contained in the
17 agreement and without hearing, approve the agreement. If
18 the Commission determines either that the agreement is of
19 major transportation importance or that there is a substantial
20 likelihood that the agreement will unduly restrain competi-
21 tion, the Commission shall enter upon a hearing concerning
22 whether the agreement will be in the interest of better
23 service to the public or of economy in operation and whether
24 it will unduly restrain competition; and shall suspend opera-
25 tion of such agreement pending such hearing and final deci-

1 sion thereon; and after full hearing, the Commission shall
2 indicate to what extent it finds that the agreement will be
3 in the interest of better service to the public or of economy
4 in operation, and will not unduly restrain competition, and
5 shall, to that extent, approve and authorize the agreement,
6 if assented to by all the carriers involved, under such
7 rules and regulations, and for such consideration as between
8 such carriers and upon such terms and conditions, as shall
9 be found by the Commission to be just and reasonable in
10 the premises: *Provided further*, That any contract, agree-
11 ment, or combination to which any common carrier by
12 water subject to part III is a party, relating to the pooling
13 or division of traffic, service, or earnings, or any portion
14 thereof, lawfully existing on the date this paragraph as
15 amended takes effect, if filed with the Commission within
16 six months after such date, shall continue to be lawful
17 except to the extent that the Commission, after hearing
18 upon application or upon its own initiative, may find and
19 by order declare that such contract, agreement, or combina-
20 tion is not in the interest of better service to the public or
21 of economy in operation, or that it will unduly restrain
22 competition.”.

94TH CONGRESS
1ST SESSION

S. 2086

IN THE SENATE OF THE UNITED STATES

JULY 10, 1975

Mr. HARTKE (by request) introduced the following bill; which was read twice
and referred to the Committee on Commerce

A BILL

To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes.

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

3 That section 216 (c) of the Interstate Commerce Act (49
4 U.S.C. 316 (c)) is amended to read as follows:

5 “(c) (1) Common carriers of property by motor vehicle
6 may establish reasonable through routes and joint rates,
7 charges, and classifications with other such carriers or with
8 common carriers by railroad and/or express and/or water;

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1 and common carriers of passengers by motor vehicle may es-
2 tablish reasonable through routes and joint rates, fares, or
3 charges with common carriers by railroad and/or water. As
4 used in this subsection the term 'common carriers by water'
5 includes water common carriers subject to the Shipping Act,
6 1916, as amended, or the Intercoastal Shipping Act of 1933,
7 as amended (including persons who hold themselves out to
8 transport goods by water but who do not own or operate ves-
9 sels), engaged in the transportation of property in interstate
10 or foreign commerce between Alaska or Hawaii on the one
11 hand, and on the other, the other States of the Union, and
12 through routes and joint rates so established and all classifi-
13 cations, regulations, and practices in connection therewith
14 shall be subject to the provisions of this part.

15 “(2) The Commission may, and it shall whenever
16 deemed by it to be necessary or desirable in the public in-
17 terest, after full hearing upon complaint or upon its own
18 initiative without complaint, establish through routes, joint
19 classifications, and joint rates, fares, or charges applicable
20 to the transportation of property by common carriers by
21 motor vehicle and other such carriers and/or common car-
22 riers by railroad and/or express and/or common carriers
23 by water subject to part III and to the transportation of pas-
24 sengers by common carriers by motor vehicle, and, when so
25 ordered in such a proceeding, it shall be the duty of the af-

1 fected common carriers to establish and maintain reasonable
2 through routes, joint classifications, and joint rates, fares, or
3 charges applicable thereto. In establishing any such through
4 routes the Commission shall not, except as provided in sec-
5 tion 3, 216 (d), or 305 (c), require any carrier without its
6 consent to embrace in such route substantially less than the
7 entire length of its route and of any intermediate carrier
8 operated in conjunction and under a common management
9 or control therewith, which lies between the termini of such
10 proposed through routes (a) unless such inclusion of lines
11 would make the through route unreasonably circuitous as
12 compared with another practicable through route which
13 could otherwise be established or (b) unless the Commis-
14 sion finds that the through route proposed to be established
15 is needed in order to provide adequate, more efficient, or more
16 economic transportation: *Provided*, That in prescribing
17 through routes the Commission shall, so far as is consistent
18 with the public interest, and subject to the foregoing limita-
19 tions in clauses (a) and (b), give reasonable preference to
20 the carrier which originates the traffic. In the case of any
21 through route established by the Commission between com-
22 mon carriers of property by motor vehicle and other such
23 carriers, the limitations in this section on the Commission's
24 power to establish through routes shall apply only to the
25 carrier originating the traffic. No through route and joint

1 rate applicable thereto shall be established by the Commis-
2 sion for the purpose of assisting any carrier that would par-
3 ticipate therein to meet its financial needs.

4 “(3) In the case of joint rates, fares, or charges estab-
5 lished pursuant to section 216(c) (1) or 216(c) (2), it
6 shall be the duty of the carrier parties thereto to establish
7 just and reasonable regulations and practices in connection
8 therewith, and just, reasonable, and equitable divisions there-
9 of as between the carriers participating therein which shall
10 not unduly prefer or prejudice any of such participating
11 carriers.”.

12 SEC. 2. Section 216(e) of the Interstate Commerce Act
13 (49 U.S.C. 316(e)) is amended to read as follows:

14 “(e) (1) Any person, State board, organization, or
15 body politic may make complaint in writing to the Com-
16 mission that any such rate, fare, charge, classification, rule,
17 regulation, or practice, in effect, or proposed to be put into
18 effect, is or will be in violation of this section or of section
19 217. Whenever, after hearing, upon complaint or in an in-
20 vestigation on its own initiative, the Commission shall be of
21 the opinion that any individual or joint rate, fare, or charge,
22 demanded, charged, or collected by any common carrier or
23 carriers by motor vehicle or by any common carrier or car-
24 riers by motor vehicle in conjunction with any common
25 carrier or carriers by railroad and/or express and/or water

1 for transportation in interstate or foreign commerce, or any
2 classification, rule, regulation, or practice whatsoever of such
3 carrier or carriers affecting such rate, fare, or charge or the
4 value of the service thereunder, is or will be unjust and un-
5 reasonable, or unjustly discriminatory or unduly preferential
6 or unduly prejudicial, it shall determine and prescribe the
7 lawful rate, fare, or charge or the maximum or minimum, or
8 maximum and minimum rate, fare, or charge thereafter to
9 be observed, or the lawful classification, rule, regulation, or
10 practice thereafter to be made effective.

11 “(2) All carriers party to a through route and joint
12 rate, whether established by the carriers under section 216
13 (c) (1) or prescribed by the Commission under section
14 216 (c) (2), shall promptly pay divisions or make interline
15 settlements as the case may be with other carriers party
16 thereto. In the event of undue delinquency in the settlement
17 of such divisions or interline settlements, such through routes
18 and joint rates may be suspended or canceled by the Com-
19 mission under rules to be prescribed by it.

20 “(3) If any tariff or schedule canceling any through
21 route and joint rate, fare, charge, or classification, whether
22 established by the carriers under section 216 (c) (1) or pre-
23 scribed by the Commission under section 216 (c) (2), with-
24 out the consent of all carriers parties thereto or authorization
25 by the Commission, is suspended by the Commission for in-

1 vestigation, the burden of proof shall be upon the carrier or
2 carriers proposing such cancellation to show that it is consist-
3 ent with the public interest.

4 “(4) Nothing in this part shall empower the Commis-
5 sion to prescribe, or in any manner regulate, the rate, fare,
6 or charge for intrastate transportation, or any service con-
7 nected therewith, for the purpose of removing discrimination
8 against interstate commerce or for any other purpose what-
9 ever.”.

FEDERAL MARITIME COMMISSION,
Washington, D.C., August 13, 1975.

HON. VANCE HARTKE,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee,
US Senate,
Washington, D.C.

DEAR SENATOR HARTKE: This in reference to S. 2086, a bill to authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes, upon which the Surface Transportation Subcommittee of the Senate Commerce Committee has just concluded hearings.

S. 2086 amends Section 216 of the Interstate Commerce Act to require water carriers subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, transporting property between Alaska or Hawaii and the contiguous States, whether they desired to or not, to establish through routes and joint rates with motor carriers of property, and between those carriers and carriers by rail express and water subject to the authority of the Interstate Commerce Commission. Although based on the need for "energy savings," no demonstrable need appears to have been shown by the ICC for this legislation. We have reviewed the testimony of Chairman George M. Stafford of the ICC on behalf of S. 2086 and find it interesting to note that the call for "energy savings" was not espoused when provisions identical to S. 2086 were submitted by ICC in 1967 (S. 751) and 1970 (S. 3626). We would cite the statement of the ICC when S. 751 was transmitted to your Committee:

"Although no serious problems appear to have arisen in connection with the establishment of through routes and joint rates between common carriers by water and motor common carriers of property, the fear of collapse of such arrangements because of their permissive and voluntary nature is of course always present."

On June 11, 1970, I appeared before the Surface Transportation Subcommittee and pointed out that the Interstate Commerce Commission support for Congressional action in this area appeared "devoid of any evidence that further legislation is necessary or desirable . . ."

S. 2086 amends Section 216(c) of the Interstate Commerce Act to enlarge the authority of the Interstate Commerce Commission. Under that section, the ICC could require the common carriers by water engaged in the trades between contiguous States and Alaska and Hawaii and who are under FMC jurisdiction to establish through routes and joint rates with ICC-regulated carriers. Moreover, by the express authority granted to the ICC in S. 2086, they would be empowered to determine the reasonableness of "any individual or joint rate, far or charge." It does not serve any end and I hope the Committee would agree, especially when the regulatory process is under such scrutiny, to disturb, in the manner S. 2086 does, existing lines of regulatory authority firmly founded on the shipping statutes, Reorganization Plan No. 7 of 1961 and the Rivers Act (P.L. 87-595) for the smooth flow of commerce between Alaska, Hawaii and the contiguous States.

Accordingly, the Federal Maritime Commission is opposed to the enactment of S. 2086.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

HELEN DELICH BENTLEY,
Chairman.

Senator HARTKE. We will have a nomination hearing also this morning, and so I would appreciate it if the witnesses would summarize their statements as much as possible. And the fact of the matter is I am going to ask that the entire statements of all witnesses be submitted and that there be a 10-minute summary. And

hopefully, I will limit my questions to 10 minutes this morning so we don't run into some of the problems we have in the past.

All right, Mr. George M. Stafford, Chairman of the Interstate Commerce Commission, will be the first witness.

And will you introduce the people with you, George?

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY A. DANIEL O'NEAL, VICE-CHAIRMAN; FRITZ R. KAHN, GENERAL COUNSEL; TED KNAPPEN, LEGISLATIVE COUNSEL; AND OWEN KATZMAN, COUNSEL

Mr. STAFFORD. Mr. Chairman, I have with me this morning at the table on my far left our Legislative Counsel, Mr. Knappen; my Vice-Chairman, Mr. O'Neal; General Counsel, Fritz Kahn; my top staff aid, Owen Katzman.

I will read a part of our statement here and would ask that the balance of it be made part of the record.

We do appreciate the opportunity to appear this morning on S. 2083 through S. 2086. These four bills were introduced by you at our request. We have proposed these bills as part of our ongoing effort to promote a more energy-efficient surface transportation system. We believe that the four bills taken together will lead to greater energy efficiency in all modes of surface transportation.

The first three bills, I will discuss—S. 2083, S. 2085, and S. 2086—are closely interrelated. S. 2083 authorizes railroad-freight forwarder contracts; S. 2085 establishes an expedited procedure for the filing of pooling agreements; and S. 2086 authorizes the Commission to prescribe joint rates and through routes. The fourth bill, S. 2084, is intended to aid the Commission in averting a transportation emergency caused by escalating fuel costs such as the massive truck strike in the winter of 1973-74.

S. 2086 is perhaps the single most significant of the four bills. It would amend section 216 of the Interstate Commerce Act to authorize the Commission, after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property, and between those carriers and carriers by rail, express, and water. It is intended to produce a more comprehensive surface transportation system offered to the shipping public at lower cost and with a greater degree of energy efficiency.

For purposes of clarity, a through route is an arrangement between two or more connecting carriers of the same or different mode for the continuous transportation of freight or passengers. A joint rate is one published by agreement or arrangement for transportation over the line or routes of two or more connecting carriers of the same or different modes.

It differs from the mere aggregate combination of two or more local rates in that it is one consolidated rate for the through movement and is filed in a single tariff. The Commission already has the authority to require the establishment of intramodal joint rate/through route arrangements between rail carriers, water carriers

and motor vehicle passenger carriers, and intermodal arrangements between rail carriers and water carriers.

Thus, this proposal serves to eliminate the existing unevenness in the regulatory framework by extending the Commission's authority to intramodal arrangements among motor carriers and intermodal arrangements between such carriers and carriers by rail, express, and water.

The most obvious energy benefit of this bill is that it will tend to facilitate piggyback service, whereby motor carrier trailers move on railroad flatcars. Historically, the Commission has encouraged the development of piggyback service and it grew rapidly following Commission sanctioning. Piggyback combines the advantages of movement by truck with the long-haul economies of rail transport, under conditions which hold total expense to a minimum.

Then, of course, we have S. 2085, which provides simplified procedures for approval of pooling arrangements. Under this bill, we will make a quick decision and the agency can be in service within that 0-day period of time in most instances.

Then, S. 2085 involves the establishment of freight forwarder-railroad contract rates. We would hope that the committee would favorably consider these four bills.

We would be happy to consider questions, sir.

Senator HARTKE. S. 2083 would authorize the establishment of contract rates between freight forwarders and railroads. It is my view that freight forwarders can now establish contract rates with motor carriers, they have the same status as shippers of similar commodities when establishing rates with railroads. Is that correct?

Mr. STAFFORD. That's correct.

Senator HARTKE. Those that oppose the bill argue that freight forwarders cannot be distinguished from shippers in a similar position for the purpose of establishing contract rates. So how do you justify the distinction?

Mr. STAFFORD. Well, of course, a freight forwarder is in the eyes of the shipper a carrier, but he is a shipper in the eyes of the underlying carrier. So we feel that he should be permitted to contract with the railroads now as he does with the trucks so as to give us an opportunity to take care of small shipments better and to put them on a more energy-efficient form of transportation for long hauls.

Senator HARTKE. Do you have any evidence that if you do this, if you give the freight forwarders what is in effect a lower rate, it will provide incentive for consolidation of small shipments?

Mr. STAFFORD. Under Ex parte 266, there was background information that would indicate that this was true.

Senator HARTKE. In other words, your hearings on 266 have given you evidence to come to that conclusion?

Mr. STAFFORD. Yes.

Senator HARTKE. You are arguing because freight forwarders provide a consolidating service for any shippers, they would be free of any restrictions placed on other shippers by the railroads. However, in the proposed bill, you have included language which would apparently limit the ability of the freight forwarder to secure certain contract rates.

I am referring to the language in the first provision of the proposed section 409(a) which establishes the duty of the parties to establish rates which, among other things, shall not unduly prefer or prejudice participants in the rate, any other freight forwarder, or any other shipper.

Will you tell me what is the meaning and practical effect of the language "or any other shipper"? In other words, if you are attempting to distinguish freight forwarders from other shippers—

Mr. STAFFORD. The word "unduly" gives a judgment factor in there. And by adding the "or any shipper" into section 409, this protects the right of these freight forwarders to have a somewhat better contract under law than the others would have because we are interested in seeing that the small shipments are better handled. But at the same time, we feel that it does give necessary protection to shippers.

Senator HARTKE. Well, wouldn't you in effect then be creating a new type of situation with this? In other words, the net result would be you would have the freight forwarder in a position of a common carrier, but you give all the rights to the other shippers that you give to the freight forwarders without the corresponding responsibilities.

Mr. O'NEAL. What that provision attempts to do—our counsel maybe can explain it more thoroughly—is to give the shippers an opportunity to challenge the rate, but not solely on the basis of the rates, whether the rate is equal to the rate that is available to the shipper, but of a more indepth question of whether there is an undue preference or prejudice, determining not just a preference, but prejudice.

And this should leave the freight forwarder with an opportunity to obtain a lower rate, but if the situation develops in which the competing shipper, shippers association, finds an undue situation, then the Commission can come in and act.

I think it is important to point out, too, in connection with this bill that it is a 2-year bill after which the Commission will report back the results of its experience under this act.

Senator HARTKE. Does "undue" have a legal definition?

Mr. O'NEAL. Oh, yes.

Mr. KNAPPEN. I think it connotes a balancing test between the encouragement that should be given the freight forwarders to move the small shipments by rail, balanced against the damage to be done potentially, which we recognized in Ex parte 266, to other shippers. It sort of builds into the statute our concern about that problem.

I don't know that it is used as a word of art so much as connoting that balancing test.

Senator HARTKE. What criteria, then, would you have for that balancing?

Mr. KAHN. Senator Hartke, in effect, the Commission's proposal would write into section 409 the limitations of section 3(1) of the Interstate Commerce Act which prohibits an undue preference and prejudice. And there is an established body of case law construing that term as the vice chairman indicated.

Under that body of case law, a mere disparity of rates would not automatically invoke the prohibition of the statute. The markets in which the shippers or consignees operate are factors considered by the Commission.

Senator HARTKE. This does provide for some type of confusion, is that right?

Mr. KAHN. No, I would not think so, Senator Hartke. As the chairman pointed out, the mere fact that Transway, to use an example, would secure a contract rate, a particular rate on the Southern Railway would not automatically entitle a shipper of comparable merchandise to have that rate unless the disparity is such as to unduly prejudice the shipper.

And that is a fact question that the Commission is accustomed to dealing with under section 3(1) of the Interstate Commerce Act.

Mr. O'NEAL. It is a fact question that has to be worked out on a case-by-case basis. Admittedly, it is indefinite.

Senator HARTKE. Another means of encouraging the consolidation of small shipments which has been proposed by some shippers is to allow any shipper to establish a contract rate with a common carrier. Why wouldn't this approach be equally as preferable as granting contract rates only to freight forwarders? In other words, why on the one hand do we prohibit shippers from getting lower rates from railroads on the grounds that would unduly prejudice other shippers or reduce the rate of return on the railroad and then, on the other hand, grant these special rates to the freight forwarders?

Mr. STAFFORD. Our effort in this case was to encourage the handling of small shipments, the problems that small shippers and/or shippers of small shipments have in many instances. And many of those were pointed up in 266; that in fact as we had several dozen instances of certain truckers bailing out of these kind of arrangements or trying to.

Also we felt that the freight forwarding business has been a rather static business for sometime and that through such an action as this, not only would it encourage them to move forward in trying to handle more of the small business operation, it would have far more of a tendency to start moving this on the railroads where possible.

Senator HARTKE. Let me ask you this: the opponents of S. 2083 argue that freight forwarders are permitted by the Commission to discriminate against unprofitable traffic and thus, on the one hand, skim the high volume, high profit traffic from the competing motor carriers and, on the other hand, leave the low volume, low profit traffic to the motor carriers who are forced by the Commission to go ahead and meet their common carrier obligations. How do you answer that argument? What steps is the Commission now taking to make sure that freight forwarders fully comply with their common carrier obligations?

Mr. KAHN. Well, certainly, the Commission proceeds against forwarders as it does against motor carriers. I know of no instance where a complaint has been brought before the Commission against a freight forwarder for failure to render service in which appropriate action has not been taken by the Commission, just as I know

of no instance where the same would not be true with respect to motor carriers.

I think the record will show, however, that the complaints have not been forthcoming before the Commission.

Senator HARTKE. Of course, what you are dealing with here is probably a bigger problem in this Nation than is commonly recognized. That is what is the role of being little? I mean, you are facing that right now in the Postal Department, for example. They are trying to eliminate all fourth-class post offices. They are hitting very hard at so-called unprofitable mail.

Mr. KAHN. If I might digress, Senator Hartke, I think the Commission's response, encouraging or at least facilitating and pooling of motor carrier freight, has very effectively addressed that problem. Of course, one of the bills which you introduced at the Commission's request would assist in that endeavor.

But through the pooling of their facilities, the motor carriers have been able to improve on the service to the small shippers at outlying places, a service that each one individually, the motor carrier would have been unable to render.

Senator HARTKE. What will this do to high-volume traffic—divert it?

Mr. STAFFORD. There is some question.

Senator HARTKE. Where to? The motor carriers to railroads?

Mr. STAFFORD. I don't know that we really know whether this will really divert.

Senator HARTKE. Now, you are right back to the heart of it again. In other words, you have this inkling, but you don't have this knowledge.

Mr. STAFFORD. That's the reason we have asked for only a 2-year period of time on this. In other words, to give you a report at the end of 2 years on whether this was working and whether or not it should be continued.

Senator HARTKE. At the present time, Mr. Chairman, there is a considerable amount of traffic which can be consolidated by the shipper railroads themselves. Why not have the railroads as a logical carrier provide this service rather than the freight forwarders?

Mr. STAFFORD. Well, they haven't really been taking care of small shipments that well. They have done a fair job in it, but they have flagged out on a great deal of this business over the past years. And we think that an effort should be made to try to move as much of that back in as possible.

Senator HARTKE. Now, I think you are right back on the heart of the criticism of the ICC. That is very simple.

The next question in my mind, I am not saying that this should be done, but, you see, what you say is that they have not performed their common carrier responsibilities. That's what you are saying.

Mr. STAFFORD. That's right.

Senator HARTKE. And in effect, you are saying the Commission has not required them to do that. The net result is that they have the opportunity to avail themselves of the common carrier goodies, but to avoid the common carrier low volume, low profitable items.

Chairman STAFFORD. This is true. And this is one of the reasons the trucks have moved in to take over a great part of this.

Senator HARTKE. I know. But maybe that is a proper role. But then, they ought to lose their rates as common carriers. Isn't that fair? In other words, isn't it the doctrine of the common carrier that he assumes not alone an opportunity, but an obligation? Isn't that fair?

Mr. STAFFORD. Absolutely. That's right.

Senator HARTKE. What you are saying is he has taken the opportunity in shunting the obligation.

Mr. STAFFORD. Yes.

Senator HARTKE. It is sort of like I will get married to you, and I will love and honor you, but to hell with supporting you.

Mr. STAFFORD. I presume.

Senator HARTKE. Do you want to comment on that?

Mr. O'NEAL. I think an argument could be made in this case certainly that the railroads have not fulfilled the obligation as far as small shipments are concerned. Of course, there are a lot of other obligations in common carriers besides carrying small shipments.

But what we are trying to do in this particular legislation, I think, is put some of the small shipments back onto the railroads that have gone to other modes of transportation. And it is particularly important in this day and age when we are concerned about more energy-efficient movement of traffic and when the railroads could use a little more traffic.

They haven't been particularly interested in gathering these sort of shipments, and the freight forwarders could play a very important role in that respect.

Mr. STAFFORD. This is part of the FEA's recommendation, too.

Senator HARTKE. Wouldn't it be more logical to permit them to perform the services that would make a profit from any additional revenues that might result?

Mr. KAHN. Of course, Senator. And I wanted to point out to you that the law permits them to do just that. The law very specifically enables any direct carrier to perform the services that otherwise would be performed by a freight forwarder. But you will recall at the end of World War II, the Senate frequently heard, certainly the Commission did, about the passenger deficit problem. And you will recall it heard about the less-than-carload deficit problem.

The railroads at that time, for whatever the reason, found that they were losing money in the handling of passenger service. They found they were losing money in the handling of less-than-carload service. And the railroads made a management decision that if they were to survive, they had to get rid of both.

In the one instance, through the enactment in the AMTRAK legislation, Congress permitted them to rid themselves of the passenger service and through appropriate tariff publication with the Interstate Commerce Commission, the railroads did rid themselves of the less-than-carload service.

But certainly at any time that they can price that service, through consolidation or otherwise, so that it becomes an economically viable

service for them to handle, the law permits the railroads to again enter the less-than-carload service.

Senator HARTKE. I know you people are experts. Why is it that on this consolidation, the railroads can't do it and make money on it and the freight forwarders can do it and can make money on it?

Mr. STAFFORD. Not many of the freight forwarders are either. This has been a very difficult situation for freight forwarders, too. Outside, of course, of the very largest one, Transway, which handles about, 40 to 60 percent of the entire freight forwarder business of all the freight forwarders we have.

I think there are some 100 or 125 freight forwarders in the spectrum, and only that one handles most of their business. So it is an indication that they are not really doing that well outside of perhaps the one.

But, Senator, with it all, the purpose of our bill is primarily energy savings and/or the effort for the small shipper.

Senator HARTKE. At the risk of trespassing on the sacred, holy, you know, I really think that in this day and age that the Mafia, if they just took a new approach, could make themselves very clean by saying what they are doing, their actions, conserve energy. The things that we are doing in the field of energy conservation—right now at this moment, the Finance Committee of which I am a member is holding hearings on a bill to deal with the energy problem. And I have to admit that I am utterly amazed and impressed by the ingenuity of some of these people to come up with arguments as to how in feathering their own nest really can be done in the name of saving energy.

But that is not your problem here. But I do understand that during the time that the ICC and the FMC were conducting informal discussions, the means of improving cooperation between the agencies, that the question of the Commission's intention to forward S. 2086 was not discussed. I wonder if you could explain why the FMC was not involved in development of this bill and what effect will this have upon carriers regulated by the FMC.

At this time, I am specifically referring to language in the bill defining common carriers by water and including water common carriers engaged in the transportation for profit in interstate and foreign commerce.

Mr. STAFFORD. This bill itself does not affect foreign commerce as such.

Senator HARTKE. What carriers are covered by section 216(c)(1)?

Mr. KAHN. Through routes and joint rates would be permitted between motor carriers and between motor carriers and railroads and water carriers, subject to ICC jurisdiction as I recall. We have difficulty perceiving how the maritime industries would have any interest in this particular legislation.

Mr. KNAPPEN. That language is taken directly from the statute as it is presently worded and applies to common carriers between Alaska and Hawaii and the continental United States.

Senator HARTKE. What carriers were covered by the amendment to section 216(c)(2)? In other words, could you require a water carrier to be subject to the Shipping Act of 1961 or the Intercoastal

Shipping Act of 1933 through those persons who had held themselves out to transport goods, but do not own or operate vessels? Do you require them to establish joint rates?

Mr. KATZMAN. Senator Hartke, the answer is no. But what we are involved with here is joint rates and through routes with water carriers subject to the ICC's jurisdiction. And that is inland water carriers, barge companies and the like.

Senator HARTKE. Does section 216(c)(3) give you any authority and if so over common carrier by water subject to the Shipping Act of 1916 or Intercoastal Shipping Act of 1933 in what way, what sort?

Mr. KATZMAN. The jurisdiction, I believe, is permissive.

Mr. KAHN. Mr. Chairman, in interstate or foreign commerce between Alaska and Hawaii on the one hand and other States in the Union—this is the rivers bill, there would be through-route-joint-rate jurisdiction as is presently found with respect to water carriers and motor carriers in the existing Interstate Commerce Act.

Mr. STAFFORD. It is not an enlargement of jurisdiction.

Senator HARTKE. What will it do in the Hawaii trade?

Mr. KAHN. Let me give you an example, Senator Hartke. A shipment is picked up in Boise, Idaho, and moved by Consolidated Freightways to the port of San Francisco and goes on a Matson vessel for movement to Hawaii. Under the rivers bill of the Interstate Commerce Act, Consolidated Freightways and Matson can participate in through routes and joint rates, enabling that container from Boise, Idaho, to Honolulu to move on a single-factor rate.

And the Commission would simply carry this provision forward by the proposed bill and not enlarge the Commission's jurisdiction at all by the proposed bill.

Senator HARTKE. The joint-rate-through-route proposal appears designed to give the Commission greater power to integrate the common carrier system and insure better service to the shipper. Generally speaking, I would endorse that proposition. But does the ICC have any documentation to show that shippers are now suffering because the Commission does not have this power?

The railroads especially contend that there is no problem that voluntary agreements provide a sufficient level of service. If service is needed, why haven't the railroads and motor carriers seen the advantages that the ICC sees and try to reap them on their own without the legislation?

Mr. STAFFORD. Again, in MC 77, our proceeding which is in this same area are the problems that we are trying to resolve. And I must admit that it is very difficult because every mode, once they get a hold of the traffic would like to retain it.

And we are interested in trying to give the most direct routes and as little cost as possible to the shipper. And, of course, we are also interested because the FEA reports in all savings of fuel we can make.

Mr. KNAPPEN. Senator, I might supplement that by pointing out that in the appendix to MC 77, there are a large number of complaints listed by shippers of small shipments concerning the joint rates and through routes available.

And I might also note that by implementation of this bill, it would, we believe, have the effect of encouraging motor carriers and railroads who have not yet seen the light perhaps to look very carefully at where joint rates and through rates are appropriate.

And also, the bill provides that it would only be after a full hearing and full opportunity for the railroads and the motor carriers to do it on their own that the Commission would come into the act and implement or prescribe joint rates and through routes.

Mr. STAFFORD. Quite frequently, Senator, you have combination rates in effect which when adding up the total of each of these rates is more than the joint rate which we are espousing in this legislation.

Senator HARTKE. Subparagraph 3 of the proposed subsection 304(e) in 2084 would permit the Commission to prescribe regulations necessary for transportation emergency to insure that the party responsible for the purchase of fuel is adequately compensated for these costs.

Now, as I understand the purpose of this proposal, it is to give the Commission the powers which would help prevent transportation emergency such as last year's truck strike. I can understand the possible need for this power. Wouldn't it be better, though, to give the Commission power to regulate these contracts to the extent necessary to insure compliance with traffic provisions, tariff provisions, such as a fuel company's pass-through, that on the one hand the Commission could insure adequate compensation for all cost used to justify their rate increases which would be passed through to the owner-operators and, on the other hand, limit the Commission's power to regulate contracts inasmuch as such contracts are part of the tariff requirement imposed upon a regulated carrier?

Mr. STAFFORD. Well, in a general way, I have some concerns with—if I understood all you were saying there—this would put us in the business of regulating their contracts. Of course, what we are really asking for is the right to enter into a contract already made for one specific purpose only which we did by our actions last year in which there is some possibility that we can do this legally.

We have never been told by the courts that we can't do it, but neither have we been told by the courts that our action was proper. And so what we are really asking for here is just—

Senator HARTKE. What you are asking for is immunity.

Mr. STAFFORD [continuing]. your blessing. Yes, sir.

Mr. KAHN. Ratification of actions that the Commission took last year and assurance that the Commission would have that jurisdiction available to it in future emergencies.

Senator HARTKE. In other words, to avoid a possibility of court action.

Mr. STAFFORD. Yes, sir.

Senator HARTKE. Apparently, the goal of the freight forwarder bill is to permit railroads to lower their rates to give a break to traffic shipped by the freight forwarders. Why should other shippers have to cross-subsidize the movement of small shipments by railroads in order to keep the railroads solvent?

Mr. STAFFORD. I don't really look at that as being a proposal that is going to require cross-subsidization. We are not talking about the

railroads going below cost in any contract even though we recognize the concern that some may have that you are giving the possibility of considerable economic power to a freight forwarder who might conceivably try to force the tariff or the rate down.

But, of course, we have retained unto ourselves in this bill the right to review and recommend either dropping or change. Plus we say that the rate must be just and reasonable.

Senator HARTKE. All right. The difficulty that we are faced with is most of these bills do seem rather sensible on their face.

Mr. STAFFORD. I think you have to add them all together to find the value of the bills. Energy saving and looking towards benefiting the small shippers.

Senator HARTKE. Thank you, Mr. Chairman.

[The statement follows:]

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

Mr. Chairman, Members of the Subcommittee: I appreciate the opportunity to be here today to testify on behalf of the Commission in support of S. 2083 through S. 2086, four bills introduced by Chairman Hartke at our request. These bills were forwarded to the Committee by my letter of May 6, 1975 and were discussed and published in the Commission's report in Ex Parte No. 301, *The Energy Crisis and the Need for Emergency Transportation Legislation*, 349 I.C.C. 699. A copy of that report is submitted herewith for the record.

We have proposed these bills as part of our ongoing effort to promote a more energy-efficient surface transportation system. We believe that the four bills taken together will lead to greater energy efficiency in all modes of surface transportation, and will have a number of other beneficial aspects, which will be described herein. The first three bills I will discuss—S. 2083, S. 2085, and S. 2086—are closely interrelated. S. 2083 authorizes railroad-freight forwarder contracts; S. 2085 establishes an expedited procedure for the filing of pooling agreements; and S. 2086 authorizes the Commission to prescribe joint rates and through routes. Overall the three proposals dovetail to promote an integrated surface transportation system, which is more efficient both from an energy and service standpoint, particularly for small shippers and shippers in out-of-the-way locations. The fourth bill, S. 2084, is intended to aid the Commission in averting a transportation emergency caused by escalating fuel costs, such as the massive truck strike in the winter of 1973-74.

S. 2086

S. 2086 is perhaps the single most significant of the four bills. It would amend section 216 of the Interstate Commerce Act to authorize the Commission, after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property, and between those carriers and carriers by rail, express, and water. It is intended to produce a more comprehensive surface transportation system offered to the shipping public at lower cost and with a greater degree of energy efficiency.

For purposes of clarity, a "through route" is an arrangement between two or more connecting carriers of the same or different mode for the continuous transportation of freight or passengers. A "joint rate" is one published by agreement or arrangement for transportation over the line or routes of two or more connecting carriers of the same or different modes. It differs from the mere aggregate combination of two or more local rates in that it is one consolidated rate for the through movement and is filed in a single tariff. The Commission already has the authority to require the establishment of intramodal joint rate/through route arrangements between rail carriers, water carriers and motor vehicle passenger carriers and intermodal arrangements between rail carriers and water carriers. Thus, this proposal serves to eliminate the existing unevenness in the regulatory framework by extending the

Commission's authority to intramodal arrangements among motor carriers and intermodal arrangements between such carriers and carriers by rail, express, and water.

The most obvious energy benefit of this bill is that it will tend to facilitate "piggyback" service, whereby motor carrier trailers move on railroad flatcars. Historically, the Commission has encouraged the development of piggyback service and it grew rapidly following Commission sanctioning. Piggyback combines the advantages of movement by truck with the long-haul economies of rail transport, under conditions which hold total expense to a minimum.

There are various types of piggyback service, but the one we are concerned with here is what is known as plan V, which involves joint rate, through route coordination of rail and motor carriers. Plan V offers important energy saving opportunities because it involves at least partial utilization of rail service in combination with motor carrier service, but unfortunately has lagged behind the development of other types of intermodal service. In view of the growing need to conserve fuel, it would seem essential that all steps be taken to encourage the development of this service. It is for this reason that the Federal Energy Administration has recommended to the Commission that it "encourage Congress to favorably consider pending proposals to require the filing of joint rates and through routes" ("Project Independence Report," November 1974, at Appendix, page 111). Clearly, the motor-rail combinations that could be required if this section is enacted, would, in many cases, produce a more energy-efficient means of transportation than the all-motor movements that it would replace.

Of course, energy savings are not the only benefits of increased use of piggyback service. Generally, it expands the type of surface transportation service available to the public through a fully coordinated transportation system. It combines the service advantages of motor carriers with the long-haul volume economies of rail and water carrier service, thus producing a more efficient and less expensive means of transportation. S. 2086 would serve to promote such efficient operations. For example, it would allow the Commission, absent carrier initiative, to establish an integrated transcontinental motor-rail-motor route which would focus traffic on an efficient short route. It could take advantage of the flexibility of motor carrier service as a feeder pickup/delivery system in the Northeast corridor city area and focus such feeder service to an ultramodern concentration terminal on the main line of a well-maintained East/West rail carrier. With volume focused to such a route, solid blocks or trainloads of trailers could be dispatched over the Eastern railroads connecting directly with a Western carrier through a central West Coast terminal for delivery by motor carrier to dispersed destinations on the West Coast. Such concentration evolving from the Commission's power to direct point rate/through route operations could create a highly efficient transcontinental service.

The Commission is fully apprised of the potential benefits of piggyback operations. Recently, its Blue Ribbon Staff Study Panel recommended (Recommendation No. 36):

"That by the use of its rulemaking power for prospective licensing the Commission establish in advance criteria whereby motor carriers will be allowed to participate in a special certificate of public convenience and necessity for general commodities moving in TOFC where: (1) in movement between the termini, the motor portion consists of 20 percent or less and the rail portion is 80 percent or more of the total distance involved; (2) the motor movement in no event exceeds 400 miles; and (3) the railroads, through the motor carrier's submittal, indicate a willingness to enter into through routes and joint rates on TOFC traffic. The tariff containing each joint rate or charge should specifically state the portion of the rate or charge accruing to each mode."

This idea of a generic certificate of public convenience and necessity for piggyback operations is presently receiving serious consideration by the Commission. But it is somewhat questionable whether the proposal could have any substantial impact on the reorienting of traffic patterns or the encouragement of intermodal transportation unless the Commission has the authority to require carriers to enter into the joint-rate, through-route arrangements contemplated by the proposal. Without such authority, any recalcitrant railroad could defeat the whole purpose of the simplified motor carrier certification process.

S. 2086 would also have energy benefits through its promotion of intra-modal motor carrier joint rates and through routes. It would authorize the Commission to require the establishment of intramodal joint rates and through routes where no reasonably efficient through route presently exists, and could help to eliminate movements involving inordinate circuitry. It is anomalous that the present statutory authority of the Commission authorizes it to require energy-efficient joint rates and through routes among the more energy-efficient modes of surface transportation such as railroads and water carriers, but not among carriers of what is considered in most instances the least energy-efficient surface transportation mode, motor carriers. S. 2086 would remove that anomaly.

In addition, S. 2086 could be very helpful in coping with the Nation's serious small shipments problem. It is the shippers that tender small or infrequent shipments who most often find themselves without satisfactory single- or joint-line motor common carriers service. These shippers, generally located in smaller, out-of-the-way communities, are often bypassed by the long-haul truckers and hence have been disadvantaged by our inability to order through route and joint rate service.

The Commission has sought to alleviate the small shipments problem by insisting that common carrier service available to the shipping public is not arbitrarily reduced by tariff publications cancelling joint rates and through routes. While the Commission has no statutory authority to require the establishment of joint rates, through routes and interchange agreements, it has determined that the cancellation of such arrangements is unlawful, if the resulting rate is not shown to be just and reasonable. The Commission's efforts in this area have been upheld in the courts.¹

Indicative of the problem of carriers' unwillingness to participate in joint rate, through route arrangements is the fact that in Fiscal Year 1974, the Commission suspended 100 tariffs attempting to cancel joint rates and through routes. Of that number, 67 tariffs were voluntarily withdrawn after suspension and 33 were disallowed by the Commission following investigation.

In addition, the Commission has adopted a policy of encouraging the use of through routes and joint rates to promote the transportation of small shipments and foster a unified motor carrier system.² To further this policy, the Commission regularly requires that when a tariff cancelling a joint rate and through route is filed, it be supported by full disclosure of the justification for the cancellation. A copy of the letter used to notify carriers of these requirements is attached hereto as Appendix A.

Although these actions have had some effect on the maintenance of joint-rate, through route service, announcing policies and patching holes are no substitutes for affirmative authority. We continue to remain concerned that small shippers in geographically isolated areas do not receive an adequate level of service. Our efforts in this regard would be greatly aided if we could require the establishment of joint rates and through routes that would provide small shippers with a reasonably priced, efficient service.

The joint rates and through routes that would be instituted under S. 2086 would also benefit shippers in that rather than having to deal with a number of carriers in order to receive needed interline service, the shippers would be required to deal with only one carrier, search only one tariff to find the single applicable rate, issue only one shipping order, make only one call to trace a shipment, and pay only one freight bill. Moreover, joint rates are generally lower than a combination of local rates of connecting carriers not participating in such through service arrangements.

While S. 2086 has the potential to bring considerable benefits to the shipping public, it also insures that the management prerogatives of the carriers involved will not be unduly hampered. The bill provides that the Commission may establish joint rates and through routes only after "full hearing," thus giving the carriers involved full opportunity to present any reasons why the establishment of a given through route or joint rate is not appropriate. Carriers are generally allowed to operate to the full extent of their authority.

¹ *Interchange between McLean Trucking and Manning*, 340 I.C.C. 38 (1971) aff'd. sub nom. *McLean Trucking Company v. United States*, 349 F. Supp. 349 (1972) aff'd. per curiam, 409 U.S. 1121 (1973).

² *Restrictions on Service by Motor Common Carriers*, 119 M.C.C. 691, 703 (1974). petitions for reconsideration are pending.

They are protected from being required to participate in a through route which entails their embracing in such route substantially less than the entire length of their own routes which lie between the termini of the proposed through route. Moreover, the Commission is precluded from establishing through routes and joint rates for the purpose of assisting a carrier to meet its financial needs and is empowered to cancel such through routes and joint rates because of undue delinquency in the settlement of divisions. In sum, these provisions provide adequate protection for the legitimate concerns of the motor carriers, while at the same time, preserving the benefits to the public that this bill would bring.

S. 2085

Closely related to S. 2086 is S. 2085, which allows for expeditious Commission approval of smaller pooling arrangements that contribute to efficient transportation and energy savings but do not unduly restrain competition. Presently, section 5(1) of the Interstate Commerce Act provides that only "after hearing" and after a finding that a pooling agreement "will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition" can the Commission approve such an agreement.

Basically, "pooling" is a division of traffic or earnings among carriers, which may be sanctioned by the Commission after conducting a hearing under section 5(1) and making the findings described above. Pooling has recently been employed by motor carriers in order to enable them to serve remote and sparsely populated areas where the level of traffic does not justify full-scale competitive efforts by each of the carriers authorized to serve the territory, and where the result often is a waste of resources and a lack of adequate service due to a level of competition which the traffic cannot reasonably bear. A classical arrangement is that approved by the Commission, *Consolidated Freightways Corp. of Delaware, Pooling* 109 M.C.C. 596 (1971), where the Commission approved a pooling agreement under which a locally-based motor carrier picks up and delivers shipments at rural Oklahoma communities in the area between Oklahoma City and Dallas, as agent for several long-haul carriers which are authorized to serve these points but find it uneconomical to do so on a regularly scheduled basis. Under the pooling arrangement as approved by the Commission, the local carrier interlines shipments with the long-haul carriers at certain principal points along the main Oklahoma City-Dallas route, and revenues are divided on an agreed basis. In this way, the long-haul carriers need not serve points competitively where the traffic does not justify it, and the local carrier, acting on behalf of all the carriers, is able to provide a more efficient and responsive service than would be available from any individual carrier.

Pooling has long been recognized as a means of improving service in selected instances. It was prohibited under the Interstate Commerce Act prior to 1920 as being inconsistent with the antitrust prohibitions, but as early as 1892 the Commission observed that there was substantial support for Commission authority to permit pooling agreements found to be in the public interest in order to eliminate wasteful competition in the rail industry. See *Sixth ICC Annual Report* (1892), at pages 47-55. Pooling was utilized regularly by the Government during its operation of the railroads in World War I.

The basic outline of present-day section 5(1) dates from the Transportation Act of 1920 (41 Stat. 480), which established the application procedures now in effect for pooling arrangements. Section 5(1) initially applied only to railroads, but motor and water carriers were brought in by the Transportation Act of 1940 (54 Stat. 905). It is clear that in 1920 Congress specifically recognized the service advantages to be gained from pooling in certain instances, based upon the wartime experience. Accordingly, the House Committee on Interstate and Foreign Commerce, in reporting out the House version of the soon-to-be-enacted Act of 1920, stated that "Your committee, therefore, permits . . . pooling of traffic, earnings, or facilities upon application to the Commission

and its findings that these will be in the interest of better service to the public or economy in operation, or otherwise be of advantage or convenience to the commerce of the people."³ The Commission, referring to the World War I experience some years later, observed "Under such operations it was found that certain pooling or division of traffic and revenue, although inherently restraining competition to some extent, resulted in more economical operations for the carriers and provided a better service to the shipping public . . ."⁴

In recent years, and particularly since the *Consolidated Freightways* decision referred to earlier, the Commission has developed a standardized body of principles regarding pooling which is designed to encourage maximum utilization of the potentialities of pooling and to protect the public interest at the same time. Thus, since approval of the *Consolidated Freightways* pooling agreement, other agreements for motor carrier traffic pooling have tended to follow the guidelines of that decision. First, pooling arrangements will only be approved where the pooling carriers are in *bona fide* competition; the Commission does not allow pooling to become a substitute for previously non-existent or inadequate service by a participating carrier.⁵ Second, agreements approved since the *Consolidated* case have had to include a provision allowing for subsequent entry into the pool by other carriers having authority to serve the area, to eliminate any possibility for unfair competition between pool and non-pool carriers. Third, the Commission has included in its orders approving pooling agreements a provision allowing for petitions to reopen the proceeding on the grounds that the arrangement has not improved service to the public or resulted in operating economies, or that it has unduly restrained competition. This right of continuing supervision arises from section 5(9) of the Act, which enables the Commission to enter such supplemental orders in a section 5(1) proceeding "as it may deem necessary or appropriate." Finally, it has been established that a pooling agreement must provide that a carrier may withdraw from the pool only after 30-days' notice to all other participants and the Commission, which gives the Commission time to reopen the proceeding and re-examine the arrangement where circumstances warrant.

Despite the Commission's encouragement of pooling arrangements and its development of standards which can be readily applied to new situations, we have become concerned that the procedural requirements of section 5(1), and the necessary delays incident to the formal adjudicatory process, required thereby, have impeded full utilization by carriers of pooling possibilities. At the same time it recently has become clear that more pooling can lead to substantial energy savings as well as improvements in service, particularly since pooling of service among motor carriers is most often implemented in remote, sparsely populated areas, where the distances are great but the volume of traffic too small. In recognition of these possibilities, the Federal Energy Administration, in its recent "Project Independence Report" (November 1974), at page 110 of the Appendix, specifically encouraged the Commission to promote motor carrier pooling arrangements.⁶

The benefit of a simplified pooling procedure is a difficult matter to quantify because pooling is a voluntary, carrier-initiated act, and statistics are not available which would reliably indicate any specific optimum level of energy savings to be gained through procedural simplification. However, the *Consolidated Freightways* proceeding illustrates the kind of energy-saving potential which exists and should be tapped: in that case, no fewer than eight long-haul carriers were authorized to serve, and had a common-carrier obligation to serve, a number of small Oklahoma communities which could be reached adequately by one locally-based carrier under the pooling arrangement. Moreover, and equally important, efforts to simplify the procedure for approval of pooling arrangements will save carriers time in implementing agreements

³ H. R. Rep. No. 456, 66th Cong., 1st Sess. (Nov. 10, 1919). This passage of the report also deals with control, merger, and other features of present-day section 5 of the Act.

⁴ *Terminal Carriage Corp.—Pooling*, 70 M.C.C. 199, 203 (1956).

⁵ *T.I.M.B.—DC, Inc., Investigation and Revocation of Certificates*, 113 M.C.C. 897, 902 (1971).

⁶ The energy-saving aspects of pooling are usually mentioned in connection with motor carriers, and the Commission does not believe that comparable energy savings are likely to be effected in the other modes. However, the service advantages of pooling apply to all modes. A recent example in the rail area is the *Rail Box* case, 347 I.C.C. 862 (1974), where the Commission approved an agreement between a number of railroads and two subsidiary car companies for the pooling of car service and revenues, in order to better promote efficiency in the provision of car service.

and money in pursuing applications through the administrative process. These are substantial benefits in their own right, and entirely appropriate at a time when the time and expense of the administrative process are causing considerable concern in many quarters.

The proposed amendment of section 5(1) would establish a procedure roughly analogous to the suspension procedure the Commission is authorized to follow in rate cases. It would require carriers to file proposed pooling agreements with the Commission 30 days or more prior to the agreement's effective date. Then the Commission would determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement will unduly restrain competition. If the Commission's preliminary answers to these two inquiries are negative, then the Commission, prior to the agreement's effective date and without hearing, shall approve the agreement. But if either of the Commission's preliminary determinations are affirmative, the Commission must suspend operation of the agreement and hold a hearing on it.

Then, as under the existing statute, the Commission can approve the agreement only to the extent that it finds that the agreement will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition.

The key to this proposal is its encouragement of carriers to implement energy-saving pooling arrangements wherever possible by authorizing summary, informal approval of a substantial proportion of them.

The suspension-type procedure allows the Commission to take a preliminary look at the pooling arrangement, and if it does not appear to be of major consequence to the nationwide transportation system and does not appear to restrain competition unduly, to authorize the agreement to become effective 30 days after its filing. At the same time, it retains for the Commission the necessary authority to review fully major pooling arrangements and those agreements that may well have undue anti-competitive effects.

In sum, pooling agreements can lead to substantial energy savings as well as definite service improvements. This proposed amendment to section 5(1) has the considerable benefit of meaningfully promoting pooling without sacrificing the public interest in adequate competition. It would also bring about regulatory simplification in a situation where full hearing procedures are no longer warranted in all instances. The Commission strongly believes that the enactment of S. 2085 is highly appropriate in this time of increasing energy costs, periodic energy shortages, and widespread concern over the procedural requirements of the regulatory process.

S. 2083

Like S. 2085 and S. 2086, S. 2083 is intended to help produce a more efficient, coordinated surface transport system. S. 2083 would advance this purpose by encouraging less-than-carload shippers to utilize energy saving rail service through the medium of railroad-freight forwarder contracts. In order to put this proposal in its proper context, I would like to describe briefly the history and status of freight forwarders.

Freight forwarders are common carriers under part IV of the Interstate Commerce Act, performing transportation services in their own name and under their own responsibility. The traffic they handle consists primarily of less-than-carload or less-than-truckload shipments which they consolidate and tender in volume to other carriers for actual movement. Because the forwarders' shipments are tendered to underlying carriers in carload, truckload, or volume quantities, they can move, in the aggregate, at a lower rate than would the individual, unconsolidated shipments. The forwarders' profit is the difference between the rates they charge their customers for the movement of their small shipments and the volume rates the forwarders pay to the common carriers for the performance of the underlying transportation service. Except within their terminal area, forwarders may not use their own vehicles to perform the underlying transportation.

Traditionally, forwarders have been treated as common carriers with regard to the shippers whose traffic they undertake to transport, and as shippers with regard to the common carriers to whom they tender the traffic for actual

movement. The hybrid nature of the forwarders' service has caused definitional problems throughout their history.⁷ Early in this century, the forwarders considered themselves to be ordinary shippers, and the Commission and the courts agreed. However, with enactment of the Motor Carrier Act in 1935, freight forwarders sought "grandfather" authority as motor common carriers. They were denied such authority by both the Commission and the courts and were precluded from establishing joint rates and through routes with motor carriers.⁸ In 1942, freight forwarders were brought under Commission regulation by the enactment of part IV of the Interstate Commerce Act. The forwarders generally supported this action, expecting that if made subject to the Act, they would be allowed to enter into negotiated rate arrangements with other carriers subject to the Act. However, the new statute perpetuated the treatment of forwarders as shippers in their dealings with underlying carriers and made no provision for forwarders to enter into joint rate/through route arrangements with railroads or motor carriers except in limited situations.

In 1950, two relevant changes were made in part IV of the Interstate Commerce Act. First, the statutory definition of a freight forwarder (49 U.S.C. 1002(a)(5)) was altered to make it clear that a freight forwarder is one who holds itself out to the general public as a common carrier, but the underlying legislative history emphasized that merely conferring common carrier status upon forwarders did not accord them the right to establish joint rates with other common carriers.

The second statutory change, however, created what in effect was an alternative to joint rate authority, in that it authorized freight forwarders to enter into contracts with motor common carriers subject to certain conditions and requirements. This modification, embodied in a new section 409, is still in effect. Pursuant to this authority, thousands of freight forwarder-motor carrier contracts and accompanying rate schedules are filed every year. For example, in Fiscal Year 1975, 18,443 section 409 contracts, or amendments thereto, were filed with the Commission.

Since 1950, legislation has been introduced on several occasions, which would extend the coverage of section 409 to freight forwarder-railroad rates or which would otherwise allow railroads to offer special rate arrangements with freight forwarders. In part to study the effects of such legislation, the Commission instituted a broad investigation into the status of freight forwarders, which resulted in its comprehensive report entitled *Ex Parte No. 266, Investigation Into the Status of Freight Forwarders*, 339 I.C.C. 711 (1971). In that report, we determined that we should support legislation such as that embodied in S. 2083.

In reaching this decision, we noted that freight forwarders, who are the only real competitors of motor carriers for the transportation of most small shipments, had been unable to capture new traffic available from the virtual discontinuance of rail less-than-carload service. We noted that forwarding "is at best a static industry." (339 I.C.C. at 792). In determining that we should support legislation like S. 2083, we indicated our view that it was necessary "for forwarders to remain viable and to perform an even more important role in the transportation of small shipments" and our further belief that "the public will benefit from this type of legislation through expanded forwarder service and lower rates." (339 I.C.C. at 797). We emphasized that the fact that such legislation would provide increased competition for the transportation of small shipments was a strong factor weighing in its favor "since additional needed services may thereby be made available to the shipping public and it is possible that prospective competition might move much traffic which the motor carriers are refusing to handle for any numerous reasons." (339 I.C.C. at 795).

These potential benefits of the proposed legislation remain and, indeed, have grown substantially more important in view of the need to reduce energy consumption in surface transportation. If in fact, S. 2083 has the intended

⁷ A complete discussion of the history of freight forwarders appears in the Commission's proceeding entitled *Ex Parte No. 266, Investigation Into the Status of Freight Forwarders*, 339 I.C.C. 711, 716-733 (1971).

⁸ *Acme Fast Freight, Inc., Common Carrier Application*, 2 M.C.C. 415 (1937), 8 M.C.C. (1938), *aff'd. Acme Fast Freight v. United States*, 30 F. Supp. 968 (S.D.N.Y. 1940), *aff'd. per curiam*, 309 U.S. 638 (1940).

effect of increasing the number of small shipments moving by rail through the tender of consolidated shipments by freight forwarders, the result will be a shift of small shipments traffic from motor carrier rail service, which in most instances, is more energy-efficient. Although under this plan, motor carrier service generally would still be utilized within terminal areas, the overall effect would be less use of motor carriers and more use of railroads.

Freight forwarder-railroad contracts could have other energy saving benefits. Under special contractual arrangements, the forwarders could enable the railroads to avoid empty car movements by loading refrigerator or special purpose cars in the empty direction. Any measure such as this, which holds the potential for reducing the empty mileage of special purpose cars should be carefully considered.

In this regard, we should emphasize that since S. 2083 merely permits the voluntary making of agreements between railroads and freight forwarders, we cannot be totally convinced that its full potential will be realized. Thus, as we stated in Ex Parte 266 (339 I.C.C. at 796) :

"At the same time, we must acknowledge that we are not able to predict with certainty the extent of the benefits to carriers and shippers as a result of the proposed change. We do not know, for example, to what degree the railroads would exercise the proposed permissive authority for establishment of special rates. There is also a question as to how much of the rate benefits would be passed on to shippers."

In view of this uncertainty concerning the effects of this proposals, we have included a provision in S. 2083, which makes the authority of freight forwarder railroad contracts effective for only a two-year period. During this period, we intend to study the effects of the amendment and consistent with its provisions, to provide Congress a report six months prior to the end of the two-year period on the effect of the amendment and whether it should remain in effect, terminate, or be modified. We have reduced the time period for this experiment from three years, as set forth in prior bills, to two years because we believe the two-year period is sufficient to ascertain the effects of the amendment.

Finally, in light of the fact that they have generated some controversy, we should mention the words "or any shipper," which appear in S. 2083 (page 2, line 8) and which preclude any forwarder-rail contract that causes undue preference or prejudice to any shipper, as well as to any participant or other freight forwarder. As we noted in Ex Parte No. 266 (339 I.C.C. at 794), there is some danger that forwarders will be able to drive their rates down to an unreasonably low level and that other shippers on the railroad in question, in effect, would have to make up the difference. The added language was intended to preclude this possibility.

We understand the forwarders' complaint that this provision may provide an obstacle to the development of forwarder-railroad contracts, but we do not agree that it entirely precludes contracts which offer benefits different than those offered to shippers. The prohibition is only against "undue" preference or prejudice. Although we do see that this proviso may be an impediment to the implementation of some contracts, we believe that on balance, its inclusion in the bill is appropriate.

In this regard, we should note our view that the large shipper who tenders a trainload of small shipments is performing a transportation service different from a freight forwarder assembling a trainload of small shipments from scattered origins. The latter service fills a distinct need for economical and efficient transportation and has potential for improved service to small communities.

S. 2084

The purpose and effect of S. 2084 is to insure that if necessary to avoid a transportation emergency, the Commission may impose pass-through requirements on carriers sufficient to compensate adequately owner-operators for fuel cost increases. The proposal accomplishes this by adding a subparagraph (3) to section 204 (e) of the Act. This subparagraph would provide that when the Commission finds "that a transportation emergency exists or is anticipated," it may promulgate regulations concerning the terms of owner-operator contracts sufficient to insure that "the party, who under the contract or lease is responsible for the purchase of fuel, is adequately compensated by the terms

of such lease or contract for fuel costs." We emphasize that the proposal would not give the Commission any authority to regulate, under normal circumstances, the amount of fuel compensation to be paid to owner-operators. But it would allow the Commission to regulate fuel compensation to owner-operators in order to avert future transportation emergencies brought about by inordinate fluctuations in the price of fuel. Given the present unstable world fuel situation, such fluctuations seem almost inevitable, and thus this authority could prove essential.

There are an estimated 90,000 owner-operators operating throughout the country. Ordinarily owner-operators have contracts with regulated motor carriers under which the owner-operators are compensated by division of the revenue earned by the motor carrier for performing the transportation. For example, the contract could provide that the owner-operator will receive 75 percent of the applicable line-haul rate of the motor carrier, and generally from such proceeds, the owner-operators must pay for the fuel and other operating expenses of running their rigs. It was the lack of an adequate pass-through provision in these contracts for the drastically escalated fuel costs brought about by the mid-East oil embargo, which led to the massive truck strike in February 1974. This strike, which brought violence and economic deprivation to large parts of the country, was in large part resolved by the actions taken by the Commission to insure adequate fuel compensation. In *Ex Parte* No. MC-43 (Sub-No. 2), the Commission promulgated a rule requiring the modification of all contracts between carriers and owner-operators to provide that the compensation paid to the owner-operators be increased by an amount equal to the fuel cost increases from May 15, 1973 to the extent that such increases were authenticated by receipts and not otherwise compensated. Contemporaneously, the Commission issued Special Permission No. 74-2525, which allowed the carriers to file and make effective on one day's notice, a tariff surcharge, not to exceed 6 percent, to the extent necessary to offset the higher diesel fuel prices. The order further provided that this surcharge be passed through in full to the person actually responsible for the payment of fuel charges.

The crucial nature of these actions and the seriousness of the crisis is illustrated by the passage by Congress of Joint Resolution 185, which authorized the Commission to make its final order in MC-43 (Sub-No. 2) effective immediately, rather than after the 30-day statutory period. The discussions on the floor of both the House and Senate emphasized the extreme emergency confronting the nation and the vital importance of timely Commission action to resolve the crisis.⁹

These orders, particularly the 6-percent surcharge order, were instrumental in bringing the strike to an end. Subsequently, in *Ex Parte* No. MC-92, the Commission faced the delicate task of phasing out the surcharge, while incorporating sufficient fuel compensation in the underlying rate structure to prevent any recurrence of the strike. It accomplished this by orders which required the cancellation of the surcharges, authorized certain rate increases to replace them, and required that a certain percentage of the rate structure, which represented proven fuel cost increases be paid directly to the owner-operators with the normal contractual percentage applying to the balance of the rate.

Although the Commission took these actions because they were necessary to end the truck strike and prevent its recurrence, the question of whether or not the Commission has the statutory authority to impose the pass-through requirements contained in these orders has not been definitively resolved by any court. We believe that the general provisions of section 204 of the Act give the Commission the authority to regulate the owner-operators' fuel compensation in an emergency, but it also has been (we think, incorrectly) argued that since section 204(f) specifically delineates the owner-operator activities that the Commission may regulate and does not mention regulation of fuel compensation, Congress did not intend to give the Commission that authority.

The court that heard the appeal from the 6-percent surcharge order did not rule on the jurisdiction question since it ultimately dismissed the suit on the grounds of mootness, *National Small Shipments Conference v. United States*,

⁹ See 120 Congressional Record No. 11, pages 1313-1317 (February 5, 1974) and 120 Congressional Record No. 13, pages 623-633 (February 7, 1974).

C.A. No. 74-C-1265 (S.D.N.Y. 1974). The MC-43 (Sub-No. 2) decision was never appealed because its effect was largely superceded by the 6-percent surcharge authorized in Special Permission No. 74-2525.

The MC-92 orders were appealed twice. One Court ruled from the bench that the Commission has jurisdiction to vary the fuel compensation provisions of owner-operator contracts in a transportation emergency, but the Court never issued a written opinion, *Irregular Route Carriers Association v. United States*, C.A. No. 4-72214 (E.D. Mich. 1974). In the other appeal, the Court overturned the MC-92 orders and remanded the case to the Commission, but it did not rule on the extent of the Commission's jurisdiction. *Refrigerated Transport Corp. v. United States*, C.A. No. C 74-1674A (N.D. Ga. 1975).

Because the Commission's jurisdiction in this area is unclear, it is important to have it spelled out in order to avoid any further litigation, particularly since the relief we would grant is emergency in nature and would lose its effectiveness if tied up in litigation. In presenting this proposal to Congress, we emphasize our belief that we already have the statutory authority, but that a need exists to have it spelled out more clearly.

It should also be pointed out that this measure is timely given the present instability in fuel prices. The Commission has instituted Ex Parte No. 311, *Effect of Modifying Proclamation No. 3279 and Other Anticipated Energy Conservation Measures on the Operations of Carriers Subject to the Interstate Commerce Act*, for the purpose of devising a means of permitting the expedited recovery of fuel cost increases brought about by an import tax or alternative measure. Since owner-operators generally pay all fuel costs, there is a possibility that the Commission will have to impose the same kind of pass-through requirements that it has imposed in the other proceedings discussed herein. If that is the case, S. 2084 would become imperative in order to avoid lengthy litigation which could preclude timely implementation of the new orders.

That concludes my prepared remarks. We would be happy to answer any questions you may have.

Attachment.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C.

GENTLEMEN: The Commission, and this bureau, is concerned with the increase in the number of cancellations being published of joint routes and rates, and of interchange points in routes, since the issuance of the Commission's last report in Ex Parte MC-77 (Sub 1), *Restrictions on Service by Motor Common Carriers*, 119 M.C.C. 691.

The publication indentified in the subject of this letter provides for a cancellation for your account, although it is not indicated it was directed by you or by the other carrier, or both. The Commission has an obligation to see that adequate service to the public is not endangered. It has the power under Section 216(g) of the Interstate Commerce Act to suspend cancellations of joint rates and routes, and to enter into an investigation of the matter, acting either upon a petition seeking such action, or upon its own motion.

We ask that you write to this office by return mail stating the reasons justifying the cancellation of joint routes and rates for your account in this publication. If you were not the carrier requesting the publishing bureau to cancel, we wish to have your statement to that effect and your comment on any disadvantage or detriment to you and to shippers and consignees on your line that would ensue from this becoming effective.

If you were not the one requesting the cancellation, you should be aware that you have the right to object by timely filing a petition with the Commission for the suspension of the cancellation, giving your reasons.

In replying, please refer to this letter by date and file number. If the date you receive this does not permit our receiving a letter reply twelve days in advance of the effective date, a telegram or telephone call will do.

Very truly yours,

CHARLES E. THOMPSON,
Chief, Tariff Examining Branch.

[The following information was subsequently received for the record:]

Served June 13, 1975

30782

 INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 301

 THE ENERGY CRISIS AND THE NEED FOR
 EMERGENCY TRANSPORTATION LEGISLATION

Decided May 9, 1975

Upon consideration of views, arguments, and representations of the parties, and after extensive staff study, certain conclusions reached concerning the need for emergency energy legislation for the surface transportation industry.

Charles W. Adams, C. Adkins, Lawrence F. Altaffer, Jr., Earl W. Beck, Don A. Boyd, W. H. Bryant, T. M. Calder, Robert L. Calhoun, W. C. Collins, W. G. Daly, Alfred S. Daviau, A. P. Davis, Jr., J. F. Day, Bruce E. DePree, John L. Dodge, J. M. Eakin, Samuel W. Earnshaw, William J. Fellers, Bert M. Fischer, James Fitzpatrick, W. J. Ford, H. Richard George, Harry D. Gobrecht, Jack Goodman, Betram I. Gordon, Donald G. Griffin, Eugene F. Gronbolt, Joseph A. Guard, Vernon J. Haan, J. M. Hagerty, David Hahn, Granville Hahn, W. P. Hartis, Jr., John E. Harvey, Allan B. Hegg, E. Stephen Heisley, Richard J. Helm, William J. Hull, James S. Jennison, Richard E. Johann, Howard W. Jones, Terrence D. Jones, Harold L. Karr, Carl H. Kraus, Charles F. Kuhlman, J. A. Layton, Joel A. Leavitt, Victor A. Long, C. R. Looney, D. R. Macdonald, Marvin McClam, Thomas McGrath, Lyman McLane, Frank A. McPherson, M. G. Mitchell, William J. Moshofsky, J. Harmon Moss, Wm. B. Moss, William J. Mueller, E. F. Mundy, Robert W. Murphy, Jr., J. P. Nelligan, A. D. Nelson, H. E. Overmire, Jon M. Patterson, B. E. Phillips, J. T. Pollock, Patrick W. Pollock, John G. Reid, Robert D. Rierison, K. D. Robinson, Carl Running, Abe Schippers, David M. Schwartz, Milton D. Semrau, Ernest Sigeti, William K. Smith, Harold E. Spencer, Paul Stepner, R. J. Sullivan, James M. Taylor, John P. Thomspson, Dale Thurston, G. C. Turner, J. E. Turner, John R. Van Antwerp, Alex J. Viator, Robert J. Walsh, R. W. Walton, E. R. Wheeler, Jr., A. Milton Whiting, Bill Wiley, Billy Williams, Grover C. Willis, George C. Willis, George L. Wilson, Lynes D. Wobken, D. J. Wollenhaupt, and J. P. Zumwalt for individual shippers.

Eugene D. Anderson, Carl E. Bagge, William L. Bailes, Jr., Earl W. Beck, Martin W. Bercovici, William H. Borghesani, Jr., Cecil L. Brennan, J. A. Bryan, Jess J. Butcher, Charles J. Carey, Murrel L. Dean, John F. Donelan, John W. Dunning, A. Thomas Easley, Ronald D. Eastman, Ernest Falk, Russell H. Hopkins, Joseph E. Keller, George W. Koch, Dwight L. Koerber, Hughe Kohlmeyer, Ronald K. Kolins, John G. McGowan, John K. Maser III, Lyman McLane, Jeffrey W. Napier, Robert H. North, Alvin E. Oliver, Roy E. Olson, Robert Ricker, Carl Schwensen, Richard D. Snyder, Daniel J. Sweeney, Dale Thurston, Guy N. Verger, Charles A. Washer, John C. White, and Frederic L. Wood for shippers associations.

Earl W. Beck, Lawrence Berman, R. Edwin Brady, Charles C. Coon, Scott H. Elder, Lewis W. Emerich, Fred G. Favor, Thomas R. Kingsley, Carl V. Lyon, Giles Morrow, Keith G. O'Brien, Vernon Patton, Roland Rice, Wesley A. Rogers, Richard R. Sigmon, James R. Smith, and Charles A. Webb for carrier associations.

Baxter Ward for the Board of Supervisors, county of Los Angeles, Calif.

Gordon P. MacDougall and Israel Packel for the Commonwealth of Pennsylvania.

A. G. Grimm for the Missouri Department of Agriculture.

James A. Graham for the North Carolina Department of Agriculture.

Stuart G. Meister and James C. Schultz for United States Department of Transportation.

John A. Harris, E. F. Heitz, Ronald W. Hill, and Paul L. Mills for United States Department of Agriculture.

Sumner J. Katz and Paul Rodgers for the National Association of Regulatory Utility Commissioners.

E. V. Dorsey for the United States Postal Service.

Albert P. Barber, E. J. Biagioli, Michael T. Boehler, Louis J. Carque, Sam Cerniglia, R. A. Dombrowski, Laurence A. Elgin, W. B. Fouts, O. J. Garrison, Jr., H. W. Hontz, S. Harrison Kahn, Alvin T. La Fond, William C. McNeal, F. A. Mechling, James J. Nathanson, Clifford J. O. Nelson, James P. O'Donnell, Gregory M. Rebman, John F. Spickerman, Archie H. Stevens, Jr., Daniel C. Sullivan, Joseph P. Tuohy, and Gene T. West for individual carriers.

A. Alegria, Wm. R. Allen, Jr., C. W. Bath, Gene Baugh, William E. Callum, Jr., Joffre C. David, Carl W. Fisher, Donald A. Frederick, Donald E. Graham, Robert L. Graves, John R. Hamlett, R. E. Harridge, H. O. Hoelscher, James S. Krzyminski, F. R. Light, Seeley

G. Lodwick, C. D. Owens, William D. Shipley, Anthony J. Skul, Jr., Roger J. Stroh, and Carl A. Wolter for agricultural cooperatives.

V. Alice Campbell, Frank R. Kenfield, and W. J. Morgan for specified Chambers of Commerce.

Forrest S. Baker, R. V. Dubay, J. D. French, James J. Irlandi, Joseph M. Linsey, E. F. Lodge, Jr., Arthur F. Peterson, John W. Quick, Fred H. Tolan, and Congressman Al Ullman for other interested persons.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By Notice and Order dated November 29, 1973, we instituted this proceeding on our own motion to solicit representations from any interested persons to aid us in formulating legislative plans concerning the role the Interstate Commerce Commission should play in the current energy shortage. As we stated in the above-mentioned Notice and Order, the Congress of the United States was then considering the adoption of certain legislation (*e.g.*, S. 2589 and H.R. 11450) which would have required this Commission to report to the appropriate congressional committees, within 15 days after the date of enactment, on the need for additional regulatory authority in order to conserve fuel during the energy emergency, while continuing to provide for the public convenience and necessity. This Commission has presented testimony before congressional committees on the above-mentioned and other bills and has proposed certain legislative alternatives to those measures as set forth in appendix A to this report. As of this date, enactment of these bills has not resulted.

The purpose of the instant proceeding, nevertheless, is to solicit the views of interested persons (1) on the tentative legislative recommendations set forth in appendix A, and (2) on any other energy conserving legislation that might be suggested. At the same time, Commission staff has initiated an internal study of this problem area with the aim of independently developing an appropriate legislative energy package. The results of their work are discussed *infra*.

REPRESENTATIONS

Representations have been filed in this proceeding by those persons listed in appendix B and such persons will be referred to by their appropriate short titles. It should be noted here that the

response we received to our Notice has been gratifying. Representations have been received from over 100 individual shippers, 36 shipper associations, 16 carrier associations, 8 governmental entities, 23 carriers, 19 agricultural cooperatives, 3 chambers of commerce, and 13 other interested persons. These have all provided us with considerable assistance and insight in dealing with the many interrelated, and often inconsistent, transportation problems generated by the energy crisis.

Since the time period for filing comments to this proceeding expired on December 19, 1973, a number of supplemental comments, including one from the United States Department of Transportation, have been filed. Inasmuch as these comments raised important new issues, the Commission, by order served July 1, 1974, accepted these supplemental comments and replies thereto, and extended the period for filing supplemental comments to August 1, 1974. Appendix B also lists the supplemental comments filed.

DISCUSSION AND CONCLUSIONS

A. Existing authority and accomplishments thereunder.

This Commission, as an independent regulatory agency charged by the Congress with overseeing the operations of the regulated portions of the interstate surface transportation industry—embracing railroads, oil pipelines, motor carriers, domestic water carriers, freight forwarders, and brokers—has been working strenuously within the existing statutory framework to develop methods for the conservation of fuel and to deal with transportation problems arising from the fuel shortage. In this regard this Commission has taken a number of steps designed to effectuate fuel conservation within the industry we regulate. The following are just some examples:¹

Gateway elimination.—One of the most visible and effective measures this Commission has taken recently to alleviate the energy shortage is the institution of procedures for the elimination of gateways. Ex Parte No. 55 (Sub-No. 8), *Gateway Elimination*, 119 M.C.C. 530 (1974). The new regulation (49 CFR 1065), which went into effect in April 1974, provides, in general, that when an irregular-route carrier can save up to 20 percent of the distance it would travel in observing a gateway by operating over the most direct route between authorized service points, the gateway need

¹Appendix C hereto contains a list of some additional actions we have been able to take pursuant to our existing authority.

not be observed if certain filing requirements are met. Where the most direct route is more than 20-percent shorter than the longer gateway route, joinder is permitted only where the carrier establishes a public need for this service. The Environmental Protection Agency has estimated that these gateway eliminations could result in an annual saving of over 300 million gallons of fuel. Thus far, this Commission has processed over 18,000 submittals of the more than 22,000 filings for the elimination of gateways.

Further reductions in operational circuitry.—Our Superhighway and Deviation Rules (49 CFR 1042) enable regular-route motor common carriers of property to traverse routes (including those in the Interstate Highway System) which are up to 15-percent shorter than those specified in their certificates, thus resulting in more energy efficient routes. At the present time, we are considering the enlargement from 15 to 20 percent of the operational circuitry reduction permitted to motor common carriers of property under certain provisions of the Superhighway and Deviation Rules. Ex Parte No. MC-65 (Sub-No. 5). We are also presently considering a similar enlargement in circuitry reduction permitted under certain provisions of the Trailer-on-Flatcar Service Rules. Ex Parte No. 230 (Sub-No. 3). One of the primary considerations raised in both of these proceedings is the beneficial effect such rule changes would have on energy conservation.

Recoupment of increased fuel expenses.—At the height of the Nation's fuel crisis in February 1974, this Commission responded quickly in granting special permission to motor carriers to file, on 1 day's notice, an increase in charges, not to exceed a 6-percent surcharge, for line-haul transportation and other services which consume fuel.² This action had the effect of immediately ending the nationwide truck strike. Subsequently, in July 1974, this Commission determined that, inasmuch as the authorized surcharge was designed solely for the recoupment of increased expenses directly related to increased fuel costs, and, in view of the deescalation of the fuel crisis and the more gradual increase in fuel prices, the surcharge authorization would be phased out over a period of 45 days.³

Acting on a Commission proposal,⁴ Congress passed legislation on February 15, 1974, requiring that compensation paid to lessors of

²Special Permission No. 74-2525, *Emergency Fuel Surcharge for Line-Haul Transportation Charges and Other Charges—Motor Common Carriers*, February 7, 1974.

³Ex Parte No. MC-92, *Investigation of Impact of Rising Costs on Motor Common Carriers*, July 8, 1974.

⁴Ex Parte No. MC-43 (Sub-No. 2), *Adjustment of Compensation for Equipment Leased by Motor Carriers of Property Because of Rising Fuel Costs*, January 30, 1974.

motor vehicles by regulated carrier-lessees be adjusted by the amount by which fuel costs had increase² since May 15, 1973.⁵

Trip leasing.—In Ex Parte No. MC-43 (Sub-No. 3), *Lease of Vehicles of Private Carriers with Drivers*, we are considering whether regulated motor carriers of property should be allowed to augment their operating equipment by the lease for a single trip of equipment of private carriers. If adopted, such a regulation would serve to decrease empty mileage incurred by private carriers.

Operational feasibility.—This Commission, on November 15, 1973, issued a statement entitled *General Policy Statement Concerning Motor Carrier Licensing Procedures (Operational Feasibility)*, in which we reminded carriers and their representatives that evidence respecting how equipment is expected to be returned to an origin point, as well as other data relating to the operational feasibility of their proposals, must be presented as part of an applicant's initial evidentiary presentation in applications for new authority.

"Waste" products.—In Ex Parte No. MC-85, *Transportation of "Waste" Products for Reuse and Recycling (General Motor Carrier Licensing)*, this Commission is reconsidering⁶ the adoption of a streamlined application procedure for motor carriers seeking to transport "waste" products in furtherance of a recognized pollution control program. While this proceeding has as its primary purpose the encouragement of recycling natural resources, it will, if approved, provide an incentive for carriers seeking to fill backhaul movements with recyclable commodities. This will result in a reduction in empty deadhead miles and a corresponding reduction in energy consumption.

Compliance with NEPA.—This Commission is mandated by sections 101(b)(6) and 102(2)(C)(v) of the National Environmental Policy Act of 1969 (NEPA) to consider energy and natural resource factors. Pursuant to this mandate, we have to date prepared in excess of 20 environmental impact statements for specific proceedings. Many of these impact statements present an in-depth analysis of energy related impacts. See, for example, the final environmental impact statement served in docket No. AB-71, *Baltimore and Annapolis Railroad Company Abandonment*

⁵Public Law 93-249.

⁶This streamlined application procedure was approved by the Commission on September 30, 1971 (114 M.C.C. 92). However, the court decision in *Chemical Leaman Tank Lines, Inc. v. United States*, 368 F. Supp. 925 (D. Del. 1973), has required a reopening of this proceeding for further consideration consistent with that decision. The Commission issued a Notice of Proposed Rulemaking and Order, served November 19, 1974, and has proposed certain modifications to the rules in question.

Between Clifford Junction, Baltimore City, and Annapolis, in Baltimore and Anne Arundel Counties, Maryland, and the draft environmental impact statement served in docket No. 35889, Illinois Central Gulf Railroad Company—Electric Commuter Train Fares.

In conclusion, in addition to the above-described actions and pending proceedings, and apart from any legislative proposals submitted to the Congress as a result of this report, the Commission is continually conducting studies in order to identify critical areas of need. Once complete such studies may identify the need for additional energy-related regulations. In this manner, we can continue to adopt energy conservation measures as we fulfill our regulatory function.

B. Suggestions of parties.

As previously noted, the Notice and Order of November 29, 1973, requested interested parties to submit their views concerning the role that this Commission should play in meeting the energy crisis. Following is a list of suggestions we have received and our responses thereto.

Extension of our jurisdiction over previously nonregulated carriers.—Most of the representations received herein are opposed to the Commission seeking any expanded authority from the Congress in order to regulate, for energy conservation purposes, private, exempt, and other previously nonregulated carriers.

Many commentators have stated that we possess sufficient authority to institute fuel conservation measures without infringing on the free enterprise of private carriers, and that regulation of those previously exempt forms of carriage would destroy any economic advantage which they now enjoy over regulated carriers. It has also been suggested that any ensuing regulation of private carriage by this Commission would be biased in favor of the carriers already subject to our regulatory control. A third reason advanced is that this Commission's staff is not large enough nor does it possess the expertise to carry out such regulatory control.

As a corollary, over 20 persons, representing shippers, shipper associations, and private carriers, have expressed their view that, although private and exempt carriers should be subject to the same general standards for fuel conservation as regulated carriers, such controls should be imposed by a Federal agency not involved in the economic regulation of the transportation industry. It has been suggested that the Federal Energy Administration (FEA), through its

fuel allocation program, is developing the expertise to impose properly across-the-board measures designed to conserve fuel.

In 1972, for-hire motor carriers comprised only 3.9 percent of the total trucks on the Nation's highways, yet they accounted for 42.1 percent of the total ton-miles transported by all motor carriers.⁷ Thus, considering the share of the market which the for-hire motor carriers hold, it is readily apparent that this Commission can play a significant role in establishing rules and policies which will have a significant effect on fuel conservation.

It is the belief of this Commission that, in order to be effective, any fuel conservation program must apply uniformly to the entire transportation sector of the economy. Just as this Commission must insure that our regulatory policy does not discriminate among the various classes of carriers we regulate, so too must an energy conservation program be applied uniformly and equitably. It is clearly within the purview of Congress to act decisively in implementing a uniform energy conservation program, and in assuring that one agency is given sufficient statutory authority to act effectively. At the present time, however, we can find no compelling reason to recommend that the legislative proposal as envisioned in appendix A be adopted by the Congress. We do feel, nonetheless, that there are areas where this Commission should be given expanded statutory authority to deal with specific energy related problems. These areas are fully identified in part C of this report, and amendatory legislation for this purpose is set forth in appendix D.

Backhaul.—Certain parties, including American Farm Bureau, Farmland, FCX, Houston Chamber of Commerce, International Technovations, and Modern assert that we should allow motor carriers to transport as backhaul any traffic they can without the necessity of receiving authority from this Commission. On the other hand, Nelson Freightways suggests that we investigate the operational efficiencies of nonregulated carriers to determine if such operations meet desired norms. If such norms are not met, it is suggested that we divert this traffic to certificated carriers. That empty backhauls exist cannot be questioned. To a degree, as discussed below, they are unavoidable. The President's Council on

⁷1972 Census of Transportation, U.S. Department of Commerce, Bureau of Census; and 88th Annual Report to Congress, Interstate Commerce Commission, 1974. It is interesting to note that while the number of for-hire trucks as compared to the total number of trucks has declined from 5.9 percent in 1963, to 4.4 percent in 1967, to 3.9 percent in 1972, the share of ton-miles transported by for-hire carriers has increased from 33.4 percent in 1963, to 36.1 percent in 1967, to 42.1 percent in 1972.

Productivity has estimated that approximately 40 percent of all motor carrier traffic, regulated and unregulated, involves empty mileage.

That figure is based on data from the U.S. Department of Transportation "Loadometer Study," which reflects both local and intercity traffic and unregulated as well as regulated carriers. The empty mileage figures revealed by that study vary widely according to types of vehicle and among for-hire, private and exempt carriage. For example, in 1972 the data showed that ICC regulated van units ran completely or partially loaded 79.7 percent of the time while the same equipment in the exempt sector ran completely or partially loaded only 72.2 percent of the time. Also, it is widely recognized that the loadometer studies are limited in several respects; most notably, the studies were not designed specifically for the objective of determining empty mileage.

This Commission has examined data based on "Highway Form 7" reports of classes I and II motor carriers of general freight. That evidence indicates that those carriers ran completely empty only 7 percent of the time. In addition, in order to develop a broader and more usable data base, the Commission has undertaken a study of empty mileage in the motor carrier industry in an attempt to obtain a clearer and more detailed picture of the problem and to evaluate alternative approaches to improving the current situation. A questionnaire has been developed and appropriate statistical sampling techniques have been devised to guarantee the quality of the product. The Federal Energy Administration, the U.S. Department of Transportation, the National Commission on Productivity and Work Quality, and the Council on Wage and Price Stability have been consulted in this effort.

This Commission attempts to authorize operations by motor carriers which will facilitate the provision of economic and efficient services. Many motor carriers possess authorities from this Commission which enable the transportation of backhaul traffic or which permit round trip operations. For example, a carrier serving a manufacturer from Detroit, Mich., to points in Texas might well be authorized to transport articles used in the manufacture of the commodity produced at Detroit from points in Texas. Another example would be the bus company which is generally authorized to serve from a particular point to another point and back again.

In many instances, of course, carriers do not have backhaul authority from this Commission. This may have been the result of a shipper's requiring service *from* its plant while it was completely

satisfied with existing services delivering goods to its plant. In short, a lack of a demonstrated need on the part of the shipping public for round trip operations may result in a one-directional authorization. Many of these carriers holding one-way authorities have other completely separate operating rights that might be used on a return trip, or they may lease their equipment to authorized carriers so that empty truck miles are eliminated. Others may transport so-called "exempt" commodities (such as certain unprocessed agricultural commodities) as backhaul.

But it should also be noted that these devices are not the only means of solving a backhaul problem. Interstate trucking is not closed to expanding services and operations, new entrants, or reasonable competition. License requests, most of which relate to motortruck operations, account for more than 80 percent of our formal cases. During the 1973 fiscal year, 5,240 applications for motor carrier operating authority were filed, and 4,299 were granted in whole or in part. In 507 instances the applicant was issued an initial license authorizing it, for the first time, to provide service to the public as a for-hire regulated carrier. Our licensing function is thus directed only to the elimination of the unsafe or unfit operator and to the prevention of economically harmful and wasteful competition.

This Commission is obligated by the national transportation policy as set forth in the preamble to the Interstate Commerce Act "to promote safe, adequate, economical, and efficient service." To this end, we constantly strive to authorize motor carrier operations which are territorially balanced. Compare *Rogers Cartage Co., a Corporation—Extension*, 110 M.C.C. 139 (1969). See also *General Policy Statement Concerning Motor Carrier Licensing Procedures (Operational Feasibility)*, *supra*. Furthermore, this Commission, as previously noted, in Ex Parte No. MC-85, *Transportation of "Waste" Products for Reuse and Recycling (General Motor Carrier Licensing)*, *supra*, is considering the adoption of regulations to simplify filing requirements for motor carriers seeking to transport recyclable commodities in furtherance of a recognized pollution control program. Motor carriers will have the opportunity to utilize this traffic for backhaul movements, thus resulting in more balanced operations.

It must be pointed out that, as alluded to earlier herein, not all imbalances in traffic patterns can be eliminated. The northeastern portion of our Nation is a heavy consumer of food products. Yet, carriers of food products from the midwestern portion of our

country cannot always locate loads suitable for their specialized equipment in the Northeast to return to the Midwest. Food must be delivered to our congested urban centers, and we cannot eliminate this necessary transportation service solely on the ground that it may be energy inefficient.

In other instances, backhaul traffic is just not available on a timely or practicable basis and it simply is not reasonable for motor carriers to hold equipment at a particular point awaiting the availability of such traffic. As indicated above, motor carriers in those circumstances often transport "exempt" traffic or lease the involved equipment to a motor carrier that may require, on a temporary or limited basis, additional equipment to serve its customers adequately.

We certainly do not foresee, as Archer Daniels Midland Company fears, requiring carriers to transport commodities as backhaul for which their equipment is not properly suited. Thus, it can be seen that this backhaul issue is a multifaceted problem when viewed in the context of this Commission's regulatory obligations. Within that context, however, it is not an insurmountable problem. This Commission is continually evaluating the operations of motor carriers in order to improve their efficiency and to eliminate empty backhaul miles.

Private carriers.—This Commission has a firm policy, first announced in *Geraci Contract Carrier Application*, 7 M.C.C. 369 (1938), and strongly reaffirmed in *Ralph A. Veon, Inc., Contract Carrier Application*, 92 M.C.C. 248 (1963), against granting motor carrier operating authority to nontransportation companies engaged in private carriage operations. Companies engaged in private carriage have certain inherent costs advantage over for-hire carriers, including a guaranteed volume of traffic and elimination of solicitation expenses. If, in addition, the private carrier were able to obtain authority to perform backhauls, it would be able to conduct operations at such a low cost that for-hire carriers would be unable to compete. This has not been viewed as sound transportation policy, and, therefore, except for rare instances, nontransportation companies engaged in private carriage are precluded from receiving authority from this Commission.

In addition, as noted above, the Commission proposed a rule in Ex Parte No. 43 (Sub No. 3) which would allow private carriers to lease their vehicles with drivers to certificated carriers on a single-trip basis. This rulemaking procedure is currently pending before the agency. It has generated considerable comment, including a

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negative response from the Private Carrier Conference of the American Trucking Associations.

This Commission believes that strong efforts must be made to urge shippers which do not operate efficient two-directional private carrier fleets to utilize public transportation to the greatest extent possible. Just as local governments seek to relieve traffic congestion and air and noise pollution, and to discourage undue energy consumption by encouraging their citizens to utilize mass transit facilities, it too seeks to encourage the use of public facilities to relieve these same problems. This Commission has an obligation to assure the public that for-hire carriers operate efficiently and economically and that existing for-hire carriers remain healthy and stable.

Requested exemptions.—Certain respondents have proposed that private and exempt carriers be allowed to transport regulated, for-hire traffic at the same time as and in the same vehicle with nonregulated commodities. As fully explained above, we cannot embrace this proposal. At present the Interstate Commerce Act [section 203(c)] forbids the transportation in interstate or foreign commerce of nonexempt for-hire traffic by any person not licensed by this Commission. Alternatives available to private carriers have already been discussed. Other carriers may seek appropriate authority from this agency. We believe that our licensing policies, mentioned above, are sufficiently liberal so as not to warrant any need for legislation which would relax entry requirements. We must be in a position to assure the public that any carrier they call for interstate surface transportation service is fit, willing, and able to provide that service. We cannot fulfill this public responsibility if private carriers are allowed to transport normally regulated traffic merely because they place a small box of exempt commodities in the vehicle. We are aware that this illustration is extreme, but it is the kind of regulatory avoidance that we would anticipate. We utilize it to emphasize the potential loss of control over the delicate competitive situation in the regulated surface transportation industry that we oversee.

These arguments apply with equal force to the proposals of the Farm Bureau that all motor carriers be permitted to serve all intermediate points on their authorized routes and be allowed to handle all available traffic notwithstanding particular commodity restrictions. What many commentators do not seem to understand is that if traffic is diverted to carrier A to fill its equipment, then in most instances it is being diverted from carrier B who, in many

cases, is left with a partially laden vehicle. Therefore, while certain interests would be benefited from legislation allowing carriers to transport any commodities they desire, other persons would be equally adversely affected and no overall profit would be achieved.

Middle & Western Farms suggests that section 203(b)(5) of the act be amended to reinstate the 50-percent rule. Specifically, it recommends modification of section 203(b)(5) so that the agricultural cooperative exemption:

*** shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 50 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage.

It asserts that this amendment would allow cooperative agricultural associations to find backhaul loads and prevent wasteful deadheading.

Agricultural cooperatives may now apply for certificated authority to transport backhaul loads within the existing 15-percent rule. For a complete explanation, see *American Farm Lines Common Carrier Application*, 114 M.C.C. 30 (1971). Circumstances do not appear to warrant separate and special treatment of agricultural cooperatives for the purposes under consideration in this proceeding.

Archer Daniels Midland Company proposes the amending of section 203(b) of the Interstate Commerce Act so as to exempt from regulation motor vehicles used in carrying property consisting of dry bulk agricultural commodities (including manufactured products thereof) when the operator of the motor vehicle so performing has in his possession a written statement from the consignor attesting that said consignor had ordered in writing adequate equipment from regulated carriers, and such equipment had not been provided within 72 hours subsequent to the placement of said order. Such an amendment, in our opinion, is unnecessary. Current regulations [49 CFR 1131.4(3)] permit a carrier to seek emergency temporary authority. An emergency according to these regulations is defined to exist where there is a "lack of equipment capable of transporting the involved commodity." Special procedures exist for the expeditious processing of emergency temporary authority applications [see 49 CFR 1131.2(d)]. This procedure includes telephonic and telegraphic verification of rate levels and the absence of existing

carriers' services. This process was most recently reviewed in *Motor Carrier Temporary Authority*, 118 M.C.C. 444 (1973), and found to be an equitable means of meeting situations of immediate and urgent need. We see no advantage to delegating decisionmaking functions in this area to our field personnel.⁸ Such matters are currently resolved uniformly and without undue delay.

Federal preemption.—In an effort to achieve effective fuel conservation measures, it will be necessary, in some instances, for the Federal Government to promulgate preemption regulations in order to achieve uniform and equitable measures. While we would agree with NARUC and Southern Freight that some fuel conservation measures would be best left to State regulation, certain matters require immediate Federal agency review. For example, State size-and-weight restrictions vary considerably. It has been recommended⁹ that this Commission be given jurisdiction to establish uniform national size-and-weight restrictions designed to increase the amount of tonnage which can be transported in a single load. It should be noted that Congress has recently acted in this area. In enacting the *Federal Aid to Highway Act Amendment of 1974*, Public Law 93-643, Congress has increased the maximum weight limitation which a State, seeking funds from the Highway Trust Fund, can impose. This law does not deal with size restrictions.

Domestic water carriers.—American Waterways Operators, Mid-American Transportation, Point Landing, and Waterways Freight Bureau seek deregulation of this segment of the surface transportation industry. Our discussion above on the need for entry control and the functions of licensing applies equally to domestic water carriers as to motor carriers. Union Mechling states that water carriers transport food and petroleum products, and, therefore, they should be allocated sufficient fuel to allow the adequate movement of these and other essential commodities. We wholeheartedly endorse such a policy and concur that during any future fuel crisis, allocation programs must assure that all segments of the surface transportation industry have sufficient fuel for the movement of essential commodities.

⁸As proposed by Bristol-Myers, Certain-Teed, Drug and Toilet Preparation Traffic Conference, Eastern Industrial Traffic League, Freight Forwarders Institute, National Small Shipments Traffic Conference, and Swift & Co.

⁹Recommended by Boise Cascade, Consolidated Freightways, Continental Grain, Farmland Industries, Fingerhut, Georgia-Pacific, Kenosha Auto Transport, Nabisco, National Independent Meat Packers, NITL, Lundstrand, Terminal Transport, and United States Gypsum.

Railroads.—The National Coal Association and the Property Owners' Committee recommend that Congress give priority to legislation which will make available to the railroads funds to purchase and repair hopper cars. The 93d Congress considered such legislation. The House of Representatives passed the Surface Transportation Act, H.R. 5385, which would have provided for loan guarantees for the purchase of rolling stock and for maintenance, while the Senate passed the Rolling Stock Utilization and Financing Act of 1973, S. 1149, which would have provided for financial aid to railroads for the purchase of rolling stock. While final legislation was not forthcoming, we encourage the 94th Congress to consider favorably and expeditiously such legislation.

Kerr-McGee supports the development of low-sulphur coal deposits in Campbell County, Wyo., and urges this Commission to approve the construction of rail line facilities to transport this coal. This matter is being investigated in Finance Docket No. 27579, *Burlington Northern, Inc. and Chicago and Northwestern Transportation Company Construction and Operation Between Douglas and Gillette, in Campbell and Converse Counties, Wyoming*. This proceeding was the subject of a final environmental impact statement prepared by this Commission, in conjunction with the Departments of the Interior and Agriculture, served October 18, 1974. It should be noted, however, that on January 3, 1975, the U.S. Court of Appeals for the District of Columbia Circuit enjoined the Secretaries of the Interior and Agriculture from taking further action concerning mining plans and railroad rights-of-way pending further order of the court. *Sierra Club v. Morton*, — F. 2d — (D.C. Cir., No. 1182-73, January 3, 1975). The issue still pending before the court is whether a region-wide environmental impact statement covering coal development activity in the northern Great Plains region (Wyoming, Montana, North Dakota, and South Dakota) must first be prepared. While this Commission was not specifically enjoined from consideration of the rail construction proposal, it is not known at this time to what extent the injunction will delay or prevent expansion of coal resource development in the affected States.

Menasha urges greater allocation of fuel for the railroads because it is alleged that they transport three or four times as many ton-miles of freight per unit of fuel than do motor carriers. The Delaware and Hudson Railway seeks to have railroads given first priority in the allocation of diesel fuels and proposes that fuel used to transport

fuel be exempt from any form of allocation. As previously emphasized, we believe that every segment of the surface transportation system provides a unique and vital service. Any fuel allocation program to meet emergency needs must ensure that all public carriers are allotted sufficient fuel to move essential commodities.

Continental Grain requests us to seek legislation to modify railroad operating rules which limit industries and locations that can be switched by line crews as against terminal switching crews when energy would be conserved. It also suggests requiring railroads to operate run-through trains over short-line tracks of another railroad when a reduction in mileage would result. These are constructive ideas and are being given further consideration at this time.

With respect to other suggestions, this Commission in Ex Parte No. 270, *Investigation of Railroad Freight Rate Structure*, is undertaking a comprehensive study of the freight rate structure and railroad service. In addition, railroad rate base and rate of return is the subject of an extensive investigation in Ex Parte No. 271, *Net Investment—Railroad Rate Base & Rate of Return*. In order to make the Ex Parte No. 270 study more manageable, it has been broken down into a number of sub-proceedings which examine particular commodity groupings such as coal, iron ores, scrap iron and steel, lumber and lumber products, and paper and paper products. Inasmuch as coal represents the largest traffic contributor and is a vital energy source, it was chosen as the first commodity grouping to be studied. The Coordinator's report and order on coal was served on March 14, 1975, in sub-proceeding No. 4, and is printed at 345 I.C.C. 71. It is anticipated that the Ex Parte No. 270 investigation will generate information to aid this Commission in future proceedings.

Congress has enacted the Regional Rail Reorganization Act of 1973, which establishes mechanisms for realigning the Northeast (17 States) rail system for the purpose of creating a more efficient rail operation. This process, when completed, is aimed at making rail operations more economically and environmentally efficient and more attractive to shippers presently using other modes of transportation.

Compliance with NEPA.—AAR suggests that we seek authority to avoid all NEPA-related delays in the processing of rail abandonment and construction applications, and the Missouri Department of Agriculture asserts that the delaying provisions of NEPA should be

suspended for the duration of the energy crisis. NARUC, the Commonwealth of Pennsylvania, and the Drug and Toilet Preparation Conference, on the other hand, suggest that this Commission not seek the suspension of NEPA to permit the wholesale abandonment of rail lines. It is asserted that failure to comply with the provisions of NEPA contributes significantly to the delay in processing abandonment and other proceedings. This Commission is deeply concerned with protecting the quality of our human environment and is making every effort to comply with the requirements of NEPA while at the same time properly discharging our primary statutory mission of regulating domestic surface transportation. Since the injunction in *Harlem Valley Transportation Association v. Stafford*, 360 F. Supp. 1057 (S.D.N.Y. 1973), affirmed 500 F. 2d 328 (2d Cir. 1974), this Commission has prepared, in advance of public hearings, either an environmental threshold assessment survey or an environmental impact statement in every abandonment application acted upon. In addition, we have conducted environmental review, in the form of either a threshold assessment survey or an impact statement for a wide variety of Commission actions, including railroad construction, rates, passenger train discontinuance, commuter fare increase, and general rulemaking proceedings.

Comments of the Department of Transportation.—DOT has filed supplemental comments in this proceeding in which it recommends seven specific actions which the Commission could take to facilitate the efficient use of transportation, without the need for additional statutory authority. For the reasons stated below, not all of DOT's recommendations will be adopted; nevertheless, we are pleased to receive them and are always open to responsible suggestions for change in all areas of regulation.

Three of these proposals deal with motor carrier regulation. First, it is suggested that the 20-percent circuitry test now being used in the gateway elimination proceedings be extended to cover regular-route carriers and that the Superhighway and Deviation Rules utilize a 20-percent circuitry rule rather than the present 15-percent rule. As noted in part A of this report, this matter is presently under consideration in Ex Parte No. MC-65 (Sub-No. 5). In this regard it should be noted that the present 15-percent circuitry test merely establishes a *prima facie* case that there will be no competitive impact. Deviation applications have been approved in cases where the involved circuitry is in excess of 15 percent.

Second, DOT recommends that there should be more flexibility in determining commercial zones, and that the zones should relate more closely to the Standard Metropolitan Statistical Areas (SMSA). It is suggested that the resulting transportation of freight into and beyond the zones in order to serve local transport service results in extra highway miles and unnecessary fuel consumption. This Commission is constantly reexamining specific commercial zones in order to determine whether true economic and industrial patterns are described. If they are not, commercial zone boundaries are realigned. This Commission presently has procedures whereby any person may request a review of a commercial zone; thus, we can and will entertain petitions by DOT or any other party seeking a modification of a specific commercial zone. As an example of this Commission's flexibility in this matter, in 1970 we redefined 11 separate commercial zones.

Third, it is suggested that motor carrier certificate commodity restrictions be relaxed to avoid narrow commodity eligibility, which assertedly tends to result in empty backhaul movements. DOT recommends that commodity authority be restricted by commercial or industrial fields of operation only, that carriers be permitted to carry 15 percent of their annual traffic in commodities previously restricted to them, and that carriers be permitted a number of "free" days each month to carry loads not covered by their certificates. As noted above, we are aware of the empty backhaul problem and have taken a number of steps to reduce deadhead mileage, without the need to resort to the elimination of commodity restrictions. The purpose of imposing commodity restrictions in motor carrier certificates is to insure that a balanced and responsive transportation system is available, and to prevent unwarranted and ruinous competition by an excessive number of carriers competing for the same traffic. Moreover, this Commission has instituted a uniform system for the wording and imposition of commodity, territorial, and other types of restrictions. See *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967). The DOT suggestions, particularly that which would permit a number of "free" days, would present tremendous enforcement difficulties, and their feasibility is thus questionable. This proposal has been made to the Congress by DOT in the past and has not been enacted.

The remaining four comments of DOT deal with the regulation of railroads. DOT recommends that this Commission eliminate restrictions on use of covered hopper cars in unit trains because

increased use of unit trains will foster better utilization of railroad cars, with resulting fuel savings. However, while it is true that unit trains are capable of more efficient utilization of railroad cars, the Commission's restrictions on the number of cars to be utilized in unit trains are a means of ensuring that smaller shippers have an adequate supply of railroad cars. During its period effectiveness, Revised Service Order No. 1120, restricting unit train operations to 20 percent of the available cars, served as a reasonable compromise between the need for more efficient train movements and the protection of the shipping public.

DOT suggests that strong measures be immediately taken to require greater utilization of freight car capacity, by requiring an increase in loaded weight capacity. Last year, for example, in order to alleviate a car shortage, we issued Service Order No. 1185 directing an increase in the minimum loading of mechanical refrigerator cars. While that service order has since expired, it served the purpose of increasing the utilization of refrigerator cars during an emergency. Furthermore, this Commission, in the future, will continue to consider issuing orders authorizing increased loading capacity in the event of other acute shortages.

Next, this Commission is asked to take the initiative in encouraging railroad carriers to examine carrier routing guides and tariffs as they may bear on excess circuitry. As DOT points out, this Commission has in the past placed reasonable restrictions upon the use of uneconomical routes, and we will continue to do so in the future as urgent needs are perceived.

Finally, DOT asserts that inspection, reconsignment, and diversion practices in transit result in extra switches and unnecessarily delayed train movements. It recommends that this Commission's policy clearly indicate that the carriers may recover the costs of in-transit inspection, thereby allowing the market itself to assist in the allocation of scarce resources. We agree with DOT that certain in-transit privileges should be examined. In a recent proceeding, I. and S. Docket No. 8548, *Inspection in Transit, Grain and Grain Products*, we approved the publication of a special in-transit charge, but required the railroads to show that the remaining line-haul rate for reduced service was just and reasonable.

C. The need for expanded jurisdiction.

This Commission has thoroughly considered and evaluated the representations, suggestions, and criticisms of all parties to this proceeding and has scrutinized the Interstate Commerce Act in its

present form. It is thus not without considerable thought that we have reached the conclusion that certain additions to and modifications of the existing legislation are indeed warranted. As reviewed in the initial section of this discussion herein, the Commission already has done much within the scope of its current legislative mandate to promote the efficient use and conservation of energy. However, in order to avoid a piecemeal approach to the energy problems now confronting our national transportation system and to implement a more comprehensive energy policy, new legislation is imperative.

The need for an expanded role by the *Federal Government* in dealing with the energy crisis is obvious. Consumption and conservation of energy are national problems which cannot be satisfactorily solved on a regional basis. The Federal Government thus should assume an active role in assuring that all sections of the country, as well as all interests therein, are treated in an equitable manner when energy shortages and other related problems occur. Passage of legislation which is clear and unambiguous in enabling the Government to act responsively in an emergency situation would help to facilitate its functioning effectively in this role. Such legislation should anticipate energy-related problems and address itself to their resolution so as to permit the Federal Government to act with dispatch and certainty, particularly with respect to the institution of rulemaking proceedings. The statutory jurisdiction of the Federal Government should be clarified prior to the time when a need to assert that jurisdiction arises.

The Interstate Commerce Commission is clearly the most appropriate agency to implement and enforce a comprehensive energy policy for our national domestic surface transportation system. Not only does this Commission have the administrative experience and technical expertise, but it also has demonstrated in the past its ability to coordinate energy-related demands with other urgent transportation problems. It is now accustomed to considering and taking action with respect to economic aspects of all modes of the surface transportation industry which it regulates; it should likewise be empowered to effect any appropriate measures related to energy use which are necessary to keep that transportation system efficient. Although energy utilization and transportation are concepts which are necessarily and inextricably intertwined, a certain amount of sophisticated analysis is required to evaluate the relative merits of energy-related measures and to determine their

compatibility with other necessary nonenergy measures. We feel the ICC is well equipped to perform this function.

A number of specific legislative proposals, which are set forth in appendix D to this report and which have been submitted to the Congress, would expand this agency's authority and thereby enable it to deal more effectively with on-going energy demands as well as with emergency situations. These proposals are discussed, *seriatim*, below.

Proposal one.—The effect of this provision enables the Commission to impose pass-through requirements on carriers sufficient to compensate owner-operators adequately for fuel cost increases during transportation emergencies. The proposal would not give this Commission any authority to regulate, under normal circumstances, the amount of fuel compensation to be paid to owner-operators; however, it would allow the agency to regulate fuel compensation to owner-operators in order to avert future transportation emergencies brought about by inordinate fluctuations in the price of fuel. Given the present unstable world fuel situation, such fluctuations seem almost inevitable, and thus this authority could prove essential. This Commission would be empowered to determine, in light of our expertise in transportation generally, when, in fact, an "emergency" exists, or we would be free to rely on the determination of other governmental bodies.

The lack of an adequate pass-through of compensation to owner-operators to cover fuel cost increases led to the nationwide truckers' strike during February 1974. This Commission's consequent imposition of pass-through requirements in Special Permission No. 74-2525 (the 6-percent surcharge order) and subsequently in the Ex Parte No. MC-92 proceeding, discussed earlier herein, played a large part in ending that strike and in preventing a recurrence. However, the question of whether or not this Commission has the statutory authority to impose such requirements has not been definitively resolved by any court. An argument can be made that the general provisions of section 204 of the Interstate Commerce Act give this Commission the authority to regulate the owner-operators' fuel compensation in an emergency, but it also has been argued (we think incorrectly) that, because section 204(f) specifically delineates the owner-operator activities which this agency may regulate and does not include regulation of fuel compensation, Congress, therefore, did not intend to give this Commission that authority.

The court that heard the appeal from the 6-percent surcharge order did not rule on this jurisdiction question because it ultimately dismissed the suit as moot. *National Small Shipments Conference v. United States*, C.A. No. 74-C-1265 (S.D.N.Y. 1974). The order in Ex Parte No. MC-92 was appealed twice. One court ruled from the bench that this Commission has jurisdiction to vary the fuel compensation provisions of owner-operator contracts in a transportation emergency, but the court never issued a written opinion, and its order now is on appeal to the Supreme Court. *Irregular Route Carriers Association v. United States*, C.A. No. 4-72214 (E.D. Mich. 1974). In the other appeal, the court overturned the Ex Parte No. MC-92 order and remanded the case to this Commission, but it did not rule on the extent of the Commission's jurisdiction. *Refrigerated Transport Corp. v. United States*, C.A. No. C 74-1674A (N.D. Ga. 1975).

Because this Commission's jurisdiction in this area is thus unclear, it is important to have it clarified in order to avoid further litigation, particularly since the authority involved is emergency in nature and would lose its effectiveness if subjected to protracted litigation.

It is also important to note the timeliness of this measure, given the present instability in fuel prices. This Commission has instituted Ex Parte No. 311, *Effect of Modifying Proclamation No. 3279 and Other Anticipated Energy Conservation Measures on the Operations of Carriers Subject to the Interstate Commerce Act*, for the purpose of devising a means of permitting the expedited recovery of fuel cost increases brought about by an import tax or alternative measure. Since owner-operators generally pay all fuel costs, it may well be that the Commission will have to impose the same kind of pass-through requirements that they have imposed in the other proceedings discussed herein. If that is the case, this legislative proposal would be a particularly appropriate measure at this time.

Proposal two.—This proposal is substantially similar to the joint rate/through route proposal submitted by this Commission to the 93d Congress. It amends section 216 of the act to authorize this Commission, after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property, and between those carriers and carriers by rail, express, and water.

It thereby eliminates a regulatory gap, inasmuch as this Commission already is empowered to establish intramodal joint

rate/through route arrangements between rail carriers, water carriers, and motor vehicle passenger carriers, and intermodal arrangements between rail carriers and water carriers. The proposal is particularly timely at this juncture since it can lead to both monetary and energy savings. It would authorize this Commission to establish routes which are both efficient and economical, thus reducing fuel consumption and effecting a joint rate, which would be less than the sum of the individual rates. This authority would also encourage the growth and maintenance of "piggyback" service and would benefit the shipper, in that it would need only one contract with the originating carrier and would be able to ascertain the rate for the through movement by consulting a single tariff. Generally speaking, this authority would aid this Commission in fostering a coordinated transportation system featuring greater efficiency and economy.

Proposal three.—This proposal amends section 409 of the act to authorize freight forwarders to enter into contracts with railroads governing the utilization by the freight forwarders of the railroads' services and the compensation to be paid for those services. Presently section 409 only authorizes such contracts between freight forwarders and motor carriers. The authorization of freight forwarder-railroad contracts would be for an experimental 2-year period, during which time this Commission would study the effects of these contracts on all interested parties and would report the results of this study along with its recommendations for continuation of the program to the Congress.

This proposal is similar to the legislative recommendation made in Ex Parte No. 266, *Investigation Into Status of Freight Forwarders*, 339 I.C.C. 711(1971). That recommendation was presented to the 93d Congress and introduced as S. 2461, but no hearings were held on it. The proposal does not include the antitrust immunity provision which was part of this Commission's prior legislative recommendation. The reasons for the deletion are that no substantial justifications for its inclusion have been presented and there is no antitrust immunity for carriers entering into comparable joint rate/through route arrangements.

The proposal also extends to shippers the protection against undue prejudice from the contracts and requires this Commission to consider the effect on consumers and shippers, in addition to carriers, in formulating its recommendations as to the continuation of the program. These provisions seem logical since they extend the

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protection provisions of the statute to all interested parties, provide a response to the argument that these contract rates would lead to unduly high charges for other shippers, and contribute to the overall attractiveness of the proposal. The primary justification offered for the prior legislative recommendation was that it was needed to improve the "static" performance of the freight forwarding industry. However, another strong argument can be made that the existence of contract rates between freight forwarders and railroads will encourage less-than-carload shippers to utilize energy-saving rail service, and that such contractual arrangements could help the railroads to improve car utilization and increase their tonnage carrying capacity.

Proposal four.—The purpose and effect of this proposal is to allow for expeditious Commission approval of smaller pooling arrangements, which contribute to efficient transportation and energy savings but do not unduly restrain competition. Presently, section 5(1) of the act provides that only "after hearing" and after a finding that a pooling agreement "will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition" can this Commission approve such an agreement.

The proposed amendment of section 5(1) would establish a procedure roughly analogous to the suspension procedure this Commission is authorized to follow in rate cases. It would require carriers to file proposed pooling agreements with this Commission 30 days or more prior to the agreement's effective date. Then this Commission would determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement will unduly restrain competition. If this agency's preliminary answers to these two inquiries are negative, then this Commission, prior to the agreement's effective date and without hearing, shall approve the agreement. But if either of the preliminary determinations are affirmative, this Commission must suspend operation of the agreement and hold a hearing thereon. Then, as under the existing statute, this Commission can approve the agreement only to the extent that it finds that said agreement will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition.

This proposal is intended to allow for the expeditious implementation of energy saving pooling arrangements. The suspension-type procedure allows this Commission to take a

preliminary look at the pooling arrangement, and if it does not appear to be of major consequence to the nationwide transportation system and does not appear to restrain competition unduly, to authorize the agreement to become effective 30 days after its filing. At the same time, the proposal retains for this Commission the necessary authority to review fully major pooling arrangements and those agreements that may well have undue anticompetitive effects.

Several members of this Commission, in recent speeches, have noted that pooling agreements can lead to substantial energy savings, and a number of parties to this proceeding, including Boise Cascade, Bristol-Myers, Drug and Toilet, EITL, General Foods, and Small Shipments Conference, support greater latitude for this agency in authorizing such arrangements. This proposal encourages such agreements by authorizing summary, informal approval of a substantial proportion of them. Once an agreement is reached, it could, under this proposal, be implemented expeditiously in many cases. Moreover, the fact that they are not faced with an extensive Commission procedure to gain approval for their agreements should lead carriers to devise a greater number of these smaller scale agreements.

The original proposal made by this Commission which would expand this agency's jurisdiction over now unregulated private carriage, found in appendix A, has been the subject of extensive discussion by the parties to this proceeding as discussed in part B of this report and has been a matter of substantial consideration and analysis by this Commission. This proposal may be divided into two sections, neither of which is favored by those it would affect. The first part would allow us "to suspend or otherwise adjust" a regulated carrier's operations to conserve fuel during an energy emergency. The regulated industry objects to enactment of such broad powers. The Regular Common Carrier Conference notes that we have undertaken numerous steps to improve energy efficiency, and it claims that our present rulemaking power is broad enough. Nelson Freightways and AAR fear that any broad power of the type proposed could be abused. They point to the fact that even during World War II, emergency powers were not so comprehensive. The second part of the proposal would allow any emergency fuel regulations we issue to extend to carriers not presently subject to our jurisdiction. The objections to that proposal have been unanimous, except for the presently regulated industry.

At the present time, we see no compelling need for recommending to the Congress either part of the original legislative

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proposal. While consumption and conservation of energy remain ongoing concerns of this agency, there is no imminent energy emergency today as was experienced in early 1974. Moreover, the numerous fuel conservation measures currently advanced by the President, the Congress, and the Federal Energy Administration are helping to forestall another "crisis" of major proportions. However, in order to provide for just such a reoccurrence, we believe that the Congress should have before it legislation which it might consider enacting at the appropriate time. The suggested language of that legislation is set forth in appendix E, accompanied by an explanation and justification therefor. While it is not imperative that the described authority be conferred upon the Interstate Commerce Commission, we believe that our experience and expertise in surface transportation regulation highly qualify this agency for implementing such legislation.

Inasmuch as regulation of the private sector is clearly within the purview of congressional power, and because a uniform policy with respect to the treatment of private (now unregulated) and for-hire carriers is essential in time of emergency, the draft bill would extend emergency regulation to presently unregulated carriers as well as to regulated for-hire carriers. While the legislation would permit this Commission to determine when an energy emergency exists, that determination could be made as well by the President, the Congress, or some other appropriate agency.

Finally, we reiterate that although it is not being submitted as part of the four proposals in the legislative package discussed herein, it is essential for the Congress to consider for future passage the draft proposal embodied in appendix E.

FINDINGS

We find that no affirmative action on the original proposal advanced, as set forth in appendix A, is warranted at this time and on the present record; we further find, however, that affirmative action on the legislative proposals set forth in appendix D is warranted, and that, therefore, these proposals have been submitted to the Congress for consideration. An appropriate order will be entered.

COMMISSIONER MURPHY, whom COMMISSIONERS TUGGLE and HARDIN join, dissenting in part:

While I am in agreement with the majority that the instant proceeding has served a useful purpose in exploring the need for

emergency transportation legislation, I cannot agree with several of the legislative proposals endorsed by the majority. There is no need for such legislation and it is questionable whether the proposals will, in any way, contribute to the easing of the energy crisis.

The majority urges enactment of legislation which would authorize the Commission to require adequate compensation to owner-operators for fuel costs in a transportation emergency. I do not believe that this Commission should be authorized to interfere in the private contractual relationships between a carrier and the owner-operator which it utilizes to conduct its operations. The carriers under the Interstate Commerce Act generally have the managerial prerogative to conduct their operations in conformity with the Commission's regulations. The act and the Commission's regulations presently provide ample opportunities for the carriers to seek increases in emergencies and to provide for a pass-through of charges to reflect the increase in fuel expenses encountered by owner-operators. The proposed legislation will undoubtedly create numerous complex problems which will require the constant attention of the Commission. Those matters are best left to negotiations between the carriers and the owner-operators.

In addition, the majority urges an amendment to section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads on an experimental basis. There is no apparent need nor real support for such legislation. The situation has not changed since the Commission's report in Ex Parte No. 266, *Investigation Into Status of Freight Forwarders*, 339 I.C.C. 711, wherein in a separate expression I was opposed to a similar proposal. The proposed legislation herein would pose serious problems to the motor carriers which carry tremendous quantities of less-than-truckload shipments. Moreover, in light of the precarious financial condition of the railroad industry, it would be inappropriate to require the railroads to assist the freight forwarders.

Finally, the majority also suggests that the Commission might be given standby authority in an emergency to modify a carrier's operations and services and to impose similar fuel-conserving restraints on various categories of nonregulated carriage. There is no need for such additional authority. The Commission presently can grant temporary and emergency temporary authority, where necessary, has contributed to energy conservation by such proceedings as Ex Parte No. 55 (Sub-No. 8), *Gateway Elimination*, 349 I.C.C.

119 M.C.C. 530, and has proposed other fuel-conserving measures which are under consideration. It is clear that the suggested standby legislative proposal would serve no useful purpose.

Accordingly, I cannot in good conscience join the majority to the extent that it urges the adoption of the two above-mentioned legislative proposals and the suggested standby authority.

COMMISSIONER MACFARLAND, dissenting in part:

I dissent from the majority report to the extent that it endorses legislation for Commission regulation of owner-operator compensation. I believe such legislation to be unnecessary and undesirable.

APPENDIX A

Legislative alternative originally proposed

(b)(1) The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission for the duration of the energy emergency, in addition to their existing powers and notwithstanding any provisions to the contrary in the Interstate Commerce Act, as amended, Federal Aviation Act, as amended, or Shipping Act, as amended, respectively, shall have the authority on their own motion or by motion of any interested person including the Secretary of Transportation, to review, modify, suspend or otherwise adjust a carrier's operations and the services performed thereunder, in order to conserve fuel while providing for the public convenience and necessity. This authority includes but is not limited to revising the manner and the level of operations, altering routes, territories, or points served, shortening distances traveled, and reviewing and revising the rates, fares or charges of such carrier. Actions taken pursuant to this paragraph may be taken in accordance with section 553 of Title 5 of the United States Code, and without the procedural requirement of 42 U.S.C. 4321 *et seq.* Any person adversely affected by an action shall be entitled to judicial review of such action in accordance with Chapter 7 of Title 5 of the United States Code. Consistent with the purposes of this Act, the Interstate Commerce Commission may impose upon the various categories of nonregulated carriage under the Interstate Commerce Act fuel conserving restraints, rules and regulations, comparable to those adopted pursuant to this Act to limit the service of the carriers subject to its jurisdiction.

(2) Any person knowingly and willfully violating any requirement of section 203(b) of this Act shall, upon conviction thereof be fined not less than \$200 nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for any subsequent offense. Each day of such violation will constitute a separate offense.

APPENDIX B

The representations

I. Shippers.

Aeroquip Corporation

Allied Chemical Corporation

American Standard, Inc.
 Archer Daniels Midland Company
 Armour Food Company
 Ashland Oil, Inc.
 A-T-O Inc.
 L. T. Barringer & Company
 Bohn Aluminum & Brass Corporation
 Boise Cascade Corporation
 Borg-Warner Corp.
 The Bristol-Myers Corporation
 Campbell Taggart, Inc.
 Cargill Incorporated
 Century Boat Company
 Certain-Teed Products Corporation
 Chicago Bridge and Iron Company
 Chromalloy American Corporation, American Strip Steel, Inc., Tidwell Industries, Inc., Trinity Valley Foods, Inc., U.S. Pet Foods Supply Co., Roll Forms Products, Inc., Winston Industries, Inc., Franklin Homes, Inc., and United Steel Deck, Inc.
 City Products Corporation
 Clark Equipment Company
 The Coca-Cola Company
 Colonial Stores Incorporated
 Container Corporation of America
 Continental Grain Company
 Cron Chemical Corporation
 Deering Milliken, Inc.
 Douglas Equipment, Inc.
 Dow Badische Company
 Dunham-Bush, Inc.
 E. I. Dupont de Nemours & Company
 Eaton Corporation
 FCX, Inc.
 Fibreboard Corporation
 Fingerhut Corporation
 Florsheim Shoe Corporation
 Fullerton Metals Co.
 General Foods Corporation
 General Mills, Inc.
 General Motors Corporation
 Georgia-Pacific Corporation
 Glen-Alden Corporation, International Latex Corporation, B.V.D. Company, Inc., and Schenley Distillers, Inc.
 Globe-Products Company, Inc.
 L. Gordon & Sons, Inc.
 Heilig-Meyers Furniture
 Woerner Waldorf Corporation, Geo. A. Hormel & Co., Oscar Mayer & Co., John Morrell & Co., and The Rath Packing Company
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International Minerals and Chemical Company
International Shoe Company
International Technovation, Inc.
Kaibab Industries
Log Cabin Manufacturing Company
McGraw Edison
Menasha Corporation
Minnesota Mining and Manufacturing Company
Modern, Inc.
Nabisco, Inc.
Northrop Corporation
Owens-Illinois
Packerland Packing Co., Inc.
Parke, Davis & Company
Pet Incorporated
Phillips Petroleum Company
The Pillsbury Company
PPG Industries
The Richardson Company
Riley Bros., Inc.
Riviana Foods, Inc.
Rohm and Hass Company
St. Louis Grain Corp.
Shell Oil Company
J. M. Smucker Company
The Southland Corporation
Square D. Company
S. R. of Tennessee
Standard Oil Company (Indiana)
Sundstrand Corporation
Sunland Marketing, Inc.
Sweet Life-Springfield Sugar & Products Co.
Swift & Company
Swift Chemical Company
Thatcher Glass Manufacturing Company
Thompson Industries, Inc.
Tyler Corporation
United States Gypsum Company
United Technology Center
Universal Oil Products, Inc., Norplex Division
Varo Incorporated
Wells Lamont Corporation
R. D. Werner Co., Inc.
Weyerhaeuser Company
Wilson & Co.

II. *Shipping associations*

American Bakers Association
American Paper Institute
American Retail Federation
Association of Institutional Distributors

Boating Industry Association, and the National Association of Engines and Boat Manufacturers
 California Manufacturers Association
 The Coal Traffic Bureau
 Drug and Toliel Preparation Traffic Conference, Eastern Industrial Traffic League, and National Small Shipments Traffic Conference
 Glass Containers Manufacturers Institute, Inc.
 Grocery Manufacturers of America, Inc.
 Gulf Ports Association
 The Institute of Shortening and Edible Oils, Inc.
 Michigan Industrial Traffic League
 The Midwest Packers Traffic Association
 Milk Industry Foundation
 National Association of Food Chains
 National Association of Shippers Advisory Boards
 National Association of Wheat Growers
 National Beer Wholesalers' Association of America, Inc.
 National Canners Association
 National Coal Association
 National Council of Farmer Cooperatives
 National Grain and Feed Association
 National Independent Meat Packers Association
 The National Industrial Traffic League
 National Lumber and Building Materials Dealers Association
 The New England Council
 Northwest Horticultural Council
 Official Territory Paper Traffic Council
 Pacific Northwest Grain and Grain Products Association
 Property Owners Committee
 The Society of the Plastics Industry, Inc.
 The Texas Industrial Traffic League

III. *Carrier associations*

American Movers Conference
 The American Waterways Operators, Inc.
 Association of American Railroads
 Dallas Delivery and Cartage Association, Inc.
 Freight Forwarders Institute
 Houston Delivery and Cartage Association
 Lake Carriers Association
 The Local and Short Haul Carriers National Conference
 Movers Round Table
 National Association of Motor Bus Owners
 Private Carrier Conference, Inc.
 Private Truck Council of America, Inc.
 Private Truck Operators Association of Texas, Inc.
 Regular Common Carrier Conference of American Trucking Associations, Inc.
 Waterways Freight Bureau
 Western Council of Private Fleet Operators

IV. Governmental entities

Board of Supervisors, County of Los Angeles, Calif.
Commonwealth of Pennsylvania
Missouri Department of Agriculture
National Association of Regulatory Utility Commissioners
North Carolina Department of Agriculture
United States Department of Agriculture
United States Department of Transportation
United States Postal Service

V. Motor, rail, and water carriers

Allied Van Lines, Inc.
Bass Transportation Co., Inc.
Bowman Transportation, Inc.
Clark Transport, Inc.
Commercial Storage and Distribution Company
Consolidated Freightways Corporation of Delaware
Crouch Bros., Inc.
Delaware and Hudson Railway Company
Dohrn Transfer Company
Garrison Van & Warehouse Corp.
Gray Line Sight-Seeing Companies Associated, Inc.
Kenosha Auto Transport Corporation
La Porte Transit Co., Inc.
Merchants Delivery Co.
Mid-American Transportation Company
Nelson Freightways, Inc.
Oil Transport Company
Point Landing, Inc.
Southern Freight Systems, Inc.
Stevens Van Lines, Inc.
Superior Forwarding Co.
Terminal Transport Company, Inc.
Union Mechling Corporation

VI. Agricultural cooperatives

Ag Carriers, Inc.
Agway, Inc.
American Farm Bureau Federation
CF Industries
Eastern Marketing Coop.
Farm Bureau Services, Inc.
Farmland Industries, Inc.
Florida Fruit and Vegetable Association
Illinois Agricultural Association
Illinois Grain Corporation
Indiana Farm Bureau Cooperative Association, Inc.
Land O'Lakes
Middle and Western Farms Cooperative Association, Inc.
Snokist Growers

Sun-Maid Raisin Growers
 Sunsweet Growers, Inc.
 Union Equity Cooperative Exchange
 United Fresh Fruit and Vegetable Association
 Universal Cooperatives, Inc.

VII. *Chambers of Commerce*

Beaumont Chamber of Commerce
 Dallas Chamber of Commerce
 Houston Chamber of Commerce, Freight Traffic Bureau

VIII. *Other concerned persons*

Mr. R. V. Dubay
 Mr. J. D. French
 Garvey, Inc.
 Mr. Granvill Hahn
 I.C.I., Inc.
 Mr. Joseph M. Linsey
 Mr. Arthur F. Peterson
 Mr. Donald O. Peterson
 Mr. John W. Quick
 Mr. J. M. Rakin
 Mr. Fred H. Tolan
 Transportation Research and Marketing Company
 Honorable Al Ullman, United States House of Representatives

IX. *Supplemental comments*

American Textile Manufacturers Institute, Inc.
 Association of American Railroads
 Carnation Company
 The Local and Short Haul Carriers National Conference
 The National Industrial Traffic League
 The Regular Common Carrier Conference of American Trucking Associations, Inc.
 United States Department of Transportation

APPENDIX C

Additional Commission actions which help conserve fuel

1. *Railcar service and embargo authorities.*—Our railcar service and embargo authorities provide us with some emergency power to direct the most efficient use of the available railcar fleet, to establish some priorities, and to require the joint or common use of terminals and related trackage. Sections 1(10), (15), and (16) of the Interstate Commerce Act.

2. *Temporary authority.*—This Commission can and does issue temporary motor carrier authorities to meet immediate and urgent needs for such service to a point or points or within a territory in which there is no carrier service capable of meeting those needs. In instances of area or nationwide transportation stoppages, we may issue General Temporary Authority Orders which enable the processing of such matters in our field offices on very short notice.

3. *Alternate routes.*—This Commission issues new operating authorities, upon application and proof of operating economies and efficiencies, to enable motor carriers to traverse more economical alternate routes.

4. *Multiagency task forces.*—This Commission is an active participant in multiagency energy task forces and cooperates fully with other departments and agencies in developing needed energy data and in formulating comprehensive plans to minimize problems associated with the energy crisis.

5. *Restrictions in operating authorities.*—This Commission continues to study, both internally and in cooperation with other departments, restrictions found in motor carrier operating authorities and in published tariffs with a view to removing any unwarranted limitations that may be found to be inimical to the public interest and the national transportation policy. Examples of similar studies would include *Removal of Truckload Lot Restrictions*, 106 M.C.C. 455, and *Restrictions on Service by Motor Common Carriers*, 111 M.C.C. 151.

6. *Intermodal service.*—This Commission encourages the provision of piggyback or trailer-on-flatcar service and the maintenance of through routes and joint rates, domestic as well as international, within one mode and between all modes, whether rail, motor, water, or air.

7. *Rail unit-train rates.*—This Commission has encouraged the use of rail unit-train rates which encourage shippers to tender larger volumes of certain freight to the railroads. This permits single locomotives to haul a more complete load and to conserve fuel to the maximum extent possible.

8. *Consolidations, mergers, and abandonments.*—Railroad and motor carrier consolidations and mergers are authorized to eliminate or reduce redundant operations in the public interest. Unnecessary or duplicative transportation services are also authorized to be abandoned in appropriate circumstances.

APPENDIX D

94th CONGRESS

1st Session

PROPOSAL ONE

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

_____, 1975

Mr. _____
introduced the following bill; which was referred to the Committee on

A BILL

To authorize the Interstate Commerce Commission to require adequate compensation for owner-operator fuel costs in a transportation emergency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204(e) of the Interstate Commerce Act (49 U.S.C. 304(e)) is amended to read as follows:

(e) Subject to the provisions of subsection (f) hereof, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property—

(1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease, contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby;

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this part with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability, and cargo insurance covering all such equipment; and

(3) upon a finding that a transportation emergency exists or is anticipated, regulations reasonably necessary to insure that the party, who under the contract or lease is responsible for the purchase of fuel, is adequately compensated by the terms of such lease or contract for fuel costs.

94th Congress
1st Session

PROPOSAL TWO

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

_____, 1975

Mr. _____
introduced the following bill; which was referred to the Commission on

A BILL

To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 216(c) of the Interstate Commerce Act (49 U.S.C. 316(c)) is amended to read as follows:

(c)(1). Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad by railroad and/or water. As used in this subsection the term 'common carriers by water' includes water common carriers subject to the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act of 1933, as amended, (including persons who hold themselves out to transport goods by water but who do not own or operate vessels) engaged in the transportation of property in interstate or foreign commerce between Alaska or Hawaii on the one hand, and on the other, the other States of the Union, and through routes and joint rates so established and all classifications, regulations, and practices in connection therewith shall be subject to the provisions of this part.

(2) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges applicable to the transportation of property by common carriers by motor vehicle and other such carriers and/or common carriers by railroad and/or express and/or common carriers by water subject to part III and to the transportation of passengers by common carriers by motor vehicle, and, when so ordered in such a proceeding, it shall be the duty of the affected common carriers to establish and maintain reasonable through routes, joint classifications, and joint rates, fares or charges applicable thereto. In establishing any such through routes the Commission shall not, except as provided in sections 3, 216(d), or 305(c), require any carrier without its consent to embrace in such route substantially less than the entire length of its route and of any intermediate carrier operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through routes (a) unless such inclusion of lines would make the through route unreasonably circuitous as compared with another practicable through route which could otherwise be established or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, more efficient or more economic transportation: *Provided*, That in prescribing

through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier which originates the traffic. In the case of any through route established by the Commission between common carriers of property by motor vehicle and other such carriers, the limitations in this section on the Commission's power to establish through routes shall apply only to the carrier originating the traffic. No through route and joint rate applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.

(3) In the case of joint rates, fares, or charges established pursuant to sections 216(c)(1) or 216(c)(2), it shall be the duty of the carrier parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

SEC. 2. Section 216(e) of the Interstate Commerce Act (49 U.S.C. 316(e)) is amended to read as follows:

(e)(1) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect, or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(2) All carriers party to a through route and joint rate, whether established by the carriers under section 216(c)(1) or prescribed by the Commission under section 216(c)(2), shall promptly pay divisions or make interline settlements as the case may be with other carriers party thereto. In the event of undue delinquency in the settlement of such divisions or interline settlements, such through routes and joint rates may be suspended or canceled by the Commission under rules to be prescribed by it.

(3) If any tariff or schedule canceling any through route and joint rate, fare, charge, or classification, whether established by the carriers under section 216(c)(1) or prescribed by the Commission under section 216(c)(2), without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest.

(4) Nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

94th CONGRESS

1st Session

PROPOSAL THREE

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

_____, 1975

Mr. _____
 introduced the following bill; which was referred to the Committee on

A BILL

To amend section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads on an experimental basis, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 409(a) of the Interstate Commerce Act (49 U.S.C. 1009 (a)) is amended to read as follows:

(a) Nothing in this Act shall be construed to prevent freight forwarders subject to this part from entering into or operating under contracts with common carriers by railroad subject to part I of this Act, or from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to part II of this Act, governing the utilization by such freight forwarders of the services and instrumentalities of such common carriers by railroad or motor vehicle and the compensation to be paid therefor. *Provided*, That in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants, any other freight forwarder, or any shipper and shall be consistent with the national transportation policy declared in this Act: *And provided further*, That in the case of line-haul transportation by common carriers by motor vehicle between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of four hundred and fifty highway miles or more, such contracts shall not permit payment to such common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under part II of this Act.

SEC. 2. Section 409 of the Interstate Commerce Act (49 U.S.C. 1009) is amended by the addition of a new section (c) to read as follows:

(c) The provision of paragraph (a) authorizing freight forwarders to enter into contracts with railroads governing the utilization by such freight forwarders of the

railroads' services and instrumentalities is effective only for a two-year period commencing on the date of enactment of the amendment which added this authorization to paragraph (a). The Commission shall report to the Congress six months prior to the end of said two-year period on the effect of this amendment on the consumer, shipper, freight forwarder, and other segments of the surface transportation industry and include therein appropriate recommendations as to whether the provision should remain in effect, terminate or be modified.

SEC. 3. The heading of section 409 of the Interstate Commerce Act (49 U.S.C. 1009) is changed to read as follows:

UTILIZATION BY FREIGHT FORWARDERS OF SERVICES OF COMMON CARRIERS BY RAILROAD AND BY MOTOR VEHICLES.

94th CONGRESS
1st Session

PROPOSAL FOUR

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

_____, 1975

Mr. _____
introduced the following bill; which was referred to the Committee on

A BILL

To authorize the Interstate Commerce Commission to approve, on an expedited basis, pooling arrangements between carriers that are not of major transportation importance and are not likely unduly to restrain competition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(1) of the Interstate Commerce Act (49 U.S.C. 5 (1)) is amended to read as follows:

(1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section I of this part, it shall be unlawful for any common carrier subject to this part, part II, or part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings,

or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That any party may apply for Commission approval of such an agreement by filing said agreement with the Commission not less than 30 days before its effective date. Prior to the effective date of the agreement, the Commission shall determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement will unduly restrain competition and if the Commission determines that neither of these two factors exists, it shall, prior to the effective date contained in the agreement and without hearing, approve the agreement. If the Commission determines either that the agreement is of major transportation importance or that there is a substantial likelihood that the agreement will unduly restrain competition, the Commission shall enter upon a hearing concerning whether the agreement will be in the interest of better service to the public or of economy in operation and whether it will unduly restrain competition; and shall suspend operation of such agreement pending such hearing and final decision thereon; and after full hearing, the Commission shall indicate to what extent it finds that the agreement will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, and shall, to that extent, approve and authorize the agreement, if assented to by all the carriers involved, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further*, That any contract, agreement, or combination to which any common carrier by water subject to part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on the date this paragraph as amended takes effect, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

94th CONGRESS

1st Session

APPENDIX E

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

_____, 1975

Mr. _____
introduced the following bill; which was referred to the Committee on

A BILL

To authorize the Interstate Commerce Commission, upon a finding that an energy emergency exists, to review, modify, suspend, adjust or permit adjustment of, a carrier's operations and services in order to conserve fuel while providing for the public convenience and necessity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of the Interstate Commerce Act (49 U.S.C. 304) is amended by adding thereto a new section (g) to read as follows:

(g) Upon a finding by the Commission that an energy emergency exists, the Commission, in addition to its existing powers and notwithstanding any provisions to the contrary in the Interstate Commerce Act, as amended, shall have the authority on its own motion or by motion of any interested person, including the Secretary of Transportation, to review, modify, suspend, adjust or permit adjustment of, a carrier's operations and the services performed thereunder, in order to conserve fuel while providing for the public convenience and necessity. This authority includes but is not limited to revising the manner and the level of operations, altering routes, territories or points served, shortening distances traveled, and reviewing and revising the rates, fares or charges of such carrier. Consistent with the purposes of this Act, the Interstate Commerce Commission may impose upon the various categories of non-regulated carriage under the Interstate Commerce Act fuel conserving restraints, rules and regulations, comparable to those adopted pursuant to this Act to revise the service of the carriers subject to its jurisdiction. Actions taken pursuant to this paragraph shall remain in effect for no longer than the duration of the energy emergency, as determined by the Commission, and shall be taken in accordance with section 553 of Title 5 of the United States Code and may be taken without the procedural requirements of 42 U.S.C. 4321 *et seq.* Any person knowingly and wilfully violating any orders promulgated pursuant to this paragraph shall, upon conviction thereof be fined not less than \$200 nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for any subsequent offense. Each day of such violation will constitute a separate offense.

EXPLANATION AND JUSTIFICATION

The purpose and effect of this proposal is to give the Commission standby rulemaking authority to revise operating authorities and practices for the purpose of conserving fuel while still meeting the public convenience and necessity during a nationwide energy emergency. The proposal enhances the Commission's powers to deal with an energy emergency in several respects.

First, it would extend the Commission's present authority under sections 208 and 212(a) of the Interstate Commerce Act to revise the operating rights and practices of motor carriers. Second, it makes clear that the Commission shall proceed expeditiously under section 553 of the Administrative Procedure Act, rather than by adjudicatory hearings which could be required under the present substantive provisions of the act. Third, for purposes of fair and equitable regulation, it would

authorize the Commission to extend its emergency rules to unregulated carriers, where appropriate. Finally, it would allow the Commission to proceed in the emergency situation contemplated by the provision without following the strict procedural requirements of NEPA (although continuing to give full consideration to environmental factors as well as all other relevant considerations).

We believe that the question of whether the public interest requires this type of emergency authority is a policy matter to be resolved by Congress. We have attempted here to outline the legal effects of the proposal and to show how it could aid the Commission to deal expeditiously with an energy emergency. We have provided the preceding statutory language for the use of Congress if a determination is made that this type of standby authority is necessary.

We would point out that if Congress decides that this standby authority is needed, it does not necessarily have to vest that authority in this Commission although that may be the most appropriate course in light of our technical expertise in the area. The same is true of the proposal to extend these rules to carriers which are unregulated from an economic standpoint. This authority could well be vested in another agency although from the standpoint of fair and impartial regulation among regulated and unregulated carriers, it may be appropriate to assign the task to this Commission. While the legislation would permit this Commission to determine when an energy emergency exists, that determination could be made as well by the President, the Congress, or some other appropriate agency.

349 I.C.C.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 9th day of May 1975.

EX PARTE NO. 301

THE ENERGY CRISIS AND THE NEED FOR EMERGENCY
TRANSPORTATION LEGISLATION

It appearing, That by Notice and Order dated November 29, 1973, this Commission, on its own motion, instituted this proceeding to solicit representations from any interested person so as to aid us in formulating legislative plans concerning the current energy shortage.

And further appearing, That investigation of the matters and things involved in this proceeding has been made and that the Commission has made and filed its report herein containing its findings of facts and conclusions thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the above-entitled proceeding be, and it is hereby, discontinued.

By the Commission.

ROBERT L. OSWALD,

(SEAL)

Secretary.

Senator HARTKE. Mr. Beardsley, vice president and general counsel, American Trucking Association.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATION

Mr. BEARDSLEY. Good morning, Mr. Chairman. We appreciate this opportunity to appear to discuss the four bills which the Commission has introduced. If I may, I would like to discuss them in numerical order.

I have a summary of my remarks, and I will try to get through in very short order.

If I may, I would like to start with S. 2083 which, as you know, would allow the forwarders to make contracts with the railroads for rates even lower than the railroads are getting today on this high quality traffic that the forwarders are tendering.

Over the last several Congresses, we have opposed bills of this same nature, bills which one way or another would enhance the forwarder status at the expense of the common carriers who move their traffic.

Speaking of that forwarder status, I think you put your finger on something in your questions to the chairman. You asked why the railroads couldn't consolidate these small shipments into volume movements. There is no reason in the world they couldn't today. There is no reason they couldn't 40 years ago.

In fact, it was the failure to do that that brought the forwarders into the picture entirely. But as a practical matter, when you talk about the forwarder status technically or practically insofar as their relationship with the carriers that handle their traffic is concerned, they are shippers. We believe they are shippers in law as well as in fact.

By and large, forwarders handle only traffic moving in heavy volume between metropolitan areas. We show an example of that in the one-page statement that I have attached, one page appendix that I have attached, to my statement. The movements involved there are between New York on the one hand, Kansas City on the other.

You can take that appendix and look down it, and you clearly see what happens. Where the traffic is moving in heavy tonnage, the forwarders compete with the motor carriers. Where the traffic is going to small points, small shipments going to small points, they don't want anything to do with that traffic.

And I don't know, I didn't quite hear Mr. Kahn's answer, but the fact of the matter is the Commission has never done any more than cluck about the forwarders' failure to handle small shipments to small areas.

You might say as a matter of fact that when you consider the forwarder selectivity, the withdrawal of railroads from the small volume movements entirely or almost entirely, there is only one true common carrier left in the picture. That is the motor carrier. We are not always happy with that status to be honest about it. We find the Commissioner's sponsorship of this bill both puzzling and pretty hard to swallow.

The Commission knows the propensity of the forwarders to limit their holding out to high-grade traffic moving between major points. It is also aware that over the last 10 years, at least, it has required the motor carriers and only the motor carriers to handle all shipments to all points. I can cite you seven or eight cases, and I do in my full statement in which the Commission has told motor carriers in no uncertain terms you, friend, are a common carrier, and you get out there and perform your common carrier obligation.

They didn't say a word when the railroads went out of the LCL business for all intents and purposes. And they never said that to a freight forwarder.

What is going to happen if this bill is passed? It has to go one way or the other. The forwarders will take the extra money they are going to get from the railroads by virtue of lower contract rates than they pay today. And I stress again the fact they are getting very good rates today, considering the quality of the traffic. They can put that money in their pocket.

They aren't going to lower their rates to Vincennes, Ind., out of New York. They don't get enough tonnage to do it. But they could lower their rates, for example, from New York to St. Louis. What is going to happen?

The motor carriers who have handled that traffic for a long time, and that is the lifeblood of motor traffic, they are not going to stand aside; they are going to reduce their rates to meet the forwarder reductions. They have to. They have no choice.

Where do we end up? We end up having the traffic moving exactly as it does today in exactly the same kind of traffic. The railroads will continue to handle the traffic they are handling now, and the motor carriers will continue to handle the traffic they are handling now.

The only thing is the railroads will suffer a reduction in the revenue they are receiving on the freight they are handling today, and the motor carriers will suffer a reduction in the revenues on the traffic they are now moving because they will have to reduce their rates in order to meet the forwarders' reduction if it comes about.

So we stay right where we are except that each of these two modes of transportation become today's situation even more impoverished than they are now.

Something was said, of course, earlier by, I believe, Chairman Stafford about the fact the forwarders aren't making much money. To be perfectly candid about it, there is nobody in the transportation field that is making much money. The forwarders are not alone.

Finally, on this bill, the Commission justifies this proposed legislation, as you say, on the sacrosanct basis of energy-saving rail service. Quite frankly, I think shippers are going to use rail service for one of two reasons.

One: It is better.

Two: It is cheaper.

I don't know of any shipper that is going to turn his traffic over to any mode of transportation by paying more money and at the same time having the savings going—perhaps it is going—to save a little energy. But I think also this energy bit is significantly over

done. It is a theory like a lot of theories that simply doesn't hold water on close examination.

I have attached to my statement a publication put out by our research department, aptly, I think, entitled, "Debunking the Rail Energy Efficiency Myth." And it goes into some detail regarding the true situation insofar as energy consumption is concerned in the transportation field.

I think the basic fallacy in the assumption that the railroads are so extremely energy efficient is the fact that they make their comparisons on the basis of ton miles. Railroads handle by and large heavy-loading traffic. Trucks by and large don't handle heavy-loading traffic. So when you compare ton miles, it is like comparing apples and oranges.

There is a built-in bias against trucks by using a ton-mile comparison. And I have a simple illustration that I think will show the ridiculousness of this ton-mile comparison. I ask you to assume a 40-foot rail car loaded with machinery weighing 75 tons. And this is not in my prepared statement. I ask you to assume a similar sized car, 40-foot car, loaded with insulating material.

That machinery will weigh 75 tons; the insulating material about 6.5 tons in a fully-loaded rail car.

Now, if you move each of those cars 100 miles, your machinery car generates 7,500 ton miles; the insulation car generates 650 ton miles. You divide one into the other, and you come out on this ton-mile theory with what seems to me the absurd conclusion that the machinery car was moved 11.5 times more efficiently than the insulation car.

That completes my remarks on 2083. Shall I go ahead with the balance of the Commission bills?

Senator HARTKE. Do you want to go to the other bills?

Mr. BEARDSLEY. We are also opposed to S. 2084. As you know, it would amend the law to allow the Commission to issue regulations to insure that owner-operators are adequately compensated for fuel costs under their lease arrangements with carriers when a transportation emergency exists or is anticipated. That covers a rather broad area.

Our basic opposition to this bill is we believe it would be an unjustified intrusion by the ICC into the dealings between carriers and independent contractors, mostly called owner-operators, that some carriers use to perform some of their services.

These owner-operators usually constitute a one-man, one-truck business. Sometimes, however, an owner-operator will own several trucks and hire his own employees to drive some of his trucks. In either case, the services of the drivers and the equipment are used by a regulated carrier under a lease agreement.

There are quite a variety of these arrangements. For example, some are based on a percentage of the revenue received by the carrier from the haul involved. Some are based on mileage, and still others are based on a trip fee.

The ICC in our estimation—and I admit that the question is difficult; we are in a sort of foggy area—has never had jurisdiction over the compensation paid under owner-operator leases. It says

in justification for this legislative proposal, in effect, that if it had this authority in the winter of 1973-74, the so-called independent truckers strike would not have taken place.

Frankly, we doubt it. But in any event, this is essentially a matter we think which should be left to the parties. There are lots of areas in the transportation business today, and I suppose it is true of every business in the world in which costs are increasing, sometimes very significantly.

We have just had a safety standard imposed by the NHTSA of DOT which is going to raise the cost of large trucks by roughly \$2,500 because of new braking requirements and things of that nature. The EPA noise regulations and emission regulations of one kind or another are going to significantly increase the costs of trucks, whether the carrier buys them or the owner-operator buys them.

All I am really trying to say is in this business when you go out to buy a truck, whether it be a small man or large man, when you make these agreements, it is the kind of thing that is better worked out between these two parties to these agreements who understand each other's business than of the Commission in effect trying to put everything into one sort of square or round or whatever you want to call the mode.

We think it will work better on the basis that it always has. That is the basis for our opposition to S. 2084.

We favor the other two bills. The pooling bill, we think will bring about a situation which is much less rigid than you have today. The pooling requirements of the Interstate Commerce Act are sort of complex. And strangely enough, they don't even contain the definition of pooling.

The Commission has proposed, as we understand it, a fairly simple operation which the carriers, I believe, will be much more apt to utilize.

Senator HARTKE. I might say on that S. 2085, we will be glad to submit your language in the bill to save you time.

Mr. BEARDSLEY. I can say the same thing about S. 2086, Mr. Chairman. We have been here for the last several Congresses supporting the bill and there are a couple of minor changes that we ask be made in the bill.

Senator HARTKE. I see those.

In opposing S. 2083, which would allow freight forwarders to establish freight contract rates with railroads, you argue that the freight forwarders will divert high volume traffic from the motor carriers to the railroads, while leaving the low-volume, low-profit traffic to the motor carriers.

It was my understanding that the only way the freight forwarders got high-volume traffic was to consolidate smaller shipments into volumes which are less costly to move. If freight forwarders are capable of diverting high-profit traffic, why can't the railroads or the motor carriers get this traffic directly?

Mr. BEARDSLEY. Well, there is no reason at all that they can't. As I indicated earlier, I have never understood why the railroads early in the game didn't consolidate these small-lot movements into volume movements. But for reasons best known to themselves, they

never did. That is the reason the forwarders came into the picture.

Motor carriers today, and they always have been, are essentially a small volume mode of transportation. We have some heavy tonnage, that is to say, moving in truckload lots. But that represents by far the small percentage of shipments that we handle.

Senator HARTKE. Why can't you compete, then?

Mr. BEARDSLEY. We are competing, Mr. Chairman. We are competing very vigorously between the major points. As I pointed out earlier, it is only us that is supposed to handle the small shipments throughout the country, so to speak. We are the only ones the Commission says has to do it. We are very competitive with the forwarders.

As I say, if you will look again at this little one-page appendix, you will find where the traffic is moving between major points, the forwarders' rates are very close to the motor carriers' rates. There is very intense competition, no mistake about that, between motor carrier and forwarder.

What I am concerned about is the second alternative I gave you earlier—namely, that the forwarders will use this law if it is enacted to get the railroad rates down even lower with the result that we have no alternative, but to meet them. They are not going to lower the rates, as I said before, to Vincennes, Ind.; they are not going to lower them to Centralia, Ill., or Washington Court House; they are not going to do it.

They are going to lower them, if at all, between the major points. And we are going to meet these reductions. We have no alternative. That is our lifeblood, as I said before.

Senator HARTKE. You contend the ICC has not enforced the provision to require the freight forwarders to perform their duties as common carriers?

Mr. BEARDSLEY. There can't be any doubt about it, Mr. Chairman.

Senator HARTKE. Do you have cases for that?

Mr. BEARDSLEY. If you note, I said before about all they ever did was cluck. You note this little statement. They say, "One of our major concerns, for example, is with the traffic patterns of existing freight forwarders. Commission investigations have revealed that these traffic patterns show a preponderance of movements between major metropolitan areas to the virtual exclusion of smaller communities," which is simply stating the facts of life. That is the situation.

Senator HARTKE. What I am asking, though, is there any case in which the request has been made to enforce them to perform their common carrier responsibilities that the Commission has refused to require them to do?

Mr. BEARDSLEY. I really don't know, Mr. Chairman. But the fact is the Commission institutes many, many proceedings on its own motion. And if it really had any intention at all of doing what you are talking about, it wouldn't have had to wait for a complaint to be made.

Senator HARTKE. There is a live quorum; I am going to impose upon Senator Weicker for a few more questions, and I will try to be back here as soon as I can.

Senator WEICKER. Mr. Beardsley, you say the lower rates which this bill would make possible for freight forwarders to establish with railroads would undercut your business and thus make it harder for you to provide service to isolated communities. Assuming, without agreeing, that this is true, would it be more sensible to get rid of cross-subsidization itself rather than continuing to saddle one group with high rates to subsidize another group?

Mr. BEARDSLEY. Well, I would say yes off the bat, but I think that, Senator, practically as a political matter is a pretty tough one to get over. We are talking about a lot of small areas in this country who've got, I would think, a lot of representatives in Congress who are interested in their welfare. And I doubt that they are going to be kind of wiped off the map by any insistence by us, for example, that everything we handle is going to have to return full cost.

Perhaps you are talking about a subsidy to the motor carriers to serve those points. I don't know.

Senator WEICKER. I would like to examine the results of the enactment of section 409 which allows freight forwarders to negotiate rates with motor carriers. What was the effect of the establishment of such negotiated rates upon motor carriers?

Mr. BEARDSLEY. The effect was that the motor carriers that are handling that tonnage, I believe, are handling it at rates much lower than they charge the general public, and without real justification for it.

I think you will find in most instances, it is traffic they think they have to have in order to get a backhaul, for example, where they would otherwise move empty. So they are taking rates on very high-grade tonnage that they would not tender to the public generally.

Senator WEICKER. Is this unfair competition for the railroads which would have otherwise gotten the traffic?

Mr. BEARDSLEY. Let me tell you if it is, we would be happy to be rid of it. We think, as I said in my remarks, it was a mistake that Congress passed this in its present form.

Senator WEICKER. On the consumer side, have such negotiated rates reduced costs or kept them from going up as fast as they might have?

Mr. BEARDSLEY. I really don't know. I don't think forwarders have passed any of those savings on to the public if that is what you are getting at.

Senator WEICKER. Finally, if negotiated rates have not been beneficial for motor carriers, why have they entered into these rates with freight forwarders?

Mr. BEARDSLEY. There are lots of times, Senator Weicker, where a carrier no matter what kind will have a—in fact, there are very few completely balanced movements because of the nature of the country and the fact that all areas of the country don't balance out agriculturally and otherwise.

The result is there are many times when you may have a vehicle that is slightly loaded or perhaps not loaded at all. The temptation in some of these instances is to take very low rates for high-quality traffic in order to get something out of the return movement.

In the long run, that does not do the overall rate structure one bit of good. And that is an understatement.

Senator WEICKER. In your statement, you argue that passage of S. 2083 would result in freight forwarder-railroad rates which would result in "significant rate reductions." Why wouldn't such reduced rates result in lower consumer prices and help stem the increased inflation rate?

Mr. BEARDSLEY. Well, I have just said a while ago that I don't believe the forwarders ever passed the savings that they make by getting lower rates out of motor carriers on to the general public. I recognize the possibility that one of the things that can happen here is that the forwarders between the major points may lower their rates if they can get a reduction from the railroads, in order to divert the motor carrier tonnage.

But I have also pointed out it is not going to work. We are not going to give up that tonnage, as I have said before. That is our lifeblood.

Now, there will be at least, I think, for a short time a saving to the public. But whether that is justified in view of the financial conditions of both the railroads and motor carriers, I don't know. I would think it wasn't.

But let's assume for a little while the public does save some money. You are going to get back to the situation where the forwarders, the railroads and the motor carriers see that all that has happened is that the same tonnage is moving by the same modes of transportation between the same points. They will all finally realize they have made a mistake; their rates will have to gravitate upwards to make up for that mistake.

So I think that any advantage the shipping public gets out of that will be short term. And again, I doubt that those savings will be passed on ultimately to the consumer. I don't see much evidence that has happened in the past.

Senator WEICKER. Motor carriers had the authority to negotiate joint rates and through routes with the railroads, is that right?

Mr. BEARDSLEY. Yes, sir.

Senator WEICKER. The motor carrier portion of this rate will often be lower than the equivalent motor carrier rate for traffic which does not later move by railroads. Why isn't the position of the freight forwarders who would establish a negotiated rate with the railroads similar to that of the motor carriers who establish joint rates?

Mr. BEARDSLEY. The basic difference as I see it, Senator, is that the railroads and motor carriers are common carriers who are entitled to interchange with each other at a joint rate through route arrangement. In its relationship with the carriers that transport tonnage, a forwarder is by law and in a practical aspect a shipper.

Senator WEICKER. And my last question to you, and I thank you for your patience, if the establishment of joint rates and through routes would facilitate the establishment of piggy-back service which is thought to be energy efficient, why is it necessary for the Commission to require the establishment of these rates?

Mr. BEARDSLEY. Well, we are talking now, I guess, about S. 2086, Senator.

Senator WEICKER. Right.

Mr. BEARDSLEY. That is a hard question for me to answer. I think historically, the motor carriers over the years have shown a lot of willingness to enter into joint rates with railroads. I guess the railroads started out by thinking we weren't very respectable people back in 1935. And somehow or other, I guess they still feel that way because they resist by and large.

There are some piggy-back rates, so-called, but by and large, they resist the efforts of the motor carriers to enter into joint rates with them. There is some piggy-back moving on so-called plan one. But generally speaking, the railroads have consistently opposed giving the Commission the power to require them to enter into joint arrangements with the motor carriers. They say we want to do it when we are going to do it, and we want it on a voluntary basis.

I don't know what they will say this time, but I sort of suspect that will be the testimony this time, too.

Senator WEICKER. I thank you very much, Mr. Beardsley.

Mr. BEARDSLEY. Thank you, Senator.

[The statement follows:]

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL,
AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman, and members of the Subcommittee:

My name is Peter T. Beardsley and I am Vice President-Law and General Counsel of American Trucking Association, Inc., 1616 P Street, N. W., Washington, D. C. 20036. You are probably familiar with our organization, but for the record let me say that ATA is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia.

We appreciate the opportunity to present testimony on the four bills which Senator Hartke introduced at the request of the Interstate Commerce Commission, S. 2083, 2084, 2085, and 2086. We favor two of the bills and are opposed to the other two. I will discuss the bills in their numbered order.

S. 2083—CONTRACTS BETWEEN RAILROADS AND FREIGHT FORWARDERS

We are opposed to S. 2083. This bill would enable freight forwarders to obtain lower rates from railroads for the transportation of forwarder traffic than those charged other shippers for the same service. It would extend and greatly expand as to their dealings with railroads the unwarranted forwarder privilege permitted by Sec. 409 in their dealings with motor carriers. They would be permitted to contract with railroads to handle their traffic at much lower rates than are charged for like traffic of other shippers, tendered under similar conditions. This would put the forwarders in a preferred position whereby they can use their large tonnage between important transportation centers to drive down the railroads' rates and, in turn, increase their profits.

It should be noted that §409 bans motor vehicle movements in volume lots at reduced rates for forwarders on distances greater than 450 miles. The proposal before you, however, proposes no such limitation on rail transportation of volume tonnage.

A little over three years ago, we opposed S. 1896, which was introduced following the Interstate Commerce Commission's decision in Ex Parte No. 266, *Investigation Into The Status of Freight Forwarders*, 339 I.C.C. 711, (1971), wherein it recommended that "forwarders should be allowed to enter into negotiated arrangements with common carriers by rail . . . at least for a 3-year period . . ." *Id.* at 809. The bill was not enacted. The few differences between S. 1896 and the present S. 2083 do not in any way alter our opposition to the latest bill.

In 1956, hearings were held on H.R. 9458 to amend §409 of the Interstate Commerce Act to allow freight forwarders to make contracts with railroads similar to those they make with motor carriers. But the proposed 1956

legislation, unlike the bill before you, would have been limited to movements of forwarder traffic in so-called piggyback movements. The forwarders claimed that such legislation was needed because there was "no practical basis on which freight forwarders can legally utilize piggyback service, and second, because the motor carriers who compete with forwarders for traffic already are authorized to use the service on a contractual basis." Hearings, Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce, 84th Cong., 2nd Sess., p. 1158. The forwarders said the legislation was needed to achieve "equality of regulatory treatment." This catchphrase has been popular with the forwarders for a long time, but it won't really stand scrutiny. The forwarders' claim that they are subject to "unequal regulation under law" is based on nothing more real than the fact that they are regulated *differently* than are rail, motor and water common carriers. Being different creatures, in fact and in law, there is no reason whatever that they should be treated the same as the common carriers which transport their traffic. What the forwarders really want is to enjoy the privileges attendant upon common-carrier status, without shouldering their responsibilities. Forwarders do not transport good; they merely act as a "middle man" between the shipper and his customer, using the services of true common carriers to transport the freight. The forwarder's status, with respect to the common carrier which transports his traffic is, and always has been, that of shipper.

Freight forwarders have been in business almost as long as the railroads. Their success was due to the railroads' failure to move less-carload shipments with reasonable speed. The forwarders solicited these shipments on the same rate basis as the rail less-carload charges, and promised faster service than the railroads gave. By consolidating these shipments into volume lots, the forwarders were able to receive the much faster service the railroads provided for carload traffic, and to live off the spread between the higher LCL rates they charged the shipper and the significantly lower volume rates they paid the railroads. The conduct of forwarding activities requires a very small investment. In 1973, according to the latest annual report of the ICC (1974), the "net investment in transportation property plus working capital" of Class A freight forwarders was \$67.3 million, in rounded figures. The comparable figure for Class I motor carriers of property is \$3.6 billion.

Forwarders accept common carrier responsibility for loss or damage to the goods of their shippers, but in their relations with the various common carriers which actually transport the freight, forwarders are shippers.

The definition of a "freight forwarder" in Section 402 of the Interstate Commerce Act makes the forwarder's status clear. He is:

(1) A person other than a carrier subject to Part I, II or III of the Interstate Commerce Act;

(2) Who assumes common carrier responsibility with respect to shipments tendered by the shipping public;

(3) Who undertakes the assembling and consolidating of shipments, and the break-bulk and distribution thereof; and

(4) Who uses, for all or any part of the transportation of shipments moving in forwarder service, the services of a rail, motor or water common carrier regulated by the Interstate Commerce Commission.

In the early days of regulation, the railroads attempted to charge their LCL rates on each individual shipment which the forwarders tendered in consolidated volume lots. Had they succeeded, the forwarders would have been out of business. But the forwarders argued that their status was that of a shipper, and that the railroads had to charge them the same volume rate as they did other shippers. The Supreme Court, in *Interstate Commerce Commission v. D. L. & W. R.R.*, 220 U.S. 235 (1911) held with the forwarders, saying:

"The contention that a carrier, when goods are tendered to him for transportation, can make the mere ownership of the goods the test of the duty to carry, or, what is equivalent, may discriminate in fixing the charge for carriage, not upon any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods, is so in conflict with the obvious and elementary duty resting upon a carrier, and so destructive of the rights of shippers, as to demonstrate the unsoundness of the proposition by its mere statement."

And in *C., M., St. P. & P. R. Co. v. Acme Fast Freight*, 336 U.S. 465, 467-68 (1949), the Supreme Court said:

"In its relations with its customers, a forwarder is subjected by the Act to many of the requirements and regulations applicable to common carriers under Parts I, II, and III of the Act . . . In its relations with these carriers, however, the status of the forwarder is still that of a shipper."

Before either motor carriers or forwarders were subjected to federal regulation, motor carriers transported forwarder traffic on a contract basis. When motor carriers came under federal regulation in 1935, these arrangements were declared unlawful by the ICC, whose decision was upheld by the Supreme Court in *U. S. v. Chicago Heights Trucking Co.*, 310 U.S. 344, 60 S. Ct. 931 (1940). The Court unanimously held that "forwarders are shippers protected by the Interstate Commerce Act" and that the Commission's action in holding the contract arrangements unlawful was an exercise of its "power to protect and maintain a transportation system free from partiality to particular shippers." The Court also noted that "forwarders in using railroads enjoy no special tariff rates and pay the same published carload and less than carload rates that other shippers pay."

ATA and other motor carrier organizations participated in Ex Parte No. 266. Through a series of exhibits we induced, we showed that forwarders do not provide service between many points they are authorized to serve, and that they are highly selective in the traffic they choose to handle. We demonstrated that forwarders do not compete at all with motor carriers over relatively short distances (the ICC report, page 767, shows that only 1.6% of forwarder traffic moves 499 miles or less) and that even over long distances, their competition is limited, generally speaking, to traffic moving in heavy volume between the larger cities.

One of the exhibits we introduced in Ex Parte No. 266 included a comparison of the motor-carrier and forwarder rates from New York to Kansas City and intermediate points. Appended hereto is an update of that exhibit with 1975 tariff rates. Acme Fast Freight's forwarder rates are shown on the exhibit; the rates of two other large forwarders (Universal Carloading and Distributing Corp. and National Carloading Corp.) which were listed on the original exhibit and are much higher than Acme's rates have been eliminated for purposes of clarity. The motor-carrier rates are those of Eastern-Central Motor Carriers Association, Inc. From New York to St. Louis and Belleville, IL (10 miles outside St. Louis), Jefferson City and Kansas City, the forwarder rates are on a parity with those of the motor carriers. However, on traffic moving from New York to the smaller points, the forwarder rates on all traffic are much higher than those of the motor carriers. For example, to Vincennes, IN, Acme's rates range from \$1.57 per cwt. on Class 100 traffic below 500 pounds, to \$6.79 per cwt. on Class 50 traffic from 500 to 1,000 pounds, respectively, higher than those of the motor carriers. This demonstrates the selectivity in which the forwarders engage whereby they "compete" with the motor carriers only between metropolitan areas where tonnage is heavy. This forwarder pattern of selectivity exists nationwide and the ICC is well aware of it. In one of its recent decisions, it said:

One of our major concerns, for example, is with the traffic patterns of existing freight forwarders. Commission investigations have revealed that these traffic patterns show a preponderance of movements between major metropolitan areas to the virtual exclusion of smaller communities. *American Delivery System, Inc. Freight Forwarder Application*, 340 I.C.C. 776, 789 (served March 27, 1972)."

The effect of this selectivity is that the motor carriers are given the "privilege" of providing service to the smaller cities and towns throughout the country, very often at rates which do not equal the cost of providing the service.

The Commission's report in Ex Parte No. 266 acknowledges that the railroads "have almost completely discontinued their LCL service" (399 I.C.C. at 735), and that:

"Motor carriers handled almost 85 percent of the volume of small-shipment or LTL traffic in 1964. Freight forwarders were second (though the largest of the indirect modes of transportation) accounting, however, for only about 5 percent of over-all tonnage." *Ibid.*

The latest figures available indicate that motor carriers handled 84.7% of the small shipments tonnage in 1972, whereas freight forwarders handled 4.4%.

(Transportation Economics, Vol. I No. 3 - 1974 p. 11, published by ICC Bureau of Economics)

As the Commission noted in its report (339 I.C.C. 741), the forwarders "argue that they are common carriers; and should be given full common carrier status; that they should not be treated as shippers; and that the authority under section 409 to enter into contracts with motor common carriers establishes that, at least with respect to that mode, they are common carriers." Perhaps the best way to demonstrate the infirmity of this forwarder claim is to turn from the technical arguments, to a look at the Commission's day-to-day regulation of the two transport modes. When motor carriers have strayed from the "straight and narrow path" and have reduced or eliminated portions of their service on the ground that the service costs more than the rates return, the Commission has been quick to castigate them and threaten revocation of their franchise unless they "straighten up." In *Pacific Intermountain Express Co. — Investigation*, 96 M.C.C. 204 (1965) the ICC held that the named carrier and two others were not "maintaining a reasonably continuous and adequate service" in performing the transportation authorized by their certificates between some of the points they were entitled to serve. The carriers were ordered to correct the deficiencies in their service, and threatened with revocation of their certificates if they did not do so, despite the Commission's admission that "there is a paucity of traffic generated at these points."

Years ago, in *Buhr — Revocation of Certificate*, 62 M.C.C. 774, 776 (1954), the Commission said: "Carriers holding operating rights issued by us should render the service authorized and should not be permitted to retain authority unless they intend to and do render such service. The failure of a common carrier to operate may be regarded as a violation of the terms of its certificate and of the provisions of the Act and of the Commission's rules and regulations promulgated thereunder, and constitute grounds for the Commission's calling upon the carrier to resume operations under penalty of having the certificate revoked."

And the Commission continues today to follow that hard line. In *T.I.M.E.-D.C., Inc. — Investigation and Revocation of Certificates*, 113 M.C.C. 897 (1971), the Commission found that respondent, while not refusing less-truckload shipments to certain points, had turned the traffic over to other motor carriers. It turned a deaf ear to the carrier's argument that it could not transport the traffic involved except at a financial loss. It said (at p. 897):

"Nor are we impressed by respondent's argument that reinstitution of the considered service would have an adverse financial effect on its operations. This is no more than a pleading that it has discontinued the unprofitable portions of its operations while retaining the profitable portions. Respondent cannot be permitted to skim off the cream of the traffic and offer a less than complete service to shippers located at the involved points . . ."

And finally in *Braswell Motor Freight Lines, Inc., Investigation of Practices*, 118 M.C.C. 392 (1973), the Commission put it still another way by saying, at 410, "unauthorized total cessation of operations . . . constitutes an unlawful abdication of the obligation inherent in respondent's certificated operating rights to provide reasonably continuous and adequate service at its authorized points."

I have cited these proceedings to show that the Commission holds the motor carriers strictly to their common carrier obligation to render the service authorized by their certificates. It will not do for the motor carriers to agree that they lose money on certain operations and therefore, should be allowed to avoid them.

If it be a fact that the forwarders occupy the same common-carrier status as motor carriers, why—in view of the abundant evidence of their failure to live up to their "common carrier obligation"—has the Commission never seen fit, in any case we can locate, to threaten to revoke their permits unless their practices are corrected. The fact is that forwarders, regardless of their technical, legal, status have never been considered by anyone—other than themselves when it suited their convenience—to be common carriers.

We submit that the Commission's decision in *Ex Parte No. 266* is both inequitable and naive. It has shown no concern at the successful avoidance—by both forwarders and railroads—of the transportation of traffic which is not profitable, while at the same time "coming down hard" on motor carriers for attempting to follow the same course. It should know that if this bill is enacted, and the railroads reduce their charges to forwarders, there can be only one of two results: either the forwarders will pocket the reductions as

profit, or will use them to attempt to divert motor-carrier traffic which will return a profit to them. And the Commission should also know that the motor carriers will meet any forwarder rate cuts in order to retain such traffic. Meanwhile, if its past performance is any criterion, the Commission, having promoted a program to enrich the forwarders at the expense of motor carriers, can be expected to continue to insist that motor carriers shall "toe the line" in carrying out their common carrier obligation, while looking the other way as the forwarders "skim the cream" of competitive traffic. This, despite its obligation under the National Transportation Policy fairly and impartially to regulate all transportation modes!

When the legislation to include freight forwarders under federal regulation was being considered by the House, Congressman Wolverton referred to the abuses which had arisen by virtue of the "large volume of tonnage which [forwarders] control [and use] as a means of inducing the rail lines to establish rates specially designed to accommodate this particular [forwarder] traffic." He noted that "by playing one railroad against another and by playing railroads against motor carriers, the forwarders have been able to obtain concessions from the railroads which have greatly aided them in extending their operations."

In his remarks, Congressman Wolverton referred to the fact that "forwarders have favored the authorization of joint rates as a permanent matter." He said:

"Upon most careful consideration, however, your committee has concluded that the likelihood of abuse is so great, and injury to the underlying carriers so probable, as to make it imperative, in the interest of the public and for the good of the transportation system of the country as a whole, that Congress should adopt the definite policy of forbidding such rates."

* * * * *

"The principle underlying reason why the forwarders desire to obtain authority to make joint rates with the actual carriers whose services they utilize, is in order to enable them to secure transportation at a less price than the regular rate of the carrier, and at a price which will not be open and available to other shippers. Even were such authority surrounded with all possible safeguards, the tremendous bargaining power which the larger forwarders would have by reason of the great amount of traffic which they control, would inevitably enable them to divert from the carriers performing the actual transportation important amounts of revenue greatly exceeding the value of the service contributed by the forwarders themselves." 87 Con. Rec. 8218 (1941)

His comments today are as appropriate as when made, and as applicable to S. 2083 as to the bill then under consideration.

The fears expressed relative to the forwarders' power, by virtue of the volume of freight they control, to force concessions from carriers remains entirely justified. The great bulk of the forwarding business is concentrated in the hands of a few large forwarders or forwarder groups. According to the Commission's report in Ex Parte No. 266, one conglomerate organization, United States Freight Co., now Transway International Corp., controls seven Class A freight forwarders, several motor carriers, owns 50% of an ocean common carrier with worldwide operations (Waterman Steamship Co.), and owns a trailer manufacturer (Great Dane). 339 I.C.C. 753-54 "Other controlled companies further contributing to USF's transportation empire include some 30 active entities engaged in transportation or related activities including foreign freight forwarding, local drayage, platform handling, terminal management and operations, agency services, and insurance brokerage." *Id.*, at 754 Again, according to the ICC's report, its gross revenue in 1969 was \$326.4 million, with net income of \$13.9 million. *Id.*, 753. Updating these figures to 1974 from Moody's Investors Service, we find that Transway's gross revenue has grown to \$592.12 million and its net income to \$19.53 million.

In the years since 1969 when the Commission's Ex Parte 166 report was written, a number of "new" freight forwarders have come under ICC jurisdiction through issuance of operating permits. These forwarders are largely engaged in the specialized forwarding of household goods and air freight, both within the United States and internationally. When the revenues of the large surface freight forwarders are totaled, they do not now constitute as large a percentage of the total forwarder revenue as they did in 1969. But if the surface forwarders' revenue only were totaled for 1974, and that of the large forwarders in that category segregated, we believe that a few large

forwarders and forwarder "families" such as Transway would be seen today to be as dominant in the field of surface freight forwarding as they have been for many years. Thus, insofar as the movement of general freight is concerned, the type of forwarder operation which is competitive with motor-carrier service between metropolitan areas, several large surface freight forwarders still dominate their field and enactment of S. 2083 would enable them (and particularly the Transway group) to extract significant rate reductions from the railroads. *Id.*, 753-763

Our organization has opposed the forwarders' continuing efforts, over many years, to achieve a highly favored position in transportation by occupying the status of shipper or carrier whenever one or the other best suited their convenience and pocketbook. Twenty-five years ago, we opposed the provisions now found in Section 409, whereby forwarders are given the privilege of using their tonnage to "persuade" motor carriers to charge them much lower rates than they charge other members of the shipping public for the same service. See Hearings on H.R. 5967, Subcommittee on Transportation of the House Committee on Interstate and Foreign Commerce, 81st Cong., 2nd Sess. (1950), pp. 148-181. But the legislation was enacted, resulting — in the Supreme Court's words — in "partiality to particular shippers." The amendment to Section 409 gave the forwarders the same privileged position they occupied before regulation of motor carriers. Insofar as motor carrier-forwarder relationships are concerned, it is almost as though neither was subject to federal regulation. The Commission has done nothing to assure that the §409 "contract" rates which the forwarders pay motor carriers are reasonable, or that they even equal the cost of performing the service. S. 2083 would exacerbate the problem by vastly increasing the ability of forwarders to profit — not because of the service they render — but because of the economic power they wield through the tonnage they control.

The enactment of §409 was, we submit, a mistake. The forwarders now ask you to compound that error. Not satisfied with their free rein to obtain unreasonably low rates from motor carriers by virtue of the traffic they control, they again seek to increase their profits by using the same tactics on the railroads. For the reasons so clearly expounded by Congressman Wolverton when Congress first regulated freight forwarders, we ask that you reject S. 2083.

In fact, forwarders are already securing extremely low rates from the railroads for the movement of their traffic. The Rail Revenue Contribution Study, published by the ICC Bureau of Accounts for the year 1972, Statement No. 153-72, breaks down the transportation of forwarder traffic by railroad into eight directional categories. On a fully-allocated cost basis, the railroads lose money on the transportation of this high-grade traffic on six of the eight movements. The figures range from revenues 2.7% below fully-allocated cost (Official to West) to 41.4% below fully-allocated cost (Official to Official). Only on the West to West and South to West movements do the railroads show a profit, and that is only 4.4% and 5.3% above fully-allocated costs, respectively. Under these circumstances, Congress should not even consider allowing the large forwarders to use their tremendous economic power to secure still lower charges from the railroads on their very high grade traffic.

The forwarders claimed in Ex Parte No. 266 that enactment of legislation similar to S. 2083 is needed to achieve "equal treatment" with motor carriers. They also made the equally fallacious claim that enactment of the bill would benefit small shipment traffic. (ICC Report, p. 741) While the forwarders deserve full credit for a vivid imagination, these claims are completely baseless.

Forwarders have always been "traffic skimmers." Because of the significant tonnage the large forwarders can tender, they already receive extremely favorable rail rates. To the extent, therefore, that forwarders restrict their holding out to high-rated traffic between metropolitan centers, the "spread" between the rates they charge and those they pay is increased. As stated by Commissioner Murphy in his dissent in Ex Parte No. 266:

"In this regard, the forwarders' spread — the difference between what the forwarder receives from its customers and what it pays for the underlying transportation — has increased steadily during the past 14 years from 25 cent to 35 cents of each dollar paid to the forwarders by their shippers. This spread seems to me to be ample to meet the expenses of a reasonably efficient forwarder and to return a satisfactory profit to that forwarder. That it may not do so in certain limited situations does not, in my judgment, constitute sufficient cause to increase it." 339 I.C.C. 813

As noted, it is commonplace to find forwarder rates which meet motor carrier rates on heavy traffic movements between metropolitan areas, but they decline to maintain rates on the same scale, on traffic moving to or from small points. That is left for the motor carriers to handle. The ability of the motor carriers — and only the motor carriers — to serve these small points is heavily dependent on a continuation of the movement of traffic in large volume between large points.

Some years ago, the railroads, with the acquiescence of the Commission, "retired" from the business of transporting small shipments. This, in turn, had the effect of "dumping" a vast amount of such traffic upon motor carriers. The forwarders won't take it, except when it moves between major points. This leaves the truly "cat and dog" traffic — small-volume shipments moving sporadically to and from small points throughout the country — for the motor carriers to handle. This traffic cannot move at all, except on a loss basis, and the Commission requires *only* the motor carriers to transport it.

In its 87th Annual Report to Congress (1973), at page 59, the Commission noted that the railroads "[o]ver the past ten years . . . for the most part have not handled any LCL (less-than-carload) traffic." Other than to note that this "has been of great concern to the small shippers," the Commission's statement contains no possible criticism, express or implied, of the railroads' action. Under these circumstances, it seems the height of irony for the Commission to sponsor legislation which is intended to enable the forwarders to divert "good" traffic from motor carriers by lowering, in highly selected cases, their rates on such traffic, and, in turn, to subsidize these lower rates through the medium of rail-forwarder "contracts" containing rates still lower than those now provided by rail traffic. This highly inequitable proposal will not improve service to the public; and we assume the Commission will continue to look to the motor carriers — not the forwarders to railroads — to transport small lots of freight to sparsely settled areas. Passage of S. 2083 can only aggravate the "small shipment problem," in that diversion of profitable traffic from motor carriers to forwarders will make it harder for the former to serve these small points, and the latter have no intention of doing so.

A final word relative to the Commission's justification for its sponsorship of S. 2083. It includes the statement that a "substantial argument has been made . . . that . . . contract rates between freight forwarders and railroads will" (1) encourage less-than-carload shippers to utilize energy-saving rail service; and (2) help the railroads improve car use and increase their tonnage-carrying capacity by better synchronization and avoidance of empty car movements by loading refrigerator or special purpose cars in the empty direction. The Commission recognizes the theoretical nature of the proposal, and admits that "its practical effects are not entirely clear." This, in turn, forms the basis for proposing that the legislation be enacted "on a two-year experimental basis" during which it can assess the "energy-saving effects of the proposal . . . and report the results to Congress."

It is popular these days to assume, without any real consideration of the actual practices involved in rail versus motor transport, that the former is far more energy-efficient than the latter. This assumption is by no means valid in the vast majority of cases. Such assumptions are always based on the number of ton-miles moved by train and truck and the fuel consumed in such movements. This simplistic method of "proving" that trains are more energy-efficient than trucks cannot stand even reasonably close examination. Among other things, it ignores the fact that rail traffic is much heavier loading than truck traffic. This being so, it follows that any comparison of the efficiency of the two modes is like comparing apples and oranges. It also ignores the fact that railway routes between the same points are generally longer than truck routes. In some instances, the rail mileage is more than double the highway distance. Thus, on the same shipment between these points, rail ton-miles could be double truck ton-miles on this basis alone. Again, rail ton-miles are not directly comparable to truck ton-mile because the former frequently do not include necessary transportation, usually by truck, to and from the rail facilities. Thus, attempts to compare the energy efficiency of different types of transport on a ton-mile basis is unrealistic. This simplistic approach to a complex problem is dangerously misleading because it appears to be scientific. I am attaching to this statement an 8-page pamphlet prepared by our Department of Research and Transport Economics, entitled "Debunking the Rail Energy Efficiency Myth," which goes into more detail

on this subject than I would attempt in this statement. I commend it to your attention.

For the reasons stated, we urge this Subcommittee not to recommend enactment of S. 2083.

S. 2084—OWNER-OPERATOR FUEL COST PASS-THROUGH

This proposed bill would add a new subsection (3) to Section 204(e) of the Interstate Commerce Act to permit the Interstate Commerce Commission to adopt regulations "to insure" that owner-operators are "adequately compensated" for fuel costs in a lease or contract arrangement when "a transportation emergency exists or is anticipated." The rationale underlying the Commission's proposal is the threat of future truck strikes due to "the present unstable world fuel situation" and resultant "inordinate fluctuations in the price of fuel." The Commission blames "the lack of adequate pass-through of compensation to owner-operators to cover fuel cost increases" for the truck strike in the winter of 1973-74.

This proposal is unwise and would aggravate rather than ameliorate the present energy problem. It is always unwise for government to interfere indiscriminately in the contractual rights of individuals and corporations. The right of freedom of contract should not be infringed upon except for the best of reasons.

The truck strike referred to by the Commission resulted in an abrogation of the rights of all others but the owner-operators. The illegal actions on the part of some striking owner-operators during that strike deserve censure. Instead, this bill would encourage such persons to artificially stir up emergency-type situations. We suggest that this proposal will encourage rather than discourage future truck strikes by providing too facile a procedure which can be easily manipulated to serve the selfish interests of a small segment of the transportation industry.

The Interstate Commerce Commission has never had, and should not now be given, jurisdiction over the substantive matter of compensation paid by motor carriers to the independent contractors from whom they lease their vehicles and driving services. This is an area which is properly left to negotiation between the parties involved. All leases and contracts in this area are not the same; some are based on percentage of revenue, some on trip fee basis, some on a mileage basis, etc. The complexity and types of lease agreements do not and cannot lend themselves to the type of rigid regulations which would undoubtedly be forthcoming if this measure was enacted.

The cost of fuel is but one item of expense in the business of transporting property. The cost of equipment is going up steadily, and precipitately, particularly with respect to the new braking system required under Motor Vehicle Safety Standard No. 121, recently promulgated by the National Highway Traffic and Safety Administration of the Department of Commerce. The cost of tires also promises to rise significantly, and soon, by virtue of a new anti-noise regulation of the Environmental Protection Agency. The taxes levied by the States applicable, in one way or another, to the operation of commercial vehicles, are steadily rising. These types of increased costs which must be borne by users of such vehicles, are of as much importance to the owner-operator as fuel in his consideration of the compensation which he must receive when he leases his vehicle and his services to a regulated carrier. And if he is to survive as an independent businessman, he must, and does take them into consideration when he bargains with a carrier over the terms of his lease agreement. We submit there is no more reason to inject the Commission into what would otherwise be arms-length bargaining between two businessmen in the case of increases in the cost of fuel than with respect to the other cost increases referred to.

Finally, it should be remembered that owner-operators, as independent contractors, have always had recourse to the courts in disputes over contract performance. They are not without any less remedy than other parties to contractual agreements. We oppose enactment of S. 2084.

S. 2085—CARRIER POOLING

We favor the provisions of this bill. Section 5(1) of the Interstate Commerce Act constitutes a broad prohibition of agreements by common carriers for the pooling "of traffic . . . service, or of gross or net earnings, or of any portion thereof," unless such agreements have the prior approval of the Commission.

But the statute itself contains no definition of the term "pooling." Thus the Commission, of necessity, has almost unlimited discretion to interpret what constitutes a prohibited "pooling" agreement. This, we submit, has caused a good deal of confusion among carriers, and required numerous Commission and court proceedings in efforts to understand the scope and application of the statutory language. See, for example, *Boston & Maine R. Pooling Application*, 298 I.C.C. 703, 708-709 (1956). Insofar as motor carriers are concerned, this combination of a board and complex statute, and the rigidity of the requirements for Commission approval, has discouraged the filing of pooling applications which would have produced savings for the carriers, and better service to the public.

The proposal submitted by the Commission would allow motor carriers to follow a much simplified procedure in the vast majority of cases in which they seek approval of pooling agreements. They would thus be encouraged to improve service on small-volume movements to sparsely settled areas through the medium of pooling. Because of the smaller number and size of shipments to many small points, regulated carriers generally must operate at a loss in handling the traffic. Operations pursuant to pooling agreements would increase the productivity of vehicles operating in such areas, and result in diminution of operating expenses, thus enabling carriers to minimize such losses. Furthermore, the shipping public would be offered more frequent and expeditious service than is presently possible. This proposal would be in the interest of better service to the public and of economy in operation.

S. 2086—JOINT RATES AND THROUGH ROUTES

This proposed legislation would empower the Commission to require motor carriers of property, under specified circumstances, to establish joint rates and through routes with each other, and also with rail, express, and water common carriers. This duty would arise only under circumstances in which the Commission, after full hearing, required the establishment of such rates and routes.

This proposal has been before the Congress in one form or another for some time, and over the span of the last several Congresses we have supported, generally, the various bills introduced to carry it out. See, for example, our testimony on S. 2245 and S. 3626, submitted May 7, 1970, and letter dated May 3, 1972, written by our President, W. A. Bresnahan, for insertion in the record of hearings on S. 2628. We do not believe it is necessary or desirable to go again into a great deal of detail respecting this proposal. Suffice it to say that except for the minor changes we suggest, this bill has our endorsement.

There are two changes which should be made in the bill. The first involves only the insertion of one word. Subsection 216(c) (2) as the bill would amend it, would require the carriers involved to establish "reasonable" through routes, when they are required to do so by the Commission. Yet the earlier language in the subsection, in authorizing the Commission to establish through routes, does not contain the word "reasonable." For purposes of conformity and to make it clear that the Commission has the obligation to establish only *reasonable* through routes, joint rates, etc., we suggest the insertion of the word "reasonable" before the word "through" the first time it occurs in the first sentence of proposed subsection 216(c) (2).

The second amendment we suggest would incorporate a safeguard which we believe is necessary, and which the Commission itself substantially included in a draft bill which it sent to Chairman Magnuson under date of March 8, 1973. We suggest that it be inserted at Subsection 216(e) (3), with the present subsections (3) and (4) of the section being renumbered as (4) and (5). It would read as follows:

"In any proceeding involving a through route and joint rate the Commission shall consider, among other things, any evidence challenging the fitness of any carrier or carriers involved and any facts relating to special operational circumstances attending the service to which the rate is applicable."

In short, we believe that the Commission in exercising its power to require one carrier to enter into a through route joint rate agreement with another, regardless of the modes involved, should provide the opportunity for either of the carriers being required to make the arrangement to show that it might be inequitable to it. Such a showing could encompass, for example, evidence demonstrating that the other carrier had a history of non-payment of traffic balances, or of causing much greater loss and damage to goods than other carriers in the same category.

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Washington Court House OH		304	1078	1078	1075	1075	1071	1071	1066	1066					531-I	901	865	776	742	644	618					474	454
Cincinnati OH		304	1078	1078	1075	1075	1071	1071	1066	1066					531-I	964	925	825	792	688	660					504	482
Vincennes IN		304	1230	1230	1228	1228	1225	1225	1219	1219					531-I	1073	1031	920	884	769	736					563	540
Centralia IL		13	1345	1273	1151	1086	963	911	963	911					531-I	1135	1089	971	930	813	780					594	566
Belleville IL		13	1171	1121	1005	962	833	796	612	586					531-I	1170	1120	1003	960	831	796					610	585
St. Louis MO		13	1171	1121	1005	962	833	796	612	586					531-I	1170	1120	1003	960	831	796					610	585
Jefferson City MO		327	1247	1196	1067	1023	888	848	650	623					533-B	1247	1195	1066	1022	887	848					649	624
Sedalia MO		327	1581	1493	1581	1493	1581	1493	1581	1493					533-B	1292	1237	1107	1063	925	886					676	645
Kansas City MO		327	1330	1276	1136	1088	946	906	689	662					533-B	1330	1276	1134	1088	945	906					688	660

EXPLANATION OF CLASS COLUMNS

COLUMN A - Less than 500 pounds

COLUMN B - 500 to 1000 pounds

American Trucking

Trucks Trains and Truth

*Debunking
the
Rail Energy Efficiency Myth*

DEPARTMENT OF RESEARCH and TRANSPORT ECONOMICS

AMERICAN TRUCKING ASSOCIATIONS, INC.

WASHINGTON, D.C. 20036

AUGUST 1974

TRUCKS, TRAINS AND TRUTH —

Debunking the Rail Energy Efficiency Myth

Would you believe . . .

. . . That a car is twice as "energy efficient" when it carries four 200-pound men as when it carries four 100-pound women?

. . . That a truck combination is more "energy efficient" when it carries steel than when it carries lettuce?

. . . That the steel industry is more "energy efficient" than the clothing industry because it produces more tons per unit of energy?

You'd probably recognize that all of these suggested conclusions are based upon irrelevant comparisons. Yet one of the most persistent and dangerous propaganda pitches now being used

to brainwash the public in these days of the energy shortage is based upon comparisons of this type. An advertisement that has been widely circulated puts it this way.

Southern Pacific trains move 238 tons per mile per gallon. 4 times that of trucking. 125 times that of air.

The effectiveness of this clever bit of deception is unquestionable. Although the ad doesn't say so, millions of people actually believe that because trains move more tons per gallon of fuel they are more efficient than trucks or planes. Even worse, some highly placed public officials have used this argument to promote regulations and legislation designed to shift freight from trucks to trains as a means of saving energy.

As an indication of how far things have gone the table below has been reproduced from a news release put out by the U.S. Department of Transportation. It purports to show the approximate energy efficiencies of different forms of transport in 1973. It accompanied a speech delivered by Secretary Claude S. Brinegar to the Scientific American Energy Conservation in Transportation Round Table Conference, which was held in Washington, D.C. earlier this year.

ENERGY USAGE AND APPROXIMATE EFFICIENCIES (1973)

Passenger Mode	Fuel Usage 1,000 B/D*	Passenger Miles Per Gallon of Fuel
Rail	10	100-150
Bus	70	75-150
Automobile		
Non-Urban	2,000	35
Urban	3,000	25
Air	700	15
Freight Mode	Fuel Usage 1,000 B/D	Freight Ton Miles Per Gallon of Fuel
Water	300	300
Rail	300	180
Truck	1,500	50

Note: Various miscellaneous uses (international carriers, non-freight trucks, recreational) use about 1.3 million B/D.

* B/D Barrels per day

Although the Secretary's remarks were highly qualified, as to the relative efficiency of trucks and trains, the clear implication of the table is that trains are more than three times as efficient as trucks (180 ton-miles per gallon of fuel for rails compared to 50 ton-miles per gallon for trucks). It has subsequently been used by others without the Secretary's qualifying language.

This is not only ridiculous, it is dangerous,

Gross Weight and Carried Load

The amount of fuel required to move a given load, all other things being equal, varies with the total or gross weight to be moved rather than with the carried load alone. In other words, energy is expended to move both the cargo carried and the vehicle that carries it. This can result in an improvement in apparent fuel efficiency while real fuel efficiency actually declines.

To illustrate, if the car in the question posed at the opening of this article weighed 3,600 pounds empty, the carried load would be 400 pounds and the gross weight 4,000 pounds with the four women. With the men the carried load would be 800 pounds and the gross weight 4,400 pounds. The carried load would be twice as much with the men as with the women but the gross weight would be only 10 percent higher. Under these conditions, if the car obtained 10 miles per gallon with women and 9 miles per gallon with the men, the relative fuel efficiency based on the carried load would be 2 ton-miles per gallon when hauling women and 3.6 ton-miles per gallon when hauling men. There would be an actual increase in fuel consumption of 10 percent when the men were carried — assuming that fuel consumption went up in direct proportion to the gross weight of the loaded vehicle, which it would not — but an apparent increase in energy efficiency of 80 percent in ton-miles per gallon of fuel based on the carried load. The same would be true, of course, if the comparison involved thin and fat people.

Obviously, the importance of moving people cannot be determined on the basis of their weight. Neither can efficiency. Based upon the kind of reasoning used in assuming that ton-miles per gallon of fuel is a proper basis for determining energy efficiency, fuel could be saved, or efficiency increased, by moving the men rather than

as a few examples will quickly show. It would be funny if it weren't so serious. The truth is that without a good deal more information, neither the economic value nor the energy required to move different kinds of freight between different points can be determined by either the number of tons that are moved, the distance each ton is moved or the product of the two, which is ton-miles.

the women. Even more ridiculous, under this concept, the apparent fuel efficiency of a carpool could be increased and actual efficiency decreased by having its members gain weight.

The same principle applies to the movement of freight. A flat bed truck combination carrying steel would have an empty weight of about 13.5 tons and a carried load of about 23 tons, for a gross weight of 36.5 tons. A refrigerated combination carrying Boston lettuce would have an empty weight of about 15.5 tons and a carried load of about 10.5 tons for a total of 26.0 tons. Thus the gross weight, the weight that influences fuel consumption — all other things being equal — of the combination loaded with steel would be only 40 percent greater than the one carrying lettuce but its carried load would be 120 percent greater.

Since, as pointed out earlier, fuel consumption would not increase in direct proportion to the increase in the carried load, the relative number of ton-miles that could be obtained between the same points per gallon of fuel when hauling steel would greatly exceed that which could be obtained when hauling lettuce. Under the theory that freight should be shifted to the most efficient use as determined by ton-miles per gallon of fuel, this would dictate that fuel be used to haul steel rather than lettuce. But a steel salad might be hard to digest.

One final example, the comparison of different kinds of transportation service in purely physical terms, such as ton-miles, is no different than comparisons of different kinds of goods in such terms. How can a ton of steel be compared with a ton of clothing? Or a bushel of potatoes be compared to a bushel of corn. Under this theory the steel industry would be more energy

efficient than the clothing industry because it produces more tons per gallon of fuel, or other unit of energy.

There are a number of other reasons why ton-miles per gallon of fuel should not be used to determine relative transportation efficiency. One is that fuel consumption per ton-mile varies with the gross weight involved not the carried load — **all other things being equal**. There's the rub. In

transportation things are rarely equal. Among the things that are seldom equal are the terrain over which shipments move, the mileage between given points by different carriers and forms of transport, shipping weight as compared to commodity weight, the volume of freight moving between given points at one time and over time, the distance that goods move, the completeness of the service and the speed at which freight moves.

What Goes Down Must Come Up

The effect of the terrain over which freight moves on fuel consumption per ton-mile is pronounced, for obviously it requires more fuel to move a load uphill than down. Under the ton-mile per gallon of fuel principle, downhill movements should be favored over uphill. This leads to some interesting speculations.

It requires less fuel per ton-mile by any mode of transport to move the same freight from Denver to Omaha than from Omaha to Denver. Thus, under this theory, transportation from Denver to

Omaha should be encouraged while that from Omaha to Denver should be discouraged.

Each year millions of tons of coal are moved from mines in the mountains of Pennsylvania, Virginia and West Virginia to ports in the Hampton Roads, Virginia area. The cars used to haul the coal to the ports are returned to the mines empty. Since it requires fuel to haul the empty cars up the mountain when no freight is being hauled, think of the increase in efficiency that could be realized if the return of the empty cars was discontinued.

When Is A Mile Not A Mile?

Routes of different railroads between the same points are rarely the same. If two railroads operate between two identical points and Railroad A operates over a route that is 20 percent longer than that of Railroad B, the number of miles when multiplied by the weight of the shipment will result in 20 percent more ton-miles by Railroad A to move the same freight between these points. Railroad A would actually use more fuel, but its rate of fuel consumption per ton-mile could and probably would be lower because fuel consumption per ton-mile tends to be lower on longer hauls.

When railway movements are compared to

movements by truck between the same points the effect of circuitry is even more significant. Railway routes between the same points are generally longer than highway routes. In some instances, the rail mileage is more than double the highway distance. Thus, on the same shipment between these points, rail ton-miles will be double truck ton-miles.

Obviously this difference in ton-miles will materially affect both the actual fuel consumed in performing a given transport service and the rate of fuel consumption per ton-mile, increasing the former and decreasing the latter.

Shipping Weights Vary for Some Goods Depending Upon Mode

The weight of a shipment includes the packing and bracing materials necessary to permit it to move without damage. In most cases shipments must be given greater protective packing and bracing to move by rail as compared to truck. A good illustration involves household goods

which must be crated for rail movements but not for movement by truck. Thus the same goods often weigh more when moving by rail than by truck. This increases the number of ton-miles performed by rail compared to truck.

Volume Over Time

The volume of goods to be moved at a given time, as well as that to be moved in a given period, is particularly important when considering the relative fuel consumption per ton-mile of trucks and trains.

Generally speaking railroads can move large quantities of heavy goods, moving in large volume between fixed points located relatively long distances apart, at greater fuel efficiency than can trucks. On the other hand, trucks can handle all commodities moving short distances, light and bulky articles and smaller shipments moving all distances between numerous points more efficiently than can rails.

To illustrate, trains can move large quantities of coal between mines and generating plants and other limited points such as ports, with less expenditure of fuel than can trucks. Trucks, however, can move smaller quantities of coal, single carload quantities, for example, short distances between mines and small consumers with less fuel than would be required to perform the same movement by rail.

The relative efficiency of railroads declines sharply as the shipment size, or the quantity to be moved between given points at a given time

declines. This can probably be illustrated best by an example involving passengers. If 1000 persons want to travel between two points and all can leave at the same time, they could probably be handled most efficiently by train. If the number that could leave at one time dropped to 500, the fuel efficiency of trains in terms of either passenger miles or ton-miles per gallon of fuel would drop sharply. If the number that could leave at the same time fell to 50, buses would probably be more energy efficient.

In the case of freight movements, the same principle applies. Just because railroads can carry dense commodities — those that have high weights per cubic foot — moving relatively long distances at the same time and in heavy volume over time at relatively low energy consumption per ton-mile does not mean that they can move lighter loads and smaller volumes at the same efficiency.

This is one of the reasons for the railroad branch line problem. Both the fuel required and the cost to move small amounts of freight at a given time by rail are prohibitive. A switch engine pulling a few cars up a branch line uses much more fuel than would be required to move the same freight by truck.

Complete Movements Not Compared

Another reason that ton-miles by railroad are not directly comparable with ton-miles by truck is that the former frequently do not include necessary transportation to and from the rail facilities. These movements, usually by truck, consume fuel not included in the railroad total. The ton-miles per gallon of fuel for these pick-up and delivery movements is usually low in relation to over-the-road truck movements.

Since rail movements must be made between rail terminals, the number of ton-miles required to move goods between points intermediate to rail terminals can be considerably greater than

if the shipment moved entirely by truck. This is particularly important on shipments moving relatively short distances. On a movement between two points 80 miles apart by highway and located intermediate to two railroad terminals located 100 miles apart the difference would be substantial. To move the shipment by railroad would require 120 miles — 20 by highway and 100 by rail — whereas the highway movement would require only 80 miles. Under the method used to compile rail statistics the fuel consumed in moving the shipment to and from the rail facility would not be included in the rail fuel consumption data and neither would the ton-miles.

Density and Loadability

The ratio of carried load to gross load for various commodities is affected by two factors, den-

sity and loadability. Density is the weight of a commodity in relation to the space it occupies.

It is expressed in pounds per cubic foot. Loadability is the amount of freight that can be loaded into a given space due to the size and shape, as well as other characteristics, of the freight (such as fragility). Density and loadability determine how much freight, in terms of weight, can be loaded into a given freight car, truck or trailer. These factors have an important bearing on fuel consumption per ton-mile.

A box car or truck trailer has a fixed weight and cubic capacity. Either may limit the amount of goods that can be loaded in them. Thus if a trailer can haul 50,000 pounds and its cubic capacity is 2,500 feet its optimum density is said to be 20 pounds per cubic foot ($50,000 \div 2,500$).

This means that freight that can be loaded to 20 pounds per cubic feet will fill both the cubic and weight capacity of the trailer. Any freight that cannot be loaded to 20 pounds per cubic foot will reduce the weight that can be loaded in the trailer. Household refrigerators, for example, have an average density of about 8 pounds per cubic foot. Since, however, they cannot be stacked one on top of the other, their loadability is only 5.6 pounds per cubic foot and a 40 foot trailer with 2,500 cubic foot capacity can only be loaded to 14,000 pounds or 7 tons. As shown earlier, this would mean that refrigerators would yield very low ton-miles per gallon of fuel and their movement would have low energy efficiency.

Quality of Service

Efforts to determine the relative energy efficiency of different types of transportation by comparing ton-miles per gallon of fuel ignores important differences in the "quality" of transportation services. Among the factors that make some transportation services more costly and valuable than others are speed, flexibility, frequency and completeness.

A service that provides overnight delivery is

usually more attractive to those who buy transportation (shippers) than one that requires a week to effect delivery. One that offers daily service is usually preferred to one that offers it two or three times a week. Door-to-door service is usually more desirable than a service that requires pick-up and delivery from and to a carrier facility. These higher quality services also usually require greater expenditure of effort per ton-mile including fuel.

Technological Feasibility

Each mode of transport has certain technological characteristics that give it a decided advantage in efficiency over the other modes for certain types of traffic. Pipelines can handle large quantities of liquids moving in large and steady volume between fixed points, with maximum efficiency. Railroads and water carriers can handle efficiently large quantities of freight moving in large shipments between fixed points. The speed of air carriers between distant points is unmatched by other modes. Trucks are unexcelled for movements of all types of freight for short distances and for distribution involving small and medium size shipments moving all

distances between many points of origin and destination.

Pipelines can obviously only move flowable commodities while water carriers can only serve points that are accessible by water. Not so obvious is the fact the railroads can only serve points located on tracks without truck assistance. The distance that the shipment moves and a number of other factors have a decided bearing on whether or not a given freight movement can be handled more efficiently by trucks, rails, or a combination of the two.

The Average Fuel Consumption Per Ton-Mile by Mode

The comparisons of relative energy consumption per ton-mile of trains and trucks, used to

"prove" that the former are more efficient, are, of course, based upon averages for the two modes.

This is perhaps the most glaring of the errors in this whole exercise.

There is no disputing the fact that railroads can move large quantities of dense commodities in heavy volume between fixed points with a lower consumption of fuel per ton-mile than can trucks. On the other hand there should be no disputing the fact that trucks can handle short haul movements of most commodities and long haul move-

ments of low density commodities and those moving in small or medium size loads with less energy per ton-mile than if they were and could be moved by trains.

The comparison of average train and truck fuel consumption per ton-mile is as meaningful as the comparison of average fuel consumption uphill and down. For all practical purposes, one cannot be substituted for the other.

What About Piggyback?

It is generally conceded that railroads can usually perform line haul transportation — movement of freight between fixed points — with less fuel per ton-mile and that trucks can handle assembly and distribution services, including single carload lots and smaller shipments more efficiently. Because of these facts and because trucks can handle traffic between points not on rail lines it is often suggested that a combination of rail and truck service would be desirable.

There is some merit to this idea and the growth of piggyback service over the years indicates that this is recognized. Experience has shown, however that no arbitrary decision based on mileage or other factors can determine where and when it should be used to achieve maximum efficiency. Where speed and quality of service are concerned movements entirely by truck can frequently provide superior performance between specific points with lower expenditure of fuel than can piggyback service.

How Should Transportation Energy Efficiency Be Determined?

The argument that ton-miles per gallon of fuel is a proper criterion for judging transportation energy efficiency is obviously without merit and should be dismissed. How then should transportation energy efficiency be determined? This question might best be answered by comparing transportation to other facets of our economy.

Our Gross National Product (GNP) is not measured in tons but in dollars. Thus all of the goods and services produced by our economy, including transportation, are aggregated in terms of their dollar value. This is the missing ingredient in any physical measurement. While these physical measurements are helpful and necessary in determining quantities and relative values they are meaningless otherwise. Goods come in a wide range of values per ton. Thus while a ton of gravel is equal to a ton of bread in weight their values differ widely. Values, of course, are based upon the price consumers will pay for a given quantity of a given good. While apples and oranges cannot be compared physically, their prices per pound can be compared and the aggregate value of apples can be compared to that of oranges.

The same principle that applies to goods also applies to service including transportation. Just as goods come in a wide range of prices per pound, gallon, bushel or ton, transportation comes in a wide range of prices per ton-mile. The prices per ton-mile for transportation reflect the value that those who buy transportation service (shippers) place on them. This value reflects the consumers judgement of relative quality.

Since transportation consumers have a free choice among different modes of transport at a variety of prices, which largely reflect the cost of those services including fuel costs, it must be assumed that they choose a particular service because it best meets their needs all things being considered.

The use of price per ton-mile rather than ton-miles alone automatically eliminates the distortions that result from comparing purely physical units. In the examples of the effect of terrain on fuel consumption, where ton-miles per gallon of fuel are greater going downhill than up, the use of value would eliminate this problem because all

of the pertinent factors would be reflected in the price. Competing railroads, for example, would have the same cost factors in each direction and so would truck lines.

Looking at transportation from the same viewpoint as we look at the rest of our economy, we find that the average price paid for railroad service is less than 2 cents per ton-mile while the average price paid for intercity truck service is about 10 cents per ton-mile. Thus the average price of truck service per ton-mile is 5 times that of rail service. Since it is obvious that shippers

would not pay 10 cents for something they could get for 2 cents, it is clear that the ton-miles produced by railroads are inferior to those produced by trucks.

In the DOT table reproduced near the beginning of this report, rails are said to produce 180 ton-miles per gallon of fuel while trucks produce 50. Applying relative values to the physical units we find that railroads produce \$3.60 worth of transportation service per gallon of fuel while trucks produce \$5.00 worth.

Summary and Conclusion

Attempts to determine the relative energy efficiency of different types of transportation by the simple process of comparing the number of tons hauled per mile per gallon of fuel is both foolish and foolhardy. It is a simplistic approach to a complex problem and is dangerously misleading because it appears to be scientific.

The basic question posed by the energy shortage is how can we meet our National transportation requirements with the least expenditure of energy, which in the case of trucks and trains is petroleum fuel. This demands that the energy requirements to perform given services be compared on a realistic basis. This cannot be done by the simplistic method of comparing ton-miles per gallon of fuel.

While it is possible to compute the number of tons that could be moved per mile per gallon of fuel by various modes of transportation under specific conditions, it is not proper to generalize energy requirements for different kinds of movement. Thus, if the number of tons of specific kinds of freight that can be moved between specific points at a given time are known, the amount of fuel that would be required can be calculated for each mode.

In other words, if it were known that 10,000 tons of coal were to be transported from a mine to a generating plant at a given time and the terrain to be traversed was known, the amount of fuel that would be required to move it by each mode of transportation, railroads, trucks, barges, pipelines or even conveyor belt, could be determined with some degree of precision. Also, if it were known that 10,000 tons of merchandise of

different kinds and characteristics were to be moved from 1,000 known points of origin to 1,000 known destination points, in a given period of time, it would be possible to compute the fuel requirements by mode of transport. In either case, the number of ton-miles per gallon of fuel could be determined but these data would be largely irrelevant since they could not be compared properly.

If, in the example above, it was found that 400 tons of coal could be moved per mile per gallon of fuel by railroad, and that was the most efficient mode in this instance, and if it was found that only 40 tons of merchandise could be moved per mile per gallon of fuel by truck, and that trucks were the most efficient mode for that freight, these would be the pertinent facts. That is, they would tell which mode could move each kind of freight with the smallest consumption of fuel. The fact that the railroads could produce 400 ton-miles per gallon of fuel when moving the coal would not mean that they could produce ton-miles per gallon at the same rate when moving the merchandise. Comparison of the ton-miles per gallon, or gallons per ton-mile, required to move coal efficiently with ton-miles per gallon required to move merchandise by the most efficient mode would, therefore, not only be irrelevant, but it would be highly improper and misleading. Yet, this is precisely what is done when average ton-miles per gallon of fuel for railroads is compared to average ton-miles per gallon of fuel for trucks.

The truth is that the types of traffic being handled by each mode of transport today reflect the economic efficiency of each mode, including its energy efficiency. For the most part pipelines

are moving bulk liquids in heavy volume between fixed points. Water carriers are moving long haul bulk commodities in large shipment sizes between points on navigable waterways. Railroads are moving heavy dense commodities in large volume in medium to large shipment sizes between points on their lines. Air carriers are moving high volume small shipments of a priority nature, while trucks move virtually everything that moves in local or urban areas and that intercity freight which moves in small lots or that demand prompt delivery, or special handling which can only be performed by trucks. Trucks also participate in the movement of virtually all intercity freight moved by the other modes originating and/or terminating at points not directly served by those modes.

The so-called Shipper Surveys conducted by the U.S. Bureau of the Census¹, although they cover only intercity transportation of certain classes of manufacturers, show quite convincingly that intercity transportation is now rationally divided between trucks and railroads on the basis of size of shipment and length of haul. Small sized shipments, and those moving short and medium distances are predominantly carried by truck. Heavy, long-haul movements, on the other hand are predominantly by rail. It should be noted that purely local freight movements, and movements of some classes of manufactured goods, were excluded from the Shipper Surveys.

Specific data on rail and trucks movements, from the Census tabulations, show:

Shipments weighing less than 30,000 pounds	— 12 percent by rail
	— 87 percent by truck
Shipments weighing 30,000 pounds or more	— 55 percent by rail
	— 39 percent by truck
Shipments traveling less than 300 miles	— 33 percent by rail
	— 64 percent by truck
Shipments traveling 300 miles or more	— 62 percent by rail
	— 32 percent by truck.

(residual percentages represent "other modes")

Any shifts in the modal freight patterns shown above — from truck to rail for small and/or up to medium range shipments — would probably require more rather than less fuel than under current conditions.

Finally, if maximum energy efficiency is to be achieved in transportation, it must be accomplished on realistic terms, which include the quality as well as the quantity of the service involved. This can best be determined by the cost of the service and what those who use it can and will pay for it. A service, no matter how low its cost

or fuel consumption, that is not responsive to shippers' needs is worthless. This is no different than any other phase of our economy, a product for which there is no market has no value.

Optimum transportation energy efficiency will only be realized when each form of transport is allowed to improve the efficiency with which it performs those transportation services it can handle best.

¹ U. S. Bureau of the Census, Department of Commerce; 1967 Census of Transportation, Commodity Transportation Survey — Shipper Groups.

Senator WEICKER. These hearings will recess until tomorrow at 10 o'clock.

[Whereupon, at 11:25 p.m., the hearing recessed, to reconvene on Tuesday, July 29, 1975, at 10 a.m.]

ICC REQUESTED LEGISLATION

TUESDAY, JULY 29, 1975

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee was reconvened, pursuant to adjournment, at 10:07 a.m. in room 1318 of the Dirksen Senate Office Building; Hon. Vance Hartke presiding.

OPENING STATEMENT BY SENATOR HARTKE

Senator HARTKE. We have a long list of witnesses this morning. Somebody said we had all witnesses in the room.

I do wish to emphasize, as I did yesterday, that unlike so many changes that have been proposed in the Commission's regulations of surface transportation in recent years, these bills propose changes that require amendments in existing law and cannot be achieved through a change in the Commission's regulations through a rule-making proceeding.

These are the proposals that we think should first be considered by Congress, which has delegated considerable power to the Commission with the hope that policy changes within the scope of the act would not have to be made by Congress until administrative remedies had been exhausted.

We will therefore be proceeding promptly to these bills and will attempt to resolve whether or not these legislative changes are necessary.

Unfortunately, the record clearly indicates thus far that the battle over these bills is largely conceptual and not based upon an examination of the effect of the bills on the national transportation system.

We may therefore have to be making judgments with less information than we would like, but I think it is time for us to make a decision and I can assure you that decisions will be made on the record with no presumptions on behalf of the status quo.

At issue is the degree to which these bills will promote more energy efficient transportation and the extent to which that efficiency is in the best interests of the national transportation system.

I do not think there is any doubt that we will take any action possible that will both promote greater energy savings and better transportation. However, there is considerable doubt about the extent these bills will achieve these goals—doubt which I hope we can to some extent resolve today.

Because we have so many witnesses and this room must be cleared by 12:30 p.m., I would appreciate it if each witness would submit his statement for the record and summarize his remarks in 10 minutes.

Several of the witnesses speaking on the same issue have volunteered to appear in a panel and this arrangement should allow us to complete these proceedings this morning.

Our first witness this morning is Mr. John Snow, Deputy Undersecretary, DOT.

**STATEMENT OF HON. JOHN SNOW, DEPUTY UNDER SECRETARY,
DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY MARK
ARON, GENERAL COUNSEL'S OFFICE**

Mr. SNOW. Good morning, Mr. Chairman.

May I introduce on my right, Mark Aron, the representative from the DOT General Counsel's Office.

Mr. Chairman and Members of the Subcommittee: It is a pleasure to appear before you today. The four bills that are subject of this hearing all address important subjects. We think that S. 2084 regarding adequate compensation for owners-operators is a bill that is particularly desirable. Although we do not support all of the bills or agree with the particular form of certain of the bills, we commend the ICC for its part in developing these proposals. We would hope, however, that the Commission in the future would become somewhat more generous and liberal in its approach towards the broader topic of regulatory reform.

We have come to the point in our history where there is a realization that we need fundamental reform of our economic regulation of transportation. Regulatory patterns that we adopted 50 or even 20 years ago do not necessarily reflect present realities. Regulation that was originally intended to protect the users of transportation services now serves all too often to frustrate competitors and innovators.

Unfortunately, our independent transportation regulatory agencies have reacted to valid criticism with half-measures, or worse, proposals not to solve problems but rather which serve to confuse the issue. I don't think that was their intention though. The Commission recently came forward with two regulatory moves, one dealing with rate bureaus and the other with the creation of a so-called no-suspend zone. These proposals have been represented by some as major initiatives of great significance. In each of these cases, however, it is our opinion that the Commission proposed what can only be called minimal reform. With respect to rate bureaus, the Commission's proposal did not deal in any significant manner with the basic cartel-like behavior of the bureaus. With respect to a no-suspend zone, the Commission proposed only a very narrow zone and then limited it to general rate increases—the very type of increase that serves to perpetuate the pricing distortions that we have today. The combination of easier general rate increases and unfettered bureau rate making power is the worst possible package of regulatory reform. And without minimizing the importance of the

subjects addressed in these four bills, I need not remind the subcommittee that these four bills will not solve the problems that today confront our regulatory system.

What we need is the type of comprehensive and far-reaching reform that the administration proposed in the Railroad Revitalization Act and the kind of reform that the administration will shortly propose in its bill to reform the regulation of motor carriers.

Mr. Chairman and members of the subcommittee, I apologize for this digression, but I did want to place my discussion of these bills in what I think is the proper perspective. Now I will address each bill.

S. 2083 would authorize contracts between freight forwarders and railroads. The Department supports an amendment of the law to allow such contracts, but does not support the particular form of this bill. Let me explain the reasons for changing the law and then what is wrong with the approach taken by this bill.

First, we have over many years supported a more flexible and market-oriented approach to transportation regulation. We believe that reliance upon the market maximizes innovation and experimentation and produces a rate structure related to cost and demand that properly allocates our limited transportation resources. Allowing freight forwarders to contract with railroads is consistent with this approach. Second, in other nonregulated industries, parties are able to make contractual arrangements to suit their individual needs and it seems to work well. Historically, contract rates have been restricted in the transportation industry by the Commission because of a fear that transportation companies would discriminate against the various users of transportation service, and that such users would have little protection against such discrimination because of the existence of widespread monopoly in the transportation industry.

With respect to contract rates between freight forwarders and railroads, the problem of discrimination really doesn't exist; the contract is with the forwarder—against whom no carrier would have any reason to discriminate—not with the shipper. But more importantly, we need to rethink the whole issue of contract rates. The Department is considering the advisability of allowing contract rates for a broader segment of the transportation industry, particularly for the railroads where contract rates would seem to have special merit. We must stop regulating and legislating on the assumption that there is widespread monopoly in transportation. We are all aware that railroads face very effective competition from trucks, barges, and pipelines, and this awareness must become part of our regulatory thinking.

Finally, we support an amendment to allow contracts between freight forwarders and railroads because it removes an inequity in the present law. Today, the law allows freight forwarders to contract with motor carriers but not with railroads. Not only is that inequitable, it is also energy inefficient because it encourages freight forwarders to utilize trucks than more energy-efficient railroads where appropriate. This legislation would correct this situation, and provide encouragement to use the more energy-efficient mode.

We do not think the form of S. 2083 is appropriate, however. The bill authorizes only a 2-year experiment which would require additional legislation to extend this change in the law. We see no need for an experiment; the issue here is clear and the only problem is to enact the appropriate legislation.

In addition, the Commission proposal would subject contract rates to the full panoply of Commission control for reasonableness, "preference and prejudice." We are somewhat mystified as to how the provision would actually work since individually negotiated contract rates would always seem to prefer one party or another, in the everyday sense of the word. We firmly believe that the review proposed by the Commission is unnecessary and would largely completely destroy the value of the ability to negotiate contract rates. The Commission's past history of rate review and the long administrative delays associated with that review hardly qualify the Commission as a candidate to review the myriad of individual contract rates that would result from this proposal. We are also very fearful that the Commission would use its broad powers to favor one mode over another mode or to attempt artificially to alter the balance among them—as it has done in the past—and we think these decisions are better left to the market place and to a neutral test of economic efficiency. The only restraint that should be imposed is a requirement that the specified contract rate be compensatory. Therefore, we would support a permanent amendment to authorize freight forwarders to engage in contract rates with railroads without any Commission interference except with a review power limited to insure that the specified contract rate is compensatory, with compensatory defined as covering variable costs.

S. 2084 would authorize the Commission to require adequate compensation for owner-operators if a "transportation emergency exists or is anticipated." The independent owner-operator trucking industry has evolved into a vital part of our national transportation system. They are a highly varied industry. There are approximately 150,000 trucks that are owned by independent owner-operators. These independents are essential not only to the distribution of agricultural products, but also play a key role in augmenting the equipment of regular-route and irregular-route common carriers and contract carriers. The contribution of the independent owner-operator to our Nation's economy often goes unrecognized. In view of the independent operator's importance to the Nation's overall transportation system and in recognition of the need to facilitate such transportation, we support this legislation to clarify the Commission's authority to make regulations to insure that the owner-operators are adequately compensated for the fuel they purchase. We think, however, the proposal should be more clearly drafted to require the Commission to make a specific finding that transportation emergency exists, which threatens substantial and irreparable harm.

Many of the owner-operators are truckers who own and operate their own truck vehicles which they lease to regulated trucking companies. The compensation of the owner-operator is established in a lease agreement between the owner-operator and the regulated

trucking company. These lease agreements have a term of at least 30 days. Many of these leases have a much longer period and these people are the real object of this proposal. Under the agreement, the owner-operators' compensation is generally fixed in terms of some proportion, normally 75 to 80 percent, of the total revenues earned by the regulated carrier.

During the fuel crisis that the Nation experienced in early 1974, many owner-operators found themselves in an extremely vulnerable financial position because their operating costs had risen so substantially and in such a short period of time. Because owner-operators are not regulated carriers, they could not file for rate increases before the ICC but had to depend upon the regulated carriers to file for such increases. We saw that during the period of significant fuel cost increases, the regulated carriers, for competitive reasons, were reluctant to file for increased rates. Thus the burden of increased costs was disproportionately borne by the owner-operators. Only after action from the Commission, based on negotiations between the operators and the Government, were passthrough requirements ordered, thereby correcting a very serious problem. The Commission now seeks to assure that the statute clearly provides authority for that agency to act quickly to avert, in any situation repetitious of January-February 1974, any substantial hardship to the owner-operators, and as a consequence, to the shipping and consuming public.

Let me emphasize that although fuel compensation is a big problem for the owner-operators, there are many other areas affecting the operation of owner-operators which equally deserve legislative and regulatory change. State licensing and registration requirements are a major problem. Here there is a tremendous amount of duplication and unnecessary paperwork. Unnecessary restrictions against filling up empty trucks on the "backhaul" are another problem. We will address these and other areas in our upcoming motor carrier legislation.

The third bill S. 2085, would authorize the Commission to approve, on an expedited basis and without hearing, pooling arrangements among rail, motor and water carriers. The Department supports the need for expedition in all regulatory matters and agrees that in certain instances pooling arrangements may contribute to more efficient transportation and to energy savings, although these savings are most likely with respect to rail and highly doubtful with respect to truck pooling arrangements. We do not, however, support the particular form of this bill. We should always bear in mind that pooling arrangements reduce competition and should be carefully scrutinized. The hearing requirement is an important safeguard for the users of transportation services and the public. Therefore, we do not support the proposal to do away with the hearing requirement. An alternative that would satisfy both the objectives of expedition and careful scrutiny would be an amendment to allow "non-major" pooling arrangements—with that determination made by the Commission—to go into effect *pending* a later hearing by the Commission. This approach of a later hearing is consistent with the approach we have taken with respect to suspension of rate cases in

the proposed Railroad Revitalization Act. In the RRA we provided a phase-in no-suspend zone which permits rapid adjustment but leaves the Commission with full power to review the evidence and determine the lawfulness of the rate.

Allowing the rate or in this case the pooling arrangement to go into effect pending investigation not only expedites the procedure but also provides a factual basis for the eventual decision. Too often today, cases must be decided upon "maybe's" and hypotheticals because a proposal's implementation is suspended prior to a decision as to its lawfulness. It is far better, we believe, to allow a proposal to go into effect provisionally and then to base the final decision upon factual results.

We also think that the standard for determining the acceptability of pooling arrangements which requires that they not "unduly restrain competition" should be clarified. Pooling arrangements should be allowed only if the transportation benefits substantially outweigh the anticompetitive effects and only if the pooling arrangements is the least anticompetitive way to achieve the transportation objective. If these changes were made, DOT would support S. 2085.

Finally, S. 2086 would authorize the Commission to order through routes and joint rates between motor carriers of freight and between motor carriers of freight and rail and water carriers. There are two basic issues here, one concerning intramodal through routes and joint rates and one concerning intermodal joint rates.

As for the intramodal question, the Commission has no authority to require through routes, or joint rates, between motor carriers of freight. Such a need for through routes and joint rates between rail carriers was found to be necessary because of the fact that each railroad owns its own right-of-way and no one railroad was willing to permit operations by another carrier over its roadbed. Motor carriers of freight operate over publicly owned rights-of-way. Therefore, if a need exists for a new route, the Commission has authority to, and should, certificate a carrier to serve that route without the necessity of establishing a through service by two or more carriers. The authority sought here could have the effect of retarding the expansion of energy efficient and shortest single carrier service where a need is shown. Moreover, single line costs should normally be lower than joint line costs and shippers would benefit to a greater degree from single line rates than joint line rates.

With regard to the intermodal issue presented by this bill, railroads, motor and water carriers at present can and do enter into voluntary joint and through rates if they find a need for such service. This proposal would force carriers to enter into arrangements even if the marketplace does not support such an arrangement or if one party does not find an arrangement in its economic interest. The Department would prefer to trust the market mechanism and the national behavior of management than have the Commission second guess what is in the best interest of competing modes. The Commission has a long history of using its power in an uneconomic manner to foster ill-defined or illusory social objectives at a very heavy cost to a sound transportation system. This is a time for less regulation, and not more. We, therefore, oppose this bill. I might

also add that in our proposed Railroad Revitalization Act and in the bill that we propose to submit regarding motor carriers there are provisions to restrict the anticompetitive activities of rail and motor rate bureaus. I think once these rate bureau changes are made we will see carriers much more eager to look beyond the interests of their particular mode and to the most efficient way of doing business, including intermodal rates where appropriate.

Thank you for this opportunity to speak with you. The Secretary and I both look forward to continuing this discussion with you or regulatory reform after the recess. I would be happy now to answer any of your questions.

Senator HARTKE. Thank you, John.

The Department supports S. 2083, which would authorize contracts between freight forwarders and railroads, but argues that the legislation should be put in place permanently rather than on an experimental basis and such contract rates should not be subject to Commission control for reasonableness.

Is that a fair statement? On preference and on prejudice, is that fair?

Mr. SNOW. Yes, on preference and prejudice, that is correct.

We would only require that the rates be compensatory.

Senator HARTKE. You have based your position on the grounds that contract rates would promote a more flexible and market-oriented approach to transportation regulation and would produce a rate structure related to cost and demand that properly allocates unlimited transportation resources.

I wonder if you could supply for the record an analysis of the existing practices under section 409 of the act which permit contract rates between freight forwarders and motor carriers which support your argument that such contract rates for freight forwarders do not discriminate against shippers who ship traffic which is similar to that shipped by freight forwarders and result in a better rate structure for shippers by freight forwarder than they might have if freight forwarders were limited to utilizing the published rates of motor carriers.

I am particularly interested in how, given the fact that freight forwarder rates are regulated and not directly subject to market demand, contract rates provide any benefit for the shipper who utilizes the freight forwarder.

See, it comes right back again, John, and I hear your philosophy loud and clear, but I never see those facts and figures to come back to meet this basic argument.

Mr. SNOW. We would be happy to supply the record with the information.

[The following information was subsequently received for the record:]

S. 2083 is a bill to amend section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads.

Section 409 of the Interstate Commerce Act presently permits freight forwarders to enter into contracts with common carriers by motor vehicle regarding rates for transportation of their shipments. These rates are usually a little below the common carrier's published rates. The motor carrier can profitably do this because the freight forwarder assembles the required number

of small shipments to make up a truckload lot which is then tendered to a motor carrier. The reduced motor carrier rate permits the freight forwarder to make a profit for his efforts in assembling the small shipments. S. 2083 will permit forwarders to negotiate rates with railroads in a similar manner as presently permitted with motor carriers.

Forwarders have ardently pressed for this type of legislation since 1956; however, efforts never got beyond the Hearing stage (see 339 ICC 732).

H.R. 9548 and S. 3366, 84th Cong., 2nd Sess.

H.R. 4393 and S. 1382, 85th Cong., 1st Sess.

H.R. 10831 and S. 3714, 90th Cong., 2nd Sess.

H.R. 10293, 91st Cong., 1st Sess.

Ex Parte 266, "Investigation into the Status of Freight Forwarders," decided January 19, 1971, provides a very thorough and detailed investigation of freight forwarders (339 ICC 711 to 905). This investigation was conducted by the ICC at the request of one of the previous Congressional Committees.

So much testimony has been taken on this subject that there appears little that needs to be added except to say that DOT still favors this type of legislation.

We have reviewed all of this past testimony and discussed S. 2083 with personnel at the Interstate Commerce Commission and the Freight Forwarder's Institute.

To the best of our knowledge, there have never been any problems with section 409. There have not been any complaints. The Interstate Commerce Commission does not have to become involved in the rates between motor carriers and freight forwarders. These rates have been just a little below operating costs. We do not anticipate that railroads will negotiate rates with freight forwarders which are not compensatory.

The Department of Transportation favors S. 2083 because it removes an existing inequity in that forwarders can presently negotiate rates with motor carriers but cannot do so with railroads. Since there have not been any complaints regarding section 409 rates with motor carriers over the past 30 years, the Department of Transportation favors omitting new section (c) which limits negotiated rates with railroads to a two-year trial basis.

Senator HARTKE. You argue contract rates would not result in discrimination to these shippers. I think if you stick around here this morning and listen to some of the testimony you will hear a whole panoply—which is a word you don't use; I use. Your word is "range." You took it out of your statement, but the same meaning—of shippers arguing just exactly to the opposite.

These shippers, who generally have considerable economic power in the transportation field, do agree that contract rates would be desirable for all shippers.

I doubt, however, that a number of other shippers with less economic power would agree with that analysis.

If we do not prohibit discrimination against shippers, particularly by railroads or those utilizing their services, how do we protect against the abuse of economic power by carriers or shippers who have substantial market dominance?

Mr. SNOW. Mr. Chairman, the bill before us, S. 2083, deals with the relationship between rails and forwarders. And the issue of discrimination and preference and prejudice doesn't arise in the same way as it would in the context of shippers dealing with railroads. In other words, shipper rates would not be affected directly by this bill.

It is for that reason that we feel that the requirement that the rate be compensatory is an appropriate and sufficient one to deal with the problem.

If the legislation is passed in a form which enables complaints to be filed by shippers on the basis that the rate is discriminatory

preferential, prejudicial, I think the legislation will be largely a nullity.

So if there is a case to be made, and I think there is, for freeing up the relationship between railroads and freight forwarders, then I don't see anyway to do it except to remove any requirement that preferential prejudice and discrimination be a basis for a complaint in finding the rate unlawful where that issue is raised by a shipper.

Senator HARTKE. That doesn't answer the question. The question is simply how do you protect against that abuse of utilization of economic power either by the railroads or the shippers.

Compensation is not the only element that is going to be involved. How do you avoid that abuse of power? Are you really saying in substance—and I gather this at times from some of the approaches of the Department of Transportation—"If you have the power, go ahead and use it"?

In other words, the only question being money.

In other words, the rest of the way across the board you say if the power is there, use it. And if you don't have the power, you are just at the mercy of those who have it whether it be the shipper or the carrier.

Mr. SNOW. Mr. Chairman, I don't want to mischaracterize our position. Our position here is in response to a bill dealing with the relationship between forwarders and railroads. There can be no discrimination against shippers under this bill since it does not deal with shippers.

On the broader issue of discrimination, preference and prejudice, as you know, in the Rail Revitalization Act the rate flexibility provisions which we have in that bill are carefully designed so that rates can be suspended on the grounds that there is preference, there is prejudice, there is discrimination.

So we have—and I use the word—retained the full panoply of commission authority to both suspend and to find rates unlawful in the rail bill on the basis of sections 2, 3 and 4 of the act.

So we are aware of that concern. And we view it as a justified concern.

Senator HARTKE. Isn't it true, though, that under this situation the railroads could prefer the freight forwarders because they get a better deal with other shippers?

Mr. SNOW. I am not sure that I fully heard the question.

Senator HARTKE. In other words, freight forwarders could make arrangements for a better deal for themselves which they have and so they have a preference over any other shippers?

Mr. SNOW. Well, it could be the case. And in fact we would suspect that the forwarders would obtain a lower rate * * * but under our approach it would still have to be a compensatory rate.

Senator HARTKE. That is the power I am talking about that is out there.

Mr. SNOW. But, Mr. Chairman, I think that power, if you want to call it power, and the lower rates obtained by the forwarders is going to rebound to the benefit of the transportation system and the consuming public because the lower rates which the forwarders are able to negotiate with the railroads will end up being translated because

of competition into lower prices and lower shipping rates for the public.

The overall effect of this legislation has to be in the direction of reducing rates and reducing prices because it is making lower cost transportation available that isn't available today.

Senator HARTKE. How do you protect against the abuse, though? In other words, we are living in an area in which we have seen the abuse of power, right, by the Government.

Mr. SNOW. I think abuse of power occurs.

Senator HARTKE. I know you hate to admit it. I understand that. But that is true.

Mr. SNOW. Mr. Chairman I will certainly grant that power gets abused.

Senator HARTKE. One of the reasons for these regulatory agencies, they weren't created simply out of ether. They were created for a very specific purpose, to deal with this abuse of power.

If you have talked to a lot of small shippers today, they feel there is an awful lot of abuse of power now even with the regulations.

You are talking about the cartels; if all we are going to do is just change the name of the cartels, I don't think that that does an awful lot to provide any real benefit to anyone.

What assurance do you have that the freight forwarders, if they obtain a so-called better rate, will pass on the better rates to the small shippers or to the consumer ultimately?

In other words, what assurance do you have that they just won't take it and increase their profits?

Mr. SNOW. Mr. Chairman, I think the assurance I can give you is that the freight forwarders operate in a competitive environment. And when firms operate in a competitive environment, they cannot long retain that excess profits.

I would expect to see any cost savings which the freight forwarders realizes from this proposal to be shared with the general public and the consuming public through the operation of competitive forces in the freight forwarders' industry, an industry in which entry is very easy, an industry in which competitive forces can and do operate.

Senator HARTKE. Can you really show me, John, where competitive forces today, for example, operate in the oil industry and automobile industry or the steam industry, in any big industry at all?

I mean, look what happened this morning. Coffee prices went up 20 cents a pound. Competitive forces, right? Every one of them will go up 20 cents a pound.

Isn't that remarkable in a way? You know competitive forces are really working; right?

Mr. SNOW. I am not an authority on the coffee market. But the industries you cited to me are industries which have far more concentrated than the freight forwarding, barging, or trucking industries. These other industries you refer to have economies of scale which lead to the fact that there will be fewer firms in the industry and the industry will assume what the economists call an oligopoly kind of structure.

There is no reason to believe that the trucking industry for instance will take on an oligopolistic structure if it is less regulated.

It doesn't seem to me it is reasonable to think we can't have a highly competitive freight forwarding industry given how easy it is to enter that industry.

Trucking and freight forwarding are essentially small scale industries as opposed to oil and automobiles and steel.

Senator HARTKE. Let me ask you now, as far as the freight forwarder is concerned, there are about 125 of them?

Mr. SNOW. A small number, right.

Senator HARTKE. Small and big ones?

Mr. SNOW. There are a small number and there are a few that occupy a large place in the industry.

Senator HARTKE. In other words, one has about 40 percent of the market?

Mr. SNOW. That is right.

Senator HARTKE. Since you digressed and since you got that big PR operation going down there in the DOT, I have to admit I went over to the White House with all due respect, most of the talk was about passenger railroad system and about the Penn Central, in about the cases the Congress had acted again outside the scope of the regulatory process which left me with the idea that we had a lot of people riding Alan Greenspan's old economic theory, but not really working out in the marketplace itself at all with the real world.

I hope you can get back to the real world.

But since you have digressed and talked about the desirability of immediately enacting the administration's Railroad Revitalization Act, in my opening statement yesterday I thought I had made it very clear that there was a distinction between these bills and the bills such as the Rail Revitalization Act and last year's Surface Transportation Act on the grounds that the Rail Revitalization Act primarily proposes changes in the Interstate Commerce Act which could be implemented by the Commission in a rulemaking proceeding, while the bills before us today require amendment of the act if the policies proposed as to be implemented.

I again wish to make this point because to my knowledge the Department has never petitioned the Commission under rule 44 of the Commission's rule to institute a rulemaking proceeding dealing with the subject matter of the Rail Revitalization Act.

Particularly the ratemaking proposals of the Rail Revitalization Act have never been proposed to the Commission.

I must admit that it is difficult to take seriously the Department's adamant position on regulatory reform when it is unwilling to even tentatively explore the possibility of implementing these changes in proceedings before the Commission.

Mr. SNOW. Could I try and respond to that?

Senator HARTKE. You can say anything you want to.

Mr. SNOW. The Commission of late has taken a number of actions such as the ones I discussed in my testimony, the so-called no suspend 5 percent zone, the action in ex parte 297 dealing with rate bureaus and, as I say, we commend them for taking action.

First: I think that we have helped create a climate in which these actions are taken. And I think that is important.

I don't think the Commission operates in isolation.

Secondly: And more directly on the point, we have petitioned the Commission.

Senator HARTKE. When?

Mr. SNOW. April 4, 1974.

Senator HARTKE. What happened?

Mr. SNOW. In connection with energy.

We petitioned the Commission and suggested seven actions which the Commission could take on its own motion. These included liberalization certificate restrictions which contribute to empty backhaul and circuitry. It included a proposal to extend the so-called gateway decision which eliminated reduced circuitry. It included a proposal for greater reliance on pricing flexibility.

Of the seven actions which we have proposed, five were rejected. One was made the subject of another proceeding. MC 65—sub 5—I think involving a proposal by the regular route common carriers to expand their ability to deviate from superhighways and thereby achieve a less circuitous routing.

I think that our record is good on the issue which you raise: going to the Commission and participating in their proceedings over the course.

One of my responsibilities at the Department is to look over our filings in regulatory cases. I can't tell you exactly how many cases we are in, but I would estimate upwards of 50 or 60 pending ICC cases we are involved in in one way or another.

We have used that forum.

Senator HARTKE. Have you presented the Railway Revitalization Act to them in a proposal?

Mr. SNOW. Yes, we have petitioned them.

Senator HARTKE. Why do you make such a big claim, then, to everybody else that Congress should act? In other words, this is an old, old rule of administrative law, and I mean it ought to be at least a rule of the DOT that before you unleash this barrage and continue to call meetings at the White House, you go ahead and proceed in a manner in which you might have at least an opportunity to present the very element you are talking about.

Mr. SNOW. Mr. Chairman, the rule you are referring to is exhausting your administrative remedies.

There is also authority that you don't have to exhaust your administrative remedy if following the remedy would be futile because the certainty of adverse decision or because of the failure of the agency to respond in a timely manner. I think the recent action and statement of the Commission would perhaps fit into this exception. See Davis, Admin. Law, 20.07.

Senator HARTKE. I am just talking about now the process. Before coming back and insisting that you have congressional change, that you go back and proceed to utilize the opportunity of the law the way it is written.

Mr. SNOW. Let me say, Mr. Chairman, that a very large number of the items which you find in the Railroad Revitalization Act have been the subject of filings which we have made or initiated at the ICC.

These include all of the proposals on rate bureaus and——

Senator HARTKE. Let me ask you, John, have you presented the Rail Revitalization Act and petition under section 44?

Mr. SNOW. Not as such.

Senator HARTKE. That is what I am saying.

Why not?

Mr. SNOW. We have not brought it in the form of rulemaking, but we have presented the issues in our numerous filings.

Senator HARTKE. Why not? In other words, I can listen to you go ahead and hear and skip all around and talk about everything else but I am asking the heart of the question: Why not? Are you going to?

Mr. SNOW. We don't contemplate presenting it as a rulemaking.

The problem is this——

Senator HARTKE. No, no. The problem is are you going to. You either are or you are not.

Mr. SNOW. No.

Senator HARTKE. You are not going to.

Mr. SNOW. And I don't contemplate that. And the reason——

Senator HARTKE. Then, I take very seriously your intention, the intention of the Department to do this, other than to make a lot of noise or write some other alternate result which is not dealing with really regulatory reform that has some other purpose.

Mr. SNOW. Mr. Chairman, could I tell you why we don't propose to do it?

We don't propose to do it because in the past virtually all of the proposals which appear in the Railroad Revitalization Act in one form or another have been the subject of DOT filings at the Commission and the Commission has answered our filings by rejecting our proposal.

I think we have exhausted the administrative route and it would be futile to make the filing you propose. We have made our presentations to the Commission and the Commission has decided in its wisdom that our proposals should not be implemented.

Senator HARTKE. I wanted to ask you to supply for the record then the material which in substance you have said in general terms—for the record—all of the petitions for rulemaking involving each one of these issues you are speaking about.

Mr. SNOW. Mr. Chairman, I will file with the committee our filings before the Commission that raised these various issues.

Senator HARTKE. No. No. I am talking about petition for rulemaking. I am not going to let you off that easy, John.

You people have been getting off pretty easy down there with all this talking. I am just going to tell you someday you have to come down to the nub. You go out and talk in broad terms about the marketplace and deregulation and competitiveness as though there is some magic wand somebody can wave out there and get something done.

I want to get down to the nub and specific issues.

You are telling me you have done this, that. I say all right, provide for us the petitions for rulemaking you have asked for.

What you are really trying to say is you haven't; have you?

Mr. SNOW. We have advanced the ideas and proposals which are in the Railroad Revitalization Act in numerous filings. Our views have been considered by the agency and are known by the agency.

Senator HARTKE. Now you are backfilling to what I asked in the first place. You are trying to leave the impression you have gone through this procedure.

All I will say to you, and all I said in the very beginning, is why don't you try and go ahead and use the law the way it is written instead of coming up here asking Congress to change the law, making the assumption the law won't work.

The law is very clear. It is written that way. You have got the right to move.

I said before I cannot really take very seriously your intention in this field when you are having such an adamant position on regulatory reform when you are unwilling to intensively explore the possibility of implementing these changes in a proceeding before the Commission.

Mr. SNOW. Mr. Chairman, I can only reiterate that we have explored in various filings.

Senator HARTKE. I hear you. I have gone through that. That is about the 10th time you said that.

You remind me of my child when she gets caught with her hands in something she is doing. I don't intend to.

Let's get down to it. I think you understand what I have asked for; do you not?

Mr. SNOW. I think I do.

Senator HARTKE. If you don't, I will make it very clear. I am going to say something to you on this regulation reform.

We are interested in doing something to supply a regulatory system, not go ahead and create confrontation among a bunch of people and tear this thing to pieces.

I am interested in trying to find some results which are going to be salutary. I am not going to go ahead and make a political issue for the campaign of 1976.

Mr. SNOW. Mr. Chairman, I think our proposals will provide the salutary effect for transportation and the consuming public.

Senator HARTKE. All right.

Senator Pearson, do you have any questions?

Senator PEARSON. No, I am going to pass for the moment. I am trying to catch up and see what you are talking about, Mr. Chairman.

Senator HARTKE. Senator Ford?

Senator FORD. I pass.

Senator HARTKE. All right. Thank you.

[The following information was subsequently received for the record:]

Attached is a brief description of several Interstate Commerce Commission proceedings directed toward issues of regulatory reform. The proceedings described are those which have been initiated or in which major action has occurred during the last 18 months. The descriptions are broken into two categories: (1) proceedings related to both rail and motor carriers; (2) proceedings related to motor carriers only.

PROCEEDINGS RELATED TO RAIL AND MOTOR CARRIERS

1. *Ex Parte No. 314 — Special Procedures for General Freight Rate Increases Based on Revenue Need*

BACKGROUND AND ISSUES

By Notice of Proposed Rulemaking and Order of June 12, 1975, the Commission issued for comment new rules that would permit all common carriers subject to Commission jurisdiction, except pipelines, to implement one during each calendar year general rate increases not to exceed 5 percent, without suspension but subject to possible investigation. The rules would include keep account and refund conditions in the event a subsequent investigation found the increase or any portion thereof to be unlawful.

DOT POSITION

DOT filed comments on the proposed new rules on July 17, 1975. We indicated how the Commission's proposal differs in several critical respects from our legislative proposal relating to no-suspend procedures. Most importantly, we noted the ICC proposal applies only to general increases which exacerbate existing distortions in the rate structure, while DOT's legislation applies to all but general rate increases, thereby encouraging independent action and cost-based rates. Unlike DOT's proposal, the ICC offers no new provisions for rate decreases. Furthermore, the ICC proposal, in addition to encouraging general rate increases, does not include any restraints on the rate-setting powers of rate bureaus, thus insuring continued cartel pricing and discouraging cost-based commodity and class pricing. We recommend that the proposed new procedures not be adopted.

COMMISSION DISPOSITION

None to date.

2. *Ex Parte No. 301 — Energy Crisis and the Need for Transportation Legislation*

BACKGROUND AND ISSUES

By Notice dated November 29, 1973, the Commission set forth for comment proposed new statutory language which would give the Commission new authority over regulated and nonregulated carriers in order to meet energy problems. The proposed legislation included authority to revise the manner and level of operations, alter routes, territories or points served, shorten distances traveled, and review and revise rates, fares or charges. The Commission also asked for authority to impose fuel-conserving restraints and other rules upon nonregulated carriers.

DOT POSITION

On December 19, 1973, DOT filed comments with the Commission stating our belief that the Commission should utilize existing authority to meet energy problems and stating further that we would later file specific recommendations in this regard.

On April 4, 1974, DOT recommended seven specific actions we believed the Commission could take under its existing authority to facilitate the efficient use of transportation resources and energy conservation; three recommendations concerned the regulation of motor carriers and four the regulation of railroads. The recommendations concerning motor carriers involved the modification of circuitry rules for regular route carriers by amending the Super motor carriers commodities-handling authority restricted only by commercial zones; the relaxation of carrier certificate commodity restrictions to give motor carriers commodities-handling authority restricted only by commercial or industrial fields of operation as defined by the type of shipper or consignee to be served; the elimination of restrictions of use of hopper cars in unit trains; increasing the load weight of freight cars; reducing excess circuitry in rail carrier routings; and reducing inspection, reconsignment and diversion

practices. Regarding the last item, we noted our doubt that the costs associated with these practices were adequately charged to the using shippers and that, accordingly, those shippers not using the services were subsidizing those using it. We stressed our belief that the Commission should approach the problem of uneconomic allocation of resources, resulting in energy and fuel inefficiency, through pricing decisions.

COMMISSION DISPOSITION

On June 13, 1975, the Commission issued a Report stating that since its original legislative proposal had met with uniform disfavor, the Commission had decided against submitting the proposal to Congress. Regarding DOT's seven proposals, five, in essence, were turned down. One (20 percent circuitry for regular motor carriers) has been made the subject of another proceeding (MC-65, Sub-No. 5, (discussed below) and another (inspection, reassignment and diversion practices) was deemed worthy of further evaluation. In response to our suggestion to reduce motor carrier certificate commodity restrictions, the Commission responded that they are already taking steps to reduce "dead-head" mileage, and that our suggestion for permitting a number of "free" days each month in which carriers could transport loads not covered by their certificates would present tremendous enforcement difficulties. The Commission stated that commodity restrictions serve to insure a balanced transportation system and prevent unwarranted competition by an excessive number of carriers competing for the same traffic. Responding to our suggestion for the elimination of restrictions on use of covered hopper cars in unit trains, the Commission stated that these restrictions insure that smaller shippers have an adequate supply of railroad cars. Regarding DOT suggestions for increasing rail carload weight capacities and encouraging railroad carriers to examine excess circuitry in railroad routings, the Commission answered that these problems can be resolved on an *ad hoc* basis as they occur. Similarly, the Commission stated that it can examine on an *ad hoc* basis when and of the need arises to redefine commercial zones and that present procedures are available for such reviews.

The Report states that the Commission has taken action on energy-related matters by submitting four legislative proposals to the Congress. These concern: (1) authority to enable the Commission to impose pass-through requirements on authorized carriers sufficient to reimburse independent owner-operators for fuel cost increases during undefined transportation "emergencies"; (2) authorization to enable the Commission to order through routes and joint rates between motor common carriers and carriers of other surface modes; (3) temporary (i.e., for an experimental period) authorization to permit contracts between freight forwarders and railroads; and (4) authorization to permit expeditious Commission approval of certain pooling arrangements which "contribute to efficient transportation and energy savings but do not unduly restrain competition." The Departmental position on these four bills was explained in testimony offered by Deputy Under Secretary John W. Snow on July 29, 1975, before the Subcommittee on Surface Transportation of the Senate Committee on Commerce.

3. *Ex Parte* No. 297 — Rate Bureau Investigation

ISSUE

On June 15, 1973, the Commission instituted an investigation to inquire into the activities of rate bureaus operating pursuant to collective ratemaking agreements under Section 5a of the Interstate Commerce Act. Twenty-eight specific areas of inquiry were set forth in the Order, touching upon most significant aspects of rate bureau activities.

DOT POSITION

On April 16, 1974, DOT filed comments in this proceeding. In general, we noted rate bureaus provide many valuable services but many of their practices also dampen competitive forces in the ratemaking process and discourage price flexibility and service innovation. We stressed that rate bureaus interfere

with the establishment of rates based on the cost of the most efficient carrier and provide a mechanism through which carriers may set and maintain rates above a competitive level. This, we argued, discourages the lower cost carrier from reducing its rates to reflect its greater efficiency. Specifically, we urged the Commission, *inter alia*, to:

(1) Prohibit railroad rate bureaus from voting on single-line movements and limit the bureau's consideration of joint-line movements to actual participating railroads;

(2) Prohibit railroad rate bureaus from taking any action to suspend rates established by independent action;

(3) Prohibit motor carrier or freight forwarder rate bureaus from protesting a rate filed by independent action, unless accompanied by a showing that the proposed rate failed to cover the variable cost of the service;

(4) Require all rate bureaus to act within 120 days of the time a rate change is proposed to the bureaus; and

(5) Require all rate bureaus to make public the votes of their members.

Generally, our principal recommendations were made in a fashion to respond to the 28 issues set out by the Commission in the proceeding.

COMMISSION DISPOSITION

On June 16, 1975, the Commission issued its decision in this proceeding. The Commission agreed with many of the Department's proposals, particularly (2) and (3) above, and issued a complete prohibition of rate bureau protests against members' rate proposals and of any rate bureau discouragement of independent action proposals. The Commission also agreed with recommendation (4) above, that a 120-day maximum period for processing proposals be established. In addition, the Commission agreed with DOT regarding modification of uniform system of accounts procedures. The Commission agreed to restrict activities that might permit one rate bureau to acquire control of another, and ordered that rate bureaus should not be profit-making enterprises and that shipper-affiliated carriers should not participate in bureau ratemaking proceedings without specific prior Commission approval.

Some DOT proposals were not accepted. Most importantly, the Commission did not agree with (1) above that railroad rate bureaus be prohibited from voting on single-line movements and the bureaus' consideration of joint-line movements be limited to actual participating railroads. The Commission argued that collective consideration of single-line and joint-line rates cannot practically be separated and that the elimination of antitrust immunity for consideration of single-line movements would destroy the very essence of collective ratemaking. The Commission stated that if antitrust immunity for these functions were removed, joint-line service essential to a national transportation system would be virtually impossible. The Commission also rejected (5) above regarding the publication of members' voting records, as well as the recommendation for identification of proponents of new rate proposals.

PROCEEDINGS RELATED TO MOTOR CARRIERS

1. *Ex Parte No. 55 (Sub-No. 8) — Motor Common Carriers of Property, Routes and Service (Petition for Elimination of Gateways by Rulemaking)*

BACKGROUND AND ISSUES

Gateways result from a motor common carrier combining (tacking) two separate and unrestricted grants of irregular-route authority at a common service point (the gateway) and conducting operations through the gateway from points served under one authorization to those served under the other. In November 1973, the Commission issued a proposed rule to eliminate the tacking requirement. Specifically, the Commission's proposed rule provided that an irregular-route carrier could operate by the most direct routing where the reduction in circuitry was not greater than 20 percent. As a corollary, however, the Commission provided that gateway operations involving more than 20 percent circuitry would have to be discontinued unless the carrier filed an appropriate application demonstrating that the public convenience and necessity justified continued operations over the circuitous route.

DOT POSITION

On December 11, 1973, we supported the Commissions' proposed elimination of the gateways when circuitry between two points does not exceed 20 percent. Generally, DOT supported use of Commission rulemaking authority to encourage more efficient use of transportation resources. We stressed that the proposal would promote healthy competition and would, at the same time, protect the industry and the shipping public from destructive competition and carrier instability. We also proposed future reevaluation of the pricing practices of the industry to determine if elimination of circuitry had resulted in economies requiring rate adjustments. We noted that apparently the present rate standard contains inequities which lead to a misallocation of transportation resources: either the rates charged by a direct route carrier to haul the same traffic transported by the circuitous route carrier through its gateways must be well above a competitive level, or the rates charged by the gateway carrier must be near or below marginal cost. We stated that in a more competitive environment circuitry would be minimized since the circuitous carrier would not be able to compete effectively with the direct route carrier.

Additionally, we proposed extension of the rule to regular-route carriers and to all hazardous materials movements.

COMMISSION DISPOSITION

On February 25, 1974, the Commission promulgated simplified rules to permit irregular-route carriers to eliminate gateways in accord with the 20 percent rule. The Commission did not accept our recommendations regarding the elimination of gateway requirements for all hazardous materials movements and for regular-route carriers (but see discussion of MC-65 (Sub-No. 5) below). The Commission also disregarded our suggestion that the applicant carriers supply cost data and other financial justifications for the rates they intend to charge for direct carriage.

2. *Ex Parte No. MC-65 (Sub-No. 5)—Petition of the Regular Common Carrier Conference of American Trucking Association, Inc.*

BACKGROUND AND ISSUES

This proceeding was initiated by a petition of the Regular Common Carrier Conference who requested the Commission to institute a rulemaking proceeding for the purpose of amending the Super Highway and Deviation Rules for motor carriers of property. The amendment would extend the application of the "Gateway" decision and permit regular-route carriers to deviate from authorized routes over super-highways if the deviation is less than 20 percent of the distance between points over authorized routes. Without such an amendment, regular-route carriers are permitted to deviate only if the deviation is less than 15 percent of the distance between such points.

DOT POSITION

On October 29, 1974, the Department supported the proposed amendment. This was in accord with the position we had previously expressed in our filings in Ex Parte No. 55 (Sub-No. 8) and Ex Parte No. 301. In addition to reiterating our support for Commission actions reducing regulations which impose unnecessary circuitry upon motor carriers, we reiterated our previously expressed view that the Commission should permit hazardous materials carriers to use the most direct route, as well as our suggestion that the Commission consider placing requirements upon the carriers to adjust rates, as appropriate, to reflect savings resulting from the proposed amendment. We also asked the Commission to reopen this proceeding and Ex Parte No. 55 (Sub-No. 8) after one year to examine the effects of relaxation of the rules and to consider whether further relaxation would be appropriate.

COMMISSION DISPOSITION

On June 3, 1975, the Commission issued its decision adopting the liberalized modifications of the Super Highway and Deviation Rules. The Commission

stated that there was no opposition to this action, that the change would permit economies and efficiencies of operation redounding ultimately to the benefit of the public, and that it would equalize whatever disparity may have existed between regular and irregular-route carriers as to permissible reductions in operation circuitry that may have resulted from the Gateway Elimination Case.

DOT's other recommendations were denied. The Commission stated that interested persons could file petitions at any time seeking modification of the rules, that authorizing all hazardous materials carriers to utilize the most direct route would result in a myriad of new competitive services for which no public need had been established and that this proceeding was not the proper forum for a general discussion of rates applicable to motor carrier services or evidentiary requirements in motor carrier rate proceedings.

3. *Ex Parte No. MC-43 (Sub-No.3)—Lease to Regulated Motor Carriers of Vehicles with Drivers by Private Carriers*

BACKGROUND AND ISSUES

On March 5, 1974, the Commission issued a Notice of Proposed Rulemaking and Order instituting an investigation relating to the leasing of vehicles with drivers by private carriers to regulated motor carriers. The NPRM contained proposed modifications of the Commission's existing "trip-leasing" regulations. These modifications would permit private carriers to lease equipment to regulated carriers under certain prescribed rules in order to maximize the efficient allocation of scarce energy resources, while at the same time maintaining necessary controls over such trip-leasing operations. Principally, the rule would reduce current regulations which preclude the leasing of equipment with drivers from private carriers for a period of less than 30 days.

DOT POSITION

In comments filed May 15, 1974, DOT commended the Commission for re-examining its leasing rules for private carriers, stating that the proposed modifications were desirable not only for fuel conservation purposes, but because they would help shippers and carriers to realize overall transportation economies.

We expressed reservations regarding particular provisions of the proposed rules. For example, we opposed limiting application of the amendment to equipment in private carriage as of March 7, 1974, or to equipment which replaces it on a one-for-one basis. Secondly, we stressed that limiting the back-haul to not more than "110 percent of the most direct highway mileage from the point at which private carriage terminates to the base point of the equipment" would be particularly difficult to enforce. Further, we questioned the need for the Commission to establish the compensation to be paid for the trip-leased equipment and driver and suggested that market forces could be relied upon to establish proper and equitable compensation. Finally, we noted that the provision that the compensation paid for the trip-leased equipment and driver be 70 percent of the derived revenues would be extremely difficult to apply.

COMMISSION DISPOSITION

None to date.

4. *Ex Parte No. MC-43 (Sub-No. 4)—Lease and Interchange of Vehicles—Trip Leasing*

BACKGROUND AND ISSUES

By Order dated January 31, 1975, the Commission published a Notice of Proposed Rulemaking for the purpose of exploring certain issues related to trip-lease arrangements between owner-operators and regulated carriers and determining whether the rules and regulations governing such lease and interchange of vehicles should be revised. Specifically, the Commission requested comments as to whether: (1) operators who lease their vehicles should be guaranteed copies of, or the right to inspect, the extended freight bills showing the total revenue upon which the split of revenue is based; (2) whether such operators should be assured payment of their compensation within 15

days of delivery; and (3) whether clearinghouses should be established where motor carriers could register availability of freight to be trip-leased for their account.

DOT POSITION

In its comments, DOT supported: (1) the absolute right of owner-operators to obtain, within a specified time, copies of all freight bills covering transportation, any portion of which is performed by the operator; (2) specification in the lease agreement of the terms of the revenue division; and (3) a provision that the actual compensation to be paid the operator be made within a specified period of time. DOT stated that the Commission acted wisely in raising the issue of establishment of clearinghouses, but that more data is needed regarding current market arrangements for matching loads and equipment in order to address the subject accurately.

5. *Ex Parte No. 311—Effect of Modifying Proclamation No. 3279 and Other Anticipated Energy Conservation Measures on the Operations of Carriers Subject to the Interstate Commerce Act*

BACKGROUND AND ISSUES

On January 31, 1975, the Commission published a Notice of Proposed Rule-making in which it proposed that an interim expedited procedure be established to deal with regulated motor carriers' fuel cost increases directly attributable to the increase in fees on imported crude oil. The Commission also requested discussion of an alternative proposal by which the Commission would develop a formula for a uniform percentage fuel-related rate increase.

DOT POSITION

On February 19, 1975, DOT filed comments with the Commission generally supporting its proposed objective to meet the anticipated effect of the increased import fees. We suggested, *inter alia*, that the Commission should require the motor carriers to submit information as to increasing productivity which offset increased costs. We encouraged the initiation of additional proceedings aiming toward the maintenance of cost-related rates with minimal regulatory delay.

We stated also that while the basic objective of the proposal is reasonable and necessary, the suggested procedures are confusing, that they lack necessary reporting safeguards and that they may not yield the information sought. Specific areas for modification were suggested. Finally, we stated our concern that the proposal itself does not promote fuel conservation and implicitly contains inflationary pressures.

COMMISSION DISPOSITION

None to date.

6. *Ex Parte No. MC-C-8506—Intercompany Parent—Subsidiary Transportation*

BACKGROUND AND ISSUES

On November 6, 1974, the Commission published notice of a filing of a petition by the Private Carrier Conference of the American Trucking Association (PCC), which sought to have the Commission recognize as private carriage motor carrier operations performed by one corporate entity (for compensation or direct benefit) for another which stands either in a parent-to-subsubsidiary or subsidiary-to-subsubsidiary relationship with it. Under present administrative and judicial interpretations, such operations are virtually prohibited.

DOT POSITION

On January 13, 1975, we filed comments with the Commission supporting the position of the PCC, stating that we regarded the position as sound economically and desirable as a matter of regulatory policy. To document our view, we submitted an extensive research report conducted for the Department by Drake Sheahan/Stewart Dougall, Inc. which showed significant opportunities for fuel savings, mileage reductions and other economies if the policy

in question were adopted. Our filing also indicated that while modification of the rule will produce some diversion of traffic from the for-hire motor carrier industry, such diversion will not be so significant as to outweigh the benefits that would be obtained from the proposed new policy.

DOT further argued that the Commission's past decisions in this area have been based on the exercise of administrative discretion and may be changed if the Commission finds that good cause exists to do so.

COMMISSION DISPOSITION

None to date.

7. I&S M-28454, *Guaranteed Service—Pacific Intermountain Express*

BACKGROUND AND ISSUES

In mid-1974, Pacific Intermountain Express Co. (P.I.E.) proposed a tariff offering a so-called "Money Back Guaranteed Service" which would provide shippers the option to pay the standard rate plus a premium for guaranteed pick-up and delivery dates. If these dates are not met, the charges, including the premium, would be refunded to the shipper. On August 15, 1974, Division 2 of the Commission summarily rejected P.I.E.'s proposal. On September 10, 1974, P.I.E. submitted to the Commission a petition for reconsideration, and on December 12, 1974, DOT submitted a statement in support of the P.I.E. petition for reconsideration. On December 16, the Commission denied the petition for reconsideration "without prejudice to the refiling of new schedules," stating that: "the matters raised by petitioner may require closer scrutiny than would be possible from an examination of the petition for reconsideration." Subsequently, P.I.E. refilled the proposed tariff, and on March 28, 1975, the Commission suspended the proposed rates and instituted an investigation.

DOT POSITION

The petition for reconsideration we filed on December 12, 1974 set forth the view that the proposed service is legally acceptable and stressed that the proposal appears to be an ordinary pricing decision of the type common in unregulated industries, and proposed in order to market a perceived competitive advantage. We argued that while this kind of pricing seems novel in regulated transportation, it should not be rejected without test or consideration of its merits. We argued that the Commission should at least conduct a hearing as to the desirability of instituting the proposed innovative pricing proposal.

COMMISSION DISPOSITION

As noted above, the Commission instituted an investigation although its initial position had been to reject the concept summarily as illegal. The investigation is currently under way and the Department presented a witness at hearings on June 11 and 12. The Administrative Law Judge has requested counsel to present a brief regarding whether the proposed service constituted is illegal (because "free") under the Interstate Commerce Act. That brief was submitted on July 3, 1975. No decision has been rendered by the Judge as of this date.

Senator HARTKE. Mr. Harry J. Breithaupt, Jr., vice president and general counsel, Association of American Railroads.

STATEMENT OF HARRY J. BREITHAUPT, JR., VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.

Mr. BREITHAUPT. Mr. Chairman and members of the subcommittee, my name is Harry J. Breithaupt, Jr. I am vice president and general counsel of the Association of American Railroads, with offices here.

May I summarize my statement with the understanding it will be included in the record?

Senator HARTKE. Yes. As I said, every statement will be included in the record. Gentlemen, if you all accord us the opportunity to try to get through these witnesses by holding your summary to 10 minutes and we will ask each one of the Senators to have their first round of questions in 10 minutes.

Mr. BREITHAUP. I am sure I will be able to do that. Thank you.

Let me first address S. 2086, the bill having to do with through routes and joint rates.

We take no position on those provisions of S. 2086 that have to do with the establishment of intramode through routes and joint rates applicable to transportation solely by motor carriers, nor do we take any position on those provisions of the bill having to do with through routes and joint rates as between motor carriers and water carriers.

We do, however, strongly oppose this bill to the extent that it calls for mandatory or compulsory through route and joint rate arrangements as between motor carriers and railroads, for to that extent it would impose upon the already burdened railroad industry additional regulation that is not only unwanted and objectionable but is also regulation for which no necessity or justification has been shown.

I would point out to the Chair that lengthy and comprehensive records have been made before this subcommittee on three separate occasions in the past 8 years on bills that were the predecessors of S. 2086 now under consideration.

As I said, the records were lengthy, yet they were totally lacking in any demonstration of the need for compelling railroads to enter into through routes and joint rates with particular motor carriers not of their own choosing; for forcing them to participate in such joint arrangements with trucking companies on a basis other than that of mutual selection, mutual trust and common agreement; for coercing them into contractual relationships with partners, so to speak, who may be unacceptable to them and with whom they may be incompatible—all in circumstances, and on terms and conditions, that may not only be disagreeable to them, but may well be prejudicial to them as well and contrary to their interest.

Nowhere in the Commission's 1967 or 1970 presentation, nor in its 1972 presentation, was there shown any illustration or example of how it is that the present law on intermode through routes, with its provision for voluntary—as opposed to compulsory—arrangements between railroads and motor carriers, is deficient.

In its explanation of the latest bill, S. 2086, which the Commission agrees "is substantially similar to the joint rate/through route proposal submitted by the Commission to the 93d Congress," on which hearings were never held at the most recent time the bill was introduced, a new statement of generalities is added.

That statement, in the words of the Commission is: "The proposal is particularly timely at this juncture since it can lead both to monetary and energy savings."

Of course, this statement is timely with the energy crisis, but we seriously question whether this bill would provide either monetary

or energy savings. Under present law, railroads and motor carriers are perfectly free to enter into through route and joint rate arrangements on a voluntary basis. To the extent that either monetary or energy savings are attainable, the incentive is already there. Compulsion through additional heavy-handed regulation is neither needed nor warranted.

We are strongly opposed to the concept of any compulsion at all in the establishment of through routes and joint rates between railroads and motor carriers.

This proposal is advanced, you will recognize, Mr. Chairman, at a time when a fierce debate is going on about the desirability of the proposed regulatory structure, the need perhaps to deregulate, the need to reregulate, and yet at this point in time the Commission again advances this proposal for additional regulation.

The present permissive and voluntary arrangements between the two modes are working satisfactorily; and, therefore, we feel, the matter should be left alone until it can be positively shown that a change in the present law is called for in the sense of being needed. Doctrinaire reasons like "eliminating gaps in the present law," "eliminating inequalities in economic regulation," or "can lead both to monetary and energy savings," don't meet that test of demonstrable need.

Briefly, let me say with respect to S. 2085, the bill having to do with pooling arrangements, while it seems to us that S. 2085 would have much greater application to the motor carriers than to our own railroad industry, we think it is a step in the right direction and we support this bill which is designed to expedite ICC approval of certain pooling agreements without hearings and would also minimize the burden upon the carriers making application for approval in those instances.

Thank you again, Mr. Chairman, and Senators, for this opportunity to present our views.

Senator HARTKE. S. 2086 rests on the assumption that the regulated carriers should be required to establish joint service with other carriers in order that shippers could take advantages of the benefits of a totally integrated common carrier network.

While I can understand the railroad's objection to particular aspects of the bill, for example, the very vague "necessary or desirable" standard which the Commission would impose upon itself in setting joint rates and through routes, it seems to me that your basic position is that such services as are necessary will be established if they are of mutual benefit to the carriers involved.

This, of course, says nothing about the shipper and the high probability that, as between two competing regulated carriers and a shipper, agreements will be reached only with some outside pressure.

How do you address the argument that shippers should have the benefits of a common carrier system with the maximum degree possible so long as we provide for adequate compensation of the carriers providing services?

Mr. BREITHAUP. Yes, sir. I was unable to be at yesterday's session, but the only time that a shipper representative has testified before this committee on this question was one time a couple or 3 or 4 years ago when a representative of NITL came and not even

that witness was able to point to a single circumstance where the carriers had not voluntarily entered into arrangements which would meet the needs of the shipping community.

What I am trying to say by way of addressing myself to the argument that you have asked me to address is that it is very difficult to take an adversary position about which there isn't any argument.

Senator HARTKE. There is going to be some testimony today from some of the people here. Are you going to stay around and listen?

Mr. BREITHAAPT. I will be glad to.

Senator HARTKE. You do that.

Mr. BREITHAAPT. I eagerly await some example, as to the failure of the railroads and the motor carriers to provide through routes and joint rates where there is a need for it.

Senator HARTKE. Recently, the railroads have come to Congress opposing, for example, increases in motor carrier weights permissible on the interstate highway system and a grant of eminent domain to coal for pipeline companies on the grounds that such activities would threaten the viability of the railroads, and the central role they play in our common carrier system. Now you come before this committee to argue that the railroads should not be forced to participate in the common carrier system unless they find it to be to their own advantage.

So let me ask you, how do you distinguish between and justify the railroad's argument on the one hand for protection against competition because they are part of a common carrier system and their desire, on the other hand, to not fully participate in the common carrier system?

Mr. BREITHAAPT. The principal thing, I would say, by way of response to that, Mr. Chairman, is that our major objection to the congressional handling of the truck size and weights problem is that at no time was consideration given to that as a matter that had impact upon the national transportation system. The effect upon the railroads, upon other forms of transportation, was not a consideration examined by the Congress, at least so far as the record shows. At the time the permissible truck size and weight increases were legislated.

Senator HARTKE. Let me ask you would you believe if there had been any more time you would have had any less opposition?

Mr. BREITHAAPT. If there had been more time, would we have had any less opportunity?

Senator HARTKE. In other words, your opposition was based on the fact that by increasing the weights or having the coal pipelines, the net result would be you lose certain business in there. I mean whether you had 1 day or 60 years, I think you would have had the same objection.

Mr. BREITHAAPT. I would hope that the Congress would act responsibly and respond to considerations of the national transportation system question.

Senator HARTKE. I understand that. But, I mean, your opposition was really based upon the threat of competition. Let me say the threat of taking some of your business away. I am not arguing you

should or shouldn't; I am just saying to you I don't see how it made any difference.

Mr. BREITHAUP. You are a better judge than I, Mr. Chairman.

Senator HARTKE. Not really. I think you are a good judge of it, and I perhaps shouldn't put you on the spot of saying that. Will the railroads' position change if the language of this proposal would change to make it similar to 14 of the act which establishes true routes with other railroads and motor carriers?

Mr. BREITHAUP. At one time, the bill before you did so provide. And this bill reflects a departure from the earlier draftsmanship. If we were to have to be faced with this as statutory provisions, I think I would prefer it in the present posture rather than having the congressional mandate subject to subsequent action by the commission because the congressional direction really would have to be coupled with the terms of the present bill. There is no way it can be self-policing.

Senator HARTKE. The staff member has a suggestion, maybe, here.

Mr. CUNNINGHAM. You say there is no demonstrated need for this mandatory establishment of joint rate and through route. If a procedure were established whereby a shipper could petition the commission for the establishment of these routes upon a demonstration prima facie demonstration that he'd be unable to negotiate with the carriers the proposed joining of these rates, do you think there would then be a reasonable basis for the establishment of these rates?

Mr. BREITHAUP. You mean, one, the commission itself establishes this, but only upon the showing of need by a shipper who thought that his needs were not being satisfied?

Mr. CUNNINGHAM. Yes.

Mr. BREITHAUP. I think that would be an improvement on the present bill.

Senator HARTKE. Senator Pearson?

Senator PEARSON. I think you noted the problem several times. I can understand the ICC, looking down, and seeing a gap in their jurisdiction and trying to fill the gap—that's just the way the bureaucracy has operated. But now I am advised that the truckers are not opposed to this, and that they don't really care too much. You don't really oppose through routes and joint rates among railroads or among truckers, but you have reservations as between railroads and truckers. Is that your position?

Mr. BREITHAUP. No position as to what the law may require with respect to arrangements between truckers.

Senator PEARSON. That's right. I understand that.

Mr. BREITHAUP. But I do object to giving the ICC authority to compel the establishment of these arrangements between railroads, on the one hand, and truckers on the other.

Senator PEARSON. Why is that?

Mr. BREITHAUP. It is totally unnecessary, Senator Pearson, because it may already be done upon a voluntary basis. It is being done upon a voluntary basis. The record is barren with respect to any examples of a failure of the carriers to come forward and meet shipper needs in these respects. And it just seems to me fundamentally wrong to endow the commission with the power to say to

railroad A, you must enter into a contractual arrangement with trucker B whether you want to or not.

Senator PEARSON. I am not being cynical, but I can always understand these proposals better if I find out who wants them. And the ICC in the testimony yesterday didn't make any record as to any great demand for this authority, this gap that they illustrate and seek to close.

I assume the shippers somewhere very much want the ICC to have this authority so that they can get through routes and joint rates on a greater flexibility than they have now.

Mr. BREITHAUP. That's a perfectly natural assumption, Senator.

Senator PEARSON. Is that assumption true?

Mr. BREITHAUP. To my mind, that is not the fact, though. I have not heard all this clamor from the shipping community, and I am a student of the subject.

Senator PEARSON. That leaves us with the ICC wanting this authority merely because they haven't got it.

Mr. BREITHAUP. It would appear so. They speak of it as a regulatory gap. They speak of it as an inequity in regulation. They speak of it as a desirable objective from their point of view to round out the regulation. But they couldn't quote any shippers as clamoring at the gate for it.

Senator PEARSON. If there is no demand for it, why would the railroads object to its existence?

Mr. BREITHAUP. I don't know what the commission might do with it or how it would work if they had the power. I am at pains in this statement, which I tried to be brief about, to explain some of the uncertainties.

Senator PEARSON. I am aware of that. You have been, as you always are, very helpful.

I don't have any further questions.

Senator HARTKE. Senator Ford?

Senator FORD. Mr. Chairman, let me ask one question. Apparently there is no problem with listening to your questioning of the witness.

Senator PEARSON. I don't know.

Senator FORD. That's where we are now.

Do I understand from the chairman there will be testimony later on that will indicate there is a problem?

Senator HARTKE. Yes, I think there will. But there isn't any problem under the law.

Senator FORD. I don't want to get into that posture because I think, as a new member and having served in the executive branch in my State, we have over-legislated and regulated a lot of places, and I would hope we would not get into more regulation just for the sake of regulation. I found that some legislation is better than no legislation as an attitude here and I think no legislation, if it is not needed, is much better than trying to have some legislation.

I want to fall down on the side of the legislation of less regulation if it is not needed.

But I would be very interested in listening to the testimony that refutes maybe the appearance that there is no need for it this morning.

Mr. BREITHAUP. Mr. Chairman, before I get myself into too embarrassing a position, let me point out I have not had a chance to look at the statements as Mr. Cunningham has had, so he might know something about subsequent testimony I don't know.

Senator HARTKE. We are not trying to trap you.

All right. That's all I have.

Mr. BREITHAUP. Thank you.

[The statement follows.]

STATEMENT OF HARRY J. BREITHAUP, JR., VICE PRESIDENT AND GENERAL
COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am Vice President and General Counsel of the Association of American Railroads, with Headquarters at Washington, D.C. The railroads which are members of the Association operate 97 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the revenues of all railroads in the United States, except AMTRAK and Auto-Train.

I appreciate the opportunity to appear before the Subcommittee today to present the views of the Association and its members on S. 2085 and S. 2086, which were introduced on July 10, 1975, by the Chairman of this Subcommittee (by request) to reflect and implement legislative recommendations made by the Interstate Commerce Commission.

S. 2086—THROUGH ROUTES AND JOINT RATES

The Association takes no position on those provisions of S. 2086 that have to do with the establishment of *intramode* through routes and joint rates applicable to transportation solely by motor carriers, nor does it take any position on those provisions of the bill having to do with through routes and joint rates as between motor carriers and water carriers. We do, however, strongly oppose this bill to the extent that it calls for mandatory or compulsory through routes and joint rate arrangements as between motor carriers and railroads, for to that extent it would impose upon the already over-regulated railroad industry additional regulation that is not only unwanted and objectionable but is also regulation for which no necessity or justification has been shown.

Lengthy and comprehensive records have been made before this Subcommittee on three separate occasions in the past eight years on bills that were the predecessors of S. 2086 now under consideration.¹

As I said, the records were lengthy, yet they were totally lacking in any demonstration of the need for compelling railroads to enter into through routes and joint rates with particular motor carriers not of their own choosing; for forcing them to participate in such joint arrangements with trucking companies on a basis other than that of mutual selection, mutual trust and common agreement; for coercing them into contractual relationships with partners, so to speak, who may be unacceptable to them and with whom they be incompatible—all in circumstances, and on terms and conditions, that may not only be disagreeable to them, but may well be prejudicial to them as well and contrary to their interest.

All that we have had by way of explanation from the Interstate Commerce Commission to justify the *intermode* feature (i.e., rail-truck) of this proposal have been broad statements of generalities by its spokesmen such as—

"Because it is recognized more than ever that adequate intra- and inter-modal coordination is clearly in the public interest and because the lack of this authority has brought about a number of serious problems, which I will mention subsequently, we believe that these gaps in the present law should be eliminated through the enactment of S. 751." (1967 Hearings, p. 33)

¹ Hearings before the Subcommittee on Surface Transportation of the Committee on Commerce, United States Senate—"Through Routes and Joint Rates, etc." 90th Cong., 1st Sess., on S. 751, S. 753, and S. 1768, Serial No. 90-37, May 16, 17, 18 and June 9, 1967.

91st Cong., 2nd Sess., on S. 2245 and S. 3626, Serial No. 91-65, May 6 and 7, and June 11, 1970.

92nd Cong., 2nd Sess., on S. 2628, Serial No. 92-205, May 4, 1972 and Serial No. 92-228, June 8 and 9, 1972.

"Because it is recognized more than ever that adequate intramodal and intermodal coordination is clearly in the public interest and because the lack of this authority has brought about a number of serious problems, which I will mention subsequently, we believe that these gaps in the present law should be eliminated through the enactment of joint rates and through routes legislation." (1970 Hearings, p. 25)

The "serious problems" which the ICC witnesses went on to mention in past years—and I do not in any degree discount their seriousness—did not have anything at all to do with that part of the Commission's proposal calling for mandatory intermode through routes and/or joint rates between motor carriers and railroads. All of the service breakdowns and inadequacies they cited (to some extent with specific illustrations) in those years had to do with the failure of motor carriers, between and among themselves (intra-mode), to establish and maintain through service.

Nowhere in the Commission's 1967 or 1970 presentation, nor in its 1972 presentation, was there shown any illustration or example of how it is that the present law on intermode through routes, with its provision for voluntary (as opposed to compulsory) arrangements between railroads and motor carriers, is deficient. Why, then, does the Commission continue to recommend that this additional regulation be imposed upon the railroads, and that its regulatory power and authority over the railroads be so enlarged?

A principal reason, it appears, is the Commission's professed and repeated belief that "gaps in the present law should be eliminated." When Senator Magnuson introduced S. 2628 on September 30, 1971, and when Senator Hartke introduced this latest bill, S. 2086, both caused the Commission's explanation of the bills to be published in the Congressional Record. Again, the Commission has dealt pretty much in generalities by stating:

"Enactment of the recommended legislation would close this gap in existing law . . ." (Cong. Rec., September 30, 1971, p. S. 15446)

* * * * *

"This proposal eliminates a regulatory gap . . ." (Cong. Rec., July 10, 1975, p. S 12231)

The Commission also appears to find justification for its proposal on the ground that it would tend to equalize regulatory treatment. It has said: "... an incidental effect of this legislation is the elimination of certain inequalities in economic regulation among the several modes of transportation." (1967 Hearings, p. 25)

With respect to its recommended bill on which hearings were conducted five years ago, it said: "It would also have the effect of according greater equality of treatment in the regulation of the carriers of the various modes." (Cong. Rec., May 26, 1969, p. S 13690)

And the Commission said the same on the previous bill, S. 1628: "It would also have the effect of according greater equality of treatment in the regulation of the carriers of various modes." (Cong. Rec., September 30, 1971, p. S 15467)

We do not agree that there is any gap in the present law with respect to through routes and joint rates between railroads and motor carriers that needs to be eliminated. Nor do we agree that there is an inequality of regulation in this area sufficient to justify, especially as an "incidental effect"—almost as an afterthought, as it were—the imposition of additional regulation upon the railroads.

A principal difficulty with the intermode feature of this bill is that no one knows just how it would work out. No one can foresee, with any certainty, what the results would be. Nevertheless, in the absence of examples of any ills to be cured or of any conditions to be improved, the Congress again is asked to "close gaps" with legislation that will have the "incidental affect" of eliminating "certain inequalities." Without any demonstration of need, and without any real explanation, the Congress is urged to provide the Interstate Commerce Commission with substantial additional regulatory authority over the railroads.

In its explanation of the latest bill, S. 2086, which the Commission agrees "is substantially similar to the joint rate/through route proposal submitted by the Commission to the 93rd Congress", on which hearings were never held, a new statement of generalities is added: "The proposal is particularly timely at this juncture since it can lead both to monetary and energy savings." (Cong. Rec., July 10, 1975, S 12231)

This statement is timely with the energy crisis, but we seriously question whether this bill would provide either monetary or energy savings. Under present law, railroads and motor carriers are perfectly free to enter into through route and joint rate arrangements on a voluntary basis. To the extent that either monetary or energy savings are attainable, the incentive is already there. Compulsion through additional heavy-handed regulation is neither needed nor warranted.

Under S. 2086, the Commission would be empowered to establish (i.e., compel the establishment of) through routes and joint rates between railroads and motor common carriers of property. The pertinent language is, in part: "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes . . . and joint rates . . . or charges applicable to the transportation of property by common carriers by motor vehicle . . . and/or common carriers by railroad . . ."

Thus, the bill would direct the Commission to compel the establishment of through routes and joint rates between railroads and motor carriers "whenever deemed by it to be necessary or desirable in the public interest." Not just whenever deemed *necessary*, but whenever deemed "*necessary or desirable*." This points up the difficulty and uncertainty of knowing what the real effect of the measure would be.

What is meant here by "desirable"? Why should the Commission's notion of what is "desirable" enable it to overrule and countermand managerial judgment? As indicated previously, railroads are now, under present law, permitted to work out through route and joint rate arrangements with motor carriers in instances where they feel it is desirable to do so. The minimum standard for the Commission's substitution of its judgment for that of the carriers' management ought, at least, to be public necessity.

Furthermore, under this bill the Commission would have the arbitrary authority to compel the establishment of through routes and joint rates even without a finding under the standard—loose as it is—of "necessary or desirable in the public interest." Consider the proposed statutory language: "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest . . . especially through routes [etc.] . . ." Restated: The ISS *shall* prescribe through routes and joint rates whenever it finds it necessary or desirable in the public interest; and it *may* do so absent such a finding.²

Let us look now for a moment at the matter of divisions of joint rates (i.e., determining the respective revenue shares of the participating carriers). This bill provides (new section 216(c)(3)) that the carriers themselves are to work out and establish the divisions—whether the joint rates are voluntarily published or ICC-prescribed. This approach would leave divisions, at least, to the carriers.

It does not mean, however, that divisions agreed upon by the carriers involved (assuming they could agree) would be safe from Commission interference (for section 216(f) of the Interstate Commerce Act (not amended by the bill) would authorize the Commission to prescribe new and different divisions if it is of the opinion (after hearing, either upon complaint or upon its own initiative) that any divisions "are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established)."

S. 2086 contains one provision which was designed, I believe, to make compulsion a little less unpalatable. It would require that divisions be promptly paid and interline settlements promptly made; and in the event of undue delinquency with respect thereto, "through routes and joint rates may be suspended or canceled by the Commission under rules to be prescribed by it" (new section 216(e)(2)).

This approach is less desirable than that found in Senator Moss' bill, S. 3626, in the 91st Congress. That bill provided, in the event of undue delinquency in settling divisions, etc., "the Commission shall permit on short notice the cancellation or suspension of the through route or joint rate involved."

² The present bill differs in this respect from the ICC's proposal in the 91st Congress (S. 2245).

We are strongly opposed to the concept of any compulsion at all in the establishment of through routes and joint rates between railroads and motor carriers. The present permissive and voluntary arrangements between the two modes are working satisfactorily; and, therefore, we feel, the matters should be left alone until it can be positively shown that a change in the present law is called for in the sense of being needed. Doctrinaire reasons like "eliminating gaps in the present law", "eliminating inequalities in economic regulation", or "can lead both to monetary and energy savings", don't meet that test.

S. 2085—POOLING ARRANGEMENTS

Although it would appear that S. 2085 would have much greater application to the motor carriers than to the railroad industry, the Association supports this bill which is designed to expedite ICC approval of certain pooling agreements without hearings and would also minimize the burden upon carriers applying for such approval in certain instances.

Thank you for the opportunity to present the views of the Association and its members on these bills.

Senator HARTKE. The next witness will be Mr. Russell Moir, the chairman of the board of the Freight Forwarders Institute.

I think for the benefit of Senator Pearson and Senator Ford that this witness will be addressing himself primarily to that question. And I think that the next witness will either be addressing himself to it in one fashion or another.

All right. Thank you.

**STATEMENT OF G. RUSSELL MOIR, CHAIRMAN OF THE BOARD,
FREIGHT FORWARDERS INSTITUTE; ACCOMPANIED BY GILES
MORROW, GENERAL COUNSEL**

Mr. MOIR. Mr. Chairman and members of the committee, my name is G. Russell Moir and I have with me Mr. Giles Morrow, general counsel of the Freight Forwarders Institute. We both appear today on behalf of the Freight Forwarders Institute which is the National Trade Association of freight forwarders regulated under part IV of the Interstate Commerce Act. The institute has headquarters here in Washington. In my regular occupation, I am chairman of the board and chief executive officer of Transway International Corp., a transportation-distribution company with headquarters in New York. Transway owns and operates several part IV freight forwarders, some large, some small.

The freight forwarding industry supports S. 2083. We will not state a position, at these hearings, on bills S. 2084, 2085, and 2086. Under other circumstances we would oppose S. 2085—to expedite pooling—and S. 2086—mandatory joint rates—on the grounds that they do not apply to freight forwarders and thus that their enactment would widen the scope of already discriminatory regulation. However, since the Commission's package of bills contains one bill designed to help our industry and all of the bills are designed to meet current critical conditions, we shall not oppose any of the bills.

The last time I appeared before this Honorable Subcommittee was June 8, 1972. The subject of the hearings at that time was the same as it is today and as it was as far back as 1967. The cast of characters for and against the proposed legislation are the same, though some of us have aged in the interim.

Though the people, pro and con to the proposed legislation, are the same; though the positions are the same, circumstances are different today than ever before.

We have just experienced the greatest decline in the economy of this Nation and the world since the Great Depression of the thirties. We are now confronted with the greatest energy crisis that this world has ever seen—and we don't see the end of the tunnel yet.

Gentlemen, in the normal course of affairs of supporting legislative proposals, men like myself come before bodies such as this one and extol the virtues of the legislation and others of us question the motives of the supporters and indeed the very motivation for the proposed legislation.

I am not going to burden this record with a repetition of all of the reasons why this legislation is important. The record is replete with testimony as to its importance and need. I refer particularly to the testimony presented to this subcommittee on June 8 and 9, 1972, on S. 1896, and ask that the following statements in support of that legislation be incorporated in this record.

Statements of: G. Russell Moir, Chairman of the Board of Governors; Freight Forwarders Institute; Jervis Langdon, Jr., trustee, Penn Central Transportation Co.; Neil F. Cunningham, traffic manager, Sunbeam Appliance Co.; Archer G. Milligan, director of transportation, The Sperry and Hutchinson Co.; C. W. Owen, president, City Transfer, Inc.; Donald S. Beattie, executive secretary, Congress of Railway Unions; James M. Souby, Jr., president, Western Railroad Association; Jerry Chambers, chairman of the board, Clipper Express Co.; Barrie Vreeland, director, Department of Transportation, Commerce and Industry Association of New York; and Gilbert J. Parr, transportation consultant, president, Gilbert J. Parr Associates.

It might be of interest to this subcommittee to know that even more extensive hearings on similar legislation were held on the House side in 1972. (Hearings, Subcommittee on Transportation and Aeronautics, House Interstate and Foreign Commerce Committee, on H.R. 7986, et al., 92nd Congress, 2d Session, Serial 92-64, March 14-16, 1972). In addition to the witnesses who appeared before your subcommittee, the following witnesses supported the legislation in the House hearings:

Statements of: William F. Alexander, Jr., vice president, Humbolt Express, Inc.; A. R. Allen, general manager, Portland Freight Traffic Association; Kenneth Delaney, manager, Transportation and Technology Department, Los Angeles Area Chamber of Commerce; James J. Devlin, general chairman, Freight Forwarders Division, Brotherhood of Railway, Airline and Steamship Clerks; Hon. Robert N. Giano, Representative in Congress from the State of Connecticut; David N. Inwood, vice president, Traffic, Navajo Freight Lines, Inc.; Hon. John M. Murphy, Representative in Congress from the State of New York; Hon. George M. Stafford, Chairman, Interstate Commerce Commission; and Robert D. Tetranlt, manager, Traffic and Transportation, Oneida Ltd., Silversmiths.

You can see why these hearings neither afford the time nor present the necessity to specify the many reasons, advanced by many different interests, for the prompt enactment of this legislation.

What I do want to discuss, briefly, is the critical need for the legislation in the light of today's conditions and something about the oppositions' position.

I have been in freight forwarding since 1929. I have always taken pride in the fact that though my business, and I personally, have been motivated by the desire to make profits and prosper, the business to which I have dedicated my career is one which functions for and in the public interest. This legislation is in the public interest.

Freight forwarders which I represent today are common carriers regulated pursuant to part IV of the Interstate Commerce Act. Since the abandonment of direct less-than-carload—LCL—operations of the railroads it has been left to our industry to provide and afford to the general shipping public LCL service by rail.

There can be no question that part IV freight forwarders provide an essential service. The Interstate Commerce Commission so held in Ex Part 266—"Investigation into Status of Freight Forwarders" 330 I.C.C. 711 (1971). It may be said that that investigation is the basis, along with the energy conservation reasons for the Interstate Commerce Commission sponsorship of the legislation before you.

In 1971, the United States was not experiencing an energy crisis. If our industry provided an essential service in 1971, it certainly provides an even more essential service today.

Our ability to consolidate and move small shipments by rail, a mode of transportation utilized by forwarders in 90 percent of their line-haul movements, is an energy conserving operation in that one unit of energy expended in rail transportation can move four times as much freight as that same unit of energy used in over-the-road vehicles.

Further, with the great burden on governmental resources brought about by the Northeastern Railroad crisis, which crisis today even touches our traditionally prosperous railroads, legislation which will enhance railroad finances should be encouraged and adopted. We are the vehicle by which railroads can recapture some of their lost tonnage and additional revenue at a profit to themselves.

At the hearing before this committee in 1972, Mr. Gilbert J. Parr, a transportation economist, gave testimony which was uncontroverted, that freight forwarder traffic contributed 126 percent of rail variable costs and 114 percent of rail fully allocated costs. Mr. Parr is presently updating that study. Obviously, the railroads profit by working with freight forwarders.

Let me now turn to the matter of the opposition to the proposed legislation. Congress, in its wisdom, in enacting part IV of the Interstate Commerce Act in 1942, bringing freight forwarders under regulation permitted, by exception contained in section 402(c), Nonprofit shippers' associations and shippers' agents to continue to operate without regulation. However, it was not the intent, nor was it envisioned by Congress, that those excepted from regulation should compete with freight forwarders. Compete they have.

Shippers' associations, if they are bona fide, are merely shippers who, under an exemption provided by forwarder regulation, are

permitted to consolidate their freight to receive the benefit of lower charges. Thus, the inquiry arises: How can a proposal which looks to the improvement of forwarder service harm shippers?

The fact is that shippers' associations look upon themselves as unregulated freight forwarders, competing with the regulated industry. What I ask the members of the subcommittee to keep in mind is that shippers' associations are *not* common carriers—that they do not serve the general public, but select their members from among those who have the right kind of freight to mix in association cars, between the most profitable points—and that they leave it to the common carrier forwarders to handle the balance of the freight, not only for those members unacceptable to the associations, but for their own members where the freight is not acceptable by the association.

In the business arena, members of shippers' associations already obtain a tremendous advantage over their competitors who are not members of such associations. They seemingly would like to increase that advantage by preventing the enactment of legislation which would improve forwarder service for the entire shipping public. I think it should be borne in mind that if railroads and forwarders, working together under realistic arrangements as contemplated by this legislation, should provide such improved service that shippers no longer would find it beneficial to join a nonprofit association that would benefit the transportation system and the shipping public.

Shippers' agents have exactly the same interest as the shippers' associations—except the profits go to entrepreneurs. They do only part of what a forwarder does and each in only one terminal area. If forwarders can, through negotiated arrangements perform the same function as do shippers' agents at a lower cost, why perpetuate the unregulated entrepreneur to the detriment of the regulated common carrier who must hold himself out to provide service to *all* shippers in all cities where the forwarder operates? I say again, permit forwarders negotiated arrangements and if the shippers' agent becomes no longer economically viable then it will be because it has become more advantageous for the shipping public to deal with the common carrier forwarders.

I turn now to our opposition from our long-haul motor carrier competition. To them "competition" and "opposition" are synonymous. In truth they oppose this legislation because they desire to have no competition from the rail industry for the long-haul less-than-truckload (LTL) freight. LTL and LCL are interchangeable terms, the only distinction being whether the shipment is carried by truck—LTL or rail—LCL. With the advent of piggyback operations by railroads the previous distinctions in terms became meaningless.

Here, unlike shippers' associations or agents, it is not a desire merely to perpetuate an industry. They want all the LCL traffic competition by railroad, for this traffic can best be carried out through the vehicle of the freight forwarders' ability to attract this traffic to rail. We suggest that in order to insure the shipping public, large and small, of a choice of services, competition must continue. We believe that the proposed legislation can go far to foster such competition.

Mr. Chairman, that concludes my statement, but we do have one brief amendment to submit for your consideration. Since it is basically a legal matter, I would ask if Mr. Morrow might state the amendment, with your permission. We do not need to dwell on the matter but Mr. Morrow would be happy to answer any questions.

Mr. MORROW. Mr. Chairman, we suggest that S. 2083 be amended by striking out the words "or any shipper" as they appear on page 2, line 8, of the bill. This would necessitate for fairly obvious reasons changing the preceding phrase, "any other freight forwarder" to read "or any other freight forwarder."

I have prepared a three-page memorandum stating our reasons for suggesting this amendment. Basically, we think the words "or any shipper" are unnecessary and out of place in this legislation and we fear they might generate unnecessary litigation. That is the substance of my statement. I just offer it for the record.

Senator HARTKE. All right. Your memorandum will be included. [The statement follows:]

STATEMENT OF GILES MORROW, GENERAL COUNSEL,
FREIGHT FORWARDERS INSTITUTE

Bill S. 2083 changes existing law in two basic respects. One, it extends Section 409 of the Act, which now authorizes forwarders and motor carriers to operate under contracts, so that forwarders and railroads would also be able to operate under contracts. Two, the bill adds a new standard to be observed by the parties and administered by the Interstate Commerce Commission in the establishment of contracts between forwarders and railroads and motor carriers.

Section 409 now requires the parties to contracts to establish just, reasonable, and equitable terms, conditions and compensation of such contracts. The terms, conditions and compensation of the contracts may not, consistent with the law, unduly prefer or prejudice any of the parties to the contracts or any freight forwarder not a party thereto. The bill would require, in addition, that the terms, conditions and compensation of the contracts not unduly prefer or prejudice any shipper.

In trying to understand the purpose and effect of this new standard it should be borne in mind that while the arrangements authorized by Section 409 are called contracts, they are comparable to joint rate and divisional arrangements authorized by other sections of the Act for other types of carriers. Thus when the Senate Commerce Committee reported the bill which established Section 409 in its present form, in 1950, it said, in the Committee Report:

"Under the Section (409) as proposed by the bill the standards to be observed by the parties, and the administrative controls vested in the Commission, are comparable to the standards and controls set forth in other sections of the act respecting divisions of revenue among other carriers performing a joint service. (Sec. 1(a) and 15(6) of part I (railroads); secs. 216(e) and (f) of part II (motor carriers); and secs. 305(b) and 307(f) of part III (water carriers).) Those standards and controls differ materially from and have no relationship to the standards and controls provided by the act in the case of *rates to the shipping public*." (Senate Rpt. 1285, 81st Cong., 2d Sess., S. 2113, 1950. Underscoring is ours).

To illustrate what your Committee meant about the standards in Section 409, I refer to Section 216(c), which authorizes joint rates between motor carriers and railroad, express, motor and water carriers. That Section states:

"In the case of such joint rates, fares, or charges it shall be the duty of the carrier parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable and equitable divisions thereof *as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers*." (Underscoring added).

When your Committee patterned Section 409 after the other parts of the

Act which deal with arrangements between carriers for joint service, you did not, thereby, ignore the interest of shippers. Rather, you recognized that the interest of shippers is fully protected by other provisions of the law dealing with what the shippers pay for the transportation of their goods. Let me illustrate:

Section 404(a) makes it the duty of freight forwarders "to establish, observe and enforce just and reasonable rates and charges", and Section 1(4) imposes the same duty on railroads.

Section 404(b) makes it unlawful for any freight forwarder to unduly prefer or prejudice or unjustly discriminate against any person. Railroads are subject to the same restraints under Part I.

Under Section 406(d), known as the "rule of ratemaking" the ICC is required to observe substantially the same standards in prescribing just and reasonable forwarder rates as the Act requires, in other sections, in the case of other carriers.

Therefore, since the interest of shippers in *what they pay to the carriers* is fully protected, and since the standards provided for freight forwarders in Part IV are the same as those in other parts of the Act for other carriers, the inquiry arises: Why should negotiated arrangements under Section 409 be treated differently from corresponding arrangements under other parts of the Act? We do not think your Subcommittee has been provided with a satisfactory answer to that question. Indeed, the Commission's explanation of the bill, which was printed at page S 12229 of the July 10, 1975 Congressional Record, is inconsistent in this regard. The Commission points to two changes which it has made in the drafts of bills to Amend Section 409 which have heretofore been considered by Congress. First, the Commission says it eliminated the anti-trust immunity from prior bills because "there is no anti-trust immunity for carriers entering into *comparable joint rate/through route arrangements*". The Commission then goes right on to say that it has included a provision "extending to shippers the protection against undue prejudice from the contracts", ignoring the fact that there is no such provision in comparable arrangements under other parts of the Act, and that the reasons which *impelled* it to exclude the anti-trust immunity *condemn* its inclusion of the shipper standard.

The really important question is: What meaning would be given to the words "or any shipper" in the administration of Section 409? The only certainty is that the words would be given *some meaning* by the Commission and the Courts. We fear, and we think with good reason, that these words would form the basis for a very great deal of litigation which, at the very least, would delay and impede the establishment of contracts and very likely severely impair the public benefits which otherwise would be derived from the legislation.

Section 409 was included in the Act when forwarders were regulated, 33 years ago, and changed to its present form 25 years ago. We submit that no need for a change in the present standards for contracts has been manifested by all those years of experience.

Senator HARTKE. Senator Pearson.

Senator PEARSON. I have no questions.

Senator FORD. I have no questions.

Senator HARTKE. You are facing a battle on two fronts, is that what you are telling me. On the one hand, you say the motor carriers do not want you to have this authority because you will divert some of their business over to the railroad, right?

Mr. MOIR. Hopefully.

Senator HARTKE. On the other hand, you say that the battle is faced against you because the shipping associations want to have the same rights without some of the responsibility you have. Is that fair?

Mr. MOIR. Either the same rights or they don't want to see anything that would put the common carrier freight forwarder in a better position to serve the shipping public than they are.

Senator HARTKE. One reason the DOT, I understand, is considering proposing is to urge the consolidation of small shipments, which have been proposed by small shippers is to allow any shipper to establish a contract rate with a common carrier. What is your approach on that.

Mr. MOIR. I don't know, I am not undertaking to speak for the Department. I would doubt they would mean any shipper. I would think perhaps what they have in mind is the ability of the railroad to deal with a sufficiently large shipper whose business had particular characteristics and to enter into a contract arrangement.

And I would think that is probably something that should be reviewed quite carefully because the reason for the ICC Act in the first place was in effect the ability of certain very large shippers to impose their pricing needs upon the railroads to the detriment of the smaller shippers.

Senator HARTKE. I asked this question a moment ago. What provision do you believe should be placed in the bill to insure that any benefits which are secured for freight forwarders through their rates with railroads which are not available to other shippers, what assurance should be placed in the bill that benefits would be passed on to the consumers of the freight forwarders?

Mr. MOIR. I think that comes about in two ways, Mr. Chairman. Number one, as a common carrier, we file our tariffs with the Commission. We have to justify the level of the rates. The level of the rates, if seemingly improper, are subject to protest by any member of the shipping public with the Commission. We have to go through the same process as a common carrier that any other common carrier does, rail or highway. And so the shipper continually has access to the Commission to question the level of any rate.

The other is that the competitive nature of our business both within our own industry and vis-a-vis the motor carrier industry is such that you cannot operate in a climate of an unreasonable profit. Nobody is going to let you. And competition is going to be in there to keep your rates down to the lowest level at which you can produce the service and still hopefully attract the business.

So the shipping public is protected in two ways.

Senator HARTKE. Sort of a similar question. If the distinction you attempt to make is proper and if freight forwarders should be able to secure rates which discriminate against other shippers, why shouldn't there be a prohibition to insure that such discrimination does not get out of hand, for example, so that the railroads do not have to lower their rates for freight forwarders and raise them on shippers who do not have the privilege of negotiating rates?

Mr. MOIR. In the prior legislation that was considered in this connection, it was provided for the processing of these agreements through the Commission that they would have the same right of review, they would have the logic, the economic viability of them the fact they were fully covering costs, would have to be made self-evident to the Commission.

Mr. MORROW can elaborate on that more.

Mr. MORROW. The shippers, of course, have full right to explain about any rail rate and contend that it is unreasonable for any

reason. And if railroads make lower charges to freight forwarders under contracts, shippers certainly can explain that their charges are unreasonable and have their day in court before the Commission under part I of the act.

Senator HARTKE. The real point I am getting at is if you get the lower rate for the freight forwarders, for example, that shipper may be at the mercy of what is going on, of having to subsidize to the lower rate for the freight forwarders.

Mr. MORROW. I understand what you mean, Senator.

Take this situation. The motor carriers make contractual arrangements with railroads all the time for the shipment of their trailers. The same charge could be made, the fact that the railroads give motor carriers plan I channels and they are much lower than anything we or other shippers pay cause the railroads to be higher.

But the remedy and the only remedy provided for under the law is to explain about the level of the rail rate and say it is too high, you are dissipating your revenues.

Senator HARTKE. Any other questions?

Senator PEARSON. No questions.

Senator HARTKE. All right, thank you, Mr. Moir.

The next witness, Mr. John K. Maser III on behalf of the National Industrial Traffic League of Washington.

STATEMENT OF JOHN K. MASER III, ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY JAMES E. BARTLEY; AND STANTON SENDER, CHAIRMAN, LEGISLATIVE COMMITTEE

Mr. MASER. Mr. Chairman, members of the subcommittee, my name is John K. Maser. I am associated with the law firm of Donelan, Cleary, and Caldwell, Washington Building, Washington, D.C. 20005. I appear here on behalf of the National Industrial Traffic League whose headquarters address is Suite 712, Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004. Our law firm serves as general counsel of The National Industrial Traffic League.

With me here are James E. Bartley, executive vice president of the league on my right and Stanton Sender, chairman of the league's legislative committee. Mr. Fred H. Tolan of Seattle, Wash., chairman of the league's special committee on energy regrets that, because of a prior commitment, he is unable to be present at these important hearings.

The league is pleased that the Commission has taken action to send to the Congress these four legislative recommendations for changes in the Interstate Commerce Act which the Commission deemed appropriate in the light of the Nation's energy problems.

We understand that these are the first of a number of ICC legislative recommendations to be submitted to Congress to amend various provisions of the act, and we commend the Commission for its initiative.

The league also commends the chairman of the subcommittee for introducing these Commission proposals at the request of the Com-

mission and for promptly holding these hearings. Your prompt action gives purpose to the Commission's action in reviewing its own statutes and seeking to improve its effectiveness.

Two of the bills before you, S. 2086 and S. 2083, are being re-submitted to Congress under additional justification that their enactment could produce a more energy-efficient transportation system.

The objective of S. 2086 is to amend section 216 to authorize the ICC after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property, and between those carriers and carriers by rail, express, and water. This proposal would eliminate a regulatory gap.

The league will support legislation authorizing the ICC to require the establishment of through routes and joint rates within and between various modes of transportation. The league testified at the 1967 hearing before this subcommittee on a predecessor bill proposed by the ICC. Pertinent parts of that testimony are set forth in my prepared statement. That testimony contains reasons as to the need for this type of legislation.

The league on May 4, 1972, also presented testimony in support of a similar legislative proposal of the ICC to authorize joint rates and through routes.

In short, the league has supported this type of legislation for many years, and urges its early enactment.

S. 2083 would amend section 409 of the Interstate Commerce Act so as to authorize freight forwarders to enter into contracts with railroads governing the utilization by the freight forwarders of the railroads' services and the compensation to be paid for such services.

At the 1968 hearings before this subcommittee the league voiced its opposition to similar legislation, sponsored by the freight forwarder industry. The reasons for this opposition are set forth at page 14 of my prepared statement.

At subsequent subcommittee hearings in 1972 the league also presented testimony in opposition to a similar proposal.

At the 1972 annual meeting of the league, the league members reaffirmed their opposition to contract rates by underlying carriers that are preferentially limited to freight forwarders. The current proposal contains a proviso which is an improvement in that it would extend to shippers the protection against undue prejudice from the contract.

However, it does not meet league policy requirements in that shippers are not granted the ability to enter into such contracts similar to those extended to freight forwarders.

In sum, the league opposed S. 2083 in its present form, but would support revisions to the Interstate Commerce Act to foster innovative pricing arrangements available to all rail customers.

The purpose and effect of S. 2085 is to allow for expeditious Commission approval of smaller pooling arrangements, which contribute to efficient transportation and energy savings but do not unduly restrain competition.

Unlike the prior two proposals, this is the first time this matter in S. 2085 has been before this subcommittee. Neither the league

membership nor the special committee on energy has had an opportunity to consider this proposal.

In order to be in a position to testify at these hearings, the league's legislative committee conducted a special ballot. The league's legislative committee overwhelmingly voted to support the bill as in accordance with league policies.

As soon as possible the league's special committee on energy will be reviewing this proposal in the light of its energy impact and will be advising league officers and members of their recommendations.

The league will send its recommendations on S. 2085 as soon as they are available.

The purpose and effect of S. 2084 is to insure that if necessary to avoid a transportation emergency, the Commission may impose pass-through requirements on carriers sufficient to compensate adequately owner-operators for fuel cost increases.

Like S. 2085 this proposal, S. 2084, is a new proposal on the part of the Commission, which has not been considered by league members or the league's special committee on energy.

The league's legislative committee members were almost evenly divided on whether or not this proposal would be in accordance with league policies.

In view of the division of opinion among the members of the legislative committee and the inability of the league's special committee on energy and the league membership to have an opportunity to review this proposal, I must advise you that like the prior proposal, the league will send you its views as soon as they have been reached. I will convey to the chairman of the league's special committee on energy the urgent need for the special committee expeditiously to conclude its deliberations on this vital matter.

In conclusion, I would like to express my thanks to you, Mr. Chairman, and to the subcommittee members for the opportunity to express the league's views on these subjects.

Thank you.

Senator HARTKE. Now we are back to questions of Senator Ford to find out whether there really is any need for establishment of joint rates and through routes between motor carriers and railroads. The statements made this morning by Mr. Breithaupt was there was no need for it. You take the opposite position.

Mr. MASER. First, Senator, I am going to ask Mr. Sender, chairman of the league's legislative committee to respond to this also. But I would like to say that I think it is important to keep in mind the distinction between joint rates and through routes between motor carriers themselves and, intermodally, between the motor carriers and railroads and other carriers.

I do not think in our earlier testimony before this subcommittee that we gave any specific examples of abuse, but certainly there are examples where the carriers, motor carriers, have flagged out of arrangements, have put limitations on the type of service they would provide and to whom they would provide it, and so forth. So that with respect to the motor carriers themselves, it is very important that the Commission have this authority. With respect to

intermodal joint rates and through routes, I think it is also important. If in fact it is the case that the railroads, for example, and the motor carriers have voluntarily entered into these arrangements at all appropriate times, then the Commission would never have to exercise the authority that would be granted by this bill. But on the other hand, if the carriers do not see it in their own interest to enter into these types of arrangements, I think the Commission should have the authority to require it in the protection of the shipping public.

I would like to defer to Mr. Sender to answer that question.

Mr. SENDER. Mr. Chairman, in the 1967 hearing, a copy of which I have here, Mr. Donelan, who is the senior partner of Mr. Maser's firm, said the league's primary interest was in the problem of small shipments and the difficulties in the motor carrier area. But at the same time Mr. Donelan said the league also was concerned from a long range standpoint and felt it quite important that there be intermodal.

Interestingly enough, Mr. Breithaupt made the same statement at the 1967 hearings. He said:

Nowhere in the Commission's presentation was there given any illustration or example of how it is that present law on intermode through routes, with the provision for voluntary—as opposed to compulsory—arrangements between railroads and motor carriers is deficient nor has there been any such testimony from shipper witnesses.

He then referred to Chairman Tucker of the ICC's justification for the bill as being based on the need to foster piggyback and said:

Senator, on the basis of the language I have just quoted, it is difficult to escape the conclusion that the Commission views the intermode provisions of the legislation it seeks as a means by which the railroads may be compelled to share business with the trucks; a means by which tariffs may be allocated, if you will, between the modes; a means by which the motor carriers participation in the market may be fostered; a means by which the relative share of the motor carriers may be sustained. That this is the objective of the motor carriers themselves has been made quite clear this morning during the course of the presentation made before the subcommittee by the spokesman for American Trucking Associations.

At that time, the primary problem was in the small shipment area though piggy-back was an area of concern to many shippers. A further area that has come up of concern to shippers has to do with the matter that I joined the league presentation before this subcommittee last week. The problem is abandonment of large areas of rail service and will there be trucking service to a railhead or trucking service totally to serve those areas if there is to be abandonment.

And this is another area where there would be need, I think, for through routes and joint rates. The league members, I think, would like to have an opportunity to respond to Mr. Breithaupt's statement that there is no need for the legislation. And if it would be acceptable to the subcommittee, we would like to notify the league members to send us the examples and we will send them on to this subcommittee.

Senator HARTKE. Well, all right. I guess that's about the best you can do. Senator Ford, do you want to pursue that or anything else?

Senator FORD. No, I don't intend to ask any further questions. But as I understand the witness at the moment that you will send

us specific cases and problems of shippers having been involved particularly small ones to put fact with figures or substitute figures with fact as to the problems as you see them.

Mr. MASER. Yes, sir; we would attempt to.

Senator FORD. I think we ought to have those and document them. I think it would be important because of the previous testimony.

Senator HARTKE. Mr. Maser, you argue that freight forwarders would not be allowed to establish contract rates with railroads unless other shippers are given that right. The antidiscrimination clauses of the act have primarily been used to prohibit discrimination which might result from the abuse of economic power by shippers or carriers. Addressing only the suggestion that contract rates be granted all shippers, under a contract rate system how could he prohibit the abuse of economic power by large shippers in relation to smaller shippers which power you say the freight forwarders would abuse if they alone were given the contract rate power?

Mr. MASER. Well, Senator, first of all, I might say that the league is composed of all sizes of shippers, large, medium, and small.

Senator HARTKE. Most of them are large.

Mr. BARTLEY. I would say no, sir.

Mr. MASER. Mr. Bartley—

Senator HARTKE. All right, I may stand corrected on that; I may not. Let me say to you I have found where there is a mixture of large and small organizations when any type of framework or umbrella organization that seems to me that the little boys have very little to say or have little opportunity to say it.

Mr. MASER. Within the league I think it is safe to say, Senator.

Senator HARTKE. That's not true in your organization, I understand.

Mr. MASER. We make every effort to hear from all members. And second, I think a point to keep in mind is that there would be rates available to all shippers. This would be similar to volume rates, where you have to meet a certain level before you can take advantage of the rates. They are open to all shippers. In certain cases they may not be able to take advantage of them. I would assume that would be the same type of situation here.

Mr. SENDER. Could I respond? At the meeting of the league and it was a membership meeting at which this was adopted with about 400 people present, the policy adopted was twofold. First, a carrier should not be inhibited in making agreed contract or other innovative ratemaking techniques. Two, there should be clear-cut language for the ICC to treat violations of section 2, 3, and 4 which have to do with discrimination, preferences and prejudices in through routes and joint rates. So the contract rates should be without discrimination, preference or prejudice.

Senator HARTKE. All right, thank you.

Mr. MASER. Thank you, Senator.

[The statement follows:]

STATEMENT OF JOHN K. MASER III, IN BEHALF OF THE NATIONAL
INDUSTRIAL TRAFFIC LEAGUE

My name is John K. Maser III. I am associated with the law firm of Donelan, Cleary and Caldwell, Washington Building, Washington, D.C. 20005. I appear here on behalf of The National Industrial Traffic League whose head-

quarters address is Suite 712, Pennsylvania Building, 425-13th Street, N.W., Washington, D.C. 20004. Our law firm serves as General Counsel of The National Industrial Traffic League (to which I shall refer as the League).

With me here are James E. Bartley, Executive Vice President of the League and Stanton Sender, Chairman of the League's Legislative Committee. Mr. Fred H. Tolan of Seattle, Washington, Chairman of the League's Special Committee on Energy, regrets that, because of a prior commitment, he is unable to be present at these important hearings.

I am a member of the Bar of the District of Columbia and specialize in the field of Transportation Law, as do all the members of our law firm.

IDENTITY AND INTEREST OF THE LEAGUE

The National Industrial Traffic League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic and transportation services of all carrier modes. The League is dedicated (1) to the attainment and preservation of an adequate and efficient national transportation system, privately owned and operated, and (2) to the protection of the shippers' interests in the field of transportation. The League has been in continuous existence for over sixty-five years and throughout that time it has concerned itself with substantial issues affecting transportation both before the Congress and the federal regulatory agencies.

Neither carriers nor their representatives are eligible for membership in the League.

I wish to emphasize that under the Constitution and the Bylaws of the League the right of independent action and expression of views is preserved to each and every member of the League.

Representatives of the League have appeared before this Subcommittee at prior hearings on bills similar to two of today's proposals, relating to freight forwarder rail contracts and mandatory through routes and joint rates.

LEAGUE VIEWS ON INTERSTATE COMMERCE COMMISSION "REQUEST BILLS"

Section 21 of the Interstate Commerce Act, and comparable provisions in the other parts of the Act, set forth Congressional intent that the Commission shall send to Congress its annual report, which shall contain, among other information, "such recommendations as to additional legislation relating thereto as the Commission may deem necessary . . ."

In the I.C.C.'s 88th Annual Report to Congress, for the fiscal year 1974, on pages 83-92, there is a report on Legislation, including the Commission's legislative recommendations in six major areas transmitted to the 93rd Congress during that fiscal year.

At the League's last Annual Meeting in November, 1974, the members reviewed the action taken on the Commission's legislative recommendations during the 93rd Congress up to that point in time.

The League members thereupon voted to support efforts to progress I.C.C. legislative proposals to early hearings, when such proposals are consistent with an established League policy. This League action was communicated to Chairman Magnuson of this Committee and to Chairman Stafford of the I.C.C. by League President August Heist.

The League is pleased that the Commission has taken action to send to the 94th Congress in advance of its annual report these four legislative recommendations for changes in the Interstate Commerce Act which the Commission deemed appropriate in the light of the Nation's energy problems.

We understand that these are the first of a number of I.C.C. legislative recommendations to be submitted to Congress to amend various provisions of the Act, and we commend the Commission for its initiative.

The League also commends Senator Hartke, the Chairman of the Subcommittee, for introducing these Commission proposals at the request of the Commission and for promptly holding these hearings. Your prompt action gives purpose to the Commission's action in reviewing its own statutes, and seeking to improve its effectiveness.

In accordance with League membership action, we appear here today to progress these I.C.C. proposals, when such proposals are consistent with an established League policy.

LEAGUE'S VIEWS ON ENERGY CRISIS AND NEED FOR LEGISLATION

The four legislative recommendations, which are the subject of today's hearing, arose out of a Commission proceeding, Ex Parte No. 301, *The Energy Crisis and the Need for Emergency Transportation Legislation*, 349 I.C.C. 699. By Notice and Order dated November 29, 1973, the Commission instituted this proceeding at a time when the Congress was considering legislation, S. 2589 and H.R. 11450 of the 93rd Congress, to require the I.C.C. and other regulatory agencies to report to the appropriate Congressional committees, within 15 days after the date of enactment, on the need for regulatory changes to conserve fuel during the energy emergency.

The original time period for filing comments to the Commission expired on December 19, 1973. The Commission by order served July 1, 1974, accepted supplemental comments and replies thereto of the U.S. Department of Transportation, and extended the time for filing supplemental comments to August 1, 1974.

These four legislative proposals were submitted to Congress on May 6, 1975, and the Report in Ex Parte No. 301 was served on June 13, 1975.

At the November, 1973, Annual Meeting, The League's Executive Committee recommended the establishment of a Special Committee on Energy. The Committee was established following this 1973 meeting, and the Chairman of the Special Committee, Mr. W. K. Smith, Vice President-Director of Transportation, General Mills, Inc., consulted with the League's Officers, the League Staff, General Counsel, and other League Committee Chairmen on the issues in:

Ex Parte 301—The Energy Crisis and The Need for Emergency Transportation Legislation.

Ex Parte 301, A through D, Fuel-Related Increases.

S. 2806—Energy Revenue & Development Act of 1973.

S. 2589—National Energy Emergency Act—1973.

Ex Parte 55 (Sub. No. 8)—Motor Common Carriers of Property, Routes and Service (Petition for the Elimination of Gateways by Rulemaking).

At the November, 1974 Annual Meeting, in accordance with the Special Committee on Energy recommendations, and those of the League's Transportation Outlook and Policy Committee, the League members adopted the following new "Resources Language" and new "Policies on Energy."

The League recognizes, in the development and application for an adequate, efficient and sound transportation system, that it must: (a) consider the efficiency and productivity of resources-usage by the transportation system; (b) encourage the allocation of resources to those uses that produce the soundest, most adequate, and most efficient system; and (c) ensure that the transportation systems needs for resources are sufficiently recognized by government and the public.

M. POLICIES ON ENERGY

M-1 Productivity

Transportation must obtain greater productivity from its use of fuel including the minimization on fuel inefficiencies of: economic regulations, consignor or consignee loading/unloading practices, and labor practices—and with due consideration to environmental and safety requirements.

M-2. Current Needs Allocation

Any allocation of fuel supply to demand should be on the basis of current needs for the transportation of cargo, freight, mail and parcels and for all people transportation, excluding private automobiles.

M-3 Priorities

Any priorities in the allocation of fuel supply must recognize the health and welfare of the nation.

M-4. Shipper Representation

The shipping public must be significantly represented on any government advisory, policy development, or program implementation group dealing with fuel demand/supply/distribution.

The Special Committee on Energy brought to the attention of League members the actions of the Department of Transportation-Office of Transportation on Energy Policy, and of the Interstate Commerce Commission, through rule-

making actions, to assist the transportation industry in coping with the energy crisis, and the League commends both D.O.T. and the I.C.C. for their efforts.

The League members supported the liberalization of gateways in Ex Parte 55 (Sub No. 8), and the action of the I.C.C. in Ex Parte No. MC-65 (Sub No. 5) in liberalizing modifications relating to the amount of operational circuitry reduction permitted regular-route motor common carriers. The League also supported the Commission's efforts in Ex Parte MC-43 (Sub No. 2), *Equipment Leased by Motor Carriers of Property—Adjustment of Compensation Because of Rising Fuel Costs*, as well as in Ex Parte MC-43 (Sub No. 3), *Lease to Regulated Motor Carriers of Vehicles with Drivers by Private Carriers*. The League is also actively participating in I.C.C. Docket MC-C 8506, *Intercompany Parent-Subsidiary Transportation*.

LEAGUE VIEWS ON S. 2086 AND S. 2083

Two of the bills before you, S. 2086 and S. 2083, are being resubmitted to Congress under additional justification that their enactment could produce a more energy-efficient transportation system.

The objective of S. 2086 is to amend section 216 to authorize the I.C.C. after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property, and between those carriers and carriers by rail, express, and water. This proposal would eliminate a regulatory gap. The Commission now has the authority to establish intramodal joint rate/through route arrangements between rail carriers, water carriers and motor vehicle passenger carriers and intermodal arrangements between rail carriers and water carriers.

S. 2086 would authorize the Commission to establish routes which are both efficient and economical, thus reducing fuel consumption and bringing about a joint rate, which would be less than the sum of the individual rates.

Although the language in this proposal, S. 2086, has been streamlined to some extent, it remains in essence substantially similar to the joint rate/through rate proposal submitted by the Commission to the 93rd Congress.

League Policy C-21 provides as follows: "C-21 Mandatory Through Rates and Joint Rates. The League will support legislation authorizing the I.C.C. to require the establishment of through routes and joint rates within and between various modes of transportation."

My Senior Partner, John F. Donelan, in behalf of the League testified at the 1967 Hearings before this subcommittee on a predecessor bill proposed by the I.C.C. In pertinent part Mr. Donelan testified as follows on the need to close the gap on the regulatory authority of the Interstate Commerce Commission as follows:

"At this stage in the development of our transportation system it is entirely inappropriate to subject shippers to the harassment which can arise if through routes and joint rates in the tariffs are either not honored or are summarily terminated. Under the present state of the law, motor carriers can withdraw at will from joint rates and through routes, and the shippers are helpless to do anything about it unless, in a Commission formal proceeding, they can meet the technical requirements of proof of unjust discrimination or undue preference and prejudice. Very often even this remedy is a matter of theory rather than practicality in terms of the time, expense and delay involved.

"In using by way of illustration the establishment of through routes and joint rates (1) when motor carriers flag out of through routes and joint rates or (2) when motor carriers impose various limitations as to traffic, as to quantities, as to connecting carriers with respect to through routes and joint rates.

"In the nature of things it would appear that if the Commission has this power to compel the establishment of through routes and joint rates there will be some diminution of the pressure for single-line certificate authority on the part of certain carriers into some areas. In saying this, we are mindful, of course, that into the smaller communities this factor may not be applicable, since the problem may very well be a lack of interest on the part of the larger carriers to have anything to do with such smaller communities.

"In using by way of illustration the establishment of through routes and joint rates between common carrier truckers, the League also wishes to advance the principle that the Commission should likewise have the power with respect to the establishment of through routes and joint rates between common carrier truckers and/or railroads and/or common carrier water lines. It is our judgment that this power vested in the Commission will make a contribution toward the attainment of progress in the sphere of coordinated transportation among all modes.

"The League wishes to make it clear that it is not proposing, by any means, that any particular common carrier trucker would have the right under any and all circumstances to insist that another common carrier trucker, or railroad or water line, join with it in through routes and joint rates. We note the provision in the language for 'reasonable through routes' [amendment to Section 1(4); amendment to Section 216(c); amendment to Section 305(b)].

"We further note that provision is made for investigation by the Commission. The Commission would be given power, among other things, to establish the divisions of the rates, fares or charges and the terms and conditions under which the through rates shall be operated. [amendment to Section 216(e); amendment to Section 307(d)]

"The objective should be the establishment of through routes and joint rates which meet the legitimate needs of the shipping public. It will be well in the legislative history to emphasize that fact, in our opinion. The League is also hopeful that the vesting of the power here involved in the Commission will serve to encourage the establishment of through routes and joint rates between common carriers by truck and other common carriers—whether by truck, by rail or water, without the necessity of intervention by the Interstate Commerce Commission. At the same time, where necessary and appropriate the Commission would have the power to act."

The League, on May 4, 1972, also presented testimony in support of a similar legislative proposal of the I.C.C. to authorize joint rates and through routes.

In short, the League has supported this type of legislation for many years, and urges its early enactment.

S. 2083

This bill would amend section 409 of the Interstate Commerce Act so as to authorize freight forwarders to enter into contracts with railroads governing the utilization by the freight forwarders of the railroads' services and the compensation to be paid for such services. Section 409 at present only authorizes contracts between freight forwarders and motor carriers. Under the bill the authorization of freight forwarder-railroad contracts would be for an experimental two-year period, during which time the Commission would study the effects of these contracts on all interested parties and would report the results of this study along with its recommendations for continuation of the program to the Congress.

The present proposal has been modified in three key ways from the prior Commission recommendation. The proposal does not include the antitrust immunity section which was part of the previous recommendation. The proposal also extends to shippers the protection against undue prejudice from the contracts and requires the Commission to consider the effect on consumers and shippers, in addition to carriers, in formulating its recommendations as to the continuation of the program. Also, the time for the experimental period has been reduced from three years to two on the theory that a two-year period is sufficient for the Commission to assess the effects of the proposal.

League Policy J-2 provides as follows:

"J-2 Charges Paid by Freight Forwarders to Underlying Carriers.

"(a) Freight forwarders should pay for the transportation services of underlying carriers at the published and filed tariff rates of those carriers, such rates being open and available to all shippers generally for similar services and under similar transportation conditions.

"(b) No through rates, nor divisions of such rates shall be established between freight forwarders and their underlying carriers.

"(c) No contract rates shall be established between freight forwarders and their underlying carriers."

"At the 1968 Hearings before this Subcommittee on similar legislation, sponsored by the freight forwarder industry, Mr. Fred H. Tolan, then Chair-

man of the League's Legislative Committee testified in behalf of the League in opposition:

"The League opposes the proposed legislation on the grounds that (1) it will give freight forwarders excessive and unnecessary economic power to obtain purchased transportation at dangerously low levels; (2) it will result in excessive pressures on rail carriers to provide transportation services to freight forwarders at levels which are inconsistent with economically sound operations; (3) the deficiencies in rail revenues from freight forwarder traffic will have to be made up on higher rates paid by the public; and (4) shippers other than freight forwarders will be paying substantially more than freight forwarders for the same transportation services from the railroads."

At subsequent Subcommittee hearings in 1972 the League also presented testimony in opposition to a similar proposal.

At the 1972 Annual Meeting of the League, the League members reaffirmed their opposition to contract rates by underlying carriers that are preferentially limited to freight forwarders. The current proposal contains a proviso which is an improvement in that it would extend to shippers the protection against undue prejudice from the contract. However, it does not meet League policy requirements in that shippers are not granted the ability to enter into such contracts similar to those extended to freight forwarders.

At the 1972 Special Meeting of the League, the League members adopted a position that "... Carriers should not be inhibited in establishing agreed, contract or other innovative ratemaking techniques."

Last week League President August Heist testified before the House Subcommittee on Transportation and Commerce of the House Committee on Interstate and Foreign Commerce. Among other things, Mr. Heist testified in favor of provisions in H.R. 6351 and H.R. 7681 to the effect that the I.C.C. may not suspend or set aside certain innovative rates under specified conditions. Thus the League would support a Commission proposal to provide for innovative pricing arrangements, in accordance with the above-cited League position, if it were extended to cover all shippers and thus achieve the energy-saving effects of rail transportation cited by the Commission.

I might note also that the League basically supported the position of the freight forwarders in I.C.C. Docket Ex Parte No. 266 (Sub. No. 1), which would expand the scope of freight forwarder terminal areas.

The League opposes S. 2083 in its present form, but would support revisions to the Interstate Commerce Act to foster innovative pricing arrangements available to all rail customers.

S. 2085

The purpose and effect of this bill is to allow for expeditious Commission approval of smaller pooling arrangements, which contribute to efficient transportation and energy savings but do not unduly restrain competition. Section 5(1) of the Interstate Commerce Act at present provides that only "after hearing" and after a finding that a pooling agreement "will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition" can the Commission approve such an agreement.

The proposed amendment of section 5(1) would establish a procedure roughly analogous to the suspension procedure the Commission is authorized to follow in rate cases. It would require carriers to file proposed pooling agreements with the Commission 30 days or more prior to the agreement's effective date. Then the Commission would determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement will unduly restrain competition. If the Commission's preliminary answers to these two inquiries are negative, then the Commission, prior to the agreement's effective date and without hearing, shall approve the agreement. But if either of the Commissions' preliminary determinations are affirmative, the Commission must suspend operation of the agreement and hold a hearing on it.

Then, as under the existing statute, the Commission can approve the agreement only to the extent that it finds that the agreement will be in the interest of better service to the public or of economy in operation and will no unduly restrain competition.

Unlike the prior two proposals, this is the first time this matter in S. 2085 has been before this Subcommittee. Neither the League membership nor the Special Committee on Energy has had an opportunity to consider this proposal.

In order to be in a position to testify at these hearings, the League's Legislative Committee conducted a special ballot. The League's Legislative Committee overwhelmingly voted to support the bill as in accordance with the League policies M-1 and C-5. League Policy M-1 provides as follows:

"Productivity—Transportation must obtain greater productivity from its use of fuel including the minimization on fuel inefficiencies of: economic regulations; consignor or consignee loading/unloading practices; and labor practices—and with due consideration to environmental and safety requirements."

League policy C-5 states the intent of the League members to favor the reduction of "time-lag" in Commission proceedings to a minimum consistent with the interests of the shipping public.

As soon as possible the League's Special Committee on Energy will be reviewing this proposal in the light of its energy impact and will be advising League officers and members of their recommendations.

As I stated earlier, the Chairman of the League's Committee on Energy is unavoidably absent from the hearing today.

The League will send its recommendations on S. 2085 as soon as they are available.

S. 2084

The purpose and effect of this proposed legislation (S. 2084) is to insure that if necessary to avoid a transportation emergency, the Commission may impose pass-through requirements on carriers sufficient to compensate adequately owner-operators for fuel cost increases. The proposal would not give the Commission any authority to regulate, under normal circumstances, the amount of fuel compensation to be paid to owner-operators. But it would allow the Commission to regulate fuel compensation to owner-operators in order to avert future transportation emergencies brought about by inordinate fluctuations in the price of fuel.

Like S. 2085 this proposal S. 2084 is a new proposal on the part of the Commission, which has not been considered by League members or the League's Special Committee on Energy.

The League's Legislative Committee members were almost evenly divided on whether or not this proposal would be in accordance with League policies. Those members of the League's Legislative Committee who were in opposition to the proposal agreed with the dissenting expressions of Commissioners Murphy, Hardin, Tuggle and MacFarland in I.C.C. Docket Ex Parte No. 301 as follows:

"The majority urges enactment of legislation which would authorize the Commission to require adequate compensation to owner-operators for fuel costs in a transportation emergency. I do not believe that this Commission should be authorized to interfere in the private contractual relationships between a carrier and the owner-operator which it utilizes to conduct its operations. The carriers under the Interstate Commerce Act generally have the managerial prerogative to conduct their operations in conformity with the Commission's regulations. The act and the Commission's regulations presently provide ample opportunities for the carriers to seek increases in emergencies and to provide for a pass-through of charges to reflect the increase in fuel expenses encountered by owner-operators. The proposed legislation will undoubtedly create numerous complex problems which will require the constant attention of the Commission. Those matters are best left to negotiations between carriers and the owner-operators."

Prior to the Commission's request for direct authority, the Commission did institute a ratemaking proceeding, Special Permission No. 74-2525, to determine the amount of fuel compensation to be paid to owner-operators of motor vehicles. The League actively participated in this proceeding, supporting the concept that those who incur additional costs for fuel should be able to recoup that expense. However, the compensation should be justified and should not be excessive.

In view of the division of opinion among the members of the Legislative Committee and the inability of the League's Special Committee on Energy and the League membership to have an opportunity to view this proposal, I must advise you that like the prior proposal, the League will send you its views as soon as they have been reached. I will convey to the Chairman of

the League's Special Committee on Energy the urgent need for the Special Committee expeditiously to conclude its deliberations on this vital matter.

The League expresses its thanks to you, Mr. Chairman, and to the Subcommittee for the opportunity to express the Leagues' views on this subject.

Senator HARTKE. C. Dyke Page. Would you want to introduce him?

Senator FORD. Mr. Page is from Florence, and he represents a Square D Co. which has some 30 major operations and they deal from the smallest shipment to the largest and I will be very much interested in listening to his advice and counsel as to this legislation, Mr. Chairman.

Senator HARTKE. All right.

Senator FORD. Being from Kentucky doesn't make him a bad boy.

Senator HARTKE. No. That is one of my favorite places to be from. All right, sir.

**STATEMENT OF C. DYKE PAGE, DIRECTOR OF TRANSPORTATION,
SQUARE D CO., FLORENCE, KY.**

Mr. PAGE. Thank you, Senator.

My name is Dyke Page and my permanent residence is in Walton, Ky. My position is director of transportation for the Square D Co., with offices at Florence, Ky.

The agenda witness list has me down as Square D Shippers, which would give the connotation of being an agency or an association. But we are a manufacturer.

The Square D Co. is a manufacturer of electrical equipment (controllers, circuit breakers, transformers, et cetera, with corporate offices located in Park Ridge, Ill.

We are incorporated under the laws of Michigan and have over 30 locations, as Senator Ford mentioned, of either manufacturing or distribution throughout the United States and several foreign plants and offices around the world.

We are involved in all modes of transportation, both foreign and domestic, in just about every weight category from small parcel traffic to large volume shipments.

Senate bills 2083, 2084, 2085 and 2086 are all amendments to the Interstate Commerce Act designed to improve the overall efficiency of our transportation system and to conserve on our all-important energy situation.

The changes proposed are not overly complicated, though I suppose there would be some question to that, but I don't believe they are, and have enough safeguards built in them to protect shipper-user and, ultimately, the consuming public, as well as the carriers and their competition.

S. 2086 is designed to give the Commission legal authority to require motor carriers, under part II of the act, and water carriers under part III of the act—and I failed to put in railroads under part I—to establish reasonable through routes and joint rates.

This change has been long overdue and we strongly support it. Legally, since the inception of part II in 1935, motor carriers have been free to transfer and move their customer's freight without any requirement that reasonable rates and through routes be maintained.

As a shipper, I can recall several instances where freight tendered to a major motor carrier in Milwaukee for small towns in Kentucky and West Virginia did not move on a through rate.

We would get a call from the origin carrier indicating that the delivering carrier did not concur with the origin carrier.

What this means is that usually the delivering carrier is the only carrier serving the small town and the bearer of the freight charges now must pay a combination of two local rates. It usually works out to be about twice the amount you would normally expect to pay.

The delivering carrier getting about as much to move the freight the last 100 miles as the origin carrier got to move the freight the first 500 miles.

No one in transportation work would question the fact that smaller, out-of-the-way towns present problems to the motor carrier but, through the years the extra costs have grown out of hand, primarily because motor carriers have not been required to maintain reasonable through routes and joint rates.

This amendment seeks to correct that inequity.

S. 2084 is a bill to authorize the ICC to require adequate compensation for owner-operators' fuel costs when such an emergency arises.

This change was precipitated with the big jump in the cost of fuel. Such increases fall heavily on all segments of transportation, but none harder than the small broker who owns a few rigs and brokers his services to a larger carrier who holds the authority.

In the last fuel emergency that resulted in a wildcat strike and violence on the highways, the ICC—under pressure—granted a 6 percent across-the-board increase to all motor carriers "who needed it".

Of course, everyone needed it.

Later, after protest and investigation, it was determined that for the greater segment of the motor carrier industry, 2 to 3 percent was enough to cover the escalation of fuel prices. Therefore, millions of dollars were paid by the shipping public that were unsupported by fact.

The increases were later rolled back.

The owner-operator, because of the way he operates, did need more to keep operating and this bill is designed to allow the ICC to increase the allowances paid him by the regulated carriers.

The regulated carriers to have an adequate vehicle to file for and get increases with supporting justification.

The owner-operator, of course, must rely on the contractual arrangement he can make with the regulated carrier.

Thus, on an emergency basis, the owner-operator will suffer revenue loss that may make it impossible for him to continue in business. I might add unless something is done to help him.

S. 2083 is a bill to allow freight forwarders under Part IV to enter into contracts with railroads under Part I.

Freight forwarding is a vital part of our whole transportation system but, by their nature, they have to rely on other carriers for the line haul.

There certainly is no reason why the freight forwarders should not be able to do the same thing with railroads that they now can do with motor carriers. It is indicated and necessary to keep this part of our system healthy and progressing.

Because of questions that have come up of prejudice and preference, S. 2083 has built in a trial period of 2 years to see how the program will work. This alone should dispel any party that would question the fact that this bill is for the shipping public's good.

S. 2085 is a bill to make it easier for the ICC to grant pooling arrangements between carriers under Parts I, II, and III of the Act. Presently, it is quite difficult for the ICC to assume leadership in intermodule pooling. Full hearings are required and the procedure is cumbersome.

This proposal will relieve some of the burden of formal procedures and place on the ICC the responsibility to lead and encourage carriers to work together for the common good. No one can argue that this is not in the public interest and that economies cannot be substantial in dollars and fuel savings.

We need some strong leadership and incentive to get our many and various segments of transportation to pull together for the benefit of all.

For these reasons, the Square D Co. is strongly in favor of each of the bills under consideration.

Thank you.

Senator HARTKE. Let me say to you that you have taken a different position than other shippers. You support S. 2083 which would permit freight forwarders to establish contract rates with railroads. And you argue that the freight forwarder is a common carrier who should have the right to negotiate rates with other carriers.

Do you use in your business frame forwarders?

Mr. PAGE. Yes, we do.

Senator HARTKE. You do use it?

Mr. PAGE. Yes.

Senator HARTKE. What is the basis for your judgment that contract rates will not discriminate against other shippers?

Mr. PAGE. Well, in discrimination, of course, there are so many avenues to pursue that I am just relying, of course, on my own personal experience with the freight forwarders where they have passed on savings because of the way they operate.

My experience in the Milwaukee area was more so than I have now in Kentucky with the freight forwarders. Milwaukee being kind of on line between Chicago, Milwaukee and New York and Los Angeles where they can provide a better service than perhaps in some remote areas.

I don't believe the freight forwarder is designed to serve remote areas in the way that perhaps other modes of transport can. That is basically my reason for feeling the way I do.

Senator HARTKE. You heard the railroads argue there is no need for Commission to require joint rates as proposed in S. 2086, and you disagree with that position.

Mr. PAGE. Well, I think I am trying to look at it in the light of the whole system, being able to work to it. Maybe that is a dream that we would all like to see happen.

I think that even though these are all private businesses and they are interested in their own business and also interested in the public good, I would like to see them all work together.

We do see instances of this in piggyback work. The railroads do have some of their own motor carriers which may be some of the reasons they don't like to see this.

Senator HARTKE. All right. Thank you, sir.

The next group is a panel: Mr. Ronald N. Cobert, general counsel, American Institute for Shippers Association, Washington, D.C.; Mr. Russell W. Talbot, executive secretary, National Association of Shippers Agents, Inc., Washington, D.C.; and Mr. Harry Bradt, general manager, United Shippers Association, St. Louis, Mo.

Is there room for everybody?

All right. Who is in charge of this?

STATEMENTS OF RONALD N. COBERT, GENERAL COUNSEL, AMERICAN INSTITUTE FOR SHIPPERS ASSOCIATION, WASHINGTON, D.C.; RUSSELL W. TALBOT, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF SHIPPERS AGENTS, INC., WASHINGTON, D.C.; HARRY BRADT, GENERAL MANAGER, UNITED SHIPPERS ASSOCIATION, ST. LOUIS, MO.; D. R. MACDONALD, GENERAL TRAFFIC MANAGER, CITY PRODUCTS CORP., CHICAGO, ILL.; JOHN C. ALLEN, JR., VICE PRESIDENT, OPERATIONS, ITOFCA, INC., CLARENDON HILLS ILL.; CHARLES A. WASHER, TRANSPORTATION COUNSEL, AMERICAN RETAIL FEDERATION, WASHINGTON, D.C.; E. KENNETH BOWERS, VICE PRESIDENT, CHARTER OAK SHIPPERS COOPERATIVE ASSOCIATION, INC., DARIEN, CONN.; AND JOHN C. LINCOLN, GENERAL MANAGER, LAWI/CSA CONSOLIDATION, INC., GLENDALE, CALIF.

Mr. COBERT. Mr. Chairman, my name is Ronald Cobert. I am an attorney practicing law in the District of Columbia. I am general counsel to the American Institute for Shippers' Associations, which is located here in Washington, D.C. This trade association opposes Senate bill 2083. I have been selected as an informal spokesman for those opposing this legislation in order to advise you that the opponents have chosen a special procedure in presenting their views to you. We trust this procedure will be of benefit and enable a more complete dialogue in the short time we have allotted to us.

Initially we intend to have each witness, of course, identify himself and his organization and submit his statement for the record. And then each witness will discuss certain areas of concern with limited or no duplication. Finally, you may ask questions of the group in general or direct your questions to any one of us for response.

In short, we have consolidated our efforts to provide a more cohesive oral presentation in the shortest possible time. During the time allotted to us, Mr. Chairman, we hope to convince you that this is bad legislation and that you should not preside over the demise of shippers' associations and shippers' agents who are literally sav-

ing the general public and the consumers millions of dollars each year on the one hand, and, on the other, providing more revenues to the Nation's railroads than the regulated forwarder industry.

At this time, Mr. Chairman, we would lead off with Mr. Washer. Senator HARTKE. All right.

Mr. WASHER. My name is Charles A. Washer. I am from Light-house Point, Fla., representing the American Retail Federation in Washington.

The federation is comprised of 50 Statewide associations and 31 national associations of retailers. Retailers have been interested in forwarder legislation since its beginning as part IV of the act. The initial cause for part IV and the history of all of the legislation facing us has been due to contract rates. Part II was enacted and freight forwarders and motor carriers operated under joint rates. That was thrown out with the enactment of part II in legal proceedings.

Thereafter part IV was enacted, principally to preserve the contract rates, but the amendment in part IV gave the ICC control that was not to the liking of the freight forwarders.

So, immediately thereafter they attempted to have a better regulation free contractual basis. And that succeeded with passage in 1950 of section 409.

Mr. Beardsley yesterday mentioned in his testimony some of their experiences with, and complaints about, section 409 rates. The section 409 rates even though they have been in effect since 1950, have not been sufficient for freight forwarders. And so they have started in recent years a request to expand that, starting with S. 3714 in the 90th Congress. We went through succeeding Congresses with S. 3803, S. 1896, S. 2461, and S. 2083.

All of these were for the purpose of expanding section 409 to permit forwarders to contract with the railroads.

Uniformly shippers' groups such as the NITL that you just heard and others have opposed this. The same principle is before us now. These different bills have had different characterizations. In the older days, we talked about what was equal opportunity for freight forwarder to have equivalent of plan I piggyback rates. That was the argument. Later it became small shipment service improvements through the contract arrangements.

Later, it became sort of aid to static industry, which was the source of the Commission inquiry. And today, the bill is stamped as an energy conservation bill.

No matter how you tag it, we are still opposed to the principle of the contractual rates for the reasons which will be given by these other gentlemen. I want to make only one other point. Up to now, I think every witness has mentioned only the fact we are dealing with the basic rate itself. I hope that we will call your attention to the fact that the contractual agreement will not only cover rates but could cover such things as car supply, payment of charges, credit periods, almost anything.

It would not necessarily be confined to rails. That is all that I would like to mention in addition to my statement and we will proceed.

Mr. COBERT. Mr. Chairman, I would like to proceed next on behalf of my individual client that I am representing here today. As I indicated previously, my name is Ronald Cobert. I act as general counsel to the American Institute for Shippers' Associations. This is a trade association, which represents 36 shippers' associations, whose operations are scattered throughout the continental United States. We believe that Senate bill 2083 is specifically designed to curtail or destroy two groups of shippers, basically shippers' associations and shippers' agents.

Shippers' associations and Shippers' agents have long been recognized by Congress in section 402(C) of the Interstate Commerce Act. There Congress has provided that the ICC shall not regulate an association of shippers which consolidates and distributes freight for its members on a nonprofit basis for the purpose of securing volume rates. An agent is generally today a freight consolidator whose activities are confined to a terminal area. The law clearly recognizes that an association and forwarders may physically act in the same manner. The important point to realize here is that insofar as the railroads are concerned, they receive the exact same type of freight and perform the exact same type of service for forwarders, shippers' associations, or shippers' agents.

Frankly, we are shocked and amazed that the ICC would recommend any legislation which has the effect of nullifying sections 2 and 3 of the Interstate Commerce Act, which sections are the cornerstone for fairness and openness and which simply say that the special deal concept is *persona non grata* insofar as transportation is concerned.

The language in the proposed legislation, that is, the provision which says that there shall be no undue preferences against any other shipper, has virtually no meaning as a practical matter. We think the language offers false security and this committee should not consider it a catchall to prevent discrimination against shippers' associations and shippers' agents.

If we read the language of the bill literally, it appears to say that an association can obtain the same deal as the freight forwarder under similar circumstances. But obviously, if that were true, there would be no need for the legislation. The fact remains that even today railroads have the ability to create certain traffic provisions which can attract small lot traffic. For example, let me raise one instance that just occurred. The Transcontinental Freight Bureau has just published some rates which provide a 7 percent reduction for two trailers tendered which contain 20 or more lots. The restrictions on that particular tariff provision are that there shall be no one lot of the 20 which is less than 100 pounds or over 15,000 pounds. Petitions for suspension of this rate filing were denied by the Commission.

The point here is, Mr. Chairman, that the railroads now have it within their ability to attract small lot traffic. And it is obvious that the ability now exists from this recent tariff provision, which the Board of Suspension has allowed to go into effect.

We feel that the primary reason for this legislation is not necessarily to take freight off the highways and put it on the railroads. We feel the primary reason for the legislation is for the forwarders

to take away freight now enjoyed by shippers' associations and shippers' agents and which is presently moving by railroads.

Let me give one example, in conclusion, of the problem which we face. One of my clients is an association in Providence, R.I. They are basically oriented toward the jewelry industry. They were formed in approximately 1957 as a reaction to the fact that nobody wanted to handle jewelry in small lots. This association has done an excellent job over the years in moving the jewelry but one of the ways in which they have moved the jewelry has been to have heavier freight in the same trailers or in the same box cars with jewelry. Now, if this legislation goes through, we could envision that situation where the forwarders, through some private contract with the railroads, could attract the heavy freight which would leave the association with nothing but the little jewelry lots once again and an inability to move that jewelry.

That is one type of discrimination which we fear. In that particular situation to which I have alluded, the association supported an application of a contract carrier before the Interstate Commerce Commission to give it an alternative to rail movements. The Interstate Commerce Commission in its wisdom denied the application although the evidence showed that the association would have over \$1 million by using contract carriage over transportation modes other than railroads. Now, what that means is that this association basically is limited to rail service out of Providence, R.I. With this type of legislation, the freight forwarders could go after the higher density freight and take away that freight because of some special deal that is made with the railroads and, therefore, destroy the primary purpose of that particular association. This is the type of discrimination which I fear if this legislation is passed.

Thank you.

Senator HARTKE. Who else?

Mr. LINCOLN. Mr. Chairman, my name is John C. Lincoln. I am the general manager of LAWI/CSA Consolidators in Glendale, Calif. That is a 43-year-old nonprofit shippers' association, which consolidates in the East and midwestern and southern part of the country and ships into California and Arizona, pretty much throughout California and Arizona. There are approximately 480 members in LAWI. They range from large national corporations down to small one store operations. The vast majority of the members are small business and the vast majority of the freight we handle is small shipment traffic.

I am referring to traffic at the 500-pound and under level, the type of small shipment traffic which the Congress has given a great deal of attention to in past years and that the Commission and the Congress are continually worried about.

Our association, being a nonprofit shippers' association, operates physically exactly like a freight forwarder, does all the things that consist of moving a shipment of freight in consolidated service, whether it is an association or freight forwarder: the assembly, the line-haul transportation and the distribution.

Those are the three major segments of that type of an operation. The line-haul transportation is traditionally performed by railroads. The forwarders have testified that 90 percent of their traffic has

moved via railroad transportation. It has also been testified here today that the freight forwarders—have the privilege under section 409 of the Interstate Commerce Act of making contracts with motor carriers for assembly work and distribution work for distances up to 450 miles.

The spokesman for the American Trucking Association stated that his organization did not like Section 409, did not like Section 409 contracts.

And I can well understand why, because many of those contracts produce charges which are less than half of the going rate paid by the ordinary shipping public for the same transportation service.

Now, associations have a similar but less advantageous privilege. Under section 408, associations can negotiate with motor carriers for the publication of assembly and distribution rates. And those rates in all cases will be higher than a section 409 contract rate, and the assembly and distribution rate is published in tariff form and it is available to anyone who has traffic which qualifies or fits under the provisions of that tariff. And so with these comparisons in mind, that is, with like cost for line-haul transportation, with disadvantages on the shipper association side for assembly and distribution of their freight, I find it incredible that the associations provide freight charges to their members which will range from 18 to 30 or 40 percent below freight forwarders on this traffic in the 500-pound and under category, the small shipment traffic. The percentage of savings on freight forwarder versus shipper association traffic declines rapidly as the weights of the shipments go up.

When we get to the top level, the trailer load charges, we find that freight forwarders are offering rates very, very close to association costs. As a matter of fact, probably a \$50 per load reduction in freight forwarder charges would serve to shift that traffic from away from shippers' associations and shippers' agents to the freight forwarders.

And under the terms of this bill, of course, it is conceivable and probable that freight forwarders and particularly Transway International can swing enough clout to negotiate a \$50 reduction in its trailer load charges without respect to any other service it might negotiate under the terms of this proposed law. That shift of traffic would simply shift traffic from one railroad patron to another railroad patron, with a loss to the railroads of the revenue that was involved in the shipment.

I think the obvious conclusion one can draw from the fact that freight forwarders seem unable or unwilling to compete, to use their expression, with shippers' associations on the small shipment traffic is that they simply don't want to compete on the small shipment traffic. Handling big shipments is an easy job in this business. There is less hassle, less fuss, fewer claims, much less stress and it is probably a great deal more profitable to go out and solicit.

After all, one call may produce dozens or hundreds of trailer loads of traffic. But small shipments are the problem facing the shipping public, not large shipments. The large shipments take care of themselves. All clout finds its proper place in the economic scheme of things in this country. Small shipments are very effectively handled by nonprofit shipping associations.

That is the reason that nonprofit shipping associations have grown so dramatically in the past 20 years in this country. It was testified yesterday that 1.58 percent of the railroad revenues come from freight forwarders and approximately 4 percent of the revenues come from shippers' associations and shippers' agents. We have addressed ourselves to the small shipment problem, the freight forwarders have not. They have turned their backs on that problem.

Senator HARTKE. Let me interrupt. I have a vote on the floor of the Senate and I am going to ask the staff member to continue this.

Let met ask a question of somebody here, though, very quickly.

What if you arranged for a contract rate for the consolidation of small shipments?

Mr. LINCOLN. If it were possible for railroads to provide a lower service on a consolidated lot of freight, provide charge for a consolidated lot of freight, they could provide for any other lot tendered, I would be in favor.

But a trailer load is a trailer load.

The source of the freight should matter not at all. The freight itself is what we should be talking about here and if a railroad needs \$1,000 to perform a service, they should get \$1,000 from us and the freight forwarder.

Senator HARTKE. The point about it is the small shipments are causing part of the problem. That is part of the difficulty.

Mr. LINCOLN. Actually that is not the difficulty with the freight forwarder, Senator. I respectfully suggest the purpose of that law is not to improve the lot of small shipments. And I can see no possible improvement in it.

Senator HARTKE. All right. I will let you proceed on that.

I think you are missing the point. What I am trying to say is that very simply you are talking about in a relationship between the shippers association and the freight forwarders. I am talking about how you are going to handle these small shipments.

Mr. COBERT. Senator, may I comment.

Senator HARTKE. I have no choice. They don't hold up.

Mr. COBERT. A quick comment.

Senator HARTKE. I will let you comment for the record, and I will read it because I have to go to the floor. I have no choice.

Mr. COBERT. I commented in my direct statement that the railroads already have the ability through tariff provisions to attract small lot freight. They can now establish those type of provisions.

This particular legislation will not help that situation. And it would seem to me if the railroads were intent on capturing that kind of business they could reduce their rates to everybody who could obtain that kind of business and thereby secure all small shipments.

Mr. CUNNINGHAM. Would it answer at least part of your objection if the proposed bill were amended to provide that contract rates would only be granted if the source of the traffic was small shipments, however defined, which; you say now the freight forwarders are not interested in acquiring or handling?

Mr. COBERT. We are talking about the fact that this particular legislation and the design of it is not to take the freight off the highways and put it on the railroads, but the design is redistribute the freight to the forwarders away from the shippers' associations. That is my contention.

Mr. CUNNINGHAM. I thought the basis of your argument was that the freight forwarders would not be shifting traffic, small lot traffic, away from the shipping associations; but only the larger lot traffic.

Mr. COBERT. That is not necessarily true.

Mr. CUNNINGHAM. Then we will go on. Perhaps we can clarify that point later.

Mr. LINCOLN. I would like to submit my written statement for the record.

Mr. TALBOT. Mr. Chairman, members of the subcommittee, my name is Russell W. Talbot. I am executive secretary of the National Association of Shippers' Agents, Inc.

My prior business career encompassed 38 years of service with the former Pennsylvania Railroad, the last 15 years of which I was in charge of marketing and pricing activities for that property.

Shortly after the merger of the Pennsylvania Railroad and the New York Central, I accepted a position with the Western Railroads as chairman of the Trans-Continental Freight Bureau with headquarters in Chicago.

After serving in this position for 3 years I elected to return East to my home in Philadelphia and thereafter served as a consultant to the Special Projects Counsel to the Interstate Commerce Commission in connection with the nationwide investigation of the railroad rate structure.

By reason of this background of experience, I believe that I am well qualified to judge the impact in the transportation marketplace of the legislation proposed by Senate bill 2083 as well as its effect on the individual users of railroad freight service.

The National Association of Shippers' Agents, Inc., which I represent, is comprised of 33 members doing business as the principal terminal areas throughout the country.

These members utilize rail service exclusively for their long-haul transportation.

The members of our association can be characterized as small entrepreneurs in their local communities and many of them have been engaged in providing local transportation service in their respective terminal areas for many years.

During 1974, these members paid the railroads approximately \$103 million in freight charges, or an average of about \$3 million per member.

Throughout my career in transportation I have had deeply embedded in my mind that the basic foundation of the Interstate Commerce Act was to prevent discrimination and eliminate preference, so that all shippers and localities would be accorded equal treatment in the marketplace.

The proposed legislation would completely undermine this basic concept by according preferential treatment to a special interest group, the freight forwarders.

No longer would all shippers be accorded equal treatment—from a practical standpoint the forwarders are shippers with respect to rail transportation regardless of any legal argument which may be made to the contrary.

The freight forwarders actively compete with other shippers for the same traffic, including the members of our association as well as the numerous shippers' associations.

They directly compete with the members of our organization in the trailer load field for the larger shipments, both truckload and carload. They directly compete with the shippers' associations in the small shipments field.

The proposed legislation would accord the freight forwarders preferential treatment with respect to both kinds of traffic.

The freight forwarders do not serve many of the smaller communities and these smaller communities would be placed at a further disadvantage by the proposed legislation.

It is stated that the objective of the proposed legislation is to "encourage less-than-carload shippers to utilize energy-saving rail service," but there is nothing in S. 2083 which would restrict this preferential legislation to the small lots shipment field.

As now written, the proposed legislation would extend this preferential treatment to encompass the entire spectrum of commerce, including less-than-carload shipments, TOFC and container traffic, and truckload and carload traffic.

This fundamental conflict between the avowed purpose of the proposed legislation and the bill as actually introduced is difficult to rationalize.

S. 2083 would not only authorize the establishment of contract rates between the freight forwarders and railroads, but, of equal significance, it would also authorize preferential arrangements as to the supply of empty cars and trailers, preferential loading of trailers at origin ramps and unloading at destination ramps, preferential line-haul service, and preferential leasing of facilities.

Before the advent of TOFC service, the freight forwarders specialized in the consolidation of small shipments—less carload traffic—for movement in rail boxcar service.

By reason of the large volume of traffic which they controlled, the forwarders were able to induce the railroads to establish many special pricing and service privileges by open tariff publication on a nonpreferential basis.

Speaking as a former representative of the eastern railroads, the end result was that the earnings on this traffic became marginal at best and deficit in many areas.

The proposed legislation would provide the forwarders with a hunting license to again pressure the railroads for special pricing and service privileges, not only with respect to conventional boxcar service but, more importantly, with respect to the newer TOFC service.

While the present TOFC service is generally regarded as reasonably profitable by the railroads, the granting of reduced rates and special service privileges to the forwarders would rapidly dissipate this profitability.

With many of the Nation's railroads in bankruptcy or on the brink of financial disaster, they can ill afford a repeat of the past history with respect to forwarder traffic.

Several recent newspaper articles have highlighted the situation with respect to car supply in the grain trade. It is alleged that the large and more influential grain companies have acquired control of the supply of empty equipment suitable for carrying grain so that the smaller grain dealers cannot obtain equipment to move their crops during harvest season.

It is also alleged that this situation forces the smaller dealers to sell their grain at subnormal prices to the large dealers in order to dispose of their suppliers.

Apparently this situation has become sufficiently alarming to stimulate the active interest of Members of Congress.

While I am not in a position to vouch for the accuracy of these allegations, it provides an interesting parallel to what would happen under the proposed legislation.

In times of tight trailer or car supply, which frequently occurs, the smaller shippers of the Nation, including those which I represent, would be unable to obtain their pro rata share of empty equipment with the result that the forwarders would obtain a monopoly on the traffic.

When the equipment supply became more plentiful during a period of decreased traffic volume, the smaller companies which compete with the forwarders would be unable to recover much of their traffic which had been diverted to forwarder service.

If the motivation for the proposed legislation is to improve the financial position of the forwarding industry, S. 2083 would accomplish this result only at the expense of the financially beleaguered railroad industry.

The traffic which the railroads now receive from many industrial shippers throughout the Nation, the many shipping associations, and the members of our association, at the present standard tariff rates, would be diverted to the forwarders under any reduced basis of contract charges which they negotiate with the railroads.

The railroads would wind up handling this same volume of traffic at the reduced basis of contract charges.

The amount of the reduction in charges on this traffic, as well as on the traffic which they are already receiving from the forwarders, would directly diminish their already depressed net earnings by an equivalent amount.

It will be argued that the reduced contract charges will enable the forwarders to divert sufficient traffic from the motor carriers to compensate for this direct reduction in net railway earnings.

While this argument is purely speculative, I am convinced that the reduction in contract charges under the proposed legislation which would be necessary to induce any wholesale diversion from highway service would be so great as to make the resulting contract charges unprofitable to the railroads, wholly apart from the problem I have just discussed of recouping the direct loss of net railway revenues.

This line of approach would spell disaster for the railroad industry.

If a wholesale diversion of traffic from highway service from the standpoint of having any meaningful impact on energy conservation, I have already stated that this should not be attempted at the expense of the financially depressed rail industry which would be the result of the proposed legislation.

If a wholesale diversion of traffic from highway to rail service is desired by Congress from the standpoint of energy conservation, this should be accomplished by legislation which goes directly to the problem without recourse to the authorization of preferential treatment for a special interest group of people who use rail transportation.

Thank you.

Mr. ALLEN. Mr. Chairman, my name is John C. Allen, Jr., and my business address is 2 Walker Avenue, Clarendon Hills, Ill.

I am vice president-operations of ITFCA, Inc., having been associated with that organization since its inception in 1959.

I am familiar with all aspects of the operations of ITOFCA and with the legislation here proposed, and am authorized to appear and present this statement in opposition to the proposed legislation in connection with S. 2083.

ITOFCA is a nonprofit shipper association operating pursuant to the exemption of section 402(c) of the Interstate Commerce Act.

A list of the members of ITOFCA is attached hereto as appendix A.

Collectively, the plants and other shipping facilities of these members are located throughout the United States and Canada.

ITOFCA's operations are nationwide and include participation in international traffic.

Our membership consists of both large and small corporations.

ITOFCA has appeared before this subcommittee in connection with prior legislation attempts to give the freight forwarders preferential rate treatment in their relationship with the railroads.

The initial proposal in which ITOFCA appeared—S. 3714, 91st Congress—was predicated primarily on the freight forwarders' desire to meet plan I TOFC rates, i.e., the railroads' contractual arrangements with motor carriers.

The next two proposals—S. 3803, 91st Congress, and S. 1896, 92d Congress—were directed more to the alleged solution of the small shipments problem.

And now the present proposal is related to the so-called energy crisis.

In each instance the result would be to give the freight forwarders preferential treatment in comparison to all other shippers of freight, including ITOFCA and ITOFCA members.

Accordingly, ITOFCA opposes the proposed legislation for the following reasons, among others.

One: It discriminates against shipper associations and other members of the shipping public by affording preferential treatment to freight forwarders.

Two: It will result in an unnecessary dissipation in railroad revenue at a time when these revenues are sorely needed by the railroad industry.

Three: The only result of the legislation will be to increase transportation costs of ITOFCA and other members of the public without any appreciable benefit to the public.

Four: The proposed legislation cannot be justified on the basis of (a) the small shipments problem, (b) the energy crisis or (c) any other valid basis.

Simply stated, it is our belief if this legislation is passed the forwarder industry with a substantial economic clout in relatively few hands will be able to work one railroad against the other to drive down the price that the forwarders pay the railroad for the linehaul transportation and other accessorial charges, especially on trailer load traffic.

We use in our testimony the example of the plan I situation and the fact that railroads currently have in effect plan I contractual agreements with the motor carrier industry which agreements or arrangements represent charges approximately 30 percent below the charges which the railroads offer the shipping public.

There is no indication that if this legislation is passed the forwarders will not be able to drive the rates which they have with the railroads down to at least the level of the plan I charges or even lower.

There is further no indication in this proposed bill that such reduced prices will in fact be passed on to the LTL shipper or even the trailer load shipper in order to attract for the forwarder business from the highway to rail transportation.

The railroad industry is in deep financial difficulty as a free enterprise system. Certainly that industry cannot afford the potential revenue drain that this legislation threatens to them, especially at a time when they are having to ask for substantial ex parte freight increases to offset skyrocketing operating costs.

The magnitude of these increases in the past year and a half in fact have caused disruption of the modes of transportation with significant diversions from rail TOFC back to various forms of highway transportation, especially in the area of the irregular route common carrier, private, contract, and even exempt agricultural hauling.

If this legislation is passed, it is our belief that this trend will be even further strengthened as the rails will have to secure even further upward price adjustment from the general public on volume load TOFC and boxcar traffic in order to recoup the losses sustained as a result of the contract rates with the forwarders.

Last, ITOFCA asks Congress to consider the valuable role which it and other shipper associations have played over the years in taking traffic off the highways and moving it in the more energy-efficient TOFC service.

ITOFCA has grown from approximately 1,700 trailers in the first full fiscal year of its operations, 1959 to 1960, to over 115,000 trailers in the fiscal year 1973 to 1974.

Much of this traffic has been diverted from, or kept from diversion back to, the highways because of ITOFCA's services.

If the proposed legislation is enacted and the railroads are forced to increase their rates to the public as a result thereof, this trend will be reversed and more traffic can be expected to move over the highways.

The question naturally arises: Why would Congress want to tamper with this proven method of attracting traffic to the railroads for the mere possibility that the forwarders might be able to attract some traffic away from the highways?

It simply does not make sense.

In summary, it is submitted that the proposed legislation cannot be justified on the basis either of solving the small shipments problem or helping the energy crisis or both.

It simply has no economical, ecological, or valid regulation justification and should not be reported out of this subcommittee.

Mr. MACDONALD. My name is Douglas R. Macdonald. I am general traffic manager of City Products Corp., of Des Plaines, Ill.

I am also appearing as president of Terminal Freight Cooperative Association, a nonprofit shippers association, whose services are used by its 65 member companies.

City Products Corp. through its divisions and subsidiaries uses both the services of regulated freight forwarders, as well as shipper associations.

As I have testified in the past on previously proposed freight forwarders' legislation, directed to the same end, that is to allow the freight forwarders to make contracts with the railroads for rates and/or services, the rates or rulemaking machinery exists today that will allow any shipper, including a freight forwarder, to propose to the railroads a specific rate or rule change that will correct an inequity or problem.

If the proposal is successfully processed through the rail carrier rate procedures, the change is equally available to all shippers that are able to meet the criterion that is set forth in the new rate item or rule.

Under the existing provision of the Interstate Commerce Act, if the railroads wish to establish innovative rates to attract piggyback with carload tonnage for profitable high rated commodities, they may do so without the need of contracts. It has been my experience, however, that as rate reductions or rule changes have taken place on the part of the railroads, it has not been the practice generally of the freight forwarding industry to pass these savings in costs along to their customers.

In other words, the changes usually have accrued to the benefit of the freight forwarders. While the proposed legislation contains the provision which makes the authorization of freight forwarder railroad contracts effective for only a 2-year period, the harm that such an experiment may have on the already precarious financial condition of the railroads would indicate that the diminution of revenue to present forwarder tonnage would have to be made up by the shipping public generally.

And as an aside, there was the statement of contract rates for small shipments. May I point out that 89 percent as is carried in the actual full statement of terminal freight tonnage is under 500 pounds.

Mr. BRADT. Mr. Chairman.

My name is Harry Bradt, and I am general manager of United Shippers Association of St. Louis.

We are a not-for-profit freight cooperative made up of approximately 250 shippers, primarily companies located in the St. Louis, Mo., area. Our association is 21 years old, having had its beginning in February 1954. We are primarily shipping outbound from St. Louis, general commodities, being distributed in 20 major cities throughout the United States. Most of these movements were made via railroad, boxcar, or piggyback movement.

Last year we paid numerous railroads a freight bill of approximately \$4 million.

The specific point that I would like to concentrate on is the impact this legislation in S. 2083 would have on a city such as St. Louis and its environs.

We sincerely feel that if this bill is permitted to be enacted into law, it will put our association, and we feel others throughout the country, out of business. If this should come to pass, we feel it would definitely be detrimental to the St. Louis area shippers and railroads alike. As has been pointed out several times before in testimony, the fact that the freight forwarders get reduced rates does not guarantee the fact that they will pass the savings back to the shipping public.

Historically, they have not done so. During the last 20 years, shippers associations' tonnage in the St. Louis area has grown dramatically, whereas the freight forwarder tonnage has been constantly on the decline. We feel the primary reason for this is the fact that the shipper associations offer their members freight savings which have continued to grow, and assist them in reducing their transportation charges.

For example, United Shippers Association of St. Louis presently offers a savings on small shipments which range as high as 20 percent under the common carrier rates. It is only in the last year or so that freight forwarders have come out with what they call cube density rates on shipments that are over 5,000 pounds.

United Shippers Associations have had these type of what we call "miniload rates" in effect since 1969.

Today we offer savings on what we call these "miniload" rates which are as high as 40 percent under common carriers.

In St. Louis, we feel that if shippers associations were not filling a need for the shipping public, they would not be growing at the rate that they have been growing.

And, on the other hand, if the freight forwarders were being sensitive to the public need, there tonnage certainly would not be declining.

We, at United Shippers in St. Louis, feel that passage of S. 2083 would give the freight forwarders not only a tremendous rate advantage, but also advantages in the area of service and preference. For example, if the railroads would decide to make piggyback trailers available to only the freight forwarders and not the shippers associations, it could put us out of business. This, then, would result in enhancing the freight forwarder profit figure at the expense of the railroads and the rest of the shipping public.

We, in St. Louis area sincerely hope and urge this legislation will be defeated.

Mr. BOWERS. Mr. Chairman, my name is E. Kenneth Bowers. I am assistant to the vice president, corporate transportation and distribution, of Combustion Engineering, Inc., Stamford, Conn., and vice president and member of the executive committee of the Charter Oak Shippers Cooperative Association, Inc. I have been authorized by the executive committee to present this statement on behalf of the association's membership, in opposition to S. 2083.

Charter Oak, as I'll refer to it, is a Connecticut nonprofit corporation having over 265 member firms. It's primary purpose is the assembly, consolidation, forwarding, and distributing of its members' shipments throughout the United States. In its fiscal year ending September 30, 1974, it moved over 108,000 such shipments in 11,210 trailers via railroad piggyback service.

Charter Oak believes the proposed bill is discriminatory.

For 1974, freight forwarder payments to the Class I railroads represented only 1.58 percent of the railroads total freight revenue. We compared the payments by freight forwarders for railroad transportation, which were slightly less than \$249 million with revenues for class 1 railroads, which were \$15.9 billion. The source of these figures is in our complete statement.

It is quite apparent that this miniscule group of rail shippers would be favored if this legislation were enacted. This, it is submitted, would be at the expense of the other 98 percent of rail users.

The ICC's position is contradictory. Since 1968 the ICC has granted general rail rate increases, including fuel surcharges, totaling 92.5 percent cumulatively. 33.8 percent of this has been since 1973. The Commission has before them a request for an additional 2.5 percent general increase.

Why should the ICC propose this legislation which, it is submitted, would permit a reduction in rail revenues inconsistent with their past actions?

This legislation will not benefit the railroads or the shipping public. There is no provision in the bill requiring the freight forwarders to pass on to their customers any reductions that they will obtain, so, it is evident that there would be a redistribution of revenue at the expense of the railroads, who can ill afford it, unless they recoup from other users.

In closing, we wish to emphasize that this committee should weigh the statements and data presented and that the objective is to provide for the interests of the general public and not for the benefit of any group.

Charter Oak and its membership believe this bill—S. 2083, is not in the public's interest.

I wish to thank the committee for giving me the opportunity to appear before you.

Mr. FENDER. Mr. Chairman, my name is Joe G. Fender and I appear in this matter on behalf of the National Conference of Non-profit Shipping Associations, also for the Oklahoma Shippers Association of Oklahoma City.

First, may it be understood that I don't want to repeat everything that has been said up to this point. The position of my group is substantially the same as the positions that have been expressed by the previous speaker.

May my statement be incorporated in full as a part of this record.

Mr. CUNNINGHAM. Yes.

Mr. FENDER. I will attempt, then, to go on to certain matters that are not wholly repetitious.

I direct attention to my statement wherein I list the associations that comprise the membership of the national conference and for which I appear at this time. These associations are bona fide non-profit cooperatives. They have no interest in legislation that is before this committee apart from the interest of their membership.

So in the final analysis, I appear at this point for the several members of the different associations.

The national conference has operated since 1957. Houston Merchants Shippers Association, one of the organizers of the confer-

ence, commenced operations back in 1950. It is the belief of the shipper members of these different groups that they receive a good service from these associations which they control and operate.

At smaller points such as Great Falls, Mont., Billings, Mont., Albuquerque, N.M., shippers receive a service on small shipments which they could not obtain from any other source. Certainly not from commercial freight forwarders.

Furthermore, these associations have been a reasonably effective device through the years for controlling costs on transportation.

In any event it is the only method of cost control the shippers have had. In Houston, Tex., where I come from, I am associated closely with the Houston group. I can say for that group in that area that the group is making rates effective for the movement of merchandise as much as 40 percent less than the rates that are available from the commercial forwarders for the same service.

The shipper groups and their members oppose S. 2083 because they feel that if it is enacted, they will no longer have just, reasonable, and nondiscriminatory freight rates from the rail carriers, second, the effectiveness of the shipping associations will be lost.

Repeating partly perhaps what has been said before, but I can't help but comment on what appears to me to be the basic discriminatory nature of what is here proposed. Notwithstanding its provisions that these contract rates should not prefer or prejudice anybody, including shippers, it appears to me that the situation itself which this bill will create is of itself discriminatory of shippers and preferential of the freight forwarders.

After all, and notwithstanding the language that these rates should be nondiscriminatory, nonprejudicial, the language is, the fact is, that the shippers are not going to be a party to the contracts and can't conceivably have the benefit of the provisions of such contracts which are realized conceivably by the railroads and certainly by the forwarders who propose to make use of it.

It is represented that this bill will conserve energy, but obviously it will not do so except to the extent that it might divert traffic from truck to rail service, but that is not the primary and obvious thrust of the bill.

If the forwarders are able to obtain preferential rates because of the contracts, they will first of all realize a greater profit on the traffic that they are presently handling. But more importantly, and what is the primary concern to us is they will unquestionably divert traffic, or at least a large portion of the traffic, to freight forwarder service, which shippers themselves are at this time handling in their own associations, which they control and operate.

The bills, in short, the groups that I appear for believe this bill is not an energy or cost saving measure and that it will only enhance the position of the forwarding industry at the expense of the users of rail service on consolidated shipments.

They submit the bill is totally without merit and should not be voted out of this subcommittee.

I thank you very much.

Mr. COBERT. That concludes the remarks. We would be happy to answer any of your questions, if you have any.

Mr. CUNNINGHAM. Thank you. I do have a few questions. I think it is proper to develop these arguments for the record.

One of your basic arguments, and I address this to the entire panel, seems to be that contract rates of freight forwarders with railroads are not desirable because they will contract with freight forwarding at a lower rate and would thereby divert traffic from the shipper associations.

In other words, you argue that the freight forwarder will not pass any savings that he would accrue as a result of the lower contract rate on to the small shipper who utilizes his service. How at the same time can he divert traffic by offering a lower rate and not pass on that benefit to the shipper?

Mr. COBERT. My comment regarding that would be that he could divert freight in key areas or key situations, which would then destroy the effectiveness of the association. For example, an association handles freight, all kinds, as well as the freight forwarder. But there may be certain key commodities which necessarily contribute to the efficient functioning of the entire group. The forwarder may key in on those particular commodities. If it can drive down the rates with respect to those commodities, it might be able to offer a key shipper a lower rate level and attract his business away from the association. A key element in the association's operations would thus be destroyed.

So we are not talking necessarily about an across-the-board decrease by a freight forwarder. We are talking about decrease in key areas and key situations. And we must remember in all of this, and most importantly, that if the forwarders get this kind of legislation, they may be able to negotiate situations with the railroads that will destroy the operational feasibility and efficiency of shippers' associations. As a typical example; if a large forwarder is able to negotiate preference for trailers, and the association does not get those trailers, the association can't provide a service, no matter what rates it has.

Mr. TALBOT. Could I supplement that?

Under the proposed legislation I would predict that the forwarders would cut their rates on the larger shipments, the trailer load shipments, the larger contractual shipments, 5,000 pounds and up. This is the desirable, profitable traffic. This is the traffic that the members of my association handle.

They would go after this first. The only way they can get it would be by matching or undercutting our charges because they would provide precisely the same service to the shippers.

Mr. CUNNINGHAM. Excuse me. Did you say in excess of 15,000 pounds.

Mr. TALBOT. That is a rough figure. But I am saying that desirable traffic that everybody wants is the trailer load traffic and the large contractual shipments. And I use 5,000 pounds as the cut-off point.

The smaller contractual shipments, particularly those shipments which go to small communities, nobody wants them.

Mr. CUNNINGHAM. This goes to a point that was raised earlier. If the proposed legislation were amended so that the contract rates

were available only for consolidations of shipments that were somehow defined as small shipments, perhaps under 5,000 pounds, or as one of your panel indicated, 500 pounds, would this provide an adequate incentive for the consolidation of small shipments without providing undue competition?

Mr. LINCOLN. If everyone could contract, yes.

Mr. CUNNINGHAM. If the shipper associations handle trailer traffic, no one is handling the small shipment, less than trailer load, less than car load, traffic, why shouldn't, as a matter of public policy, Congress provide an incentive to the freight forwarder to consolidate that traffic that no one else will handle?

Mr. TALBOT. The shipper associations are handling the small shipment traffic.

Mr. CUNNINGHAM. You said your association handled primarily large traffic.

Mr. TALBOT. But my association is not composed of shipper associations. It is composed of shipper agents. Shipper agents, as I testified, specialize in the trailer load field. Shipper associations specialize in the small load field. They are different areas.

I want to answer your question. First, I don't think it is practical to devise any legislation which from a practical standpoint could limit the type of shipment in the small shipments field. That is a question of language and semantics, but I have tried to do it myself. It is the most difficult task.

The second thing is if you did it, it makes the operation impractical because the freight forwarder or whoever it needs to blend small shipments with large shipments to get volume rates buy right up.

Mr. MACDONALD. In my prepared statement, which was submitted, I said the terminal freight cooperative association actually handled 60 percent of its shipments under 100 pounds. 89 are under 500 pounds. Many of our stores are located out in the country—town, county seat-type operations. And while there are voluntary chains of one kind or another, all I am saying is I would not like to see the freight forwarders get a contract ability, that we would lose our ability to service those stores as well as we are today.

Mr. FENDER. May I ask this? I believe the last time we were up here we debated this thing primarily from a small shipment standpoint, and I believe that most of us at that time submitted detailed figures with respect to the consist of our traffic and showed you, or most of us did, that we were handling small shipment traffic. That certainly is true of all those I represent.

Mr. COBERT. I think to sum up that point, during the last go-around of hearings on this type of legislation we did submit as a group a study by a Dr. Merrill Roberts, which was submitted before the ICC in Ex Parte 266. And Dr. Roberts concluded with statistics that the operations, of shippers associations, because of their non-profit orientation, were more conducive to handling small shipments and had, in fact, handled more small shipments than the regulated forwarder industry.

Mr. CUNNINGHAM. How would you explain, then, the Commission's decision to promote this legislation as opposed to, for example, contract rates for shippers associations?

Mr. LINCOLN. May I respond to that?

My prepared statement contains as an addendum to the statement a critique of the Commission's decision in Ex Parte 266 in which they investigated the freight forwarders, and came down to the decision which recommended to Congress contract privileges between forwarders and railroads.

A great many people in this industry and the transportation industry considered that a bad service, indeed, to the public interest.

Dr. Terrance Brown, who is an assistant professor of logistics at, I think, Penn State University, published his critique in the ICC practitioners journal, and among other things, he said in that critique that the Commission, after ordering the freight forwarding industry to present certain evidence to it—to conclude the study—it received replies from less than 40 percent of the forwarders under its regulation.

On the basis of that inadequate record, it came up with its decision supporting without any logical basis whatsoever, suggesting these contracts between forwarders and the railroads would be a good thing on a trial basis for 3 years.

I recommend that—I have attached that entire article as an addendum to my statement, and I highly commend it to this Committee. And I hope that all the members of the subcommittee will have an opportunity to read it. I believe they may come up with a different view of the Commission's findings.

Mr. CUNNINGHAM. The record will be carefully reviewed and final action taken on it.

You argue that the forwarders should be compared with shippers and not common carriers, and, therefore, the freight forwarders should not be given the right to establish rates for railroads not given to other shippers.

The opposite argument is, of course, made by those supporting S. 2083. They argue the freight forwarder should compete, for example, with motor carriers or water carriers, who are permitted to establish by negotiation joint line rates with the railroads.

How do you distinguish the freight forwarder from other carriers who would make a shipment from point A to point B through an interline process?

Mr. TALBOT. Do you want the answer from a practical or legal standpoint?

Mr. CUNNINGHAM. Practical standpoint.

Mr. TALBOT. I will answer it from a practical standpoint.

The forwarders compete for precisely the same traffic. They present precisely the same service to the shipping public, and they utilize precisely the same underlying transportation, and they perform no physical transportation themselves, such as is performed by water carriers, motor carriers, and railroads.

Mr. CUNNINGHAM. What practical distinction is there between joint rates between a motor carrier that delivers traffic, for example, to a railroad at a railhead and a freight forwarder who delivers to a railroad at a railhead?

Mr. TALBOT. Are you talking about the so-called plan one piggy-back rides?

Mr. CUNNINGHAM. No. I am talking about the practical distinction for purpose of the act or the national transportation policy between

the freight forwarder who consolidates freight and delivers it and the motor carrier who delivers it. Why should there be a difference in rates for one on the grounds one is carrying traffic further than another?

Mr. TALBOT. I am not clear as to what different rates you are alluding to?

Mr. CUNNINGHAM. Joint line rates as established by negotiations initially between the carriers.

Mr. TALBOT. A joint line rate between two railroads?

Mr. CUNNINGHAM. Or between a motor carrier and railroad. Then how are these rates to be distinguished from the proposed negotiated or contract rates between freight forwarders and railroads for practical purposes?

Mr. TALBOT. Because in the first instance, each party to the transaction performs an actual physical movement of goods.

Mr. CUNNINGHAM. What difference does that make?

Mr. TALBOT. It makes a lot of difference to me as a practical transportation man.

Mr. LINCOLN. It makes a difference in that both parties to that joint rate have some control over their costs whereas a freight forwarder certainly has no control over the transportation cost involved in his share of that joint transportation service.

Mr. CUNNINGHAM. His share or rail load?

Mr. LINCOLN. His share, whatever his share is, whether he is buying his share from a motor carrier or from a railroad. Whatever he is buying, he has got it on the basis of published rates in the case of a railroad, or a negotiated rate in the case of a motor carrier.

But in any case, it is a fixed proposition and he certainly can't cause his people to work harder or cut corners or do this or that in order to control his cost any more than he can fly over the moon. His cost is fixed.

As between two carriers who actually perform transportation service, there are a great many things they can do to control their costs involved in labor and all of the efficiency activities that they might want to engage in.

Mr. FENDER. Plus this: If it is not in the answer you have heard already, these two railroads, or what have you, party to a through movement of freight, are both physically operating carriers—and that is their relation with each other—whereas the freight forwarder is the railroad's customer, which is a big practical difference in the two situations, to my notion. Basically, they are the customer. Anytime one carrier goes to another carrier and makes a deal with it as to that situation, the one is in the relationship of customer to the other, but basically, the freight forwarder is the railroads' biggest customer.

Mr. TALBOT. The answer is the railroad industry regards the freight forwarders as customers just as shippers, association shippers, and any industrial shipments.

Mr. FENDER. Furthermore, if you pursue the argument to the logical extreme, you necessarily would wind up throwing this contract privilege open to everybody, including all shippers.

Mr. CUNNINGHAM. That is a possibility. I hope you understand my position is not one of advocating a particular position but trying

to develop the record. One of the arguments for permitting the establishment of freight forwarder contract rates with railroads is that the economic powers of the freight forwarder will force reduction of the railroad revenues. We do not hear this complaint from the railroads, and I think the committee would be curious as to why the railroads permit such a reduction in rates if it were not for their economic benefit.

Mr. MACDONALD. I think in trying to answer that, you certainly don't take exception to one of your largest customers. Now, you would hope to be in a posture in your negotiations with him that you would convince him not to take the whole hog.

Mr. CUNNINGHAM. Wouldn't you argue with your biggest customers if it would be to your detriment to do their bidding? And if it would not hurt you to lower the rates, wouldn't you accept the rate?

Mr. TALBOT. Could I supplement that answer?

The forwarder is the customer. The shipper association is the customer, shipper agent's customer. Here is a piece of legislation with the forwarders support and the other two oppose. The railroad has three sets of customers that take that position.

Mr. LINCOLN. They remain silent.

Mr. TALBOT. That might not spell out their real intention, but politely they remained silent.

Mr. CUNNINGHAM. I have no other questions for the record.

Are there any other comments?

[The statements follow:]

STATEMENT OF CHARLES A. WASHER, TRANSPORTATION COUNSEL,
AMERICAN RETAIL FEDERATION

The American Retail Federation, an organization comprised of 50 state-wide and 31 national associations of retailers, is concerned with the nation's transportation system and in the above proposals being considered upon recommendation of the Interstate Commerce Commission. The views of the Federation as to these current recommendations are based upon consideration of its Transportation Committee of previous legislative proposals, Commission procedures, or Federation transportation policies and are as follows:

S. 2083—SEC. 409 CONTRACT RATES

The Federation has previously expressed its opposition to proposals before this Committee to allow freight forwarders the right to enter into contract agreements with railroads starting with S. 3714 in the 90th Congress up through S. 2461 in the last Congress. It is true that in S. 2083 the I.C.C. has attempted to overcome some of the many objections to legislation of this type by (1) eliminating anti-trust immunity for the contractors; (2) extending preferential and prejudicial protection to shippers; and (3) limiting the experimental period to two years. These changes are excellent, but they do not meet some basic objections.

The effect on the consumer, which is to be considered by the Commission, is quite clear at the outset. Because forwarder rates are established on a parity with motor carrier rates, none of the benefits of lower forwarder costs will accrue to shippers, receivers, or the ultimate consumer. The opposite is more likely. Since the objective is to obtain lower costs for the forwarders, this can only arise from lower charges and less revenue for the railroads—carriers that are in the weakest condition and needing legislative relief and financing from the government. Therefore, the consumer or taxpayer has much to lose and nothing to gain. If, indeed, there are any cost-saving characteristics of this particular traffic, as claimed in generalities, there is no evidence as to

why these cannot be reflected in appropriate rail rates published under present procedures.

A further, and major, objection to the proposal is that the new contractual privilege is discussed generally as to "ratemaking" or "energy saving" but is not so limited. The contracts to be negotiated are for utilization of the "services and instrumentalities" of the railroads. Within this broad definition, the contracts could include freight house rentals, demurrage rules, car supply, or service schedules. The contracts could incorporate provisions for credit periods in the payment of charges or even claim settlements with limited liability. None of these matters is pertinent to transportation rates as such or to the consumption of energy. In fact, the range of services or instrumentalities that could be contracted for under the proposed amended Sec. 409 is so great that the 18-month period allowed the I.C.C. for assessment of the effects would be woefully inadequate. This is an important factor in view of the present Commission's doubt as to the probable results of the legislation and of the fears of permanency by other Commissioners. (See the dissenting opinion in *Investigation into the Status of Freight Forwarders*, 339 I.C.C. 711.)

Although the Federation is opposed to the proposed legislation for the above reasons, this should not be construed as opposition to contract rates as such and we have supported the right of railroads to publish contract or volume rates for transportation services available to all like shippers as we view this of greatest benefit to the railroads, to its consumers, and to the conservation of energy. We continue to oppose the granting of exclusive rights of contract, without Commission regulation, to particular users of rail facilities and services as provided for in S. 2083.

S. 2086—THROUGH ROUTES AND JOINT RATES

In May of 1972 we indicated, to this Subcommittee, our support of S. 2628, a bill granting the Commission the authority to require the establishment of through rates and joint rates for common motor carriers, a proposal on which our support was registered beginning in 1967 on S. 751. We reflect this continuing support for a measure that will be of benefit to shippers and receivers of small shipments throughout the country including members of the retail industry, and urge approval of S. 2086. Application of this authority to the motor carrier industry would be extremely helpful in assuring small shippers, in smaller communities, service on many commodities shunned by some carriers as not generating sufficient profit. These would include such items as light and bulky articles i.e., lamp shades, pillows or plastic articles and those deemed by the carrier as difficult or expensive to handle such as agricultural implements or nursery stock items.

It also includes shipments frequently damaged by the carriers such as new furniture or those subject to pilferage or theft such as electronic articles, furs, or watches. The carriers have the authority to transport such articles under the certificates granted by the I.C.C. but, at present, if they do not desire to handle anything but the more profitable movements the I.C.C. cannot assure the public adequate service under those rights.

The provisions of the bill are not for any arbitrary or generalized I.C.C. authority. In every instance, a full hearing must be conducted, thus allowing the carriers and the shipping public the opportunity to present the details as to the requested service.

The bill also incorporates the authority to require intermodal routes and rates which, although presently permissible, have been avoided by rails and motor carriers alike in a competitive feud and the shipping public, as a consequence, has long been denied the benefit of cooperative, efficient nationwide transportation system. The conservation of energy sources that could result from such a coordinated service, although perhaps serendipitous in nature, is justification alone. The Federation urges passage of S. 2086.

S. 2084—OWNER-OPERATOR FUEL COMPENSATION

S. 2085—POOLING ARRANGEMENTS

The Federation, at this time, has no comment to the above two proposals.

The American Retail Federation is appreciative of the concern and attention of the members of the Committee to the transportation problems contained in

these bills. Although recognizing that the Committee and the Congress must direct attention initially to the much more difficult and perplexing problems of railroad reorganization, rehabilitation, and regulation, it is hoped that if and when action is taken on S. 2083 and S. 2086, the views of the retail industry as users of these forms of transportation will be given consideration.

Thank you.

STATEMENT OF RONALD N. COBERT, GENERAL COUNSEL AND SECRETARY OF
AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.

Mr. Chairman, members of the Subcommittee: My name is Ronald N. Cobert. I am General Counsel and Secretary of the American Institute for Shippers' Associations, Inc. AISA is a trade association with its principal offices in the District of Columbia. It is the unanimous position of this trade association and its membership, that S. 2083 is poor legislation, favors one special interest group, and is inimical to the interests of the small shipper and the nation's consumers. We will explain our position more fully in this presentation, but initially, it is important for this Subcommittee to understand the interests which this trade association represents.

The voting membership in AISA is comprised of thirty-six shippers' associations operating collectively through the entire United States. A list of these associations is attached to my written testimony and represents approximately one-third of all shippers' associations operating within the continental United States. The associations who are members of this trade association are excluded from transportation regulation by virtue of Section 402(c) found in Part IV of the Interstate Commerce Act, passed by Congress in 1942. That act of Congress encourages the operation of shippers' associations which consolidate and distribute freight for their members on a non-profit basis for the purpose of taking advantage of volume rates. Over seven thousand manufacturers and retailers throughout this country comprise the underlying membership of the associations which belong to AISA.

Shippers' associations perform essentially the same physical functions as the regulated freight forwarder. The law has long recognized that there is no necessary legal distinction to be made between the physical operations of an association and forwarder. Consequently, insofar as the type of freight which is tendered by either a shippers' association or a freight forwarder to a regulated carrier such as a railroad, there is absolutely no difference. The major difference which distinguishes the association from the forwarder is the fact that the former is a non-profit association of shippers or receivers of freight.

In essence, Section 402(c) of the Interstate Commerce Act, which excludes associations from regulation envisions an association of shippers or receivers of freight organized to furnish themselves an economic service under a plan that eliminates entrepreneur profits and that provides for a substantial equality of ownership and control. The association is an economic institution which creates a situation, namely the existence of volume shipments, ultimately resulting in lower transportation costs to the member. These associations contribute to the economies of both shipment consolidation and rail-truck coordination, and, because of their non-profit structure, are particularly oriented to small firms and to those with small shipments. Thus it is the position of this trade association, that any legislation which is harmful to shippers' associations is likewise harmful to both small firms located throughout this nation and to small shipments.

Initially, I would like to comment on the explanation and justification offered by the Interstate Commerce Commission which requested this bill to be introduced. The Commission claims that a substantial argument was made that the existence of contract rates between freight forwarders and railroads will encourage less-than-carload shippers to utilize energy saving rail service. It is difficult to believe that an agency of the United States entrusted with matters of such importance as transportation could regard as substantial any argument that this legislation is energy-related. If the nation's railroads desire to encourage more less-than-carload traffic over its properties, it could simply reduce the rates or provide more adequate facilities to all shippers of volume lots and, therefore, provide an incentive to all freight consolidators including forwarders, shippers' associations, shippers' agents, warehousemen

and other shippers who have the ability to create consolidations within their own companies.

The practical effect of this legislation if passed would be counterproductive to the encouragement of less-than-carload freight for this reason. We believe that if freight forwarders and shippers' associations are treated dissimilarly, the result will be that large freight forwarders will ultimately prevail and force the smaller shippers' associations out of the market place. This will mean that literally thousands of small shippers and retailers who have come to rely upon the services of shippers' associations may be foreclosed from utilizing any consolidation service. This proposed legislation could very well create an oligopoly. Simply, a few large freight forwarders will ultimately control the type of service and price of service in connection with all firms which must ship or receive small lots of freight. Now, at least, the small shipper has the absolute right, if it cannot find the proper service by motor carrier or freight forwarder, to create or participate in a shippers' association in which the control of moving the shipments ultimately resides in the members themselves.

Perhaps the second reason given by the ICC for the proposed legislation is even more ludicrous and more difficult to understand. The Commission points out that a substantial argument has been made that contractual arrangements between railroads and freight forwarders could help the railroads to improve car utilization and increase their tonnage carrying capacity by better synchronization and the avoidance of empty car movements by loading refrigerator or special purpose cars in the empty direction. Clearly, the railroads now have within their power the ability to improve car utilization, increase their tonnage by better synchronization, and avoid empty car movements, by adjusting car service rules and adopting tariff provisions open to all of the public including freight forwarders, shippers' associations, shippers' agents, and other shippers.

We feel that if this legislation is passed the freight forwarders may well induce the railroads to enter to contractual arrangements respecting car utilization and other facilities which could doom shippers' associations as an institution which has been in existence in this country since the turn of the century. For example, we can envision a situation under the legislation, if adopted, whereby a large freight forwarder with substantial volume may be able to get preferential treatment with respect to the availability of trailers or boxcars or, in essence, first claim on the railroad equipment. Clearly, if this occurs, and if it causes shippers' associations to lose their ability to obtain railroad equipment, the association could not provide service to its members and would ultimately be out of business.

Also in its statement of explanation and justification the ICC states: "Although in theory the proposal could be a very beneficial energy-conserving measure, its practical effects are not entirely clear. Thus we propose putting the amendment on a two-year experimental basis, during which the energy-saving effect of this proposal can be assessed by the Commission and the results reported to Congress." This trade association and its members vigorously object to being made "guinea pigs" especially when the practical effect of the proposed legislation is not clear. A well concerted campaign by the forwarder could within a two year period effectively destroy shippers' associations. We do not believe that such a destruction would be in the public interest. To the contrary the destruction of shippers' associations will hurt every small shipper in the country as well as every consumer in the United States.

The proposed legislation would allow freight forwarders to negotiate lower rates with the railroads. The proposed legislation would also allow the freight forwarders and the railroads to enter into contracts governing the utilization by the forwarders of both services and instrumentalities of the railroads. There is a proviso in the proposed legislation which sets forth that the terms, conditions, and compensation in any contract between forwarders and railroads shall not unduly "prefer or prejudice" any shipper and shall be consistent with the national transportation policy declared in the Interstate Commerce Act. The ordinary layman reading this language in the proviso would probably gain a sense of security from this language, but it is indeed a false security.

If the proposed legislation actually meant that a railroad must give the same deal to a shippers' association, shippers' agent, or other shipper there

would of course be absolutely no need for the legislation. Certainly under those circumstances, we might say that those entitled to the better deal would be the vigilant shipper who finds out what the terms of a contract are between the forwarder and the carrier. We do not, however, envision that the proviso will have the effect of placing everyone on an equal footing; otherwise the legislation would have never been requested by the Interstate Commerce Commission in the first instance.

It is our position that the ICC is attempting to create preferences in favor of freight forwarders over shippers' associations despite the overwhelming fact that shippers' associations are saving its members and the ultimate consumer millions of dollars each year as a result of non-profit operations and reductions in freight costs. If there are any preferences to be given at all, it would appear that the only logical preference ought to be in favor of the shipper or receiver of freight or an association of shippers or receivers of freight who at least, if nothing else, will reflect certain economies to the ultimate consumer. If the proposed legislation is passed, the result can only be that the forwarder will enhance its profit picture, the association will be damaged in key areas, and the prices to the public will eventually rise because the association, a viable alternative to high costs and inefficiency of freight forwarders, will have been eliminated in key areas and situations.

There are two final points which should be made in this testimony. First, the proposed legislation, if adopted, will bring about substantial litigation before the ICC and the federal courts. Shippers' associations and other shippers certainly will seek relief if the carriers and especially the railroads grant concessions to the forwarders. Congress should not encourage excessive litigation.

Finally, some may contend that the legislation, if adopted, will have minimal effects since the railroads will not "cave in" to forwarder demands for preferential treatment. Unfortunately, experience over the years dictates the conclusion that the forwarders exert great influence over the railroads. We recall, for example, a former president of the now bankrupt Erie-Lackawanna Railroad proclaiming in a speech on July 30, 1970, to the New England Council: "The influence of the freight forwarder on the railroad industry has been significant. It is apparent that . . . the freight forwarder business has required railroad investment in facilities and equipment which may or may not have been justified by the economics involved . . . [We have evidenced] the all too successful demands of the forwarder for railroad provided facilities, preferential car supply, and preferential train service. But no one anticipated the concentration of the forwarders on high density freight from and to selective originating and destination areas; nor the willingness of the freight forwarder to utilize highway instead of rail transportation in spite of railroad acquiescence in forwarder pressure for rate reductions or the equivalent in service rules, nor the insistence of the forwarder on lightly loaded cars through 'marriage' rules or otherwise."

The above remarks point up the very difficult problem which associations and their members face if this legislation is passed. If there is now considerable pressure by forwarders on railroads which apparently has been successful, we can hardly comprehend the magnitude of that pressure with Congressional sanction. The ICC as a result of both old and recent decisions has been granting forwarders the right to use affiliated line-haul motor carriers. The possibility of freight diversion alone from rail to motor will cause railroads to buckle under pressure. The losers will be the "other shippers" and the ultimate consumers. We urge that the proposed legislation be defeated.

LIST OF SHIPPERS' ASSOCIATION MEMBERS OF AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.

Baltimore Shippers and Receivers Association, Inc.
Cargo Shippers Association.
Columbia Shippers and Receivers Association, Inc.
Confectionery Consolidators, Inc.
CO-OPERATIVE Shippers, Inc.
Detroit Shippers Cooperative Association.
Domestic Shippers Cooperative Association, Inc.
Drumtop Atlanta Shippers Association, Inc.

East-West Shippers Association.
 Freight International Cooperative Association.
 Golden State Cooperative Association, Inc.
 Heart of America Shippers Association, Inc.
 Import-Export Shippers Cooperative, Inc.
 Industrial Shippers Association, Inc.
 Jewelers Shipping Association.
 Knickerbocker Shippers Association.
 L.T.L. Shippers Association, Inc.
 Miami Valley Shippers Association, Inc.
 Minnesota Inter-Modal Shippers Association, Inc.
 New Jersey Shippers Pooling Association, Inc.
 Northern Pennsylvania Shippers Cooperative Association, Inc.
 Nu-Way Shippers Association, Inc.
 OCP Shippers Association, Inc.
 Ohio Valley Shippers Association, Inc.
 Piggyback Shippers, Inc.
 Piggyback Shippers Association of Florida, Inc.
 Progressive Shippers Cooperative Association.
 Publishers Shipping Cooperative Association, Inc.
 Receivers and Shippers, Inc.
 Southeastern Michigan Shippers Cooperative Association, Inc.
 Sunshine State Shippers & Receivers Association, Inc.
 Streamline Shippers Association, Inc.
 Trans-Am Shippers Cooperative Association, Inc.
 United Shippers Association, Inc. (Chicago)
 United Shippers Association, Inc. (St. Louis)
 West Coast Shippers Association.

STATEMENT OF JOHN C. LINCOLN

Mr. Chairman and Members of the Subcommittee: My name is John C. Lincoln and I am the General Manager of LAWI/CSA Consolidators, Inc., a 43 year old non-profit shippers association operating into the States of California and Arizona. LAWI/CSA has a roster of approximately 480 members representing a broad spectrum of the commerce of our country from industrial manufacturers to general wholesalers to retailers. Our members range in size from among the largest national corporations to small one store retail establishments.

LAWI/CSA consolidates the freight shipments of its members at seven origin stations located in the eastern, midwestern and southern regions of the country, and ships the consolidated lots to California and Arizona by railroad for subsequent segregation and delivery to the consignees. This traffic is now moving at an average volume of about 15 million pounds a month, and is expected to increase as the economy continues to build up more steam in the months ahead.

In terms of money, we are taking in and paying out about 1¼ million dollars a month. Included in that payout—and I want to stress the point—is the amount paid to the railroads which averages over 57% of the total money disbursed. By contrast, railroad charges represent only about one-fourth of the freight forwarding industries expense.

LAWI/CSA is opposed to the provisions of S. 2083. We think it is detrimental to the railroads, that it raises false hopes in the minds of the shipping public that freight forwarder charges will somehow come down as a result of the proposed law (which we doubt) and we think that if enacted into law the bill will result in shifting a part of the forwarders' expenses onto the backs of the rest of the railroad patrons, including the members of non-profit associations.

It is important to understand the comparison between non-profit shippers associations and profit oriented freight forwarders. Both consolidate less than-carload shipments for line haul transportation. Both utilize the services of common carriers for that line haul transportation.

Both are free to make any arrangements they wish for pickup and delivery work wholly within the commercial zone of an origin or destination city, completely free of economic control by any regulatory body.

Physically, freight forwarders and shippers associations operations are about as alike as two peas in the same pod. The two major differences are that associations *must* operate on a non-profit basis and must confine their services to members only, whereas the forwarders operate supposedly to make a profit for themselves, and they serve the general public.

There are other distinctions of a more subtle nature. One such pertains to their respective relations with motor carriers. Forwarders have the privilege in the law to negotiate private contracts with motor carriers for pickup and delivery work, up to distances of 450 miles from the assembly or distribution point. Often these negotiated private rates are less than half the level of rates paid by ordinary shippers between the same two points.

Associations on the other hand may enjoy the benefit of a slightly reduced assembly or distribution rate published in tariff form, but these rates seldom compare with the negotiated rates.

With these comparisons in mind it is surprising that non-profit shippers associations provide services to their members on the smaller shipments—those under 500 pounds—at charges that are generally 18% to 30% below the forwarder charges. The percentage of savings declines sharply as the weights increase. At the top level—trailerload shipments—the forwarders are offering rates very close to the costs of the associations. Thus with a clear cost advantage in terminal pickup and delivery expenses, and an even break on railroad costs, the freight forwarders still cannot or will not maintain reasonable rates on small shipments.

The obvious conclusion to be drawn from this is that freight forwarders are less interested in serving small shipment traffic, and more interested in going for the big shipments. Handling big shipments is an easy job in this business, less headaches, fewer claims, less sweat. But to the shipping public the problem is not big shipments—it is small shipments. Associations have addressed themselves to that problem very effectively. The forwarders have turned their backs on the small shipment problem.

Our concern in this and similar bills that have been before you in past years is that the freight forwarding industry, if the bill passes, will throw all its combined weight against selected railroads in order to get preferential rates and services. And we are convinced that *whatever* benefits were gained from such negotiations would go exclusively to profit making middleman freight forwarders who would have absolutely no obligation whatsoever to pass on the tiniest share to their shipper patrons, the guys who pay the freight. The only exception would be lower forwarder rates on volume shipments so as to ace out the competition.

How does that become our business? Simply that we will pick up some of the bill for any economic benefits won by the freight forwarding industry from the railroads under the provisions of this legislation. Surely none of us expect the railroad industry to confer money benefits on freight forwarders without recouping the lost revenues elsewhere?

Or perhaps the intent of the bill is to let the forwarders and railroads explore new ground and come up with some innovations which actually *reduce* transportation costs and recapture freight lost to highway carriers? Marvelous idea! But why restrict such innovations to the profit oriented forwarders to enhance their profits while denying the benefits to shippers associations who pass on to their members every dime of savings in every situation, bar none? If there are some new and novel ways of moving freight across this country by railroads cheaper than it is moving now we want to know about it. And our members certainly want in on it.

Through all the years of the Federal regulation of railroads the central theme of that regulation has been prohibition of discrimination between like and contemporaneous shipments. How grossly unfair it would be to set up a favored class of shipper now who could bargain for lower charges than others who ship identical kinds of traffic. Particularly so when the results of the bargaining would only go to increase a middle man's profits and would not benefit the general public in any way whatsoever.

I did not come here today to preach the relative merits of shippers associations over freight forwarders. Certainly each has a vital role to play in the commerce of this nation. Nor do we want to be included in on the right to contract for railroad services. What we don't want is a freight forwarding industry that has to leach its profit from our railroads like a parasite, rather

than earning its profits in the normal manner in the market place. These mendicants have come to Congress year after year with bills like this, hoping to wind up with their own little private domain where no competition exists. That would benefit no one but the owners of the freight forwarding companies.

Mr. Chairman, the Interstate Commerce Committee in 1970 conducted an investigation into the status of freight forwarders under Docket No. Ex Parte 266. The purpose of that investigation was to determine the merits of forwarder-rail contract rates, and it was instituted voluntarily by the Commission as a result of questions raised in a House hearing on forwarder-rail contract legislation. That decision sparked considerable controversy and there were many who thought it was a sorry service indeed of the public interest. One such critic was Dr. Terence A. Brown, Assistant Professor of Logistics, Capital Campus, Penn State University. His review of the decision in Ex Parte 266 was published in the I.C.C. Practitioners' Journal, Vol. 5, 1972 at page 667. The entire article is attached as an addendum to my written statement, and I sincerely hope the members of this Subcommittee will find the time to read it, for the article is directly in point.

In summary, this legislation offers no benefit to the public; it threatens the depletion of railroad revenues; it contains the certain prospect of an increase in the railroad rates of all other non-forwarder patrons; it presents the specter of the very kind of discrimination the prohibition of which is at the heart of the Interstate Commerce Act. I respectfully urge that S-2083 be given an honorable death right here in this Subcommittee.

EX PARTE 266 FORWARDER—RAIL CONTRACT RATES

(By Terence A. Brown)

INTRODUCTION

Early in 1971 the Interstate Commerce Commission announced its decision in Ex Parte 266—*Investigation Into The Status of Freight Forwarders*. The decision and the prior investigation were important not only because of their probable impact on the forwarding industry but also because they brought up some of the most basic problems of transport regulation. In addition, the testimony given during the investigation and the final decision provides yet another example of the economic role of the Commission and one of its most glaring weaknesses.

The reasons for the initiation of Ex Parte 266 lie in several past ICC decisions and changes that occurred in the transportation industry over a period of fifteen years. In 1954 the Commission decided the landmark "*New Haven*" case¹ and effectively gave its approval to most TOFC operations. One of the results of the decision was the growth of Plan I operations through which motor and water common carriers were allowed to bargain with the railroads for the rates they would be charged for TOFC service. These rates are viewed as joint rates and are not filed with the ICC. The existence of this rate privilege allows the railroads to discriminate between motor and water carriers, as well as between these carriers and all other shippers, including freight forwarders.

The fact that they could not engage in contract ratemaking with railroads was a source of much dissatisfaction to at least some of the larger forwarders. Consequently, these firms had legislation introduced in Congress in 1956² and 1957³ that would have extended the contract rate privilege to forwarders. However, both measures failed.

In 1960 the Commission reached another decision that was to indirectly add considerable fuel to the then smoldering fire of the contract rate issue. The case was *Forwarder Volume Commodity Rates, New York and Chicago*⁴ in which several forwarders proposed lower rates for large shipments (30,000 pounds minimum)—these rates being on the same level as the motor carrier rates. In short, the forwarders were going after the truckload freight which

¹ Movement of Highway Trailers by Rail, 293 I.C.C. 93 (1954).

² H. R. 9548 & S. 3366, 84th Cong., 2nd Sess.

³ H. R. 4393 & S. 1382, 85th Cong., 2nd Sess.

⁴ 310 I.C.C. 199 (1960); *Aff., Eastern Exp. Inc. v. U.S.* 198 F. Supp. 256.

had hitherto been moving via the motor carriers. The motor carriers protested vigorously but the ICC upheld the new lower rates.

Although some forwarders had established entry into the truckload business they apparently still felt they were at a competitive disadvantage in relation to the motor carriers because of the contract rates situation. Thus, in 1964 when the Commission again investigated piggyback operations in Ex Parte 230,⁵ the forwarders used the investigation to attack Plan I operations as illegal.⁶ The Commission, however, totally rejected their claim.

In 1968 and 1970 the forwarders again appealed to Congress for the power to engage in contract ratemaking with the railroads, but the bills did not get beyond hearings. However, the 1970 bill—H.R. 10293—stirred the Commission to announce, during the hearings, that it would undertake a study of the whole question.

It would be inaccurate to explain the forwarders desire for contract rates solely as an attempt to gain a better competitive position vis-a-vis the motor carriers. In fact, the contract rates proposal is a doubled edged sword. Shipper associations are nonprofit, unregulated associations of firms which band together in order to ship their freight more economically. One of their advantages is that by consolidating several small shipments they get the freight transported at the lower rates quoted for large shipments. This is especially useful for TOFC shipments as the railroads generally offer a reduced rate for two trucks tendered together. In effect, the shipper associations perform almost the identical function that the forwarders perform and, in fact, the associations have recently become one of the forwarders most important competitors.⁷ Thus, if the forwarders were allowed contract rates (and these rates were denied the shipper associations) they would significantly improve their competitive position in relation to the associations.

THE COMMISSION'S DECISION

After six months of investigation and deliberation the Commission announced its decision of January 19, 1971. In summary form, the Commission decided that:

(a) The forwarders should be allowed to negotiate rates with railroads for a period of three years, during which time the Commission will study the effects of the legislation;

(b) Another investigation would be undertaken to determine whether or not forwarder terminal areas should be extended;

(c) Forwarders should not be authorized to enter into joint rates and through routes with ocean shipping companies;

(d) No new regulations for forwarders of household goods were necessary;

(e) The proceeding was to be continued to provide continuing study of the forwarding industry; and

(f) Changes were to be made in the reports forwarders are required to make to the Commission.

Certainly the most important part of the Ex Parte 266 decisions was the Commission's approval of forwarder-rail contract rates. The Commission justified their position by stating that, "... adherence to the status quo can only spell further decline for the forwarding industry. . . ."⁸ Unfortunately, it is hard to find an economic rationale for the decision.

The worst part of the contract rates decision is the effect it will have on the shipper associations if Congress accepts the ICC's position. Although the associations are no less efficient than the forwarders (and possibly more efficient) their prices will be held up in comparison to the forwarders'. The effect will eventually be to misallocate resources—more forwarder service will be consumed than otherwise and resources will be wasted with the general public the final loser.

The forwarders and others defend such discrimination against shipper associations by saying that the associations are not common carriers thus they do not deserve the "benefits" of common carriage. While such legalism may have

⁵ Ex Parte 230, Substituted Service—Charges and Practices of For-Hire Carriers and Freight Forwarders, 322 I.C.C. 301.

⁶ See: 322 I.C.C. 348, 349.

⁷ See: Ex Parte 266, Decision, Appendix F, Table 27.

⁸ Ibid. p. 132.

meaning to some, the argument makes no economic sense. In fact, the forwarders and associations are competitors selling the same service and there has been no economic, logical argument made that justifies such unjust and unnecessary discrimination. The forwarders have very effectively used the law to their advantage and to the disadvantage of their competitors and the general public.

The Commission's justification of its decision rested heavily on the proposition that the forwarder industry was "declining"—i.e., becoming less profitable. Accepting this proposition for the moment, there are still some questions as to the rationale of contract rates. The fact is that granting the legal right to negotiate contract rates will have little effect on any but the largest forwarders. The vast majority of the forwarders are simply too small in relation to the railroads to gain any significant rate concessions. In fact, representatives of one of the largest forwarders claimed they expected no benefits from contract rates (even though they supported the proposal before the Commission) because they were too small to bargain effectively with the railroads. It was suggested that only one group of forwarders would benefit from contract rates—the Class A forwarders owned by U.S. Freight.

The hypothesis that the majority of the forwarders would not be affected by the contract rate privilege is supported somewhat by two pieces of evidence. During the investigation, only twenty-four forwarders bothered to join in the statement of the "forwarder" position. Had the proposal offered significant help to all the forwarders one would have expected more forwarders to have taken an interest in the investigation. The twenty-four forwarders that did respond represented less than 40 percent of the Class A forwarders operating in 1970.

Also, the concentration of tonnage within the industry tends to support the hypothesis that few forwarders will be affected by contract rates. In fact, over one-third of all industry tonnage was handled by the U.S. Freight group in 1969.⁹ In addition, the movement of TOFC traffic is even more highly concentrated. In 1968 for example, two forwarders accounted for 57 percent of the total trailers and containers originated in forwarder TOFC service.¹⁰ In short, the contract rates proposal will probably have a negligible effect on the vast majority of firms in the industry.

Another question that arises is related to the "declining" position of the forwarders. As Table I shows, the return on equity for the industry fell from 58.3 percent in 1965 to a negative figure in 1970. Admittedly, this is a decline, yet with the exception of 1970 the industry's profitability has been adequate or high by any measure, particularly for a regulated industry.

TABLE I.—CLASS A FREIGHT FORWARDERS—RATIO OF INCOME TO SHAREHOLDERS EQUITY

Year	Percent
1965	58.30
1966	¹² 56.75
1967	¹² 37.01
1968	¹² 25.01
1969 ³	24.37
1970	Loss

¹²Data of 1 large corporation in bankruptcy omitted.

After extraordinary and prior period items.

³ Preliminary

Source: Interstate Commerce Commission, 84th Annual Report, 1970, p. 152; and, Statement No. Q-950, 1970.

The loss recorded for the forwarder industry in 1970 was, of course, an average of all the Class A forwarders. In fact, it is a very poor average because the data of a few large firms can radically alter it. For example, in 1970, thirty-six forwarders reported higher net income (or smaller losses) than in 1969, while twenty-nine worsened their position. However, in 1969 there were only

⁹ For 1969 the Class A forwarders owned by U.S. Freight reported over 1.6 million tons of freight received from shippers. The total industry figure was 4.4 million tons. Transport Statistics in the United States, Part 8, Freight Forwarders, p. 7, 1971.

¹⁰ ICC, Bureau of Economics, Transport Economics, July 1969, p. 7.

twenty-eight firms with improved profits (over 1968) and thirty-three that worsened their position. In both 1969 and 1970 fifteen firms reported losses.¹¹

The reason for the poor showing in total net income in 1970, despite the improving position of many firms, is due to the fact that the average is dominated by a few large firms. As Table II shows, had the large losses reported by only five firms been disregarded, the rest of the industry would have been quite profitable. In short, if the Commission was worried about the declining financial position of the industry, they were in fact worried about a very few firms. To some it would seem inappropriate for the Commission to suggest regulatory changes of such a discriminatory nature merely to "bail out" a few firms in temporary financial trouble.¹²

TABLE II.—NET INCOME, 1970, 5 CLASS A FORWARDERS

Firm	Net income	Rank among class A forwarder (tons)
Universal.....	-2,562,918	1
Acme.....	-2,674,496	2
Republic.....	-598,573	3
National.....	-1,899,074	6
International.....	-1,363,524	7

Source: Interstate Commerce Commission, Statement No. Q-950, 1970.

While the Commission's comments about the "declining" position of the forwarder industry may be interpreted as referring to the financial position of the industry, the Commission may also have been referring to the market share of the forwarders. Data collected during the investigation showed the "static" condition of the industry as far as tonnage is concerned while the shipper associations and the other modes were growing with the economy.¹³ Indeed, the Commission's opening remarks in its discussion of the findings emphasized these trends.¹⁴ However, the question again arises: is it appropriate for the Commission to attempt to alter regulations in order to protect or promote the market shares of particular firms or industries? Such activity on the part of the ICC must be rejected as it leads to resource misallocation and unjust discrimination.

DATA COLLECTION

In order to aid its investigation, the ICC required the Class A forwarders and some motor carriers to report certain data.¹⁵ Unfortunately, the response of the carriers was not good and the data was of questionable value in some cases. For example, only forty-five Class A forwarders filed any report at all and some of the returns were incomplete. The data filed by the motor carriers was of even more questionable value.¹⁶

If the Commission is unable to gather accurate and meaningful data it cannot consistently make useful and intelligent decisions. The lack of data makes it almost impossible to discuss specific problems accurately and helps reduce the arguments to vague generalities and cliché. In order to fulfill its role the Commission must gather better data. Given the importance and need for accurate data it is somewhat surprising that the Commission has not acted with more vigor to enforce its orders.

SUMMARY AND CONCLUSIONS

The decision of the ICC to initiate Ex Parte 266 came in response to a series of prior decisions and changes in the competitive positions of the for-

¹¹ ICC, Statement No. Q-950, 1969 and 1970.

¹² If the five firms listed in Table II, only two showed a loss in 1969. ICC Statement No. Q-950, 1969.

¹³ Ex Parte 266, Appendix F, Table 26.

¹⁴ Ibid. p. 127.

¹⁵ Ibid. Appendix E.

¹⁶ Ibid. p. 65.

warders and carriers. The rapid growth of TOFC service was of utmost importance in bringing about these changes as the forwarders used piggyback to attract large freight shipments that had previously moved via motor carrier.

The Commission's decision to support forwarder-rail contract rates is questionable on economic grounds since it discriminates against shipper associations. In addition, the rationale for the decision certainly raises basic questions about the appropriate role of the ICC. To some it would seem inappropriate for the Commission to attempt to alter regulations simply to rescue a few firms from financial difficulty or to protect the market shares of particular industries. The Commission's decision is certainly consistent with the hypothesis that the ICC tends to favor regulated carriage over unregulated carriers at the expense of the general public.

Finally, the Ex Parte 266 investigation was somewhat marred by the lack of high quality data. Without appropriate data the Commission's decisions must inevitably suffer. Given the importance of its decisions the ICC must enforce its orders more vigorously.

STATEMENT OF RUSSELL W. TALBOT, EXECUTIVE SECRETARY OF NATIONAL ASSOCIATION OF SHIPPERS' AGENTS, INC.

Mr. Chairman, members of the Subcommittee: My name is Russell W. Talbot. Since January 1, 1975, I have been employed as Executive Secretary of the National Association of Shippers' Agents, Inc. My prior business career encompassed thirty-eight (38) years of service with the former Pennsylvania Railroad, the last fifteen (15) years of which I was in charge of Marketing and Pricing activities for that Property. In this capacity, I had extensive experience in the so-called small lots shipment field as well as pioneering the establishment of trailer-on-flat-car (TOFC) service in Eastern Territory. I have submitted testimony before the Interstate Commerce Commission in numerous proceedings, including testimony on behalf of the Eastern Railroads in the investigation involving the legality of the Freight, All Kinds, TOFC rate structure. Shortly after the merger of the Pennsylvania Railroad and the New York Central, I accepted a position with the Western Railroads as Chairman of the Trans-Continental Freight Bureau with headquarters in Chicago. After serving in this position for three (3) years, I elected to return East to my home in Philadelphia and thereafter served as a consultant to the Special Projects Counsel to the Interstate Commerce Commission in connection with the nationwide investigation of the railroad rate structure under Ex Parte 207 and the investigation of the railroad rate of return under Ex Parte 271. By reason of this background of experience, I believe that I am well qualified to judge the impact in the transportation market place of the legislation proposed by Senate Bill 2083 as well as its effect on the individual users of railroad freight service.

The National Association of Shippers' Agents, Inc., which I represent, is comprised of thirty-three (33) members (see attached list) doing business at the principal terminal areas throughout the country. These members utilize rail service exclusively for their long-haul transportation and primarily the various kinds of ramp-to-ramp TOFC service maintained by the railroads in the several geographic regions of the nation. For the calendar year 1974, the TOFC traffic generated by these members produced approximately 192,000 trailers which constituted primarily so-called trailer load shipments traffic which would be characterized as carload shipments if handled in conventional rail service. In addition, some members forwarded a substantial volume of so-called mixed small lots traffic in rail boxcar service. The members of our Association can be characterized as small entrepreneurs in their local communities and many of them have been engaged in providing local transportation service in their respective terminal areas for many years. During 1974, these members paid the railroads approximately 103 million dollars in freight charges or an average of about 3 million dollars per member.

When the Interstate Commerce Commission first recommended this type of legislation to Congress, Commissioner Murphy, in a dissenting opinion, commented as follows:

"In lending support to legislation that would enable the already financially troubled railroads to accede to the freight forwarders' demands for lower

volume rates, the majority has chosen to favor the few at the expense of the many shippers and receivers of freight throughout the nation to whom such rates would not be available. The resulting discrimination is at the very heart of the considered legislation, for otherwise the existing ratemaking machinery available under the Interstate Commerce Act could be utilized to develop volume rates that would be responsible to the needs of all shippers and receivers including the forwarders, on a nonprejudicial and nondiscriminatory basis. The legislation . . . represents a serious—and to me, unwarranted—departure from the cornerstone of Federal transportation regulation, the national transportation policy declared by the Congress, the very essence of which is the elimination and prevention of undue or unjust prejudice, favoritism, and discrimination.”

It would be impossible to more adequately or succinctly characterize the effect of the proposed legislation and the passage of several years since Commissioner Murphy's dissent has not altered the fundamentals of the situation. Throughout my career in transportation, I have had deeply embedded in my mind that the basic foundation of the Interstate Commerce Act was to prevent discrimination and eliminate preference, so that all shippers and localities would be accorded equal treatment in the market place. The proposed legislation would completely undermine this basic concept by according preferential treatment to a special interest group, the freight forwarders. No longer would all shippers be accorded equal treatment—from a practical standpoint, the forwarders are shippers with respect to rail transportation regardless of any legal argument which may be made to the contrary. The freight forwarders actively compete with other shippers for the same traffic, including the members of our Association as well as the numerous shippers associations. They directly compete with the members of our organization in the trailer load field for the larger shipments, both truckload and carload. They directly compete with the shippers associations in the small shipments field. The proposed legislation would accord the freight forwarders preferential treatment with respect to both kinds of traffic. The freight forwarders do not serve many of the smaller communities and these smaller communities would be placed at a further disadvantage by the proposed legislation.

While the motivation of the prior legislation might have been to improve the financial position of the freight forwarder, the following justification has been submitted by the Interstate Commerce Commission in forwarding the pending legislation to Congress:

“A substantial argument has been made to the Commission that the existence of contract rates between freight forwarders and railroads will encourage less-than-carload shippers to utilize energy-saving rail service and that contractual arrangements between railroads and freight forwarders could help the railroads to improve car utilization and increase their tonnage-carrying capacity by better synchronization and the avoidance of empty car movements by loading refrigerator or special purpose cars in the empty direction.”

It is stated that the objective of the proposed legislation is to “encourage less-than-carload shippers to utilize energy-saving rail service,” but there is nothing in S. 2083 which would restrict this preferential legislation to the small lots shipment field. As now written, the proposed legislation would extend this preferential treatment to encompass the entire spectrum of commerce, including less-than-carload shipments, TOFC and container traffic, and truckload and carload traffic. This fundamental conflict between the avowed purpose of the proposed legislation and the Bill as actually introduced is difficult to rationalize.

S. 2083 would not only authorize the establishment of contract rates between the freight forwarders and railroads, but of equal significance, it would also authorize preferential arrangements as to the supply of empty cars and trailers, preferential loading of trailers at origin ramps and unloading at destination ramps, preferential line-haul service, and preferential leasing of facilities. Before the advent of TOFC service, the freight forwarders specialized in the consolidation of small shipments (less-carload traffic) for movement in rail boxcar service. By reason of the large volume of traffic which they controlled, the forwarders were able to induce the railroads to establish many special pricing and service privileges by open tariff publication on a non-preferential basis. Speaking as a former representative of the

Eastern Railroads, the end result was that the earnings on this traffic became marginal at best and deficit in many areas. The proposed legislation would provide the forwarders with a hunting license to again pressure the railroads for special pricing and service privileges, not only with respect to conventional boxcar service, but more importantly, with respect to the newer TOFC service. While the present TOFC service is generally regarded as reasonably profitable by the railroads, the granting of reduced rates and special service privileges to the forwarders would rapidly dissipate this profitability. With many of the nation's railroads in bankruptcy or on the brink of financial disaster, they can ill afford a repeat of the past history with respect to forwarder traffic.

Several recent newspaper articles have high-lighted the situation with respect to car supply in the grain trade. It is alleged that the large and more influential grain companies have acquired control of the supply of empty equipment suitable for carrying grain, so that the smaller grain dealers cannot obtain equipment to move their crops during harvest season. It is also alleged that this situation forces the smaller dealers to sell their grain at sub-normal prices to the larger dealers in order to dispose of their supplies. Apparently, this situation has become sufficiently alarming to stimulate the active interest of members of Congress. While I am not in a position to vouch for the accuracy of these allegations, it provides an interesting parallel to what would happen under the proposed legislation. In times of tight trailer or car supply, which frequently occurs, the smaller shippers of the nation, including those which I represent, would be unable to obtain their pro-rata share of empty equipment with the result that the forwarders would obtain a monopoly on the traffic. When the equipment supply became more plentiful during a period of decreased traffic volume, the smaller companies which compete with the forwarders would be unable to recover much of their traffic which had been diverted to forwarder service.

If the motivation for the proposed legislation is to improve the financial position of the forwarding industry, S. 2083 would accomplish this result only at the expense of the financially beleaguered railroad industry. The traffic which the railroads now receive from many industrial shippers throughout the nation, the many shipping associations, and the members of our Association, at the present standard tariff rates would be diverted to the forwarders under any reduced basis of contract charges which they negotiate with the railroads. The railroads would wind up handling this same volume of traffic at the reduced basis of contract charges. The amount of the reduction in charges on this traffic, as well as on the traffic which they are already receiving from the forwarders, would directly diminish their already depressed net earnings by an equivalent amount. It will be argued that the reduced contract charges will enable the forwarders to divert sufficient traffic from the motor carriers to compensate for this direct reduction in net railway earnings. While this argument is purely speculative, I am convinced that the reduction in contract charges under the proposed legislation which would be necessary to induce any wholesale diversion from highway service would be so great as to make the resulting contract charges unprofitable to the railroads, wholly apart from the problem of recouping the direct loss of net railway revenues. This line of approach would spell disaster for the railroad industry.

If the motivation for the proposed legislation is to induce a wholesale diversion of traffic from highway service from the standpoint of having any meaningful impact on energy conservation, I have already stated that this should not be attempted at the expense of the financially depressed rail industry which would be the result of the proposed legislation. If a wholesale diversion of traffic from highway to rail service is desired by Congress from the standpoint of energy conservation, this should be accomplished by legislation which goes directly to the problem without recourse to the authorization of preferential treatment for a special interest group, such as the freight forwarders.

Personally, I cannot understand how members of Congress who are committed to the free enterprise system and the protection of small business in the open market place can support S. 2083 which would create a monopoly for a special interest group.

LIST OF MEMBERS OF NATIONAL ASSOCIATION OF SHIPPERS' AGENTS, INC.

Amex Shipping Agent, Inc.
 Bay State Shippers, Inc.
 Cincinnati Piggyback, Inc.
 COFCO Distributors, Inc.
 Commerce of Minnesota
 Delaware Valley Freight Terminals
 Dominion Incorporated
 Expressways Terminals, Inc.
 Farley Terminal Company, Inc.
 Fort Pitt Consolidators, Inc.
 Genex Terminal Company
 Go-Van Consolidators, Inc.
 Hub City Terminals, Inc.
 ICS Traffic Services, Inc.
 Intermodal Transport Co., Inc.
 Interstate Consolidation Service, Inc.
 Keystone Terminals, Inc.

Los Angeles Piggyback Service, Inc.
 Memphis Consolidation Co.
 Midwest Container Services, Inc.
 Midwest Shippers' Agents, Inc.
 P. B. Service
 Phillips Bros. Warehousing &
 Distributing Corp.
 R.P.B. Service, Inc.
 R & E Consolidation Service, Inc.
 Rail-Van, Inc.
 Rapid Traffic Service
 Shippers Traffic Service, Inc.
 Terminal Consolidation Company
 Trailer-Mate, Inc.
 Trailer Train, Inc.
 Transportation Consultants
 Volume Freight Terminals

STATEMENT OF JOHN C. ALLEN, JR., OF ITOFCA, INC.

My name is John C. Allen, Jr., and my business address is 2 Walker Avenue, Clarendon Hills, Illinois, 60514. I am Vice President-Operations of ITOFCA, Inc., (ITOFCA), having been associated with that organization since its inception in 1959. I am familiar with all aspects of the operations of ITOFCA and with the legislation here proposed, and am authorized to appear and present this statement in opposition to the proposed legislation.

ITOFCA is a non-profit shipper association operating pursuant to the exemption of Section 402(c) of the Interstate Commerce Act. A list of the members of ITOFCA is attached hereto as Appendix A. Collectively, the plants and other shipping facilities of these members are located throughout the United States and Canada. ITOFCA's operations are nationwide and include participation in international traffic.

Set forth in Appendix B attached hereto is a list of the members of the Board of Directors of ITOFCA and the companies they represent. Specific note should be made of the stature of the individuals and companies represented on ITOFCA's Board.

The Board of Directors specifically authorized ITOFCA's opposition to the proposed legislation.

ITOFCA is engaged upon behalf of its members both in the consolidation or other handling of trailerloads of freight and in the consolidation of less-than-truckload shipments into trailerload quantities for movement alone or in consolidation with other trailerloads. All of the line haul transportation is performed in rail piggyback or TOFC service.

The predominant aspect of ITOFCA's operations has been and is the consolidation of trailerloads of freight for movement under multiple trailer TOFC rates. These operations are performed virtually throughout the entire country, being coordinated whenever necessary at both ends of the rail transportation line haul with motor carrier operations.

The less-than-truckload consolidation service is now being offered from Chicago to Dallas and Houston, Texas; Los Angeles, California, the San Francisco/Oakland, California Bay areas, Portland, Oregon, Seattle, Washington, and Anchorage and Fairbanks, Alaska. It is anticipated these operations will be expanded in the near future to include additional points of service.

ITOFCA conducts substantial operations. During the fiscal year ending June 30, 1974, (the latest year for which figures are now available), ITOFCA shipped in excess of 115,000 trailers upon behalf of its members. The total transportation costs to ITOFCA and its members in connection with this service was \$70,000,000, of which over \$60,000,000 was paid to the railroads for their services. It should be evident from the above figures why ITOFCA and its members have a vital interest in the proposed legislation.

As a further indicia of the scope of the operations of ITOFCA, and its interest in the proposed legislation, it should be pointed out that at the present ITOFCA employs a total of 157 persons, operates a large office facility in Clarendon Hills, Illinois, a suburb of Chicago, operates 14 additional offices located strategically throughout the country, and its members have invested in ITOFCA over \$3,700,000 as of June 30, 1975. If the proposed legislation was enacted, it would have a substantially detrimental effect upon ITOFCA and its members.

ITOFCA has appeared before this Subcommittee in connection with prior legislation attempts to give the freight forwarders preferential rate treatment in their relationship with the railroads. The initial proposal in which ITOFCA appeared (S. 3714—90th Congress) was predicated primarily on the freight forwarders' desire to meet Plan I TOFC rates, i.e., the railroads' contractual arrangements with motor carriers. The next two proposals (S. 3803—91st Congress and S. 1896—92nd Congress) were directed more to the alleged solution of the "small shipments" problem. And now the present proposal is related to the "energy crisis." In each instance, the result would be to give the freight forwarders preferential rate treatment in comparison to all other shippers of freight, including ITOFCA and its members.

It is difficult for ITOFCA to understand how the Interstate Commerce Commission would have sponsored this legislation under the guise of the "energy crisis" or on any other basis. It is obvious from any fair reading of the decision of the Commission in Ex Parte No. 266 *Investigation Into the Status of Freight Forwarders*, decided January 19, 1971, that the Commission was making one "lastditch" attempt to save a dying and ineffective industry. How that decision or any other information available to the Commission could have motivated support of this legislation on the basis of the "energy crisis" is hard to understand. The facts simply will not support the proposed legislation on the basis of the "energy crisis" or on any other grounds. To the contrary, the overwhelming evidence supports the contention that the proposed legislation will have a national adverse effect upon the shipping public generally and ITOFCA and its members in particular.

Accordingly, ITOFCA opposes the proposed legislation for the following reasons, among others:

1. It discriminates against shipper associations and other members of the shipping public by affording preferential treatment to freight forwarders.
2. It will result in an unnecessary dissipation in railroad revenue at a time when these revenues are sorely needed.
3. The only result of the legislation will be to increase transportation costs of ITOFCA and other members of the public without any appreciable benefit to the public.
4. The proposed legislation cannot be justified on the basis of (a) the "small shipments" problem, (b) the "energy crisis", or (c) any other valid basis.

1. *Freight Forwarders Will Be Given Preferential Treatment to the Detriment and Prejudice of Other Shippers.*—Freight forwarders have always been considered as shippers in their relationship to the railroads. They are required to pay the tariff charges published by the railroads. No distinction has been made in this respect between the freight forwarders, individual shippers, or shipper associations. *U.S. v. Chicago Heights Trucking Co.*, 310 U.S. 344 (1940).

The proposed legislation would place the freight forwarders in a favored or preferential position. They would be the only group of shippers who would be in a position to bargain with the railroads for rates lower than those applicable to other shippers and to enter into contracts with them concerning those rates. The only possible result is to place them in a highly preferential position.

Freight forwarders have been attempting to secure preferential treatment of this nature since prior to the start of Federal regulations of freight forwarders in 1942. Such matters were considered in connection with the initial legislation, again in 1956 and in the 90th, 91st and 92nd Congresses (where ITOFCA appeared in opposition). Congress wisely rejected, or failed to pass, any legislation of this nature. The same action should be taken here.

When freight forwarder legislation was originally enacted, a balance was drawn which required that the forwarders pay the same charges as all other shippers, but gave them the protection of the "commodities clause" of Section 411(b) which effectively prevented shippers from entering the freight forwarding field. In 1950, this legislation balance was modified by permitting freight forwarders to contract with motor carriers with the proviso that when the line haul transportation is between concentration and break bulk points in truckload lots and such line haul transportation is for a total distance of 450 miles or more, the contract rates can be no lower than the tariff rates applicable to shippers generally. This legislation not only failed to solve the small shipment problem, as will be later explained, but it created administrative chaos in the Interstate Commerce Commission in an effort to interpret the language of the amendment. See: *Milne Truck Lines, Inc.—Invest. of Collection of Tariff Rates*, 325 I.C.C. 128.

If the proposed legislation is enacted, completely eradicating the originally intended legislative abalance, serious consideration would have to be given to further amendments in the Interstate Commerce Act giving shipper associations the right to engage in freight forwarder activities or to enter into contracts with rail and motor carriers. Shippers would thereby be given some measure of equal treatment.

The better course, however, and the course here urged by ITOFCA, is to reject the proposed legislation on the basis that it is discriminatory and contrary to the public interest.

2. *Railroad Revenues Will be Dissipated by the Proposed Legislation and Must Be Borne by the Shipping Public Generally.*—It is obvious that the proposed contractual arrangements between the freight forwarders and the railroads will result in lower effective charges to the freight forwarders and a loss in revenue to the railroads. This is the only reason why the freight forwarders have so diligently pursued similar legislation over the years. If the legislation did not have that effect, there would be no reason for it. The only questions therefore are (a) how much will the reductions be, and (b) how much railroad revenue will be dissipated as a result thereof.

The latest available figures show that during 1973, Class A freight forwarders paid the railroads a total of \$184,900,000 in revenue. A total of \$135,000,000 was paid to the railroads by the freight forwarders solely in connection with TOFC services. All of that revenue, and more, is subject to dissipation as a result of the proposed legislation.

ITOFCA feels that the contract rates between the freight forwarders and the railroads would degenerate to the level of the Plan I contract rates with motor carriers, or below, in the event the proposed legislation was permitted to go into effect. This belief is predicated on the strong bargaining position of the forwarders, where a substantial portion of the traffic is concentrated in the hands of a relatively few forwarders. If the motor carriers have been able to secure such beneficial treatment from the railroads through Plan I contract rates, it must be assumed that the freight forwarders will be in a position to secure the same or even lower rates.

ITOFCA has been concerned with the level of Plan I rates for a number of years. It has felt, and continues to feel, that motor carriers through their Plan I arrangements with the railroads are receiving preferential treatment and that the revenues dissipated in this manner must be recovered from the shipping public generally, including ITOFCA and its members. Many of these Plan I arrangements are substantially below the level of TOFC rates available to the public generally, in many instances as much as 25% or more.

Attached as Appendix B hereto is a summary of the current level of Plan I contract rates available to motor carriers by the Penn Central Transportation Company between the major corridors of Chicago on the one hand, and New York City, Philadelphia, Baltimore and Boston, on the other, in comparison to comparable single and two trailer TOFC rates available generally to the public. As indicated therein, the Plan I charges average 33% lower than the single trailer TOFC rates on 40,000 pounds, and 17% lower than one-half the two trailer TOFC rates on the same weight bracket. They are also lower than the 10 trailer rates available in these corridors (except Chicago-New York) and in some instances equate to the 60 trailer rates, even though the Plan I charges are based on the tender of only a single trailer.

These are not isolated examples. I am personally aware of a great number of other instances in various rail territories where the Plan I charges are substantially below any TOFC rates available to ITOFCA or other members of the shipping public.

It appears obvious on the basis of this type of information, that the rail-forwarder contract rates would at least degenerate to the level of the Plan I rates and, as indicated, with the concentration of power and tonnage in the freight forwarders, the railroads, or certain of them, could well be persuaded to enter into even lower contractual arrangements.

Assuming a reduction of even 30% on the basis of the comparison of the Plan I charges and the comparable single trailer rates, the loss of revenue to the railroads (on the basis of the 1973 revenue figures) would be approximately \$55,000,000 overall and 40,000,000 in TOFC revenue. It must be recognized that the proposed legislation would apply to all types of railroad line-haul and accessorial charges. Thus, the entire rail-forwarder revenue is subject to dilution.

Congress is well aware that the railroad industry in general and the Penn Central in particular are not in a position to dissipate any revenues. They need all the revenues they have, and more. It would certainly be anomalous for Congress to be enacting legislation which obviously would have the effect of dissipating railroad revenues, while at the same time being asked to appropriate funds to keep the Penn Central in business. This defies explanation or logic.

In the same manner, it appears to be wholly illogical to have the railroads constantly seeking rate increases and at the same time being placed in the position, through competitive pressures, of affording one segment of the shipping public preferential rates. Since 1967, the year prior to the first concerted legislation attempt by the forwarders to secure preferential rates from the railroads, rail rate increases (through June 20, 1975) have amounted to 68.1% in line-haul charges, and 75.1% in accessorial charges.

The loss of revenue resulting from proposed legislation would have to be recouped through additional rate increases to the public generally. ITOFCA and its members do not feel that this would be right, fair or proper. The efforts of the freight forwarders to secure this preferential legislation should once and for all be "put to bed". It is economically unsound and discriminatory.

3. No Substantial Benefit to the Public or Solution to the Energy Crisis Will Result from the Proposed Legislation.—As indicated previously, legislation the same as or similar to that proposed here has been sought to be justified previously on the basis (a) of meeting Plan I charges, (b) solving the "small shipments" problem, and (c) helping the "energy crisis".

In the prior section hereof, we have pointed out the dire economic consequences to the railroads and the shipping public of allowing the rail-forwarder charges to degenerate to the level of the Plan I rates. In this section, we would like to point out separately the invalidity of attempting to justify the proposed legislation on the basis of either solving the "small shipments" problem or helping the "energy crisis".

(a) *"Small Shipments" Problem.*—The only realistic guide which is available to determine whether the proposed rates will assist in solving the "small shipments" problem is the experience of shippers of "small shipments" since freight forwarders have had available negotiated rates with motor carriers.

In 1950 Class A forwarders handled 4.2 million tons of small shipments of the total 87.0 million tons of such shipments via all modes. In December, 1950, Section 409 was modified to allow negotiated rates between the forwarders and the motor carriers. If the forwarders passed on to the shippers any lower rates negotiated with the motor carriers a surge in the volume of small shipments handled by the forwarder would be expected. In 1972, the latest year where figures are available, the forwarders handled 4.25 million tons of a total of 97.7 million tons of small shipments. In that same period the Class I and II motor carriers increased their participation in handling small shipments from 53.4 million to 82.8 million tons. (Source: Table 1 (page 11), I.C.C. Bureau of Economics—Volume I No. 3 1974).

That the comparison of 1950 with 1972 is realistic is indicated by the following details from the table contained in the source material:

Year	Total	Motor LTL class I and II	Freight forwarders class A
1950	87,047	53,405	4,204
1951	81,998	48,941	4,886
1952	80,232	49,615	4,997
1953	79,372	51,801	4,504
1954	74,569	50,279	5,223
1955	78,616	54,132	4,697
1956	80,392	56,963	4,584
1957	78,886	57,934	4,300
1958	74,359	56,272	3,952
1959	79,988	62,721	4,174
1960	78,031	62,144	4,100
1961	78,121	63,527	4,010
1962	82,788	68,541	4,311
1963	83,958	70,794	4,215
1964	86,194	73,094	4,413
1965	92,209	76,896	3,994
1966	95,606	82,048	4,501
1967	93,829	80,190	4,352
1968	96,865	83,223	4,503
1969	98,668	84,505	4,443
1970	92,205	78,099	4,203
1971	92,133	78,500	3,641
1972	97,736	82,800	4,489

It is evident that whatever rate reductions were obtained by the forwarders were not used to reduce rates and induce a greater use of forwarder service.

Quite the contrary would appear to be the fact. For the year 1950 the average weight of a forwarder shipment was 444 pounds, while in 1974 the average weight per shipment increased to 720 pounds. At the same time, the number of shipments handled by forwarders decreased from 18,927,000 in 1950 to 12,765,000 shipments in 1974. (Source: Bureau of Accounts—Statement No. 950). Thus, the forwarders, since obtaining lower, bargained rates from the motor carriers, have reduced the number of shipments handled and have increased the weight per shipment. Such a course is a compounding of the small shipments problem, not a solution to it.

When the I.C.C.'s Bureau of Economics released its study of the Role of Regulated Motor Carriers in the Handling of Small Shipments it assessed various alternative solutions to the small shipments problem and had this to say:

"Of all the above alternatives, the non-profit shipping associations would appear to be potentially one of the most beneficial to the small shipper." (p. 103, Statement No. 67-2)

Shipper associations are both large and small. ITOFCA has members who ship many trailerloads and others who ship only a few each year. Its members include some of the largest companies in the country and many smaller concerns. Any shipper who has a need for TOFC service can join ITOFCA. Service is provided not only between major cities but virtually to all points which can be reached by a combination of rail TOFC and motor carrier service. Significantly, about 30% of all shipments handled by ITOFCA move by a combination of rail TOFC and regulated motor carrier service to or from points outside of commercial zones, as far distant as 200 miles from the rail ramp. This is true coordination of modes to achieve the benefits of expedited economical service to broad geographic areas.

ITOFCA aids its members with around the clock supervision of shipments and tracing of cars. It advises its members of rate, service, and tariff changes on a continuing basis. It makes recommendations on these matters. Where its members are affected it appears at public rate committee hearings, before the Interstate Commerce Commission or before Congress to represent their views. These are all services of particular value to the small shipper. They are all services which the freight forwarder does not provide.

As the Commission's staff recognized in its study and as ITOFCA's operations demonstrate, the shippers association is more efficient than the freight forwarder. Those who handle the business most efficiently should be allowed the chance to do so and not be cut down by discriminatory legislation.

To place the shippers association in a disadvantaged position as against the preferred forwarder, as this legislation would do, will certainly not pro-

mote the shipper association as a solution to the small shippers' problem or aid in the development of intermodal services. That such associations are gaining acceptance is evidenced by the fact that between 1964 and 1969 shipper associations originated revenue by Class I rail carriers increased from \$67,544,000 to \$118,256,000, carloads increased from 166,000 to 226,000 and tons increased from 2,413,000 to 4,031,000. During the same period freight forwarder traffic originated by the Class I railroads remained substantially the same or decreased. (Source: Table 26, App. F, Report of I.C.C. Ex Parte No. 266.) These are the latest statistics available, but ITOFCA knows on the basis of its own operation that the volume of shipper association traffic has continued to increase.

Shipper associations serve large and small shippers alike. Since they are non-profit, all consolidation savings are passed to the shipper. The carriers earn full revenues and the shippers benefit both in service and savings.

ITOFCA does not believe that the proposed legislation will inure to the benefit of small shippers, but to the contrary will be used only to increase the earnings of the freight forwarder. No sham of this nature should be allowed as a basis for the proposed legislation.

(b) *The "Energy Crisis"*.—It is difficult to understand how the Commission could be duped into attempting to justify the proposed legislation on the basis of helping the "energy crisis". ITOFCA submits that it will have the directly opposite effect.

First, ITOFCA does not believe that the freight forwarders will "pass through" to the shipping public the reduced charges resulting from the rail-forwarder contractual arrangements, and therefore attract additional traffic. There is no evidence that any such "pass through" occurred as a result of the forwarders' ability to negotiate with motor carriers; and it is not believed that any such "pass through" will occur here. Certainly, there is no requirement in the law that such a "pass through" on savings be given to the public in order to attract traffic from the highways. Thus, the fundamental concept of the proposed legislation appears to be erroneous.

Secondly, irrespective of what action the freight forwarders take in "passing through" the savings in railroad charges, it is obvious that, in order to recoup the lost revenue, the railroads will be forced to increase both their boxcar and TOFC rates, thus driving more traffic back to highways. ITOFCA has experienced just such results from recent rail rate increases.

Last year, as a result of the 10% increase taken in Ex Parte No. 305, a significant amount of traffic was diverted from ITOFCA back to the highways solely because of rate considerations. This was traffic which had been tendered to ITOFCA over the years for movement in TOFC service. However, because of rate considerations, it was switched back to the highways despite the fuel crisis and substantially higher cost of fuel as a result thereof. Moreover, based upon the information furnished to us, much of this traffic was being given to independent truckers operating under the guise of agricultural cooperatives, private carriage, etc., which have the highest incidence of empty or deadhead mileage.

If there are further increases in rail rates as a result of this legislation or otherwise, an even greater diversion of traffic to the highways can be expected. Thus, even if the freight forwarders were to pass on their savings to the public (which we do not believe will occur), and attract traffic now moving over the highway, the traffic which they would be able to attract would be more than offset by the traffic returned to the highways as a result of general rail rate increases.

Lastly, ITOFCA asks Congress to consider the valuable role which it and other shipper associations have played over the years in taking traffic off the highways and moving it in the more energy-efficient TOFC service. ITOFCA has grown from approximately 1700 trailers in the first full fiscal year of its operations, 1959-1960, to over 115,000 trailers in the fiscal year 1973-1974. Much of this traffic has been diverted from, or kept from diversion back to, the highways, because of ITOFCA's services. If the proposed legislation is enacted and the railroads are forced to increase their rates as a result thereof, this trend will be reversed and more traffic can be expected to move over the highways. The question naturally arises: Why would Congress want to tamper with this proven method of attracting traffic to the railroads for the mere "possibility" that the forwarders might be able to

attract some traffic away from the highways? It simply does not make sense.

In summary, it is submitted that the proposed legislation cannot be justified on the basis either of solving the "small shipments" problem or helping the "energy crisis", or both. It simply has no economical, ecological or valid regulation justification and should not be reported out of this Subcommittee.

I appreciate the opportunity to be heard on this matter.

Appendix A

Ace Hardware Corporation, Chicago, Illinois.
 Acklands Limited, Toronto, Ontario, Canada.
 Addressograph Multigraph Corporation, Cleveland, Ohio.
 Advertising Metal Display Company, Chicago, Illinois.
 Airco, Incorporated, New York, New York.
 Alcan Aluminum Corporation, Cleveland, Ohio.
 Allied Chemical Corporation, Morristown, New Jersey.
 Allis-Chalmers Corporation, Milwaukee, Wisconsin.
 Alton Box Board Company, Alton, Illinois.
 Aluminum Company of America, Pittsburgh, Pennsylvania.
 American Biltrite, Inc., Boston, Massachusetts.
 American Flange and Mfg. Co., Inc., New York, New York.
 American Home Products Corporation, New York, New York.
 American Hospital Supply Corporation, Evanston, Illinois.
 American Maize-Products Company, New York, New York.
 American Standard, Inc., New Brunswick, New Jersey.
 Anaconda Company, The, New York, New York.
 Ansul Company, The, Marinette, Wisconsin.
 Applied Power Inc., Milwaukee, Wisconsin.
 A-T-O Inc., Willoughby, Ohio.
 Automatic Distributing Corporation, Houston, Texas.
 Beatrice Foods Company, Chicago, Illinois.
 Bird & Son, Inc., East Walpole, Massachusetts.
 Boise Cascade Corporation, Boise, Idaho.
 Borden, Inc., Columbus, Ohio.
 Bowman Products Division, Associated Spring Corporation, Cleveland, Ohio.
 A. Brandt Co., Inc., Ft. Worth, Texas.
 Brunswick Corporation, Skokie, Illinois.
 Burlington Industries, Inc., Greensboro, North Carolina.
 Carnation Paper Products Company, Brentwood, New York.
 Ceco Corporation, The, Chicago, Illinois.
 Celanese Corporation, New York, New York.
 Chemotron Corporation, Louisville, Kentucky.
 Chrysler Corporation, Detroit, Michigan.
 Church & Dwight Co., Inc., New York, New York.
 Colgate-Palmolive Company, New York, New York.
 Consolidated Foods Corporation, Chicago, Illinois.
 Continental Can Company, New York, New York.
 Crane Company, New York, New York.
 Culligan International Company, Northbrook, Illinois.
 Cuneo Press, Inc., The, Chicago, Illinois.
 Diversey Corporation, The, DesPlaines, Illinois.
 Douglas Furniture Corporation, Chicago, Illinois.
 Dow Badische Company, Williamsburg, Virginia.
 Dow Chemical Company, The, Midland, Michigan.
 E. I. duPont deNemours & Co., Inc., Wilmington, Delaware.
 Electrical Distributing, Inc., Portland, Oregon.
 Electric Machinery Mfg. Company, Minneapolis, Minnesota.
 F. D. Farnam Company, Necedah, Wisconsin.
 Fawcett Publications, Inc., Greenwich, Connecticut.
 Flori Corporation, Phoenix, Arizona.
 Florsheim Shoe Company, The, Chicago, Illinois.
 Ford Motor Company, Dearborn, Michigan.
 Frederick-Willys, Inc., Farmington, Minnesota.
 Frito-Lay, Inc., Dallas, Texas.
 Fruehauf Corporation, Detroit, Michigan.
 General Electric Company, New York, New York.
 General Fire Extinguisher Corporation, Northbrook, Illinois.

General Foods Corporation, White Plains, New York.
 General Motors Corporation, Detroit, Michigan.
 General Sportcraft Company, Ltd., Bergenfield, New Jersey.
 General Telephone & Electronics Corp., Stamford, Connecticut.
 Georgia-Pacific Corporation, Stamford, Connecticut.
 Gerber Products Company, Fremont, Michigan.
 Globemaster, Inc., Houston, Texas.
 W. W. Grainger, Inc., Chicago, Illinois.
 Graybar Electric Company, Inc., New York, New York.
 Grocery Products Division, Miles Laboratories, Inc., Chicago, Illinois.
 Harris Hub Company, Inc., Harvey, Illinois.
 Harrison Oil Corporation, Milwaukee, Wisconsin.
 Hart-Greer, Inc., Birmingham, Alabama.
 Hearst Corporation, New York, New York.
 Hoerner-Waldorf Corp., St. Paul, Minnesota.
 Honeywell, Inc., Minneapolis, Minnesota.
 Hooker Chemical Corporation, Niagara Falls, New York.
 Hoover Company, The, North Canton, Ohio.
 Huffman Mfg. Co., The, Dayton, Ohio.
 Igloo Corporation, Houston, Texas.
 Ingersoll-Rand Company, Los Angeles, California.
 Inland Steel Company, Chicago, Illinois.
 Interlake, Inc., Chicago, Illinois.
 International Harvester Company, Chicago, Illinois.
 International Telephone & Telegraph Corporation, New York, New York.
 InterRoyal Corporation, New York, New York.
 Jewel Companies, Inc., Melrose Park, Illinois.
 Joanna Western Mills Company, Chicago, Illinois.
 Johns-Manville Corporation, New York, New York.
 Johnson Brothers Wholesale Liquor Company, St. Paul, Minnesota.
 Joslyn Mfg. and Supply Co., Franklin Park, Illinois.
 Kaiser Aluminum & Chemical Corporation, Oakland, California.
 Kayser-Roth Corporation, Burlington, North Carolina.
 Kelley Industries, Inc., Houston, Texas.
 Kennedy Manufacturing Company, Van Wert, Ohio.
 Kentile Floors, Inc., Brooklyn, New York.
 Kohler Company, Kohler, Wisconsin.
 LaMaur, Inc., Minneapolis, Minnesota.
 Lancaster Colony Corporation, Columbus, Ohio.
 Lawndale Industries, Inc., Aurora, Illinois.
 Lear Siegler, Inc., Santa Monica, California.
 Geo. H. Lehleitner & Co., Inc., New Orleans, Louisiana.
 Lincoln Electric Company, The, Cleveland, Ohio.
 Lorillard, A Division of Loew's Theatres, Inc., Greensboro, N. C.
 Thurman Magbee Corporation, Oklahoma City, Oklahoma.
 Marcor, Inc., Chicago, Illinois.
 McQuay-Perfex, Inc., Minneapolis, Minnesota.
 Mead Corporation, The, Dayton, Ohio.
 Midas-International Corporation, Chicago, Illinois.
 Midland-Ross Corporation, Pittsburgh, Pennsylvania.
 Minnesota Mining & Manufacturing Company, St. Paul, Minnesota.
 Mobil Oil Corporation, New York, New York.
 Morse Electro Products Corporation, Brooklyn, New York.
 Morton Norwich Products, Inc., Chicago, Illinois.
 Munsingwear, Inc., Minneapolis, Minnesota.
 Nalco Chemical Company, Oak Brook, Illinois.
 Nashua Corporation, Nashua, New Hampshire.
 National Can Corporation, Chicago, Illinois.
 National Starch & Chemical Corporation, Bridgewater, New Jersey.
 Nichimen Co., Inc., New York, New York.
 Nichols-Homeshield, Inc., West Chicago, Illinois.
 NL Industries, Inc., New York, New York.
 Nor-Am Agricultural Products, Inc., Chicago, Illinois.
 Olivetti Corporation of America, Somerville, New Jersey.
 J. C. Penney Co., Inc., New York, New York.
 Phillips Petroleum Company, Bartlesville, Oklahoma.

Pier I Imports, Ft. Worth, Texas.
 Pillsbury Company, The, Minneapolis, Minnesota.
 Pittway Corporation, Northbrook, Illinois.
 Playboy Enterprises, Inc., Chicago, Illinois.
 Plumbing Products Division, Borg-Warner Corporation, Mansfield, Ohio.
 Purex Corporation, Lakewood, California.
 Quaker Oats Company, The, Chicago, Illinois.
 Ray-O-Vac Division, ESB, Inc., Madison, Wisconsin.
 Rheem Manufacturing Company, Chicago, Illinois.
 Richardson-Merrell, Inc., New York, New York.
 Rubbermaid Incorporated, Wooster, Ohio.
 Joseph T. Ryerson & Son, Inc., Chicago, Illinois.
 SCM Corporation, New York, New York.
 St. Charles Manufacturing Company, St. Charles, Illinois.
 Seattle Pacific Sales Company, Seattle, Washington.
 Sherwin-Williams Company, The, Cleveland, Ohio.
 Sherwood Medical Industries, Inc., St. Louis, Missouri.
 Simplicity Pattern Company, Inc., New York, New York.
 Singer Company, The, New York, New York.
 SKIL Corporation, Chicago, Illinois.
 R & G Sloane Manufacturing Co., Inc., Sun Valley, California.
 A. O. Smith Corporation, Milwaukee, Wisconsin.
 Standard Packaging Corporation, New York, New York.
 Stauffer Chemical Company, Westport, Connecticut.
 Stewart Company, The, Dallas, Texas.
 Superior Continental Corporation, Hickory, North Carolina.
 Swimrite, Inc., Van Nuys, California.
 Sybron Corporation, Rochester, New York.
 Texfi Industries, Inc., Greensboro, North Carolina.
 Thiele Company, Inc., The, San Antonio, Texas.
 Time Incorporated, Chicago, Illinois.
 Tonka Corporation, Minneapolis, Minnesota.
 Toro Company, The, Bloomington, Minnesota.
 Triangle Publications, Inc., Philadelphia, Pennsylvania.
 True Temper Corporation, Cleveland, Ohio.
 Union Carbide Corporation, New York, New York.
 Upjohn Company, The, Kalamazoo, Michigan.
 Walgreen Company, Chicago, Illinois.
 Washington Mills Company, Winston-Salem, North Carolina.
 Wehr Corporation, Milwaukee, Wisconsin.
 Wells Distributing Company, Salt Lake City, Utah.
 West Chemical Products, Inc., Long Island City, New York.
 Western Electric Company, Inc., New York, New York.
 Westinghouse Electric Corporation, Pittsburgh, Pennsylvania.
 Weyerhaeuser Company, Tacoma, Washington.
 Woodward, Wight & Company, Ltd., New Orleans, Louisiana.
 Zayre Corporation, Framingham, Massachusetts.
 Zenith Radio Corporation, Chicago, Illinois.

Appendix B

ITOCCA, INC.

Between Chicago and—	Single trailer 40,000 lb minimum	2 trailer 80,000 lb. minimum	Volume rates (trailers)	Plan I—Penn Central Transportation Co. charges with motor carriers effective July 14, 1975
New York.....	\$565	\$458.00	10—\$368..... 50—\$361 60—\$355	In railroad furnished trailer (\$378). In motor carrier furnished trailer (\$342).
Philadelphia.....	521	422.00	Same as above..	In railroad furnished trailer (\$355). In motor carrier furnished trailer (\$320).
Baltimore.....	505	409.50	Same as above..	In railroad furnished trailer (\$335). In motor carrier furnished trailer (\$299).
Boston.....	602	496.50	10—\$463.....	In railroad furnished trailer (\$441). In motor carrier furnished trailer (\$406).

STATEMENT OF DOUGLAS R. MACDONALD, GENERAL TRAFFIC MANAGER, CITY PRODUCTS CORP. PRESIDENT, TERMINAL FREIGHT COOPERATIVE ASSOCIATION

My name is Douglas R. Macdonald. I am General Traffic Manager of City Products Corporation. I am appearing here today on behalf of 65 companies who ship their products to and from most major cities in the United States. I am also appearing as President of Terminal Freight Cooperative Association, a non-profit shipper association whose services are used by these same 65 companies.

This is my fourth appearance before the Congress—the first was in 1968, and the second in 1970, the third in 1972—in opposition to bills to amend the Interstate Commerce Act to authorize contract rates between freight forwarders and railroads. The language of the various bills has differed over the years, and the justification offered by the proponents has varied, but the effect of the bills has always remained the same. If enacted, such bills would authorize freight forwarders to negotiate special railroad contracts for added services, or for lower rates not available to the shipping public and the consumer. The end result I believe would be reduced revenues for the railroads, higher profits for the freight forwarders, but not lower freight forwarder rates on small shipments, and certainly higher rates to the shipping public and the consumer to make up for the lost rail revenues.

Before discussing in detail the reasons for our opposition to S. 2083, let me briefly tell you about the companies I am representing. We are primarily shippers of small shipments, many of which move between the small communities of America. My own company, City Products Corporation, is a retailer and wholesaler of consumer products. One of our subsidiaries is the Ben Franklin Division of City Products Corporation which is a supplier to over 2,000 small independently-owned variety stores. Other familiar names of retailers of consumer products whom I am appearing for are: Sears, Roebuck, Broadway-Hale Stores, May Company, Meier & Frank Co., and others. Some of the member companies of Terminal Freight are smaller and operate in smaller communities such as Suniland Furniture of Houston, Texas, Haverty and Jorrie's Furniture Co. of Houston and San Antonio, Texas. Rubenstein's Furniture Co. of Eugene, Oregon, Skagit Corp. of Sedro-Woolley, Washington, and William E. Wright & Sons of West Springfield, Massachusetts.

All of these companies have voluntarily joined together in a non-profit shipping association of which I am now the President. Our association has been operating for over 30 years, and during that time has saved its member companies considerable sums of money in freight costs. Lower freight rates can mean lower prices for consumer goods in the competitive market place in which all of our members compete.

Terminal Freight consolidates our members' small shipments and ships them in consolidated loads in carload or piggyback service. In the year 1974, 60% of the shipments we consolidated weighed under 100 pounds, and 89% weighed less than 500 pounds, and this condition still prevails today.

Because of the economies in allowing others to bear the expense of consolidation, rail and motor carriers offer lower volume rates for consolidated carload or truckload service. In fact, there is very little less-than-carload service left by rail and a shipper of small shipments has little choice but to join with others to consolidate or move his goods by forwarder or motor carrier.

In handling these consolidated shipments in carloads or in piggyback trailers, the railroads perform the same services and offer the same rates and charges whether the name on the bill of lading says City Products, Terminal Freight, or U. S. Freight. Who owns the goods, or whose name is on the bill of lading should not be grounds for preference or discrimination by the railroads in providing service or charging rates. The law presently requires the railroads to treat all shippers equally. The bills before you, however, would specifically permit railroads and freight forwarders to enter into special contracts for lower rates or added services (such as for unlimited credit, split deliveries, transloading, stopping in transit or freight house handling) which would not be available to my company, Terminal Freight, or to consumers who ship their goods. The first proviso of S. 2083, does provide that the contracts "shall not unduly prefer or prejudice any of such participants, other freight forwarder, or any shippers."

This provisions is an improvement over the 1972 I.C.C. proposal which granted protection against such preferential contracts only to the participants, and any other freight forwarders, but not to shippers.

Further the S. 2083 bill is an improvement over last years' bill in that this I.C.C. proposal does not include the antitrust immunity which was part of the prior recommendation.

Even with these improvements we oppose S. 2083.

One of the prime purposes for passing the Interstate Commerce Act, was to prevent discrimination by railroads in their rates to their customers.

While the first proviso of S. 2083 would make it a duty of the parties thereto not to unduly prefer or prejudice any shipper, the bill does not extend to any shipper the protection against unjust discrimination provided for under Section 2 of the Interstate Commerce Act.

We oppose this bill because we do not believe that discriminatory rates are justified. If there are economies and efficiencies permitting the railroads to offer lower rates on certain kinds of traffic, such as the movement of piggyback traffic, then such rates should be open to all customers on a non-discriminatory basis.

In the Report of the Commission in Ex Parte No. 301, the Energy Crisis and the need for Emergency Transportation Legislation, 349 I.C.C. 699, Commissioner Murphy filed a dissent in which Commissioner Tuggle and Hardin joined, opposing this legislative recommendation as follows:

"In addition, the majority urges an amendment to section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads on an experimental basis. There is no apparent need nor real support for such legislation. The situation has not changed since the Commission's report in Ex Parte No. 266, Investigation Into Status of Freight Forwarders', 339 I.C.C. 711, wherein a separate expression I was opposed to a similar proposal. The proposed legislation herein would pose serious problems to the motor carriers which carry tremendous quantities of less-than-truckload shipments. Moreover, in light of the precarious financial condition of the railroad industry, it would be inappropriate to require the railroads to assist the freight forwarders."

The Commission justifies this years' proposal as a "very beneficial energy-conserving measure" though "its practical efforts are not entirely clear." Supposedly, these special rail freight-forwarder contracts will enable freight forwarders to offer lower rates or better services, which in turn will help railroads to increase their tonnage-carrying capacity, and thus save energy. We do not agree with this theory for three reasons:

1. We believe special discriminatory contracts to some customers of the railroads but not to others, are not justified and should remain unlawful;

2. We believe that special discriminatory contracts for reduced rail rates or costly additional services for forwarders will deprive the railroads of needed revenues which they can only regain by collecting from other shippers even higher rates; and

3. We believe that past history demonstrates that when freight forwarders along with other shippers have obtained lower rail rates, the freight forwarders have simply absorbed the reductions as profits. The result is that customers of forwarders did not receive the benefits of a similar reduction in rates and the consumers, therefore, could receive no advantage.

In my testimony before Congress in 1968, 1970 and 1972, I discussed these three points at length. I will not repeat this testimony again today to conserve the time of this Committee, but ask that you consider my previous testimony in your consideration of this bill.

Moreover, the current financial situation of the railroads, particularly in the Northeast and Midwest, makes it even more imperative than in prior years that measures like this which would drain vitally needed rail revenues not be enacted.

If the railroads want to establish innovative rates to attract piggyback and carload tonnage for profitable high-rated commodities on a non-preferential and non-discriminatory basis, the railroads can do so under the existing provisions of the Interstate Commerce Act. Such a voluntary effort on the part of rail management would achieve the objectives sought by the I.C.C. through its legislative proposals.

What cannot be done under existing law—and what we strongly oppose—is for railroads to enter into special contracts with some—but not all cus-

tomers—or provide discriminatory-reduced rates or added services for some, but not all customers—to the detriment of rail net revenues. Therefore, we urge you not to enact this legislation to permit these things to be done.

The latest I.C.C. study on rail revenue contributions dated April, 1975, based on a one-percent waybill sample for the year 1972, shows that freight forwarder revenues overall failed to even cover the full allocated cost of this traffic. The ratio of revenues to fully allocated costs according to these I.C.C. figures was only 91.1%. Further, these figures show that overall revenue from freight forwarder traffic barely covered *even* the variable costs of these movements (104.4%), and in two particular movements—official to official territory, and southern to southern territory were as low as 64.4% and 74.6%, respectively of variable costs.

Under these circumstances, according to the I.C.C.'s own figures, there would appear to be no justification as Commissioners Murphy, Tuggle and Hardin pointed out "in light of the precarious financial condition of the railroad industry to require the railroads to assist the freight forwarder industry."

I regret that in my many appearances before this Subcommittee in the last seven years, I have had to testify in opposition to the legislation being offered. I do not personally like being placed in a status-quo position because there are many changes in transportation which I believe are long overdue. For example, we supported the enlarged terminal area for freight forwarders in the I.C.C. proceeding, Ex Parte 266, Sub. 1. However, the Commission denied this extension. We would favor the Commission taking a new look at enlarged terminal areas and commercial zones, and its impact on energy-saving.

With respect to the fundamental problems of our railroads and the need to conserve energy expended in transportation, the position of my company and many of the members of Terminal Freight and other shippers with whom I have personally discussed this subject, is that there are many regulatory changes that Congress should consider.

In conclusion, I urge you to oppose this legislation to allow special discriminatory freight forwarder-rail rate contracts. I urge instead that you hear and consider the regulatory reform and other proposals pending before Congress to strengthen our national railroad system to the benefit of all concerned.

Attached to my statement, as Appendix A, is an up-to-date list of the members of Terminal Freight who are in full support of this statement. I ask that this list be made a part of the record of this proceeding.

Thank you for your time.

Appendix A

Allied Stores Marketing Corp.
American Biltrite Rubber Company
American Furniture Company
American Home Products Corp.
Associated Dry Goods Company
Barrows No. Central Furniture Co.
3 Beall Brothers 3, Inc.
The Boeing Company
Broadway-Hale Stores, Inc.
Brunswick Corporation
Ceco Corporation
Central Stock Chicago, Inc.
Ciba-Geigy Corporation
City Products Corporation
Cleveland Chair Company, Inc.
Clover Lamp, Inc.
Club Supply, Inc.
Cluett, Peabody & Co., Inc.
Coast to Coast Stores
Columbian Cutlery Company
Consumers Distributing Company
Continental Can Company
De Soto, Inc.
East Penn Manuf. Co., Inc.
Ennis Manufacturing Co.
Federated Department Stores

Fisher's of San Antonio
General Dynamics Corp.
General Services Admin.
Genesco, Inc.
Gibson Distributors, Inc.
Gilmore & Davis, Inc.
Gordon Jewelry Corp.
Heil-Quaker Corp.
Indian Industries, Inc.
Lifetime Foam Products, Inc.
Mangurian's Inc.
Marspring Corporation
May Department Stores
McDade & Company, Inc.
Mead Corporation
Meier & Frank Company
Fred Meyer, Inc.
Monarch Mirror Door Co.
Northrop Corporation
Raytheon, Inc.
Rockwell Int'l. Corp.
Rohr Corporation
Roper Luggage
Rotadyne, Inc.
Rubensteins' of Oregon
S. E. Rykoff & Company

Sears, Roebuck and Co.
 Sherwood Medical, Inc.
 Robert Simpson Co., Ltd.
 Simpson Sears, Ltd.
 Smith-Lee Company, Inc.
 State Stove Mfg. Company
 United States Gypsum Co.

Van Waters & Rogers, Inc.
 Warren Group
 Warwick Electronics, Inc.
 Whirlpool Corporation
 Wickes Corporation
 Wm. E. Wright Company

STATEMENT OF HARRY BRADT, GENERAL MANAGER OF UNITED SHIPPERS
 ASSOCIATION IN OPPOSITION TO S. 2083

Mr. Chairman, members of the Subcommittee:

My name is Harry Bradt, and I am General Manager of United Shippers Association of St. Louis. We are a not-for-profit freight cooperative made up of approximately 250 shippers, primarily companies located in the St. Louis, Missouri, area. Our Association is 21 years old, having had its beginnings in February 1954. We are primarily shipping outbound from St. Louis general commodities being distributed in 20 major cities throughout the United States. Most of these movements were made via railroad, boxcar or piggyback movement. Last year we paid numerous railroads a freight bill of approximately \$4,000,000.00.

Our national transportation policy declared by Congress clearly states that there will be no undue or unjust prejudice, favoritism or discrimination. Despite this fact, for the past several years, the Interstate Commerce Commission has recommended to Congress legislation that permits freight forwarders to obtain rates lower than any other shipper. We strenuously object to Bill S. 2083 introduced by Senator Hartke, which calls for the amendment of Section 409 of the Interstate Commerce Act to authorize a contractual arrangement between freight forwarders and railroads on an experimental basis and for other purposes.

We sincerely feel that if this bill is permitted to be enacted into law, it will put our Association, and we feel others throughout the country, out of business. We saved our shippers in the area of a million dollars last year. The fact that the freight forwarders get reduced rates does not guarantee the fact that they will pass the savings back to the shipping public. Freight forwarder rates have been historically tied to motor carrier rates on a competitive basis, whereas the bulk of their costs have been with the railroads. It is only within the last year or so that the freight forwarders have come out with cube density rates in the over 5,000 pound areas. United Shippers invented, what we call mini-load rates, in these areas as far back at July 1969, and we have been passing the large savings back to our members ever since. How can the railroads who are in such bad economic straits afford to further reduce their revenues just for the benefit of the freight forwarders? In the event that this is allowed to happen, either the railroads will have to raise their rates to the rest of the shipping public or forego these revenues.

When the Interstate Commerce Commission first recommended this type of legislation to Congress, Commissioner Murphy dissented, stating that "The majority has chosen to favor the few at the expense of the many shippers and receivers of freight throughout the Nation to whom such rates would not be available. The resulting discrimination is at the very heart of the considered legislation. Otherwise, the existing rate-making machinery available under the Interstate Commerce Act could be utilized to develop volume rates that would be responsible to the needs of all shippers and receivers including the forwarders on a non-prejudicial and non-discriminatory basis."

We at United Shippers in St. Louis, Missouri, feel that this bill is definitely prejudicial and discriminatory and that its passage would be a blow to our business and our community.

STATEMENT OF E. KENNETH BOWERS, VICE PRESIDENT, THE CHARTER OAK
 SHIPPERS COOPERATIVE ASSOCIATION, INC.

My name is E. Kenneth Bowers. I am Assistant to the Vice President, Corporate Transportation and Distribution, of Combustion Engineering, Inc., Stamford, Conn., and Vice President and Member of the Executive Committee

of The Charter Oak Shippers Cooperative Association, Inc. I have been authorized, by the Executive Committee, to present this statement on behalf of the Associations' Membership, in opposition to S. 2083.

The Charter Oak Shippers Cooperative Association, Inc., is a Connecticut non-profit corporation having over 264 member firms (list attached). Its primary purpose is the assembly, consolidation, forwarding, and distributing of its members' shipments throughout the United States. In its fiscal year ending September 30, 1974, it moved over 108,000 such shipments in 11,210 trailers via railroad piggyback service.

PREVIOUSLY SIMILAR PROPOSED LEGISLATION

Bills have been previously introduced that were designed to reach the same objective, viz., contract rates between railroads and forwarders. These were: S. 3714 (90th Congress); H.R. 10831 (90th Congress); S. 2461 (91st Congress); and H.R. 10293 (91st Congress). All of these bills had extensive hearings and failed in their respective committees. Charter Oak was in opposition to those bills. We respectfully refer the Committee to the proceedings of these hearings which contain a massive amount of data and arguments why this type of legislation should not be enacted.

PROPOSED BILL IS DISCRIMINATORY

For 1974, Freight Forwarder payments to the Class 1 railroads represented only 1.58% of their total freight revenue!

Freight Forwarder railroad transportation payments—\$248,915,968. (I.C.C. statement No. 950 QFF—1974)

Class 1 Railroads Freight Revenues—\$15,783,700,000. (I.C.C. Bureau of Economics—Vol. II, No. 2—1975)

It is quite apparent that this miniscule group of rail shippers would be favored if this legislation were enacted. This, it is submitted, would be at the expense of the other 98% of rail users.

THE I.C.C.'S POSITION IS CONTRADICTORY

(Refer to Appendix A)

Since 1968, the I.C.C. has granted general rail rate increases (including fuel surcharges) totaling 92.5% cumulatively! 33.8% of this has been since 1973! The Commission has before them a request for an additional 2.5% general increase.

Why should the I.C.C. propose this legislation which, it is submitted, would permit a reduction in rail revenues inconsistent with their past actions?

LEGISLATION WILL NOT BENEFIT THE RAILROADS OR THE SHIPPING PUBLIC

There is no provision in the bill requiring the freight forwarders to pass on to their customers any reductions that they will obtain, so, it is evident that there would be a re-distribution of revenue at the expense of the railroads, who can ill afford it unless they recoup from other users.

FORWARDERS HAVE OBTAINED REDUCTIONS

In 1972, the Eastern Railroads published multiple trailer rates for tenders of 10, 50, and 60 piggyback trailers at one time, which constituted a 26.8% reduction per trailer on a 60-trailer tender for movements between New York-New Jersey on the one hand, and Chicago, as well as Western railroad connections for the Midwest, Southwest, and Pacific Coast. These rates were and are available to all of the shipping public.

The Freight Forwarders have been able to utilize Plan 1 piggyback which are contractual arrangements through the use of two motor carriers: Midwest Haulers, Inc.—49% owned by Universal Carloading, and Sullivan Lines, Inc.—100% owned by Republic Carloading Co.

The use of the lower multiple trailer rates for the past three years has not resulted in the objectives that the proponents of S. 2083 desire; therefore, why should they expect this legislation to do so?

THE I.C.C. APPEARS TO HAVE DOUBTS

The Commission, by requesting the legislation be enacted on a 2-year "experimental" basis, is sufficient reason to question the bill.

The Commission is empowered, and has the expertise and knowledge, to determine the impact on the National Transportation economy. Why are they unsure of the results of such legislation if enacted?

Therefore, in closing, we wish to emphasize that this Committee should weigh the statements and data presented and that the objective is to provide for the interests of the general public and not for the benefit of any group. Charter Oak and its membership believe this bill—S. 2083, is not in the public's interest.

I wish to thank the Committee for giving me the opportunity to appear before you.

Attachments.

Appendix A

GENERAL FREIGHT RATE INCREASES—RAIL [INCLUDING FUEL SURCHARGES

Year	Percent increase	Percent cumulative
1968	(1)	0
1968	5.0	5.0
1969	6.0	11.3
1970	14.0	26.9
1971	4.0	32.0
1972	5.0	38.6
1973	4.9	45.4
1974	18.2	71.9
1975 to June 20, 1975	12.0	92.5

¹ Index.

SINCE 1973

Date	Ex parte	Percent increase	Percent cumulative
Jan. 1, 1974	X-299	0.7	0.7
Jan. 29, 1974	X-301	2.1	2.8
Mar. 9, 1974	X-303A	4.0	6.9
Do.	X-301A	.4	7.3
Mar. 16, 1974	X-299	.2	7.5
Apr. 1, 1974	X-301B	.3	7.8
May 1, 1974	X-301C	.2	8.0
June 20, 1974	X-305A	10.0	18.8
.....	(X-301D)	.3	19.2
Apr. 27, 1975	X-310	7.0	27.5
June 20, 1975	X-313	5.0	33.8

THE CHARTER OAK SHIPPERS COOPERATIVE ASSOCIATION, INC. MEMBERSHIP

Abbott Ball Co.	Arrow Handicraft Corp.
Acco International, Inc.	Atlantic Products Corp.
Acme United Corp.	Automatic Signal Corp.
Aerosol Techniques, Inc.	Baker & Hamilton Co.
Alcan Aluminum Corp.	Bantam-U.S. Toys, Inc.
Allen Manufacturing Co.	Barnes, Wallace, Steel Div.
Allied Thermal Corp.	Bassett, W. E., Co.
Amerace-Esna Corp.	Bear Archery Co.
American Chain & Cable Co.	Beaton & Corbin Mfg. Co.
American Cyanamid Co.	Becton-Dickinson & Co.
American Refractories, Inc.	Beiersdorf, Inc.
American Tack & Hardware Co., Inc.	Bendix Abrasives
American White Cross Labs, Inc.	Bergis Products, Inc.
American Wire Corp.	Berol Products
Anixter Bros., Inc.	Best, Richard, Pencil Co., Inc.
Argo Fabricators	Bevis Industries, Inc.

- Bic Pen Corp.
 Bigelow, R. C., Inc.
 Bilco Co.
 Bowman Products—Div. of Associated Spring Corp.
 Brad-Rex. Co.—A Part of Akzona, Inc.
 Bridgeport Fittings
 Bridgeport Insulated Wire Co.
 Bridgeport Metal Goods Mfg. Co.
 Brink & Cotton Mfg. Co.
 Bristol-Myers Co.
 Bristol Socket Screw Co.
 Bronson, Homer D., Co.
 Brownell & Co., Inc.
 Burndy Corp.
 Canaan Products, Inc.
 Capital Records, Inc.
 Carter Wallace, Inc.
 Casco Products Corp.
 Case & Risley Press Paper, Inc.
 Castle Sporting Goods Co., Inc.
 Catty, H. D., Corp.
 Chase Brass & Copper Co.
 Chesebrough-Ponds', Inc.
 Chloride Systems USA, Inc.
 Cities Service Co.
 Clark Bros. Bolt Co.
 Clark's of England, Inc.
 Clinipad Corp.
 Clopay Corp.
 Colgate-Palmolive Co.
 Colonial Fiber Co.
 Columbia Broadcasting System, Inc.
 Combustion Engineering, Inc.
 Conalco, Inc.
 Conco Surgical Products, Inc.
 Connecticut Stamping & Bending Co.
 Connecticut Tube Products
 Cooper Marketing Associates
 Cunningham Drug Stores, Inc.
 Curtis, S., & Son, Inc.
 Danberg Chemical Co.
 Danfield Threads, Inc.
 Demert & Dougherty, Inc.
 Dexter Corp.
 Diamond International Corp.
 Dixon, Joseph, Crucible Co.
 Doane, L. C., Co.
 Douglas Co., Inc.
 Dual-Lite Company, Inc.
 Duo-Fast Northeast, Inc.
 DuPont de Nemours, E. I., Co., Inc.
 Dynamics Corp. of America
 Eagle Lock Corp.
 Eaton Corp.
 Echlin Mfg. Co.
 Eltra Corp.
 Emhart Corp.
 Ensign Bickford, Inc.
 Exercycle Corp.
 Fafnir Bearing Co.
 Federated Distributors, Inc.
 Fenner American Ltd.
 Fitzgerald Mfg. Co.
 Flents Products Co., Inc.
 Fluted Paper Products Co., Inc.
 Foremost-McKesson, Inc.
 G.A.F. Corp.
 Gabriel Industries, Inc.
 Gane Bros. & Lane, Inc.
 Garcia Corp.
 General Electric Co.
 General Hardware Co.
 General Refractories Co.
 General Signal Corp.
 Georgia-Pacific Corp.
 Gilbert & Bennett Mfg. Co.
 Gold Leaf & Metallic Powders, Inc.
 Goodrich, B. F., Tire Co.
 Gross, John W., Co.
 Harloc Products Corp.
 Hatfield Wire & Cable
 Hercules, Inc.
 Herman's World of Sporting Goods—
 Div. of W. R. Grace
 Heublin, Inc.
 Holson Co.
 Hospital Marketing Services, Inc.
 Houghton, E. F., Co.
 Hubbell, Harvey, Inc.
 Hunt, Philip A., Chemical Co.
 Illinois Yarn Co.
 Imperial Eastman Corp.
 Ingersoll-Rand Co.
 Insilco Corp.
 Intercontinental Lubricants, Inc.
 International Telephone & Telegraph
 Jason Div.—The Scott & Fetzer Co.
 Jeffrey Power Trans.—Dresser Industries
 Jenkins Bros.
 Kahn & Co., Inc.
 Kaman Aerospace Corp.
 Kanthal Corp.
 Keene Corp.
 Keeney Mfg. Co.
 Kemp, W. H., Co., Ltd.
 Kennedy Mfg. Co.
 Key Book Service, Inc.
 King-Seeley Thermos Co.
 Klein, Mathias & Sons, Inc.
 Lancer Graphic Industries, Inc.
 Leigh Products, Inc.
 Limbacher Paint & Color
 Linbro Scientific, Inc.
 Lincoln Electric Co.
 Litton Industries
 Lok-Rak Corp. of America
 London Laboratories Ltd.
 Lunkenheimer Valve Co.
 Marvel Products, Inc.
 Mason Candlelight Co.
 Masey, A. H., Inc.
 McKinney Mfg. Co.
 Mead Corp.
 Merchandising Equipment Group
 Mesinger Mfg. Co.
 Midway Platt Co.

Midwest Distribution Services, Inc.	St. Regis Paper Co.
Miles Laboratories, Inc.	Stanbel, Inc.
Miller Co.	Standard Motor Products, Inc.
Minnesota Mining & Manufacturing Co.	Stanley Works
Mobil Oil Corp.	Star Pin Co.
Mohawk Curtain—Div. Century Curtain	Stationers Distributing Co.
Monarch Accounting Supplies, Inc.	Steecone Products Co.
Monsanto Co.	Steel City Corp.
National Distillers & Chemical Corp.	Sterling Drug, Inc.
New England Laminates Co., Inc.	Stewart Warner Corp.
North & Judd Mfg. Co.—Div. of Gulf & Western Industries	Stoody Co.
Norton Co.	Sunshine Art Studios, Inc.
Olderman Brass Mfg. Co.	Superior Electric Co.
Olin Corp.	Superior Industries Corp.—Div. of Coleco
Papercraft Corp.	Talley Industries Co.
Paulsboro Products	Teledyne-Ansonia Mfg.
Peder Industries, Inc.	Thompson, H. G. & Son, Co.
Penney, J. C., Co., Inc.	Timex Corp.
Perkin-Elmer Corp.	Tom-Wat, Inc.
Pitney Bowes, Inc.	Tooling Products, Inc.
Plano Molding Co.	True Temper Corp.
Polychem Corp.	Turner & Seymour Mfg. Co.
Polymer Industries, Inc.	U.S. Envelope Co.
Premier Industrial Corp.	U.S. Steel Corp.
Prym, William, Inc.	Ulbrich Stainless Steel, Inc.
Puritan Fireplace Furnishing Co.	Union Camp Corp.
Raaco Corp.	Union Carbide Corp.
Raybestos Manhattan, Inc.	Uniroyal, Inc.
Reichhold Chemicals, Inc.	United Aircraft Corp.
Remington Arms Company, Inc.	United Merchants & Mfgs., Inc.
Republic Foil Co.	United Shoe Machinery Corp.
Rex Packaging Corp.	Universal Wire Products, Inc.
Rhodes, M. H., Inc.	Van Brode Milling Co., Inc.
Rich's, Inc.	Vanderbilt, R. T., Co., Inc.
Risdon Mfg. Co.	Verplex Co.
Roebic Laboratories, Inc.	Victor Comptometer Corp.
Rolock, Inc.	Viking Pump Div.—Houdaille Industries, Inc.
Ronson Corp.	Viking Wire Co., Inc.
Rowland Products, Inc.	Vinyl Weld, Inc.
Russell, Burdsall, & Ward Co.	Virginia Industries, Inc.
Saab-Scania, Inc.	Voltare Tubes, Inc.
Sanitary Dash Mfg. Co.	Wallace Mfg. Corp.
Sargent & Co.	Waterbury Lock & Specialty Co.
Schick Safety Razor Co.	Western Publishing Co., Inc.
Schweppes USA Ltd.	Western Service & Supply Co.
Scovill Hee Co.	Westinghouse Electric Corp.
Scovill Mfg. Co.	White-Westinghouse, Inc.
Sessions, J. H., & Sons, Inc.	Whitestone Products Co.
Shelton Products, Inc.	Wiffle Ball, Inc.
Signal Office Products Co., Inc.	Wiremold Co.
Smith, John P., Co.	Witco Chemical Corp.
Smith, Seymour & Sons, Inc.	Woodstock Line Co.
Son Chief Electric, Inc.	Yankee Metal Products Corp.
Sponge Rubber Products	Young, W. F., Inc.
Sprague Meter Co.	

STATEMENT OF JOE G. FENDER, FOR THE NATIONAL CONFERENCE OF NONPROFIT SHIPPING ASSOCIATIONS

Mr. Chairman and Members of the Subcommittee: My name is Joe G. Fender. My address is 711 Fannin, Suite 802, Houston, Texas 77002. I appear in this matter on behalf of the National Conference of Non-Profit Shipping

Associations and its member associations; also, for the Oklahoma Shippers Association of Oklahoma City.

The National Conference is non-profit in nature as are its member shipping associations. Those associations at this time include the following:

Arizona Shippers Association, Inc., 4625 E. Broadway, Suite 210, Tucson, Ariz. 85711.

Dal-Worth Shippers Association, 212 North Good Latimer, Dallas, Tex. 75226.

Dayton Shippers Association, 612 Centre City Offices, 40 South Main Street, Dayton, Ohio 45402.

Houston Merchants Shippers Assn., P.O. Box 2241, Houston, Tex. 77001.

El Paso Shippers, Inc., P.O. Box 299, El Paso, Tex. 79943.

Great Falls Shipping Assn., Inc., P.O. Box 2165, Great Falls, Mont. 59401.

Gulf Freight Association, P.O. Box 702, Tampa, Fla. 33601.

Memphis Freight Bureau, Commerce Title Bldg., Suite 608, Memphis, Tenn. 38103.

New Mexico Shippers Association, P.O. Box 2165, Albuquerque, N. Mex. 87107.

Retail Merchants Association, 2309 Fannin, Houston, Tex. 77002.

Queen City Shippers Association, N-106 Union Terminal, 1301 Western Avenue, Cincinnati, Ohio 45203.

Toledo-Maumee Valley Shippers Association, Inc., P.O. Box 534, Toledo, Ohio 43601.

Utah Freight Association, P.O. Box 1409, Salt Lake City, Utah 32806.

Orlando Freight Association, 1520 Sligh Blvd., Orlando, Fla. 32806.

Billings Shipping Corp., P.O. Box 1176, Billings, Mont. 59103.

Kansas City Shippers Association, 700 Woodswether, Kansas City, Mo. 64105.

NORMA Shippers Association, P.O. Box 30240, New Orleans, La. 70190.

New Orleans Shippers Association, 500 North Claiborne, New Orleans, La.

Each of these associations is located in the city which its name indicates. Activities of each association consist of the consolidation of small shipments to a carload basis for the sole purpose of saving freight charges. The associations arrange for the consolidation of their shipments at origins such as New York, St. Louis, Philadelphia, Boston and Chicago and distribute to merchants in the town where the association is located. Members of the National Conference are bona fide cooperatives. They have no interest in the subject legislation apart from the interest of their membership so that in the final analysis I appear not for the associations but for their several hundred member companies in Dallas, Memphis, Billings, Montana, Salt Lake City and other places.

The National Conference has operated since 1957. Houston Merchants Shippers Association, one of the organizers of the Conference, commenced operations in 1950. It is the belief of the shipper members that they receive a good service from these associations which they control and operate. At smaller points such as Great Falls, Montana, shippers receive a service on small shipments which they could not obtain from any other source. Certainly, not from commercial freight forwarders. Furthermore, these associations have been a reasonably effective device for controlling costs on transportation. In any event, they are the only cost control which the shippers have had.

The shipper groups and their members oppose S-2083 because they feel that if it is enacted they will no longer have just, reasonable and non-discriminatory freight rates from the rail carriers; and the effectiveness of the shipping associations will be lost.

It is true that S-2083 provides that it shall be the duty of the forwarders and the railroads to negotiate contracts which are just, reasonable and non-prejudicial. However, unless there is something in this legislation which we fail to see or understand correctly, these provisions respecting lawfulness are strictly an admonition to the parties to the contract. There are no provisions whatsoever for implementing of these provisions. This provision for contracts as far as freight forwarders are concerned is to substitute for the comprehensive regulation of rail freight rates which others are governed by, which provide not only that rates shall be just, reasonable and non-discriminatory but also provide effectively for implementing and enforcing such provisions. Under the present scheme of regulation which will continue to apply to all users of rail freight service except forwarders, rail rates must be lawful; and if they are not, they are subject to review and revision and even to suspension by the Interstate Commerce Commission at the time of publication.

It is represented that S-2083 fills a regulatory gap; but in the view of the associations and shippers which I represent, it creates a complete regulatory gap wherever freight forwarders are involved which can only benefit freight forwarders at the expense of other users of rail service.

It is represented by the Commission as it is here understood that S-2083 will conserve energy, but that is preposterous.

It is only conceivable that energy could be saved by reason of this bill by diversion of traffic from truck to rail service. The traffic that will be affected by this bill is not truck traffic primarily but traffic suitable for consolidation which presently moves in forwarder service or in the service of shipper associations.

The bill will benefit freight forwarders unquestionably. They can negotiate rates with the railroads on their traffic. Probably, they can divert traffic to their service which is presently handled by shipper associations. Either or both ways, the shipper which uses freight service and pays the bills is bound to lose. The railroads' present financial condition is such that they obviously cannot concede rates or service to the forwarders without recouping their costs from their other customers. Also, if shipper associations, in the end, should no longer be able to operate because they cannot compete with forwarders on published rail rates, then the freight forwarders will operate without effective competition and shippers will lose the only protection that they have ever had against unreasonable rates on consolidated traffic.

The groups that I appear for believe that S-2083 is not an energy or cost saving measure and that it will only enhance the position of the forwarding industry at the expense of the users of a consolidating shipment on rail service. They submit that this bill is totally without merit and should not be voted out of this subcommittee.

Mr. CUNNINGHAM. I adjourn the hearing subject to the call of the Chair.

Thank you very much.

[Whereupon, at 1:07 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF JOE L. HERBERGER, TRAFFIC MANAGER, FOLEY'S, HOUSTON, TEXAS

Mr. Chairman and Members of the Sub-committee: My name is Joe L. Herberger, traffic manager, Foley's, 100 Distribution Center, 2103 Ernestine, Houston, Texas, a division of Federated Department Stores, Cincinnati, Ohio. I also represent the Houston Merchants Shippers Association, 2410 Commerce Street, Houston, Texas 77001. I am past president of this organization and presently serve on the executive committee.

I respectfully submit this statement in opposition to Senate Bill No. 2083 and request that it be made a part of the record of these public hearings. It is my understanding that this bill would allow freight forwarders to negotiate special rates with the railroads to be used by them exclusively.

Foley's uses the present services of the freight forwarders extensively and certainly are in favor of anything that is recommended by the Interstate Commerce Commission to strengthen their common carrier position. We have reservations, however, that this legislation could be harmful to our shipping association; and if these reservations are correct, we strongly oppose Senate Bill S-2083.

We respectfully submit this statement in opposition to the above bill and are mailing the necessary twenty-five copies and request that they be made a part of the public hearings.

Foley's is a strong supporter of Houston Merchants Shippers Association and move a large volume of freight via this association. Our shipments are both large and small but are predominantly less than three hundred pounds. Many of our shipments have a high value and require above average security measures.

Houston Merchants Shippers Association is sponsored by the Retail Merchants Association and was founded on September 10, 1950. They are presently consolidating our small shipments into volume loads, moving by rail either in trailer loads by plan 2½ or all commodity carloads. Our present consolidating points are New York; Philadelphia, Pennsylvania; Chicago, Illinois; Dalton, Georgia; Charlotte, North Carolina; and Los Angeles, California. Our present membership is approximately 135 members.

This association has proven to be specialists in handling our small shipments. Our transit time most frequently is better than common carrier service. Our freight charges are on an average of forty percent lower than the common carrier rates. This association is a non profit shipping association operating under Section 402c of Part 4 of the Interstate Commerce Act. Our attorney is Joe Fender and we follow his advice closely to make certain that our entire operation adheres one-hundred percent to the intentions and interpretations of the I.C.C. aforementioned 402c exemption.

We realize that this bill in itself does not indicate any intentions of Congress to enact legislation that would be harmful to our association, but is addressing itself to the existing problems of the freight forwarding industry. We must point out however, that the volume rates which our association are using, are the same rates that are presently being used by the freight forwarders, shippers, and shipping associations.

There are several large shipping associations that take individual trailers for large industries and "marry them" in order to take advantage of the plan 2½ rates presently being used by freight forwarders, shipping associations, and individual shippers.

We want to emphasize that our association is one composed of local Houston businesses, both large and small, pooling their small shipments into trailer and carload lots.

All common carriers refer to the small shipments as one of their major cost and claim problems. The National Motor Freight Classification Docket

746, Subject 35, is recommending drastic increase in rates on clothing, and limited liability on the part of the motor carriers when they handle our type of traffic.

Our shipping association is a good example of what shippers can do for themselves in solving the small shipping problem and we do not want to see any legislation enacted that would affect our efforts.

If this proposed bill were enacted into law, the results would have to be a reduction in revenue to the railroads. Depending upon the size of the reduction granted to the freight forwarders by the railroads. This reduced revenue on the part of the railroads would have to be recovered in some other area.

We all know the financial problems of the railroad industry. Therefore, we feel that it is a logical assumption that the volume rates which we are presently using, along with the freight forwarding industry and individual shippers, would have to be drastically increased or possibly abolished.

We feel there is the distinct possibility that the activities of our shipping association would be reduced in scope or possibly eliminated completely.

As traffic manager of Foley's, I feel the Houston Merchants Shippers Association has assisted the city of Houston in keeping freight costs down and has served as a tool to fight the severe inflation problem.

We oppose Senate Bill S. 2083 in its present form or in any form that could be interpreted as an effort to deter the activities of non profit shipping associations.

STATEMENT OF GERALD J. NICHOLLS, CHAIRMAN, TRANSPORTATION COMMITTEE,
NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

Mr. Chairman: My name is Gerald J. Nicholls, Manager of the Transportation Department of Noland Company, headquartered at 2700 Warwick Boulevard, Newport News, Virginia. The following comments regarding S. 2086 are made in my capacity as Chairman of the Transportation Committee of the National Association of Wholesaler-Distributors. The National Association of Wholesaler-Distributors is composed of 94 national commodity line associations which in turn are composed of over 30,000 merchant wholesaler and distributor establishments located throughout the fifty states. Sales by merchant wholesaler-distributor establishments are forecast by the Commerce Department to exceed \$500 billion in 1975. The association estimates that NAW affiliates account for approximately 60% of total industry sales, and 60% of the close to 4 million individuals employed in wholesale trade.

We have been vitally interested in through route and joint rate legislation as proposed over the years, and have as an association previously appeared before this Subcommittee in support of such bills. The bill presently under consideration (S. 2086) has as its objective amending Section 216 to authorize the ICC, after hearing and determination that such action is necessary or desirable in the public interest, to order through routes and joint rates between motor common carriers of property and between those carriers and carriers by rail, express, and water. Presently, the Commission does have authority to establish intermodal through route and joint rate agreements between rail carriers, water carriers and motor vehicle passenger carriers, and intermodal arrangements between rail carriers and water carriers. It is our belief that S. 2086 would authorize the Commission to establish through routes which are both efficient and economical. The bill would not only reduce fuel consumption, but establish joint rates which would be less than the sum of the present combination of applicable rates.

Such legislation would enable a wholesaler-distributor to enter into a single contract with the originating carrier on behalf of all carriers participating in the shipment. He could determine the single rate for the through movement by consulting a single tariff instead of the many he must contend with now. Joint rates are usually lower than a combination of rates, which currently apply without the through service arrangements. In the event of a loss or damage, our member would have the benefit of Section 20 (11) of recovering from either the origin or destination carrier. A shipper could plan and accept shipments in accordance with his needs with the assurance that there is an existing transportation service available.

The flow of products from the manufacturing segment of our economy to the end user is continuous, as wholesaler distributors anticipate demand,

order in advance and stock in their warehouses quantities of these products which they make available where and when needed. Obviously, to meet the requirements of the nation and every one of its communities, the wholesale distribution industry needs not only a vast network of warehousing, but also a strong system of available transportation. S. 2086 would do much to speed delivery of merchandise and lower the ever-increasing transportation costs our members face in performing the vital function of the nationwide distribution of commodities of all types.

Another problem our members must contend with is that of the ever increasing lead time required on merchandise ordered from suppliers which results in the wholesale distribution industry being forced to carry larger amounts of more costly inventories to meet consumer demands on a timely basis. This problem increases where supplies are ordered in less than truckload quantities (LTL) because of the growing neglect of small shipments and shipments to less populated areas of the nation by the trucking industry and the lack of ICC authority over through routes and joint rates. Our members, when unsure of delivery schedules and lead times on purchases, must either carry a larger inventory or suffer the risk of losing customers due to the unavailability in their warehouse of the needed commodity. The cost of carrying inventory is one of the highest overhead costs of the average wholesaler-distributor.

Mr. Chairman, put very simply the National Association of Wholesaler-Distributors wholeheartedly supports S. 2086 and urges its adoption. There is and has been for years a demonstrated need for such legislation to establish through routes and joint rates for all products from the source of supply to the point of need.

We appreciate the opportunity to express the views of the wholesale distribution industry on S. 2086 to your Subcommittee and urge its speedy adoption by Congress.

STATEMENT OF GEORGE RYAN, REPRESENTATIVE, 43D LEGISLATIVE DISTRICT,
ILLINOIS STATE HOUSE OF REPRESENTATIVES

Every now and then, legislators have an opportunity to evaluate the results of the laws they have made and the experience is always edifying. I say every now and then because the opportunity doesn't often occur. Either the effects are finally realized so many years after the law is passed that no one is left who remembers the reasons for the law in the first place, or changes are grafted onto the law so that the original intent is somewhat muddled by the subsequent developments. But the Regional Rail Reorganization Act is the kind of law that does give Congress a fine opportunity for evaluation. In the first place, the magnitude of the crisis was such that Congress constructed the Act in a way to require all agencies involved to act in a very few months instead of the many years that might have been expected with a matter this complex. In the second place, this Act not only gives the public as a whole an opportunity to comment on what is being done, but gives Congress an opportunity to review the product before it is implemented. I thought that was a good provision at the time I first saw this Act, and I am certain that my colleagues in the Illinois legislature share this feeling. This plan must be evaluated carefully because once approval is given the effects will be felt long after everyone now involved has passed from the scene.

I don't want to prejudge all the efforts of the U.S. Railway Association because I haven't seen the Final System Plan yet. I have followed the planning process, however, with respect to one particular line in my district and would like to comment on what I have been led to believe will be the plan's recommendation in respect to that line. And, just so we don't lose sight of our position, I would like to compare the plan's recommendation for this segment with the goals of the Statute. In this fashion I hope to be able to descend from the general to the specific and give you my evaluation of the product in the light of the Statutory specifications.

Regarding the line I am concerned with, the old Big 4 main line from Kankakee to Cincinnati through Indianapolis, the USRA divided it into segments and then assembled traffic and cost data for each segment. A computer program was devised which calculated revenue generated by the traffic and compared it to costs. If any particular segment of the line was profitable or needed for

through service, it was recommended for inclusion in ConRail. If not, it was deemed "available for subsidy" under Section 304 of the Act.

The result of this process is that the southern section from Indianapolis to Sheldon, Illinois, and the 3 or 4 mile section on the northern end of the line are designated for retention. But some 28 miles between the city limits of Kankakee and Sheldon, Illinois, are to be left out or "made available for subsidy" as the USRA puts it.

On its surface, this was not an illogical process, but does this product comport with the Statutory specifications contained in Section 206 of the Act? Listing them in reverse order and leaving aside the one related to passenger service in the northeast corridor, I submit that it doesn't. First, this product certainly won't minimize job losses in the various communities involved. Railroad abandonment in rural areas traditionally means the demise of rural farm communities that depend upon the railroad to bring in the lumber, fertilizer, seed, and other products they need and to haul out the large quantities of grain they produce. It will happen in the district I represent for we have no other available mode of transportation at comparable costs.

Certainly this product will not result in the movement of passengers from our communities in the most efficient manner consistent with freight operations. In a letter recently addressed to most of the shippers on the line, Mr. Paul Reistrup of Amtrak pointed out that Amtrak chose the Kankakee-Sheff line as the original routing for the famous James Whitcomb Riley passenger train because it provided the best routing through Illinois and Indiana. A copy of this letter is attached.

Nor does it appear to me that abandonment of this segment will improve our environment as Section 206 states that it should. Farmers will attempt to truck their grain and trucks use more fuel and cause more pollution and require more roads and road and bridge repair.

Nor will this plan "retain or promote competition of rail and other transportation services" in our communities, which is another goal of the Statute. Competition is difficult to promote when the one alternative to trucks is completely eliminated.

Moreover, utilization of transportation modes which require the smallest amounts of energy, another of the legislative goals, is hardly going to be furthered by this action—a matter so obvious that it requires no further comment.

Nor does this plan provide an adequate, balanced system to our communities, which is another of the "social" goals of the Statute. Absenting any usable waterway, railroads are the most adequate way of moving large quantities of grain. The removal of this rail line can only render the system less adequate.

But the critical question, perhaps, is whether this product is even responsive to the first goal of the Statute and the one I have saved to address last—namely, the financial viability of the system. We have all been most concerned about this aspect of the planning process since continued diversion of public funds to sustain the bankrupt northeastern service is obviously a fiscal impossibility. To that end, USRA is charged with the responsibility of fashioning a profitable railroad as well as one that is responsive to the more "social" goals of the Statute. And I submit that the proposed plan fails to achieve that goal. It doesn't because it mechanically looks backward rather than forward. It is a rail plan that might have produced a profit in 1973 had it been implemented then. It almost certainly will not produce profitability now or in the future. It won't because things have changed and the rate of change is accelerating. It won't because the very ineffectiveness of management, inadequate customer services and inefficiencies in operation that are to a great degree responsible for the bankruptcy of the present system are being built into CONRAIL.

Since 1973, fuel prices have skyrocketed and everything we learn indicates they will continue to climb. Because of the fuel efficiencies of the railroads, they should become more and more cost attractive to shippers. Our agricultural products have regained their historical importance in the world market. It now appears that America's counterpoint to Mideastern oil may very well be the rich farm products of our Midwest farms and their small communities served by the efficiencies of a comprehensive railroad system. Only last week we learned of yet another series of negotiations between representatives of the Soviet Union and American grain dealers that may result in another grain purchase of historical importance. The shortage of railroad facilities to handle the previous sale to the Soviet Union should alert us now. And lest we forget, that grain comes carload by carload out of small farms and communities

throughout America. These changes have been reflected in the structure of the agricultural industry in the Midwest where firms are expanding their operations at an unprecedented pace. For instance, a Decatur, Illinois, grain firm is in the midst of a major expansion into Lafayette, Indiana. This expansion will result in shipments totaling more than 16,000 rail cars per year, and much of the cars necessary would come from my district if there were a rail line to ship it on. The USRA plan is incompatible with this development for the simple reason that the planners did not look forward but looked backward.

In closing, I repeat that I don't mean to prejudice the Final System Plan or to belittle the planners involved. They are faced with an insurmountable task and have an impossibly tight schedule to meet. However, my experience with the planning process as it affects the district I represent reveals some fundamental flaws. The inadequacy of data and analysis and the errors of concept and of vision we have witnessed on this one small segment, about which you have received voluminous and detailed testimony, suggests that the problem is systematic and needs to be addressed on that basis. While I would be delighted—and, yes, relieved—to discover the segment I have talked about here is included as part of CONRAIL in the final system plan, I would continue to state that two legislative changes are in order:

1. Branch lines must be frozen while accurate data is collected.

2. A uniform branch specific cost accounting system must be implemented so that accurate costs may be developed for each branch.

And, finally, let me thank the committee for this opportunity to add my evaluative thoughts to an exemplary and innovative improvement in the legislative process.

AMTRAK,
July 1, 1975.

Mr. ROBERT R. SMILEY III,
Law Offices, Smiley & Lear,
Washington, D.C.

DEAR Mr. SMILEY: This is in reference to your letter of June 6, 1975 regarding the Kankakee-Snei Penn Central line.

Amtrak shares your deep concern for the future of the Kankakee-Sheff line. That segment was chosen by the Amtrak incorporators as a portion of the original routing for the Floridian and the James Whitcomb Riley because it was the best routing through Indiana and Illinois. As you know, neither train now operates over that line due to the badly deteriorated track conditions on the Penn Central.

Amtrak would prefer to operate the James Whitcomb Riley and the Floridian trains over the original route, including the Kankakee-Sheff segment. If the Congress were to authorize and appropriate the necessary funds, Amtrak would consider upgrading the lines to Class Five Federal Railroad Administration track standards (maximum speed on unsignaled tracks for passenger trains is 79 mph).

We have been working closely with the U.S. Railway Association to attempt to have the line segment included as a part of the Conrail system, and these negotiations are continuing. Ownership of the segment by the states seems to be out of the question. Amtrak is still very interested in working out an amenable solution to the problem of the Kankakee-Sheff line as a part of our overall improvements to the Floridian and James Whitcomb Riley routes.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

PAUL H. REISTRUP,
President.

LASH-TAMARON DISTRIBUTORS,
DIVISION OF TOYS "R" US, INC.,
Saddle Brook, N.J., July 22, 1975.

Hon. HARRISON WILLIAMS,
Russell Building,
Washington, D.C.

SENATOR WILLIAMS: We are writing you to register our opposition to Senate Bill No. S2083 which is a bill to amend Section 409 of the Interstate Commerce Act to authorize contracts between Freight Forwarders and railroads on an experimental basis, and for other purposes.

We utilize shipper associations in order to reduce our freight costs. Under Section 402 C of the Interstate Commerce Act not-for-profit shipper associations are exempt from ICC regulations. Freight Forwarders operate exactly the same way as shipper association except that they are regulated and are in business to make a profit.

Through the years, the regulated forwarders have consistently introduced legislation that would give them an advantage over shipper associations. Bill No. S2083 is just another attempt to drive shipper associations out of business. If the regulated Freight Forwarders are granted this privilege, they will immediately get an already financially troubled rail industry to subsidize their operations so that they in turn can cut their rates to a level that the non-regulated forwarder would be unable to meet.

This is discriminatory and not in keeping with our National Transportation Policy and we request you to vigorously oppose Senate Bill No. 2083.

Respectfully,

JOHN LEWIS,
Director of Distribution.

SOUTHEASTERN MICHIGAN SHIPPERS CO-OPERATIVE ASSOCIATION,
Detroit, Mich., July 22, 1975.

Surface Transportation Subcommittee
Subject: Bill S. 2083

GENTLEMEN: Referring to the bill to be heard July 28 and 29, 1975 to "Amend Section 409 of the Interstate Commerce Act to Authorize Contracts Between Freight Forwarders and Railroads On An Experimental Basis, and Other Purposes."

We are opposed to passage of the above bill and we submit the following justification.

The passage of the above bill would create additional financial burdens on the railroads—by adding to the present financial conditions the railroads are currently encountering. In the event, the bill becomes law then the railroads would encounter a reduction in revenue while the volume of traffic remains the same. In addition a railroad in a poor financial condition would be forced to bid for the freight forwarder traffic in order to preserve their volume of traffic. Wherefore, it is quite possible that under these circumstances that the level of charges established under the Section 409 Contracts would not be sufficient to cover their direct costs.

Section 409 Contracts usually are set-up on the basis of a charge per 100 pounds on Freight, All Kinds, which in a layman's term applies on every commodity being shipped and less than the published prevailing rates, which means that the freight forwarders will enjoy Special Rates not available to the shipping public. Wherefore, the railroads common carrier liability remains the same, that is, the railroad is liable for the loss and damage to the merchandise while in the possession of the railroad. This type of rate making would undoubtedly result in higher transportation to products not moving with freight forwarders.

The above bill is a measure to improve the financial condition of the freight forwarder at the expense of the railroads and the shipping public and we urge your Honorable Committee to decline passage of S. 2083.

Very truly yours,

HARRY PHILLIPS,
Traffic Manager.

PIGGY BACK SHIPPERS ASSOCIATION OF FLORIDA, INC.,
Hialeah, Fla., July 22, 1975.

Reference Bill No. 2083.

HON. LAWTON M. CHILES,
*U.S. Senate, New Senate Office Building,
Washington, D.C.*

MY DEAR SENATOR CHILES: This letter to you expresses our strong opposition to the forementioned Bill and I would appreciate, if after your handling, you would forward to the proper committee that handles such matters.

We are a Shippers' Association and as such represent some 5,000 Shippers and/or Consignees that do business within the State of Florida.

In our opinion, the forementioned Bill would permit the freight forwarders to negotiate a lesser rail rate than is available to our shippers.

This Bill would also permit the freight forwarders to have a concession that could not be coped with by the shippers that are presently using the rails. This concession would consist of various commitments, equipment availability, leases and even substitute deliveries by the rail carriers. In other words, this Bill would be a discrimination against shippers with the like kind of traffic moving under similar circumstances and conditions.

Since September or October of 1972, our shippers have been subjected to railroad increases in excess of the 30%. If this Bill were permitted to the freight forwarders, that industry would negotiate a cheaper rate and the American public would be forced to pickup the tab in the form of a rate increase to offset their negotiations.

If this Bill were passed, there is nothing stated that would guarantee that the freight forwarders would reduce their rates to the American public. In essence, this Bill is nothing more than a glorified rate increase on the already financially troubled American public.

This legislation has been before Congress for some time and Interstate Commerce Commissioner, Murphy, is also strongly opposed to such a measure. In his dissenting opinion he touched on such subjects as the already financially troubled railroads, favoritism that would be forced on the railroads at the expense of their other shippers, and he further states that it represented a serious, unwarranted departure from the Federal Transportation Regulations.

This bit of legislation is of a very serious nature and deserves much more thought than has evidently been given to the subject matter. If railroad rates are to be negotiated, then let them be negotiated for the American public and lower the rates for all.

Very truly yours,

FRANKLIN E. FREDERICK,
General Manager.

AMERICAN FEED MANUFACTURERS ASSOCIATION, INC.,
Arlington, Va., July 25, 1975.

Senator VANCE HARTKE,
*Russell Senate Office Building,
Washington, D.C.*

DEAR SENATOR HARTKE: I am writing you on behalf of the American Feed Manufacturers Association, Inc. (AFMA) with headquarters in Arlington, Virginia. This Association is a non-profit organization which has been in existence for over 66 years and is a national trade association with 581 member companies, 242 who are United States manufacturers of livestock and poultry feeds. The members of AFMA account for approximately 70% of the total tonnage of feed which is sold by primary feed manufacturers in the United States.

There are a substantial number of AFMA members who actively participated in the ICC (RSPO) hearings which were conducted in March 1974 and in March 1975 relative to the Secretary of Transportation's Report entitled "Rail Service in the Midwest and Northeast Region" (The "DOT Report") and the "Preliminary System Plan" of the United States Railway Association respectively under the provisions of the Regional Rail Reorganization Act of 1973.

Many AFMA members have a vital concern and serious interest particularly in the light density line issue and the ultimate resolution of that issue. During the above mentioned ICC hearings frequent comment and evidence focused on the lack of precise and accurate data which the DOT and USRA used in their evaluation of light density lines. Their use of averages and/or estimates are leading to damaging conclusions which will serve to be irreparable and irreversible for communities and shippers who find themselves completely dependent upon light density lines which are not recommended for inclusion in the restructuring process of the Final System Plan or left in a questionable area under a State Plan which may or may not be subject to Rail Service Continuation Subsidies.

In recognition of the serious implications facing AFMA members who rely solely on a light density line for rail service and are threatened with the loss of rail service, the Board of Directors of AFMA voted at their annual meeting

on May 12, 1975 to support legislation which would amend the Regional Rail Reorganization Act of 1973 in order to provide for a 100% Federal Funding for at least two years the light density lines in lieu of a 70% Federal sharing of a rail service continuation subsidy.

Such amendment would assure continued operation of the light density lines for at least two years and provide the opportunity for more accurate and precise cost and revenue data than has been available in the development of the Final System Plan by USRA.

In some cases the amount of rail traffic generated by a given community is substantially more than that estimated in the data on which decisions to discontinue service have been proposed. We believe that decisions to continue or discontinue rail service to various communities and/or plants should not be made until accurate information has been accumulated as to the amount of rail traffic on the lines under consideration. The two year 100% Federal funding which we endorse would provide time for the accumulation of the information needed.

Therefore, AFMA respectfully wishes to endorse pending legislation such as S. 1679 and S. 1946 that would provide further interim Federal Subsidy for at least two years and afford opportunity for the development of more reliable cost/revenue data on the light density lines which are not being recommended in the Final System Plan.

Very truly yours,

ROYLE L. SPRUNGER, *Chairman,*
Executive Transportation Committee.

THE FERTILIZER INSTITUTE,
Washington, D.C., August 5, 1975.

HON. VANCE HARTKE,
U.S. Senate, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HARTKE: The Fertilizer Institute is the national trade association, representing by voluntary membership more than 90% of the producers, manufacturers, dealers, distributors, transporters, and equipment manufacturers of fertilizer and fertilizer material.

The Fertilizer Institute wishes to submit, for the record, the attached statement and this letter to the Senate Committee on Commerce, concerning:

- S. 863 "Local Rail Services Act of 1975."
- S. 1217 "Rural Rail Preservation and Improvement Act."
- S. 1396 Amending the Regional Rail Reorganization Act of 1973.
- S. 1476 "Modern Railway Transportation Act."
- S. 1679 "Light Density Railroad Lines Evaluation Act of 1975."
- S. 1879 "Conversion of Abandoned Railroad Rights-of-Way Act."
- S. 1946 "Local Rail Service Amendments of 1975."

Branch line service is of vital interest to agriculture and its input suppliers. The bulk of the nation's grain production originates on these branches. Corn and wheat are classic examples and proof of their need. Millions and millions of the 45 million tons of fertilizer used this year terminate on branch lines. Loss of these lines would be tragic to the farmers as well as the agri-input retailers. The true cost of their physical removal would be less and higher priced food.

We appreciate the opportunity to present these statements and urgently request their favorable consideration. Should the Committee need additional data to assist in its deliberations, we would be pleased to provide whatever is needed.

Respectfully submitted,

EDWIN M. WHEELER, *President.*

STATEMENT OF THE FERTILIZER INSTITUTE

The Fertilizer Institute presents its views on the seven bills before this Committee relating to railroad branch lines. Rather than commenting on each specific bill and its contents, the Institute would like to present to the Committee what it believes should be the guiding principles in consideration of any ultimate legislation concerning the railroad branch line service issue.

When examining the issues relating to branch line service, it must be continually borne in mind that branch lines cannot be regarded as existing in a vacuum. They are parts of a whole. Railroad systems are nothing more than the aggregate of branch lines and main lines that tie the branches together with major terminals. A substantial portion of the traffic that moves over the main lines terminates and originates, or both, on branch lines. This should be as important a consideration to the rail carrier as it is to the shipper and receiver located on these branches.

Likewise, when examining such thorny and complex issues as "branch line economic viability," it must be realized that individual branches are almost always affected by economic factors which affect an entire railroad system. The factors which are identified as affecting the economic viability of a specific branch line are often caused by, or are a part of, more system-wide factors. Thus, when any given set of viability criteria are applied to a specific branch line, and the determination is made that the branch line ought to be abandoned or subsidized, there is the real danger that the root cause of the low economic viability will go undetermined and unremedied, because only a symptom of a much broader system-wide problem has been considered.

For example, we have yet to see any serious examination of what the actual variable cost of branch line service *ought* to be. The carriers provide reams of data alleging what such costs are, but no one seems concerned about whether these costs are in fact necessary for adequate branch line service. The Institute maintains that if many of the real problems confronting the railroads were dealt with, branch line service would become virtually a dead issue. If these problems were effectively solved, a ConRail or investor-owned carrier could probably serve most of the existing branch lines in the Northeast and Midwest and make an over-all profit. As the Institute views it, there are at least four major areas in which this Congress can take effective action to preserve branch line rail service without requiring users or taxpayers to provide substantial subsidization. These areas are:

1. Local property taxation of rail plant;
2. Railroad work rules;
3. Railroad equipment requirements;
4. Railroad operating rules.

The Institute does not pretend to have pat solutions in all of these areas, but we know enough about rail transportation from our collective experience to know that there are significant problems in each which have unnecessarily detrimental effects on the economics of branch line service. We are recommending what we believe is a fresh approach to the branch line service issue. Each branch line should be examined to determine how it can be adequately served with the *least cost* and not measured against the standard of what the service *currently* costs.

It seems to us to make no sense at all for shippers to pay higher rates or for the nation's taxpayers to pay subsidies to maintain branch line service if local taxing authorities are permitted to continue to contribute to the cost of the service through the levying of local property tax on rail plants. In 1973 alone, nearly \$181 million was paid in local property taxes by the railroads in the 14 Northeast and Midwestern states. That was 41% of the total property tax bill paid in that year by the nation's railroads.

Why must trains serving branch lines be operated by 4 and 5 man crews if it can be determined that 2 or 3 crewmen can do the job adequately and safely? We are not aware of any recent objective study of this question. We would commend to this Committee for its careful consideration, however, the economic and safety experiences of the Florida East Coast Railway Company in reducing train crew size. Closely associated with this issue is the determination of minimum and appropriate equipment for branch line service. Caboose are expensive items of equipment, both to acquire and to maintain. If train crews can be reduced to 2 or 3 persons, perhaps the use of cabooses can be eliminated or greatly reduced. Again, we point out that the Florida East Coast Railway Company has been operating its mainline trains without cabooses for some time with quite adequate safety. If trains of 100-plus cars moving at mainline speeds can be operated safely in this manner, it would seem reasonable to assume that some branch line trains could be, also. We realize that some branch line switching operations require the use of crew cars for greater safety and efficiency. We doubt, however, that any major rail carrier has ever

studied the need to use such equipment on *all* branch line operations. Likewise, the motive power used in branch line service ought to be carefully examined to insure that maximum efficiency and minimum costs are being realized.

Operating procedures and requirements and their effect on individual branch line service costs present a more complex situation. But anyone familiar with railroad operations can tell you that many existing procedures contain unnecessary hidden costs which are ultimately attributable to branch line service. Perhaps the carriers themselves are the most logical ones to determine what efficiencies can be achieved in this area and how. But there seems to be little or no incentive to do that so long as requested rate increases are granted regularly, and the prospect of wholesale abandonment or massive subsidies appear to be waiting in the wings. Stringent "encouragement" by Congress to improve operating efficiency might well produce substantial economic benefits.

Of course, effective solutions in the four areas just discussed do not have significant direct bearing on the other major problems confronting Congress insofar as branch lines of the marginal and bankrupt carriers are concerned. That problem is the one of line rehabilitation costs necessitated by years of deferred maintenance. There is considerable temptation to include rehabilitation costs in assessing overall branch line economic viability. But we do not think this should be so. The system of cost accounting used by the nation's railroads, and upon which freight rates are based, assumes that the railroads maintain all lines at or above the original level of utility. This is patently not the case for many branch lines. The railroads have been disinvesting these lines for years through deferred maintenance. But the users have been paying freight rates that are based upon the assumption of continuation of that investment. If users should be required now to provide all or part of the cost of rehabilitation—and we believe they should not—the cost should be borne as equally as possible across the board and not assessed primarily on those users who happen to be located on disinvested branch lines.

Finally, the Institute believes Congress must examine the over-all economic impact Amtrak passenger service on individual railroads, particularly in the Northeast and Midwest, to determine whether this impact is showing up in branch line service costs. Although we do not have the hard data at hand to provide the answer, we strongly suspect that this may be the case. Certainly the users of the nation's rail freight services should not be called upon to subsidize passenger service.

In summary, the Institute urges this Committee and the entire Congress to look closely at potential means of eliminating the unnecessary costs of branch line service. We believe that if this is done adequately and *soon*, most existing branch line service can be maintained at a much lower additional expense to the users and taxpayers.

SQUARE D Co.,
Florence, Ky., August 7, 1975.

Senator VANCE HARTKE,
Dirksen Office Building,
Washington, D.C.

DEAR SENATOR HARTKE: Thank you for the opportunity to appear before your Sub-Committee on July 29, 1975, on Senate Bills 2083, 2084, 2085 and 2086.

It occurred to me that I didn't respond clearly to your question on why I was not worried about contract rates between Freight Forwarders and Railroads posing a potentially unjust discriminatory situation. I called Paul Cunningham and he suggested I put my thinking in writing for the record.

The Square D Company is a big user of Shippers Associations and they have provided a good service at a substantial savings to us and many other shippers through the years. Based on this, I suppose I should have strongly opposed Senate Bill 2083. However, I also feel that the Freight Forwarders are needed in our transportation picture, especially for the shipper of small shipments.

At one time, the Forwarders that we used in the Milwaukee area did pass on lower rates to shippers in the form of "package rates", but the fantastic increase in the cost of local motor carrier delivery, particularly in the Eastern seaboard area, caused the Forwarders to pull off the package rates and substitute "class stoppers" to bring rates up to be in line with rising costs. The Forwarders just couldn't make a profit on traffic delivered away from their terminal areas.

The relatively few Forwarders in the business today (I believe you said 140 or so) are not at all strong, financially—certainly nowhere near as powerful as most other modes. I believe that if they get reduced rates from the Rails, they will have to reduce their charges to the Shippers in order to compete with the Agents and Associations. Everybody wants more freedom of pricing in transportation and here is a chance to try it out for a limited time.

I'm sure it's difficult to see just what affect this legislation would have on the Shippers Associations. I wouldn't want to see them go under either, as they have provided a good service in an unregulated area.

I still feel that, carefully monitored, the experiment would be worth a try. For what they're worth, these are my thoughts.

Thank you again for the privilege of appearing before your Sub-Committee.

Sincerely yours,

C. DYKE PAGE,
Director of Transportation.

NATIONAL RETAIL MERCHANTS ASSOCIATION,
New York, N.Y., August 11, 1975.

MEMBERS, SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE COMMITTEE ON
COMMERCE,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I am writing on behalf of the National Retail Merchants Association "NRMA", to present testimony on bills now before your subcommittee.

By way of background, NRMA is a non-profit national trade association composed of approximately 3,000 corporate members, operating more than 30,000 retail outlets throughout the United States. These stores account for approximately \$80 billion in annual sales and range in size from large retail department store chains to small specialty shops. Our members employ more than two million people. We estimate that, in the course of a year, NRMA's member stores handle some six billion transactions, an average of some 30 transactions for every man, woman and child in the United States.

Transportation and the regulations under which it functions are of deep concern to NRMA. After due consideration, by our Transportation Committee, we submit the following recommendations regarding subject proposed legislation endorsed by the Interstate Commerce Commission:

Bill S-2083, Amendment to Section 409 of the Interstate Commerce Act. NRMA is opposed to the provisions of this bill. While the Interstate Commerce Commission's motives in recommending this legislation are undoubtedly sincere efforts to prevent further decline in the forwarding industry, NRMA does not believe it is in the best interest of its members to allow freight forwarders, exclusively, the ability to establish contracts with railroads. From an economic standpoint, freight forwarders rarely compete with motor carriers. More often than not, freight forwarders maintain rates identical to motor carriers. Motor carrier rate competition (as may be seen from the Commission's findings in Ex Parte 297 Rate Bureau Investigation) in the past five (5) years has had a tendency to be stifled. This lack of sufficient competition amongst motor carriers and between forwarders and motor carriers necessitates a competitive alternative. This competitive alternative exists in the form of Shipper Associations. To extend to freight forwarders the privilege of negotiating contract rates with railroads without extending a like privilege to Shipper Associations would undoubtedly result in the eventual elimination of Shipper Associations as a competitive force in transportation.

Bill S-2086, Amendments to Section 216 of the Interstate Commerce Act—NRMA endorses and supports this bill which would grant the Interstate Commerce Commission the authority to establish through routes and joint rates amongst motor carriers and between motor carriers and other common carriers. Selective establishments and/or cancellation of joint rates has been used by some motor carriers as a means to discourage undesirable traffic. The provisions of S. 2086, once enacted, will enable the I.C.C. to insure the more effective use of the nation's common motor carrier system in the best interests of the shipping public as well as the carriers.

We urge that the Subcommittee give consideration to these comments in the interests of the consumer by promoting a competitive environment in the forwarding industry.

Sincerely yours,

JAMES R. WILLIAMS,
President.

THE LOCAL AND SHORT HAUL CARRIERS NATIONAL CONFERENCE,
Washington, D.C., August 14, 1975.

HON. VANCE HARTKE,
*Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR SENATOR HARTKE: This is in reference to S. 2086 which would authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers, and between motor carriers and rail, express and water carriers.

Mr. Peter T. Beardsley, vice president and general counsel of American Trucking Associations, Inc., appeared before your subcommittee on behalf of the trucking industry in support of S. 2086 at hearings held July 28, 1975. This Conference enthusiastically endorses ATA's support of this bill.

In fact, your records will reveal that we have testified several times in support of previous similar measures, the most recent in the last Congress on S. 2628 at a hearing held May 4, 1972. Copies of the Conference's testimony then are enclosed for ready reference. We also wrote you October 30, 1973, urging enactment of S. 2628.

The purpose of this letter is to reiterate strongly our desire to see this legislation enacted into law and to request that this letter and enclosures be incorporated into the official record of hearings on S. 2086, if possible.

Sincerely,

FRED G. FAVOR,
Executive Director.

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