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TO AMEND THE INTERSTATE COMMERCE ACT TO CONTINUE TO ALLOW RAILROAD RATE FLEXIBILITY

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HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 3260

TO AMEND THE INTERSTATE COMMERCE ACT TO CONTINUE TO ALLOW RAILROAD RATE FLEXIBILITY

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JULY 12, 1978

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AMEND THE INTERSTATE COMMERCE ACT TO CONTINUE TO ALLOW RAILROAD RATE FLEXIBILITY

WEDNESDAY, JULY 12, 1978

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

The subcommittee met at 10 a.m. in room 235, Russell Senate Office Building, Hon. Russell B. Long (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR LONG

Senator LONG. Today's hearing is for the purpose of examining one of the most serious and perplexing problems associated with the American railroad industry.

Since the tail end of the devastating winter of 1977–78, American shippers have been beset with car shortage and car utilization problems in all areas: steel, energy, agriculture, raw materials, and others. These disruptions in the orderly movement of agricultural and manufactured goods have profound effects on the economy by increasing everybody's cost of doing business.

When there are unusual circumstances present such as very severe cold weather, lengthy strikes, or two grain crops coming to market simultaneously, we can understand that some temporary shortages will occur. On the other hand, data relating to car ownership and car utilization indicate trends that would seem to give permanence to the problem.

In the area of plain gondola cars, for example, we are told that during the decade from 1968 to 1978, the ownership by our railroads of these cars has dropped from 176,000 to 132,000. The total supply of cars has also decreased, from 1,642,000 in 1962 to 1,341,000 in 1976. In the area of car utilization, the average turnaround time for all cars has increased from 19.85 days to 21.63 days during the period 1961 to 1976.

[The bill follows:]

[S. 3260, 95th Cong., 2d sess.]

A BILL To amend the Interstate Commerce Act to continue to allow railroad rate flexibility

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (i) of subdivision (b) of section 15(8) of the Interstate Commerce Act (49 U.S.C. 15(8)(b)) is amended by striking all that follows the phrase "of this part" the first time it appears and inserting in lieu thereof "; or".

SEC. 2. Section 15(8)(c) of the Interstate Commerce Act (49 U.S.C. 15(8)(c)), is amended—

(1) by striking "within 2 years after the date of the enactment of this subdivision" in clause (i), and inserting in lieu thereof "prior to January 1, 1983";

(2) by inserting "and" after the semicolon in clause (ii) ; and

(3) by striking clauses (iii) and (iv) and inserting in lieu thereof a new clause (iii) to read as follows:

"(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision during any calendar year is not greater than 7 per centum of the rate in effect on January 1 of that year.".

SEC. 3. Section 15(8) (d) of the Interstate Commerce Act (49 U.S.C. 15(8) (d)) is amended by striking "clauses (iii) or (iv)" from the last sentence, and inserting in lieu thereof "clause (iii)".

Senator LONG. Our witnesses today represent very broad experience in dealing with these problems and I am certain their comments will be helpful. I would now like to call our first witness, Hon. A. Daniel O'Neal, Chairman of the Interstate Commerce Commission—ICC.

Mr. O'Neal, we are happy to have you here today and will put your statement in this record. We hope that you could summarize it, Mr. Chairman.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY JOEL BURNS, DIRECTOR, BUREAU OF OPERATIONS; AND JAN ROSENAK, DIRECTOR, SECTION ON RATES

Mr. O'NEAL. With me on my left is Joel Burns, who is Director of the Bureau of Operations, and on my right is Jan Rosenak, who is Director of the Section on Rates at the Commission. I will discuss very briefly some of the causes of the rail car shortage that we have today, and the Commission's efforts to deal with this shortage.

And we will discuss the rate legislation proposed by the Department of Transportation—DOT—as you indicated in your opening statement.

Some of the reasons for current shortages relate to market conditions and the handling of grain at sale. There was a bunching of sales this year because there wasn't that much grain moved last year.

In conjunction with that, exports of grain this year have, at least the gulf ports, exceeded any other year in history.

In addition, of course, we had severe weather conditions last winter which interfered with carriers' abilities to move cars rapidly. The industry is still recovering from the drastic drop in car utilization caused by these severe winter conditions, especially in the Midwest and Northeast.

In the past the Commission has relied primarily on the issuance of car service orders to deal with shortages of this kind and to improve car utilization. Recently our field staff has reported an inordinate amount of noncompliance with service order No. 1309, which requires railroads generally to move cars within 24 hours for certain phases of their operations. The ICC has taken a number of enforcement actions as a result.

We believe that car service orders have worked. They have spread around the available car supply more equitably. They don't produce more cars. The lawsuits that we have initiated for violations of our

service orders seem to be sparking a move toward voluntary compliance among other carriers.

The subcommittee asked our feelings on new legislation. I am inclined to believe that insofar as the ICC's authority is concerned, the present statutes are probably adequate. Some thought should perhaps be given, however, to incentives for consolidation of the facilities—both railroad facilities as well as perhaps facilities of agricultural shippers—yard modernization and perhaps for the establishment of a national car fleet of some kind. If changes appear necessary in our statute as we work with the new programs that I will briefly mention here, we will request additional legislation from the Congress.

The Commission has taken several other actions—we have implemented changes in the ratemaking procedures pursuant to the 4–R Act, which are designed, among other things, to improve car utilization.

It is difficult to gage the potential effectiveness of these changes, because the railroads have not used this new rate flexibility except on five occasions.

While one theory of this new flexibility, which was provided by the act, was to induce the railroads to increase and/or decrease rates to accomplish such objectives as reducing the seasonal impact on demand, so far the railroads have used this flexibility, as I mentioned, few times, and only for increases, except in one minor decrease.

Last week the Commission approved a series of suggestions developed by our Bureau of Operations for improving freight car utilization. For the long range, we plan to initiate actions in several areas, including development of improved data base, alternatives for carrier operating practices and rate structures, and encouragement of joint rail-barge rates to move grain from interior points to river points for transfer to barges.

The Commission is also giving serious consideration to a number of specific short-range recommendations developed by the Bureau of Operations, such as suspension of all freight car assignments for specific shippers and permitting them to be loaded by any shipper in any direction and supporting a permanent 10-percent tax credit for capital investment by railroads.

Both the long-range and short-range proposals are discussed much more fully in the written statement submitted for the record.

I would like now to discuss the DOT's rate proposal, S. 3260. This bill would modify and extend for 5 years the 7-percent no-suspend zone provided for in the 4–R Act, the so-called yo-yo provision. It would prohibit suspension of an individual rate increase solely on the grounds that the rate increase is too high; also it would discourage suspension of reductions totaling less than 7 percent annually.

This bill differs significantly, I think it is important to note, from the 4–R Act yo-yo provision, because it would prohibit suspension even if the carrier had monopoly power—that is, for those movements where the carrier had no competition. That is directly contrary to the policy Congress built into the 4–R Act that allowed pricing flexibility, but gave the Commission the power to protect the public where such competition did not exist. Thus, the effect of this bill is to permit the

railroads to increase their rates without fear of suspension, even in markets and perhaps especially in markets where competition does not affect their ability to raise prices. Captive shippers would be forced to accept the increase and either absorb or pass it on to the consumer.

The proposal will not have any effect where the railroads have no monopoly power, because the present standards that are now in existence allow the rails freedom to change rates in those instances. If this provision is adopted, it should be expected that the railroads will increase rates, particularly on those routes where competition is inadequate, such as for example, some movements of coal and grain and many other commodities.

It is important to emphasize here, I think that consideration of market dominance in the yo-yo provision does not impose an undue burden on the railroads. While in our existing regulations we do impose a heavy burden of proof on shippers. They must show not only that they would be harmed by failure to suspend, but also that there is a likelihood that they would prevail on the merits of the proceeding. This includes a likelihood that they can prove market dominance. As a result, there have been very few suspensions by the Commission in rate filings under this new procedure.

Also the yo-yo increase allowed under S. 3260 would be in addition to the general increases which are used continuously by the railroads. Since early 1976, railroads have been granted general rate increases totaling about 18 percent. It is important to note that increases under the yo-yo would be added to any general increases. Such increases on top of general increases would not seem appropriate at a time when this country is searching for answers to the inflation dilemma.

It is important to note as well that the possibility that the Commission might find that the rate unlawful after an investigation does not save the provision, because of the difficulty in compensating the ultimate payer of the freight costs.

We would be happy at this point to try to answer any questions which you might have.

Senator LONG. How would you characterize the next 2, 3, or 6 months in terms of what shippers can expect in cost and charges?

Are things going to get better or worse?

Mr. O'NEAL. We can't be too precise. We are pretty sure that the current shortage is going to continue probably for the next 6 months. Just exactly what shape it will take will depend upon the market conditions.

For example, how much grain can be held at the country elevators and will the markets be sufficient to cause the farmer to want to sell the grain. These kinds of conditions have a big bearing on the situation.

Mr. BURNS. I would simply like to say that there are some definite trends in the situation, even with respect to grain car shortages. They are reducing the shortages in some types of cars rather substantially.

In other types, only gradually, but there is a definite trend now toward an improved situation. I would agree with the chairman that the shortage will probably be at least 6 months, maybe for the rest of the year, with respect to grain cars.

Senator LONG. In your May 5, 1978, letter to me concerning shortages of cars, you noted that the Commission was monitoring domestic steel shippers, and if necessary, the ICC would move to supply per diem charges on gondolas.

What has developed on that situation since that time?

Mr. O'NEAL. We were collecting or developing a record, and that record has now been developed. We are now at the point where a decision is imminent on whether to propose a per diem for gondolas.

We are about to decide whether the information available sustains or justifies the imposition of incentive per diem.

Senator LONG. I would hope, Mr. Chairman, that you will move the Commission to make decisions. I think you heard me tell a story yesterday of the experience I had as a young lawyer reviewing some of the court-martial cases.

I finally had to decide to go ahead and decide what ought to be done about all of those things and make up my mind rather than just sit there and think about it. When I did, I was a lot better off and so was everybody involved, including those poor fellows sitting up there in jail waiting for something to happen.

Whether they're going to be turned free—they ought to be turned free or sentenced if they were to be sentenced, but something had to be decided. I really think in some of these cases you do the country a better service to make a decision, even if it is wrong.

I have enough confidence in you and so did the President when he appointed you to know that you are going to be right more often than you are going to be wrong. But even if you are wrong, you could always change it back, if you found out you made a mistake.

The worse thing is not ever deciding anything. You aren't the only one. It happens all over the Government, a bad situation that could be improved on, if somebody would just get off the dime and make a decision.

I think we are going to be a lot better off on taking a chance of your making a mistake than to sit there with nothing happening when the situation ought to be corrected.

Mr. O'NEAL. I could not agree with you more. I think we need to speed up decisions. I think we have made a substantial impact in speeding decisions by the Commission.

In fact, in the enforcement actions that we have been taking in the last several weeks, I think we have made an effort to insure that those actions came at a time when the shortage was actually in existence. So, instead of delaying the action, as had been the practice in the past we have tried to speed up decisions generally.

In this particular case, the Commission made an effort, when it first addressed the idea of incentive per diem for gondolas, to anticipate a shortage when one did not actually exist, when the case was before the agency. It relied upon an econometric model that our Bureau of Economics had developed and used. I think it was originally developed by Chase Manhattan. And just as the decision was about to be made, new data came out which did not support the decision, and we could not legally go forward with it, and it threw the thing out of whack.

That is why we had to go back to the starting point. That is what fouled up this whole decision. At any rate, I hope we can get it out quickly.

Senator LONG. In the same letter I wrote to you, and in your response to me, you stated that the Commission's intent was to substantially increase the basic per diem charges to virtually all cars, including gondolas. However, the charges will not apply until 1979.

Is there some way that these charges can begin sooner so that the car supply can be built up faster?

Mr. O'NEAL. The problem with it is that in order for those charges to be applied by the railroads, they need to have an experience over a period of time so that they know what charges can apply. The data just will not be available from the railroads until the end of this year, so they will not really know how to apply the information.

That is the problem. The decision is made. The thing is on its way. There are some questions, and there have been some collateral issues raised about the exact nature of the thing, but we are at a point where we have to collect the data.

Senator LONG. It seems to me that with something that is in short supply and you are going to need a lot more of it, the way to get a lot more of it is to let somebody make a profit.

Now, when you have got plenty of it, then you can sit back and, if you want to, you can regulate it very tightly. But if you want to get rid of a shortage, the way to do it is to let somebody make money by producing more of that commodity.

On your end, you can do it on the rates or the fees. I am also chairman of the tax-writing committee. We can provide some tax subsidy. But why do you not do it? You have the power and, I think, the duty, when something is in short supply to get it; and the way to get it is to let them make a profit on it.

Mr. O'NEAL. That is what we are trying to do to increase the fee, the return on investment in the rail cars.

Senator LONG. Why not kick it up now and if, in 1979, you discover that you have been too generous, cut back?

Mr. O'NEAL. There are several things that I ought to mention here. One is that we tried to do this in an orderly way. The Commission, under the 4–R Act, was required to establish a new uniform system of accounts for the railroad. That has been done. This has been tied into that system.

In addition, the Commission does have some authority to look at emergency measures. There is one option which the Commission has never used, the imposition of short-term high per diem rates. One of the difficulties of using it is—and I guess one of the reasons it has never been used is that it is likely to impose a very high cost on the terminal railroads, particularly railroads like those in the Northeast, ConRail and so forth.

Senator LONG. If I can believe what I am reading in the magazines and newspapers, people are paying money under the counter, sliding money beneath the table to get cars. Have you been reading some of that sort of thing?

Mr. O'NEAL. We have heard of those kinds of things.

Senator LONG. A fellow gets desperate to move something around, and if something is worth a lot more at the port than it is out in the boonies, and then people will get transportation, and if they are desperate, they can be expected to do things like that.

It is better to let people pay above the table than beneath the table.

Mr. O'NEAL. I agree totally.

I want to mention that this is one of the things that we are looking at in the short term. Now, the question is should we issue an order to increase per diem to a very high level? That is one of the options that is still available that we may use.

Senator LONG. What bothers me, Mr. O'Neal—I appreciate what you are doing, and I applaud you for everything you are doing in trying to solve the problem. But I think my complaint and the complaint of the people generally looking at this is that a lot more could be done. You are thinking about things that ought to be done. Here is something you say, "I think it looks like we have to do something about this thing, so we will do it to apply to 1979." But the shortage is now. The problem is now.

It seems to me that if you would be the kind of Commission I would like to see you be, you should get on top of it, not starting in 1979. The shortage is now, and the increase ought to go up while the shortage is there.

For one thing, if people have to pay more for the cars, there might not be quite as much demand for them. In the second place, when they pay more, it will increase the production and the use of them.

Mr. O'NEAL. The Commission has done a number of things. We have issued a whole series of service orders.

I want to mention that while it may be true that increased per diem will increase the utilization of cars—I think it will if it does not go too high—there is a good possibility that it would have the opposite effect in some instances.

The reason for that is that increased per diem, if it gets very high, will force cars back to the owner railroad, which is fine for the owner railroad, but it can develop some inefficiencies in the functioning of a railroad that needs to use those cars, because it may generate the movement of cars back to the owner railroad empty.

What would be the best situation would be for those cars to be moving as much as possible with a load. This is one reason why we have concentrated on the 1309 order which requires the railroads to move cars within 24 hours through certain phases of their operations.

Senator LONG. So that you understand what I am talking to you about: You are going to increase the charges on those cars in order to bring about more efficient utilization and greater production of them.

All I am saying to you: If you are going to do that, why do you want to wait until next year? The shortage is here. You ought to be getting on with it.

I would like to think that the ICC, when it sees a problem and if the ICC thinks it ought to act and if you, as Chairman, think you ought to act, then get off the dime and go ahead and do it. Do it now. Then, in 1979, you can take a look and see how it is working, rather than waiting until 1979.

Mr. O'NEAL. I understand it totally. It could not be clearer.

Senator LONG. In my view, you have made the decision. We are not talking about whether you are going to do it. Then why not go ahead and do it now? I would at least suggest you consider going ahead and implementing it now.

Mr. O'NEAL. We will see what can be done about implementing it in the short term. I am not really sure at this stage what the problems might be in doing that.

Senator LONG. It seems to me, Mr. Chairman, that the greatest service that you can render to this country in your capacity is to stop this thing of the ICC sitting around forever thinking about something and having some investigation that goes on forever while nothing ever happens.

If the problem exists at—and once in a while you might be criticized for making a mistake for acting in error, but at least stop this thing of being criticized and never getting anything done and the problem gets worse and worse and goes on year after year.

That is what people think of the Commission right now, you know; at least the railroads say that. I guess you hear that, don't you, from time to time?

Mr. O'NEAL. I would be interested in what the railroads will say about whether the Commission is acting or not.

Senator LONG. One that got a $4½ million fine probably thinks you should not act.

Thinking in terms of the public, they thought at least you did something and you were not caught just sitting there. At least you got that——

Mr. O'NEAL. I want to say that I think the Commission has acted. There are a lot of things that we have done. This one area where we have not applied this proposal currently. As I say, there are a lot of things that we have done. There a lot of things that we are looking at doing in the short range. This is one area that we will certainly take a look at.

Senator LONG. What is the Commission's estimate of the Nation's locomotive power generally as a contributing factor to the poor utilization of rail cars?

Mr. O'NEAL. Generally, there has been a shortage of locomotive power in the United States during the last several months. This has had a severe impact on the movement of rail cars around the country. There have been cars, trains, sitting in various locations in this country, not moving for want of adequate power.

We have some numbers on that, I think, if you need them.

Senator LONG. Do you want to give them to us?

Mr. O'NEAL. We can supply them for the record.

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

Several railroads reported delays to Interstate Commerce Commission field staff extending from a few hours to over four days which are, in nearly all instances, directly attributable to lack of locomotive power. For example, this year Conrail has reported delays due to lack of power as follows:

March 23, 53 trains held for power.
March 31, 54 trains held for power.
April 7, 232 trains held for power.
May 10, 99 trains held for power.
June 29, 26 trains held for power.
July 13, 11 trains held for power.

The Milwaukee Road has reported these delays:

March 9, 15 trains held for power.
March 16, 16 trains held for power.
April 6, 10 trains held for power.

April 27, 7 trains held for power.
May 10, 4 trains held for power.
June 20, 3 trains held for power.
July 12, 2 trains held for power.

The Louisville & Nashville Railroad Company reported that 26 trains were held for power on May 2 and 24 trains were held for power on June 1.

The Southern Pacific reported 146 trains delayed by lack of power between June 1 and June 27.

While it is not possible to ascertain the precise role locomotive shortages play in the overall car delay, it is apparent from the examples shown above that these power shortages are a very important factor contributing to delays throughout the nation.

Senator LONG. Would you agree that there should be some reasonable relationship between the demurrage and per diem so that the carrier would not find it financially beneficial to neglect cars of shippers, thereby decreasing the movement and utilization of cars?

Mr. O'NEAL. This is the so-called reciprocal demurrage proposal, which is one of the things—I hate to mention anything we are looking at doing, and we have not done, but this is one that is on the front burner that we are looking at. In order to impose this, you need to have to have some sort of standard. In other words, you have got to know what do we expect of the carriers, and how we are going to levy this sort of thing. It is one of those items that we are trying to deal with.

Senator LONG. Again, we would like to see a decision. As I say, even if it is wrong, we would like to see something happen.

Mr. O'NEAL. I would like to see a decision, too.

Senator LONG. I am hoping down there in that Commission you would do what some of us do, like we do on our committees, where if somebody has an idea, they will try it and see if it works; if it does not work, you can always junk it.

You can do it even without the concern of the President. Just go ahead and reverse yourself if you tried something that did not work. Some of these things, you will never know if they will work unless you try them. But at least, after you think about it—and not thinking for years—it seems to me you can think a matter of a couple of weeks or a month and then decide. Don't just keep thinking about it.

How long have you been thinking about it now? How long have you been thinking? Since you have been there, how long have you been thinking about this particular issue?

Mr. O'NEAL. Before I was Chairman, I actually advanced this idea, and it didn't go very far. Now that I am in a little different position, I think that we will see if it can't move a little better?

Senator LONG. Thank you, very much.

Mr. O'NEAL. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, Members of the Subcommittee: I would like to thank you for giving the Commission the opportunity to be here today to discuss S. 2360 and the rail car shortage problem.

S. 3260 was introduced at the request of the U.S. Department of Transportation by Senator Cannon. It is intended to continue to allow railroad rate flexibility.

The car shortage problem has been with us for several months. Recently, the Commission has been examining closely the causes of this complex problem and attempting to develop innovative solutions. I will discuss first the Commission's efforts in the car shortage area and cover the issues raised by the questions in the Subcommittee's letter to the Commission, and then turn to a discussion of S. 3260.

Before discussing recent Commission actions dealing with the car shortage, I would like to outline briefly a few of the elements contributing to the shortage.

Several factors causing the shortage relate to the market situation. For example, when grain prices are low, more grain will be held in country storage than normal.

Eventually, though, farmers and country elevator operators either need funds or must reduce the amount of grain in storage to accommodate a new crop. Whatever the situation is that triggers a sale for one elevator operator is likely to trigger the sale for other operators at the same time. The result of this is that the demand for cars quickly exceeds the carriers' ability to furnish them.

Another aspect of the market situation which has put a strain on the rail car supply is export grain sales. Despite the lack of major publicity, such as that which attended the Russian wheat sales several years ago, May 1978, produced the largest volume of export grain movements in the history of the country. The increase in export grain movements has resulted, almost immediately, in higher barge rates, which have the effect of diverting some barge traffic to rail. Of course, even without this diversion the total increase in volume grain movements would strain the rail car supply.

In addition to the market situation, unusually severe weather last winter further aggrevated the general problem by interfering with carriers' ability to move cars promptly, causing a drastic drop in grain car utilization. Many carriers have had an excessive number of cars on hand which they were unable to get placed, unloaded, and returned to the loading areas. The situation in the Midwest was particularly bad. For the first time in many years, the Illinois River froze, and the upper Mississippi Locks did not open until a month after the usual time. This meant that barge service was not available to move the bulk of the grain crop which was exported from the Gulf ports in May, and that the rail system was completely overwhelmed with demands for equipment. Although the effects of the severe winter weather are pretty much over now, the weather was a very significant contributing factor for several months.

I would now like to turn to discussion of the techniques which the Commission has used to handle car shortages in the past.

Our primary tool has been the issuance of car-service orders, which are designed to improve car utilization and distribute available cars more equitably. As you are aware, service orders may be issued only after in the opinion of the Commission an emergency is found to exist. The Commission may issue whatever order or orders it deems necessary to alleviate the situation, without prior notice or hearings. Two such orders are Service Order Nos. 1309 and 1315.

The Commission's Service Order 1309 imposes operating standards on the railroads by requiring them generally to place for unloading, remove after loading or unloading, and move in transportation service, all rail cars on their lines within 24 hours.[1] Service Order No. 1315 establishes more stringent demurrage rules than are generally provided in carrier's tariffs. Those orders have been in effect for approximately four months. Our field staff is continuously monitoring the carriers' compliance with these service orders, and while there are locations that have been found to be in full compliance, the staff is reporting an alarming amount of noncompliance with Service Order No. 1309. The Commission is presently widely engaged in investigating alleged violations of this order, and several legal actions have been taken and others will probably follow.

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[1] Service Order No. 1309 requires carriers generally to handle cars within 24 hours for certain phases of their operations. This time period has been used historically by the Commission in other movement type service orders, and has been generally accepted by the railroad industry.

The Commission adopted a similar 24 hour timeframe in Ex Parte No. 284, Investigation Into the Need for Defining Reasonable Dispatch (Perishable Commodities), 335 I.C.C. 162. The regulations in this proceeding were adopted after a full hearing with participation by the rail industry.

We believe the 24 hour limitation specified by Service Order 1309 is a wholly realistic one. Furthermore, the order is flexible in that where traffic volume does not warrant daily service, it is not required. Also, the order allows carriers to petition the Commission for exemptions from it because of hardships or inequities caused by the order.

For example, the Commission has instituted civil forfeiture and injunctive actions against ConRail for $2.3 million, and injunctive action against top officials of the carrier for future violations of Service Order No. 1309. A similar action was instituted against the Southern Pacific Transportation Company just recently involving a civil forfeiture claim of $4.4 million, and again injunctive action is being directed against the carrier's top officials. Earlier, a $445,800 civil forfeiture claim was filed against the Atchison, Topeka and Santa Fe Railway. The Commission's field staff is actively engaged in conducting investigations of other alleged abuses of our service orders and if the violations are substantiated additional enforcement actions may be expected.

With regard to other types of service orders which require carriers to desist from loading and return empty cars to owners because of geographic imbalance of the available equipment, our field staff closely monitors compliance during the regular review of carrier files. We have found relatively good compliance with this type of order, which is further indicated by the absence of complaints from the carriers benefiting from these orders.

It is difficult to assess precisely the effects of our car service orders. We believe they have more equitably spread around the available car supply, but possibly this has been achieved at the expense of overall rail industry productivity. We also believe that to the extent carriers have compiled with Service Order No. 1309, which imposes operating standards, car utilization has been improved. For example it has come to our attention that the top management of a major carrier has recently instructed its employees to comply fully with Service Order No. 1309. Furthermore, the carrier has hired additional personnel to work on locomotive repair. We believe this is a reaction to the legal actions, mentioned above, which the Commission took to enforce this order. So the extent that carriers voluntarily comply with our orders seeking to improve car utilization, we believe the effects of car orders are beneficial. Of course, our orders probably cannot solve a car shortage—we must be content if we can at least help mitigate it.

Turning now to other Commission actions, our Bureau of Operations recently concluded nine informal conferences held around the country for the purpose of inquiring into the impact of the car shortage situation on shippers, as well as the problems encountered by the railroads in trying to provide service. There were some very good recommendations made by the participants as to what can be done concerning long-term solutions to recurring car shortage problems. The Bureau of Operations issues a Highlight Statement covering the first five informal conferences. I have attached a copy of the first Highlight to this statement as Appendix 1, and will be glad to submit the second Highlight Statement to the Subcommittee when it is completed.

In addition to these hearings, the Commission just last week took a major step toward developing a new, more comprehensive approach to the car shortage problem. The Commission [2] approved suggestions for improving freight car utilization developed by the Bureau of Operations. The basic principle underlying this program is a renewed commitment by the Commission to leading the way in finding solutions to the current and future transportation problems of inadequate freight car utilization and freight car and locomotive supply. In long-range terms, the Commission is planning to institute five major actions:

(1) Development and promulgation of measurable operating standards. This would include consideration of reciprocal or reverse demurrage and penalty per diem.

(2) Development of an improved freight car utilization data base, consisting of uniform record keeping and reporting procedures, and development of market research and forecasting criteria. We are also examining the possibility of developing an econometric model to forecast car service demand.

(3) Development of viable alternatives to carrier operating practices and rate structures such as substitution of motor for rail service, allowing multiple car rates to be used on single car shipments, and investigations of the impact on grain inspection proceedings on freight car utilization.

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[2] Vice Chairman Christian and Commissioner Gresham, while supporting the general thrust of this program, dissent from the following specific recommendations: ordering repairs on boxcars less than 35 years old when bad orders exceed 5 percent; requiring discontinuance of unit trains to accommodate small shippers; ordering railroads to purchase cars or locomotives to fulfill peak period demand; and allowing reciprocal demurrage and penalty per diem. Commissioner Clapp also opposes the temporary discontinuance of all unit trains.

(4) Development and encouragement of joint rail-barge rates to move grain from interior points to river terminals for transfer to barges. The relative short mileage of the rail segment in this arrangement would require fewer rail cars than an all rail movement to the ports. Grain covered hoppers thus released would be available for other shippers.

(5) Determination of the need for development of legislative changes, especially in the areas of a need for a national standby rail car fleet and for a requirement that carriers purchase locomotives and freight cars.

In addition to initiating proceedings in these general areas, the Commission is also giving serious consideration to a number of specific short-range recommendations developed by the Bureau of Operations. The short-range recommendations which are currently before the Commission include:

Support of a request by the Transportation Association of America for establishment of a permanent ten percent tax credit for capital investment by railroads.

Directing railroads whose bad car order ratios exceed five percent in any of the shortage types, to begin immediately repairing all cars less than thirty-five years old.

Continued strict enforcement of Service Order Nos. 1309 and 1315.

Discontinuance of all unit grain trains until small shippers can obtain cars to fulfill their outstanding contracts and make room for this year's harvest.

Establishment of a "frequency schedule," which would prohibit carriers from annulling any train where at least twenty-five cars are ready for movement against the schedule.

Suspension of (1) mandatory service Rule Nos. 1 and 2; (2) all exclusion type service decisions requiring the empty return of certain types of freight cars to their owners; and (3) AAR's Car Service Directives that require freight cars to move empty.

Elimination or modification of AAR's Car Hire Rule No. 22 on per diem reclaim.

Suspension of all freight car assignments to specific shippers and permit them to be loaded by any shipper in any direction.

We believe that the use of some of these short-term recommendations could help mitigate the immediate car shortage problems, and that the long-range programs, when put into effect, will help prevent a reoccurrence of these short-term problems.

As mentioned, one aspect of our long-range plans involves the determination of the need for and development of legislative changes. I believe that the present statutes are very comprehensive and that the Commission must reexamine past policies and decisions to determine if we placed any artificial limits on interpreting these statutes. As we set a course for overcoming car shortage problems, it will be necessary to analyze whether our proposed actions are attainable under the present body of law or whether we should request additional legislation from the Congress. I am inclined to believe that the present laws provide a vehicle for the Commission to obtain better car utilization but, if it becomes necessary, the Commission will request legislation from the Congress.

Although I am hesitant to endorse any legislative changes at this time, I might suggest one idea that could be examined. This would involve some sort of an incentive program, perhaps through taxes, which would encourage the relocation of small grain elevators onto rail main lines and their consolidation into large enough facilities to enable them to use unit-train service effectively. It is suggested because while we recognize the need in this crisis to aid the small country elevator and the farmers served, we also recognize that such assistance will probably result in less effective use of the more efficient unit trains. Thus giving some relief to the small guy in this crisis may, indeed, exacerbate the overall problem. That is why we try to be very judicious in providing such relief. This situation suggests that consolidation of country elevator facilities could pay huge dividends in efficiency for the future. The Commission has not really evaluated all the possible ramifications of such a program, and I offer the idea to you as only that—an idea. Much thought, particularly along the lines of socio-economic considerations, should probably be given to this idea before it becomes official government policy.

In addition to the car service orders and hearings, the Commission has implemented changes in ratemaking procedures pursuant to the 4-R Act. These procedures are designed to provide an incentive to shippers to reduce peak-period shipments by rescheduling; to generate additional revenues for railroads; and to improve utilization of freight cars, movements, employment, and the financial stability of markets served by railroads.

I believe that peak-period ratemaking can play a positive role in reducing the car shortage problem. However, the Commission has not received a significant number of peak-period rate filngs. Therefore, it is difficult to gauge the potential effectiveness of this concept.

The Commission has been exploring the apparent lack of interest on the part of the railroads in using peak-period pricing. In interviews with our Office of Proceedings last year, representatives of rail and shipper interests suggested that one reason for this non-participation was that carriers feared to file new rates unless other carriers in their region did so as well. They thought that without close cooperation on a regional basis, carriers who participated in peak-period pricing would be put at a substantial competitive disadvantage in their product markets, as business would go to the carrier with the lowest single-level rate. This problem of course would not arise with regard to proposals to reduce rates.

The Commission favors increased use of peak-period pricing. We had hoped, however, that any proposed peak-perod increases would be accompanied by reduced rates for off-peak movements. To date, this has not been the case. In mid-1977, when the Southern Freight Association proposed a 20 percent peak-period premium on grain originating in the Southern Territory from mid-September to mid-December, 1977, the Commission declined to suspend or investigate ths first major proposal under the new statute. However, the United States Court of Appeals for the Eighth Circuit held that the Commission had abused its discretion by failing to institute a formal section 15(8) investigation of alleged section 4 violations. Our petition for rehearing was denied recently, and the Commission is currently determining whether to seek a writ of certiorari to the Supreme Court. The Commission is concerned that if it is forced to investigate very novel rate proposal, this will have a chilling effect on innovative rail ratemaking and greatly impair the flexibility of ratemaking under the 4-R Act.

A number of other factors may also be contributing to the limited effectiveness of peak-period pricing. For example, the grain market price structure is marked by unpredictable fluctuations which intensely affect transportation demand. This uncertainty clearly is a primary motivating force in a producer's decision whether to sell his crop or store it until some future time. Thus, the spread between peak and off-peak rate levels must provide enough incentive to move grain in periods when its market price alone would not encourage movement. It must also outweigh the credit costs and additional costs of storage imposed when the receipt of revenue from grain sales is delayed from a peak to an off-peak period.

On the other hand, peak-period rate increases must be set low enough so that serious diversion to other modes is not created. Some railroads believe that shippers will prefer truck or barge transportation if rail rates are set too high. They feel that higher rail prices will cause many more motor carriers to enter the market, eating into rail revenues in both peak and off-peak periods. If this is the case, peak-period pricing could be counterproductive.

We at the Commission think that the railroads have not used peak-period pricing in a way to solve the problems, such as a need for a market-responsive rate-setting mechanism, which it was originally designed to address. For example, railroads have been using peak-period pricing only to increase rates, in the same way that across-the-board increases have been used in the past. As the railroads have used this mechanism only to get increases, they are not utilizing its potential for maximizing revenues and improving service through efficient, innovative management. As we recently have reminded the carriers in our decisions in the last several general increase proceedings, improved service is imperative to avoid serious questions of economical and efficient management under section 15a(4) of the Act.

The Committee has asked us to comment on the possibilities and requirements for implementing a common ownership concept similar to that used for trailer trains, to covered hopper cars and gondolas.

Trailer Train Company and a subsidiary, American Rail Box Car Company have both been relatively succesful endeavors by the railroad industry to establish separate entities for the purpose of building and placing in free-running service various types of flat cars and 50-foot boxcars. It is one method which places rail cars in service with the control remaining within the railroad industry. Rail Box's success has been outstanding. About 90 percent of its total car miles are loaded miles, car hire costs are substantially less than for comparable railroad owned cars (daily car hire of \$11.58 v. \$18.14; average cost per loaded mile—21¢ v. 41¢), and the equipment is maintained in excellent condition. It may be, however, that a part of its success is related to its small size.

As mentioned, the senior staff has been directed to examine the general topic of railroad freight car shortages to determine what is necessary to alleviate the recurring problems.

As part of the study, the staff has been asked to take into consideration what effect a greatly expanded Rail Box ownership of cars would have on freight car utilization. This could be expanded to include all types of equipment, including covered hopper cars and gondolas. At the present ownership level, Rail Box cars have very limited empty mileage, and the question is whether a much larger fleet would retain the same favorable loaded-empty mileage ratios, as the cars are used to haul less attractive traffic and directed to remote areas to meet loading demands. The study could indicate that a larger Rail Box fleet will continue to show a reduced empty mileage record under that of the individually carrier owned cars. The Commission wishes to encourage the railroad industry to pursue a path of retaining control of the railroad freight car fleet, and the Rail Box ownership concept may be the best way to satisfy that end.

I would now like to turn to S. 3260, a bill which was recently introduced by Senator Cannon at the request of the Secretary of Transportation. This bill would modify and extend for five years the seven percent "no suspend" zone provided for in the ratemaking provision of section 15(8) of the Interstate Commerce Act. That section established a two-year test period in which the railroads were given a large measure of rate flexibility. It prohibited suspension of an individual rate increase on the grounds of reasonableness, unless the carrier were found to possess market dominance over the service at issue. It also generally discouraged suspension on the grounds of reasonableness of increases or reductions totalling less than seven percent annually.

The purpose behind the "no-suspend" provision, as we understand it, was to lessen regulation in areas where competitive forces would ensure reasonable rates; it was not designed as simply a revenue-producing concept. The Congress included a market dominance test to assure that meaningful competition existed before a rail carried could raise its rates without fear of suspension. If effective competition exists, a shipper should have a reasonable alternative to a rail rate increase. If no such competition exists—if a carrier has market dominance—the shipper needs the protection of the Commission's suspension power.

The effect of the DOT bill appears to be to permit the railroads to increase their rates in markets where competition does not restrain their market power. In these markets involving such commodities as coal and grain, the "captive" shipper would be forced to accept the increase and either absorb it or pass it on to the consumer. Effective competition, on the other hand, would restrain unwarranted rate increases because of the threat of traffic diversion and a corresponding revenue loss. Thus, we believe that this bill could simply lead to increased rates in areas where a carrier has market dominance, with little impact elsewhere. I should note that, while the Yo-Yo relates to increases and decreases, no decreases have been proposed under this provision during the two years that it was in effect.

Let me turn now to a brief discussions of market dominance generally, and then relate how it applies to the suspension situation. We believe the concept generally to be a viable lessening of railroad regulation where it is not needed. As you may know, our regulations implementing the market dominance concept were recently upheld in court. While dealing with market dominance is not free from difficulty, we believe that our regulations are a workable implementation of the legislative intent.

Suspension of rates within the seven percent no-suspend zone is only one area where market dominance comes up. Where suspension is not involved—where the Commission is simply investigating an existing or proposed rate—there are no special problems with implementing our regulation. In such cases, the determination of market dominance can be made in a reasonable amount of time after evidence on the point has been considered.

However, when the Commission is considering suspending a proposed rate, the market dominance question must be resolved much more quickly—within the 30 days after the rate is filed that the Commission has to decide whether to suspend. If the rate is filed pursuant to the Yo-Yo provision, the Commission must actually find market dominance to enable it to suspend on the ground that the rate is unreasonably high.

If, on the other hand, the proposal is outside the Yo-Yo provision, the Commission must still find that a protestant has shown that there is a likelihood of market dominance before it can suspend. This is because under section 15(8)(d)

the burden of showing likelihood of ultimate success in the proceeding rests upon the protestant.

In either case—whether or not the Yo-Yo is involved—the Commission can then make a more thorough on-the-record finding as to market dominance in the investigation proceeding. If under the Yo-Yo provision a rate is suspended, the carrier of course retains the right to challenge that finding in the investigation proceeding. However, this never arose during the life of the Yo-Yo provision because no tariffs filed under the provision were ever suspended on market dominance grounds.

It is important to recognize that the DOT proposal to eliminate the market dominance test under the Yo-Yo provision is a fundamental change in ratemaking. Very simply it would allow the railroads to implement rate increases of seven percent per year without fear of suspension on traffic over which the railroads have monopoly power or market dominance. It will not have an effect where the rails have no monopoly power or market dominance because the present standards allow the rails freedom to change rates in those instances.

Thus, if this provision is approved we should fully expect that the railroads will increase rates for captive traffic, even in those situations—perhaps especially in those situations—where rail rates are already returning a handsome profit. It will give the rails the chance to enjoy excessive profit in many situations. As Appendix 3 to this statement demonstrates, there are some commodities for which, even using railroad-supplied data, the revenue to variable cost ratio for the railroads exceeds 160%. In some cases this figure even exceeds 200 percent which means that even at present the profit may exceed 70 percent on some commodities.

It should be pointed out, also, that consideration of market dominance does not impose an undue burden on the railroads at the suspension stage. Our review of suspension cases considered since passage of the 4–R Act shows that the existing law and our regulations impose a considerable practical burden on shippers in that the latter must show not only that they would be harmed by a failure to suspend, but also that there is a likelihood that they will prevail on the merits of the proceeding. As noted earlier, this likelihood includes a likelihood that there is market dominance. Understandably, many shippers do not even try to produce market dominance evidence, and if they do it is often very general in nature.[3]

It must be obvious why many railroads do not favor the market dominance provision of the Yo-Yo section, and why it has been asserted that consideration of market dominance inhibits its use. However, the statistics show that the only inhibition against use of the previous Yo-Yo provision was where there probably shouldn't be any such increases anyway—where there *is* market dominance.

Another point is that the Yo-Yo increases as proposed by S. 3260 would be in addition to general increases, which are not included within the no-suspend provisions of section 15(8).

General increases continue to be used by the railroads as their principal method of meeting revenue needs, although the Commission has advocated greater use of selective rate adjustments as Congress intended in the 4–R Act. I have attached a chart as Appendix 2 which shows the extent of general increases (excepting commodity holddowns) since the beginning of 1976—roughly the time the 4–R Act was enacted. Such increases aggregate about 18 percent—about 7 percent per year for the two and one-half years elapsing since January 1976. If the railroads were permitted an across-the-board Yo-Yo increase of seven percent a year—without reference to market dominance considerations—this could amount to increases of up to 14 percent a year which do not adequately take into account competitive factors. In a time when the country is searching for an answer to the inflation dilemma and in an industry where portions of its business are subject to no effective competitive restraints on pricing, such a remedy seems clearly inappropriate and probably inconsistent with overall national goals.

It is true, as I noted earlier, that both Congress and the Commission have been trying to reduce the railroads' reliance on general increases to produce revenues. The 4–R Act includes several ratemaking innovations designed to en-

[3] The extent of the burden on shippers is graphically illustrated by the sharp decline in suspensions since enactment of the 4–R Act and the Commission's market dominance regulation. From 1970 to early 1975, 958 rail tariff changes were protested and 381 were suspended (39.8 percent). During the period from October 1, 1976 (the effective date of the market dominance regulations) to April 28, 1978, 455 rail rate adjustments were protested, but only 25 were suspended (5.4 percent).

hance the use of more selective types of increases—including, for example, peak-period, demand-sensitive, and high capital-investment pricing provisions. However, reduced reliance on general increases should not lead to a conclusion that S. 3260 would be more acceptable under those conditions. We would still be faced with substantial increases without possibility of suspension on noncompetitive traffic where—as I have already indicated—profits are very high.

Accordingly, we support the extension of the Yo–Yo provision, but only with the market dominance provision included. In the alternative, should it be decided to re-enact the Yo-Yo without a market dominance provision, we recommend that consideration be given to inclusion of language making it clear that general increases are to be taken into account in determining the aggregate of increases available pursuant to the Yo-Yo. This would prevent excessive suspension-free increases on "captive" commodities.

This concludes my prepared statement. I will be glad to respond to any questions you may have.

ATTACHMENTS

Vice Chairman Christian submitted the following separate expression:

I am in full agreement with the first portion of the statement (dealing with current rail car shortages). With regard to the second portion (dealing with the Yo-Yo proposals), I believe that the testimony fails adequately to address the fundamental issue which must be decided—i.e., whether to continue the concept embodied in the 4–R Act of eliminating rate regulation where the forces of market competition operate while continuing to regulate those areas where there is no effective competition, or instead to eliminate rail rate regulation entirely within a specified zone. Adoption of the DOT Yo-Yo proposal would be a major shift to the second approach—contrary to the basic thrust of the rate provisions of the 4–R Act.

It is important to note that the Yo-Yo provision which was included in the 4–R Act (which has now expired) was really something of an anomaly. The Yo-Yo approach was the one originally sought by the proponents of relaxed regulation, with the market dominance concept emerging during the course of congressional hearings. Although market dominance eventually became the centerpiece of the statute's rate provisions, the Yo-Yo concept was not entirely eliminted. Instead, Congress attempted to reconcile the two by providing a Yo-Yo only for traffic which was *not* market dominant—although with this limitation the Yo-Yo really had little practical effect since as to non-market dominant traffic the Commission cannot hold rates to be unreasonably high in any event.

The DOT bill appears to represent an attempt to revert back to the essential concept rejected by Congress in the 4–R Act—a concept of rail rate freedom within a particular zone even with regard to monopoly and captive traffic. This is a fundamental change, and it is important that it be clearly articulated. I am concerned that this statement of the Commission may not have clearly explained what the market dominance and rate zone alternatives involve for the carriers and the shipping public, for I believe that it is extremely important that these alternatives be evaluated before any conclusion as to the desirability of the DOT amendment is reached. In sum, I believe it should be emphasized that the proposal here does not merely involve a change in the terms of one statutory provision, but has serious policy implications for the future of rail rate regulation in general.

Commissioner Brown was absent and did not participate.

APPENDIX 1

Informal Conference, Bureau of Operations, Interstate Commerce Commission, Washington, D.C.

HIGHLIGHT STATEMENT—INFORMAL CONFERENCES

Preface

At the direction of Chairman Daniel O'Neal, the Bureau of Operations conducted a series of open informal conferences to explore the severe and persistent freight car shortages. The demand for freight cars of all types beyond the available supply started in late 1977. It continued to accelerate in early 1978 and is expected to continue through the balance of the year.

The informal conferences were designed to attract a diverse audience so that the discussions would include various points of view. The conferences were in-

formal in nature because we were seeking an open dialogue where any person could participate without concern that the comments formalized his/her position. As a substitute for a transcript, a Commission stenographer made notes of each meeting. These notes will serve as an informal record of the general substance that was discussed in the meetings, which were held at Washington, D.C., on March 30 and 31, 1978; at Des Moines, Iowa, on April 3, 1978; at Omaha, Nebraska, on April 4, 1978; and at Salina, Kansas, on April 5, 1978.

Objectives of informal conferences

The objectives of the informal conferences were twofold; first, what additional short ranged actions could be taken to alleviate the rail car shortages and second, an analysis of the information obtained for the purpose of making Bureau recommendations to resolve freight car shortages in the long term.

As a result of the informal conferences, several short-ranged actions were taken. They included the following:

1. On April 5, 1978, General Temporary Order No. 12 was issued permitting truckers to apply to the Commission's field office for immediate emergency temporary authority to haul badly needed fertilizer.

2. Service Order No. 1319 was issued on April 8, 1978, requiring that the railroads return Seaboard Coast Line jumbo covered hopper cars to the owner because of an immediate need to load fertilizer for movement to the farm areas.

3. The issuance of Service Order No. 1322 which required certain railroads to distribute a certain percentage of their covered hopper cars to country elevators.

The information obtained at the informal conferences that have been held and those that will follow will be analyzed by the Bureau to determine what recommendations should be made to the Commission for actions directed toward longer range solutions to the problems.

Information developed at informal conferences

The informal conference discussions were directed toward a number of commodity groups including grain, fertilizer, scrap iron and steel, cotton, lumber, and paper. The most discussion involved shortages of cars for grain shipments. However, the equipment shortages and unique shipping conditions of the other commodity groups are recognized as requiring equal consideration for both short and long term solutions.

Programs by ICC and AAR

The various actions taken by the Commission were explained in the meetings including Service Order No. 1296 which authorizes The Atchison, Topeka and Santa Fe Railway Company to substitute two refrigerator cars for each boxcar ordered for cotton loading; Service Order No. 1304 which limits the number of jumbo covered hopper cars that can be used in unit train service to 20 percent of ownership; Service Order No. 1305 which authorizes the substitution of two refrigerator cars for each boxcar ordered on the Union Pacific Railroad; Service Order No. 1306 which requires the return of 50-ft. plain boxcars empty to the Chicago and North Western Transportation Company; Service Order No. 1309 which imposes 24-hour service levels on railroads for placement, removal, and movement of freight cars; and Service Order No. 1313 which authorizes the tendering of less than the number of cars required by tariff for multiple car shipments. The Commission's special efforts in the Northeast were described. These efforts involved 35 staff members working with carriers and shippers to expedite the movement of freight cars. The Association of American Railroads commented on their various efforts to improve freight car utilization, including Car Service Directive No. 435 which requires the return of covered hopper cars to the owning railroad and the dedication of its entire car service staff, consisting of approximately 50 employees, to check on-the-ground delays of freight cars by railroads, shippers, and receivers. The Commission's Exceptions to Mandatory Car Service Rules 1 and 2 which allowed railroads to load 50-ft. boxcars of certain other carriers without regard to the destination were explained. The ARR also commented on Exclusion Orders that were issued for the cars of certain carriers in order to expedite the return of cars empty to the owning lines.

Reasons offered for the freight car shortages

The discussions did not result in specifically pinpointing the exact causes for the present freight car shortages. However, there were a number of reasons offered which contribute to the present crisis. The reasons include:

1. The severe winter weather conditions including blizzards throughout the northern tier of the United States interrupted railroad operations and caused poor freight car utilization.

2. Insufficient railroad locomotives to move the trains in roadhaul service which contributed to poor car utilization. An adjunct of this cause was the prolonged coal strike in the East which required the use of western railroad locomotives to move coal longer distances to eastern destinations.

3. Impact of a prolonged car builders strike which prevented at least 2,000 covered hopper cars and other types of cars from being added to the fleet by this time.

4. Poor maintenance of the railroads' car fleet.

5. A general deterioration of railroad service contributing to poor freight car utilization through inferior train operations.

6. A cutback in operations by the railroads on weekends and the Christmas/New Year's holiday periods.

7. Deterioration and scrapping of freight equipment for cotton, scrap iron and steel, and other commodities to an insufficient level for handling the traffic tendered for transportation.

8. The price of grain increased causing an immediate demand for rail cars to handle the grain which was placed in storage last year because of low prices.

9. The falling value of the American dollar provided foreign grain buyers an incentive to increase purchases.

10. Possible inefficient use of jumbo covered hoppers in short line-haul or cross-town switch service.

11. Insufficient purchase of railroad equipment needed by carriers to keep pace with the increasing grain production, thereby causing car shortages even though only marginal increased business activity occurred.

12. Increased farm and country elevator storage facilities permitting larger grain hold-back capacity and increased volume for shipment as market conditions change.

13. Export grain prices of U.S. grain below that of other countries, coupled with foreign crop failures, resulting in an increased demand for American grain.

Summary of comments by railroads

Spokesmen for the individual railroads that attended the meeting commented on the equipment acquisitions that their companies have made in the past several years and their plans for 1978. While specific equipment purchase statistics were not made available, several hundred locomotives are on order or being delivered along with several thousand covered hopper cars and other types of equipment. It was pointed out that since 1972, 55,000 covered hopper cars have been added to the fleet by the railroads and the car leasing industry. At the same time approximately 80,000 40-ft. boxcars have been retired from service. On balance, however, the covered hoppers provided greater tonnage capacity than the boxcars removed from the fleet. One carrier official commented that the 40-ft. boxcar fleet is mostly old and as the cars become bad ordered they are retired because of the expense that would be involved in extensive repairs.

Comments by the railroad participants contended that the transportation system cannot be expected to handle grain without car shortages when the shippers hold grain off the market until favorable economic conditions trigger a selling surge. The carriers generally expressed the view that the railroads cannot be expected to gear their equipment purchases to the peak demands of grain shippers and then have those cars sit idle during slack periods.

The railroad representatives said that the severe winter substantially hampered their operations. Locomotives downtime was a serious problem to many carriers. The eastern portion of the country was especially affected by winter storms causing rail cars to back up on many railroads. A spokesman for ConRail said the carrier was hit hard by the winter storms and because of a poor cash position, it was difficult to overcome the problem. Attempts were made to expedite cars including using the carrier's Sales staff. Efforts were also made to operate the repair shop to full capacity. The weather in North Dakota, South Dakota, Wyoming, Minnesota, and Illinois was described to be extremely severe with temperatures falling as low as 35° below zero. The Burlington Northern estimated the cost of snow removal in North Dakota alone to be in excess of three million dollars.

As the winter conditions eased, the Midwestern carriers said that cars began to flow back from the East in increased numbers.

The railroads indicated that strikes within the railroad car building industry resulted in fewer new cars being delivered on schedule. It was estimated that if Pullman Standard had been in full production there would be an extra 2,000 covered hoppers in the fleet by the time of the informal conferences.

Railroads and shippers' views concerning areas for improved utilization

Beyond the adverse impact of such influences as poor weather conditions, power failure and shortages, and the delayed delivery of new equipment, the railroads suggested that there was a need for improving freight car utilization by shipper and receivers. For example, the carriers generally suggested that shippers have to load and unload cars faster; that some method should be devised to eliminate jumbo covered hopper cars from being used in cross-town switching; and that free time should be reduced in the application of demurrage. In respect to grain, the carriers suggested that the free time allowed for the inspection of grain should be eliminated.

Shipper participants were generally of a different view. Expressions were offered that the railroad industry as a whole is not geared to handle the upturn of traffic because: (1) the carriers have not purchased sufficient number of locomotives and freight cars; (2) the carriers have not provided sufficient attention to upgrading terminals and track; (3) the carriers have not provided adequate maintenance of the car fleet to reduce bad order ratios; (4) the carriers have allowed freight car utilization to deteriorate to an unacceptable level; and (5) there should be some curb on railroads investing in other ventures wherever such practices are occurring.

The shippers were strongly opposed to suggestions of reduced free time for loading and unloading cars. They suggested that delays to cars on sidings were the result of carriers failing to timely remove them from a shipper's place of business for extended periods of time. A suggestion was offered that it would be better to have reverse demurrage to penalize carriers which fail to remove cars from sidings rather than to decrease free time and increase demurrage rates.

SUMMARY OF COMMENTS BY COMMODITY GROUP PARTICIPANTS

Grain

The feeling that prevailed throughout the meetings by the participants interested in grain was that the demand for rail equipment to ship grain would continue unabated into calendar year 1979. The prospects of a car shortage over this extended period, coupled with the resulting revenue loss by shippers that are unable to move the grain, was expressed as an extreme concern by the participants. The fear was also expressed that the car shortage problem could grow even worse in the long term. For example, it was pointed out that wheat production has increased by approximately 80 percent in the past five years and that foreign purchase will continue to increase. It was pointed out that the transportation system must keep pace with the traffic demands if producers are to have fair marketing opportunities.

Repeated comments were made of the discounts and penalties that were assessed by the buyers when shippers fail to meet the shipping deadlines in the purchase contracts. Buyers pointed out that the penalties did not reflect increased profit to them but were used to defray higher prices paid to shippers who could deliver grain when the initial shipper defaulted. In effect, from both the shipper and buyer's prospective, the commercial problem was linked directly to the unavailability of freight cars.

Grain is transported under trainload, multiple car, and single car rates. The participants in the meeting understandably were parochial in their views as to how the freight cars should be divided among the various classes of shippers. One thing that all classes of shippers did agree on, however, was the frustration of not knowing when the railroads would fill car orders; where they stood on the list to get cars: and, whether everyone was sharing equally the hardships of the car shortages. The shipper participants looked to the carriers in the discussion to explain the present railroad transportation problems.

Unit train, multiple car and single car shipments

The informal conferences provided a forum for the shippers of unit trains and the single car shippers to voice their views concerning the distribution of available freight cars by the railroads. In this connection, the Interstate Commerce Commission's Service Order No. 1304, issued February 24, 1978, was a frequently mentioned item. Service Order No. 1304 provides that the carriers

use no more than twenty percent (20 percent) of their ownership of jumbo covered hopper cars in unit train grain service. Unit trains are defined as requiring the use of twenty-five or more cars. Jumbo covered hoppers are described as those having a capacity of 4,000 cubic feet or more.

The large shipper participants viewed the 20 percent figure as being too restrictive against unit train traffic. Generally, this group pointed out that there is a tremendous amount of grain to move from storage before a new crop is harvested this year and that unit trains provide the most efficient means of moving that grain. As of late March, 1978, it was estimated that there was 2½ million tons of ship space in Texas ports waiting to be loaded. The comment was offered that Service Order No. 1304 interferes with efficient unit train operation by diverting cars into the less efficient single car service.

This they contended results in the transportation of a lower volume of grain and less revenue to the railroads. One spokesman said that his company's figures showed that in 1977 unit trains moved 7,141 ton miles per car per day, while single cars moved 1,095 ton miles per car per day. The per car per day carrier revenue was said to be $79.72 versus $50.68 in favor of the unit train. The participants supporting the unit train as the principal means of moving grain commented on their investment in facilities to load grain in unit trains as well as purchasing and/or leasing their own rail cars. The curtailment of railroad owned cars to 20 percent by Service Order No. 1304 was viewed as being inequitable because these shippers have equipped themselves to move large volumes of grain on a continuing basis rather than during limited periods of time.

Shippers of grain in other than unit train lots think differently from both efficiency and equity standpoints. This group doubted that unit trains improved turnaround time or facilitated higher carrier revenue when you consider the time it takes to assemble the cars; the priority attention such trains are given, resulting in the delayed movement of other cars; and, the special handling given the unit train at the unloading point in preference to other cars. Disbanding the grain train program, one group spokesman said would release cars for equitable distribution to all shippers and result in a smoother flow of grain to market. Other small shipper participants suggested that unit trains be limited so that the country elevators could get a higher percentage of cars needed to reduce inventories.

The financial crisis or adverse economic impact was stressed by smaller shipper attendees, including comments that the survival of the small country elevator was at stake. Examples that were offered involved country elevators being restricted by banks from making further payments to farmers for grain until rail cars were supplied and shipments tendered for transportation.

The informal conferences were replete with comments of penalties tied directly to the shortage of freight cars to move the grain. The financial procedures in the grain market were explained as including a per bushel penalty if an agreed shipment date is missed by the seller. The imposition of a penalty can vary over a wide range, but generally ranges from five to ten cents per bushel. The country elevator representatives said that the penalties remove the profit from the sales. Moreover, both large and smaller shippers commented that funds are borrowed to purchase inventories and when shipments are not made, interest charges continue to run against the loans causing substantial financial losses.

Car distribution practices of carriers

Large and small shippers expressed concern of not having sufficient cars to move grain. At least one large shipper discussed being behind by fifteen trains as of late March, 1978, and some other comments were made that indicated a shipper has been waiting since last December for a unit of 100 cars.

The frustration of not knowing when cars would be available was apparent in all categories of shippers. Smaller shippers, however, repeatedly told of getting only a token number of cars against the number that were ordered. It was these shippers who were most inquisitive concerning the distribution practices of rail cars by carriers.

The railroads responded to numerous questions on car distribution and there was some variance by individual carriers. Generally, the carriers said that the oldest car orders are filled first, based on the capability of the elevator to load within an area that is reasonable to serve at a given time. For example, a carrier having a stated number of empty cars generally will distribute the cars in line with the local train service schedule at the particular time. It was explained

that if there were three local branch lines, one branch line may benefit by receiving all the available cars one day with the second and third branch lines benefiting on subsequent days.

The Burlington Northern's representative explained that the BN classifies its elevators as A through F. Elevators classified A ship more than 500 cars annually whereas those classified F ship less than 100 cars per year. Elevators rated B, C, D, and E ship more than 400, 300, 200, and 100 cars respectively per year. Certain shippers expressed concern that they are locked into a classification due to their orders not being filled because of car shortages. The Burlington Northern cancels all car orders at the end of each week and reestablishes new orders in an effort to eliminate inflated orders. Other carriers have different indicators which relate to shippers capacity to load and identify inflated car orders but the explanation on the BN's system was the most sophisticated.

Car distribution was generally described as not including any hard and fast rules because of the variables that enter into operational circumstances. The carriers generally allude to their obligation as common carriers to accept car orders even though the requesting shipper previously used alternate means of transportation. While there are some car ordering and distribution principles followed by all railroads, each carrier has its own policies and procedures in this area. The variations in each carrier's policies and procedures complicate the task of determining equitable handling of orders and distribution of cars by comparing one carrier with another. In short, there is no industrywide uniformity in car ordering and distribution practices.

Some ideas that the participants offered to improve rail service include the following:

1. Maintenance of a sequential listing of car orders so that inquiring shippers can be advised where they stand on the list.

2. Establishment of an industry wide car distribution system that limits or excludes orders for cars from shippers who only ship by rail during car storage periods.

3. Exploration of the possibility of providing additional gathering trains, which would allow a number of shippers in close proximity to load a number of cars supplied by a railroad and then have those cars aggregated into a solid train for expedited movement to a common destination. Such exploration would also take into consideration any possible anti-trust implications caused by shippers binding together to market their grain.

4. Development by the Commission and Department of Transportation of mechanisms that would forecast emerging demands for rail equipment. Associated with this suggestion was that the Federal Railway Administration should expedite loan applications by rail carriers for plant improvement and that a joint effort should be made by the Commission and the Department of Agriculture to stabilize grain marketing practices so as to prevent erratic transportation cycles.

5. Determination as to whether large shippers, other than those utilizing unit trains destined for the ports, can comply with the tariff provisions covering trainload shipments. If not, what is the impact on the single car shippers when cars are used in such unwarranted service.

6. Initiation of a competitive export rate structure for single car shipments from points in the Midwest to West Coast ports.

7. Consideration of: (1) an apparent need for common ownership of covered hoppers similar to Trailer Train: (2) an increase in the mileage allowance by railroads for private cars; (3) imposition of a scale of (seasonal) rates depending on the time of the year shipments are made; and, (4) a means to discourage the movement of grain during fertilizer shipping season.

8. Installation of additional investment tax credit for the purchase of covered hoppers by railroads and private car lines.

9. Consideration of a study of per diem levels that one railroad pays another for use of rail cars aimed at raising those rates to a point that it would encourage debtor carriers to purchase more cars.

10. Authorization of the use of federal funds to construct covered hoppers and repair the existing fleet.

11. Increased substitution of truck for rail service from country elevators to terminals and terminals to domestic mills in order to conserve rail equipment for longer hauls.

Other types of traffic

The preceding explanation about car ordering practices and car building and ownership matters has across-the-board application for all commodity groupings.

Fertilizer

Spokesmen for the fertilizer industry related an immediate critical need for covered hoppers in the Florida area for loading fertilizer. An explanation was given that fertilizer had to be available to the farmers in the early spring. Part of the cause for the equipment shortage was that the Seaboard Coast Line Railroad's covered hoppers were not being returned promptly to the carrier. The fertilizer industry believed an emergency Service Order was necessary to require other railroads to return the SCL's jumbo covered hoppers. Service Order No. 1319 was issued on April 8, 1978, requiring the return of the SCL's covered hoppers to that line empty. In respect to substitute motor service, a General Temporary Authority Order No. 12 was entered on April 5, 1978, providing an expedited method for truckers to obtain temporary authority to transport fertilizer.

Scrap iron and steel

Brief comments were offered on Commission actions in respect to the gondola cars including the authorization of multiple car shipments to move with fewer than tariff required number of cars. Additionally, gondola cars were added to Service Order No. 1309 requiring carriers to promptly place, remove, and forward the cars in transportation service.

Spokesmen for the scrap iron and steel industry detailed the problems faced by the shippers. The problems included a decreasing number of gondola cars in the railroad fleet leading to very severe car shortages. It was also explained that the gondola fleet is old, which increases the bad order ratio of the equipment. Comments were made that rough handling of cars occurs but that shippers are cautioned regularly against such abuse. It was pointed out that shippers frequently must repair cars at their own expense before loading can take place.

Incentive Per Diem was viewed as possibly being the long run solution, although the railroads expressed mixed reaction as to the merit of incentive per diem on gondola cars. It was explained that severe winter conditions had the same adverse affect on gondola cars as all other types of equipment.

Cotton

Cotton representatives commented that the industry has a record crop to transport in 1978, but the unavailability of boxcars is greatly hampering the movement. One spokesman said that the industry is geared to using 40-ft. boxcars from both operating practices and rate structure. He said that while they want 40-ft. boxcars, cotton shippers are willing to use refrigerator cars and other types of equipment including truck substitution to the extent it is feasible. The cotton industry suggested that if the current trend of car shortages continue, it will be unable to market the 1978 crop. It asked that the Commission conduct a broad investigation into the car shortage and rectify inefficiencies.

A representative of the Illinois Central Gulf commented that the number of 40-ft. boxcars was decreasing industrywide because of the flexibility of the 50-ft. cars. It was also pointed out that a fairly substantial number of 40-ft. cars are in disrepair and there is little incentive to invest funds in a rebuilding program. Mandatory Car Service Rules 1 and 2, which require that cars must move toward the owning line were discussed. Some participants favored the relaxation of such rules as a means to improve 40-ft. car supply in certain cotton loading areas and other participants saw it as a disadvantage in that it would retard the flow of cars back to their owners.

Paper and lumber

Representatives of both the paper and lumber industries offered comments on the acute shortages of plain boxcars beginning in early 1978. As to paper, it was pointed out that the traffic moves at a steady flow without seasonal peaks.

Conclusion

These informal conferences brought together the railroads, shippers, merchandisers, government agencies, and any interested members of the public who wanted to participate in a discussion concerning railroad freight car shortages. Besides the short range actions already taken through Service Orders and longer range activities that can be planned as a result of the valuable information obtained in the sessions, there were other benefits. The conferences provided a forum for the participants to comment, question, and listen to the problems of others. The informal conferences served to open communications on a group participation basis. This type of information leads to a greater understanding of the problems even if it doesn't change the views of the individual participants. The Bureau anticipates using the informal conference concept in the future.

APPENDIX 2

	Effective date	Territorial application	Percentage increase
Ex parte No.:			
318	Mar. 21, 1976	All territories with major exceptions	[1] 7
330 (canceled interim increase in 318)	Oct. 7, 1976	East of Mississippi	7
		West of Mississippi	[2] 5
336	Jan. 7, 1977	All territories	4
343	Nov. 30, 1977	do	5
349	June 17, 1978	South, Southwest and Southeast	2
		West, East, and East-West	4

[1] Interim increase.
[2] Maximum.

APPENDIX 3

COMMODITIES WITH REVENUE TO VARIABLE COST (WITH EMBEDDED DEBT FOR COST OF CAPITAL) RATIOS EXCEEDING 160 PERCENT—DISTRICT BREAKDOWN

[Base period (year)—Actual]

			Intradistrict			Interdistrict		
Item	Page	Commodity	East	South	West	East	South	West
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	4	Wheat			170.7			
2	8	Barley			203.3			
3	14	Sugar beets		177.0			209.5	
4	22	Copper concentrate					201.2	191.4
5	28	Fluxing limestone and dolomite					190.6	
6	34	Clays O/T fire clay			163.4			
7	40	Fresh meat and packing products	164.6				196.1	173.4
8	46	Bakery refuse		178.3			184.8	
9	48	Frozen fruit and vegetables		170.6				
10	54	Corn milling products	162.2				167.9	
11	56	Sugar, refined, cane or beet	165.6					178.2
12	60	Commercial fats and oils	175.4					
13	74	Wood particleboard					165.2	
14	80	Newsprint paper	180.4		170.9		202.3	201.7
15	94	Industrial inorganic chemicals	203.5	200.3	193.5		179.5	168.4
16	96	Sodium alkalies	201.3	163.8	185.0			
17	98	Soda ash	162.5	240.5	178.8			183.6
18	100	Industrial gases	287.8	200.7	209.0			182.5
19	102	Industrial organic chemicals	225.3	203.8			168.6	163.3
20	106	Agricultural chemicals including fertilizer			162.0		161.1	164.9
21	108	Plastic material	214.2	181.3	224.5	161.4	186.5	205.7
22	110	Rubber, natural or synthetic	200.4	166.9	165.9		161.7	
23	112	Detergent and other cleaning products						164.8
24	116	Petroleum refining products	161.1					162.2
25	118	Petroleum-lube oils and greases	167.7					
26	120	Liquified gases, coal or petroleum	167.7					
27	122	Petroleum coke		182.9				
28	128	Reclaimed rubber					163.3	
29	132	Cullet	161.3	169.1	222.2	212.9	208.7	197.0
30	136	Gypsum building material						161.9
31	138	Semifinished steel		160.2				171.9
32	140	Manufactured iron or steel	172.4		164.9			179.4
33	142	Iron or steel pipe			191.0			174.3
34	144	Primary copper products	175.8	207.3	180.7		196.4	179.1
35	146	Primary aluminum products	182.8	182.2	183.4		180.1	192.4
36	148	Aluminum basic shapes		169.0	173.7		182.8	160.6
37	150	Farm machinery						168.8
38	152	Heavy machinery	186.0		208.1	167.0	165.4	216.1
39	154	Major household appliances						167.8
40	156	Motor passenger cars, assembled			184.7			205.1
41	158	Motor vehicles, assembled, O/T pass cars			176.1			191.6
42	160	Motor vehicle parts		174.6	190.8		180.0	177.3
43	162	Iron or steel scrap					166.7	
44	166	Copper matte	191.8		172.7		174.6	178.6
45	168	Lead matte	164.0	220.1	165.5			195.3
46	170	Zinc dross and residue	166.3	208.8			167.6	182.6
47	172	Aluminum residue	175.4	227.5	171.6		205.4	215.0
48	174	Misc. nonferrous metals residue			214.5	167.4	202.3	230.6
49	176	Ashes		179.0			185.7	189.1
50	178	Brass, bronze, copper or alloy scrap			179.9		188.1	164.4
51	180	Lead, zinc or alloy scrap	169.4				197.9	190.5
52	182	Aluminum or alloy scrap		166.9	177.0		174.2	
53	192	Municipal garbage						170.7

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

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 28, 1978.

Hon. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LONG: I am pleased to forward to you responses to the five questions you sent to me on July 14, 1978. The questions and their appropriate responses were prepared in connection with the Surface Transportation Subcommittee's July 11th hearing on the Midwest rail situation and proposed revision of the bankruptcy laws.

Sincerely yours,

A. DANIEL O'NEAL,
Chairman.

Attachment.

Question 1. Where a railroad is in bankruptcy, and at the same time is a party to a coordination or consolidation agreement, will there not arise a head to head conflict between the bankruptcy court and the Interstate Commerce Commission, if an abandonment is involved in the agreement?

Answer. As I testified on July 11, 1978, the Interstate Commerce Commission supports enactment of revised bankruptcy legislation which would leave authority over railroad abandonments with the Commission rather than vesting it in the bankruptcy court. Nevertheless, I do not believe that the effectuation of a railroad coordination or consolidation agreement involving a railroad in reorganization would necessarily give rise to a "head-to-head conflict" between the court and the Commission. Even though we would prefer to have the authority over bankruptcies remain in the Commission, I think I can say confidently that the Commission would be prepared to work with a reorganization court in the interests of preserving essential rail services and in promoting more efficient rail operations if the revised Bankruptcy Act makes this necessary.

In a typical coordination project, two railroads with roughly parallel trackage would agree that their traffic between certain points which they both serve would be routed over the line of one of them, that the line to be used would be upgraded, and that the other line would either be abandoned or downgraded to branch line status. In this instance, the Commission would be required to approve the consolidation project under either section 5(2) or 5(3) of the Interstate Commerce Act. In addition, approval would be needed if one of the two lines is to be completely abandoned. If it is simply to be downgraded and to receive a lighter traffic burden than the other line, no authority would be required. If the roads involved are solvent, or if the one whose line is to be abandoned is subject to the present bankruptcy law, it would be the Commission which would be required to give approval for the proposed abandonment. If, however, the railroad owning the line to be abandoned were in reorganization and subject to the bankruptcy laws as they are proposed to be revised, it would have to make the determination whether the line in question should be abandoned. I am confident that the Commission would be able and willing to work in harmony with the bankruptcy court in resolving a situation of this kind. Coordination obviously would be necessary, but I believe that it could be achieved.

Of course, without such coordination, I do envision some problems for the Commission in acting on consolidation requests. For example, the bankruptcy court might authorize an abandonment on the assumption that a consolidation agreement would be approved. The Commission, on the other hand, in considering the agreement might find that the line approved for abandonment by the court was superior in design, construction, and maintenance to the other lines subject to the agreement, as well as best serving the users of the lines. It would favor retaining the line as part of the consolidation rather than abandoning it. The Commission would be left in a position of either disapproving the consolidation altogether or approving one inferior to that which it would otherwise have approved.

Question 2. I have been concerned for some time about the serious cash-flow situation on the Delaware and Hudson Railroad. It is no secret that without USRA financial assistance, the D&H may be the nation's next bankrupt carrier. What are your thoughts on the future of the D&H? What do you perceive as

possible measures the railroad and/or the Federal government might take to strengthen the carrier?

Answer. The Delaware and Hudson Railway has experienced several cash crises during the last year. One of these involved a debt to two insurance companies which matured in April of this year. That situation was apparently resolved, after extended negotiations, when the insurance companies agreed to accept approximately 200 unencumbered D&H cars in lieu of payment, with the cars being leased back to D&H under an 11-year agreement. This agreement, however, has not been consummated. Additional funds were made available to the D&H through a refinancing by the Federal Railroad Administration of locomotives which the D&H had acquired under a United States Railway Association loan agreement.

The D&H's financial situation has been made worse by the present Norfolk and Western strike. We estimate that the strike will decrease the D&H's cash flow by about $250,000 per week because of lost traffic. At this point, we cannot predict the outcome of the strike, and consequently, the total impact on the D&H.

The possibility must be faced that the D&H may opt for bankruptcy reorganization (its board voted not to file for reorganization at a meeting held July 27) or that it may eventually have to cease operations due to lack of cash. In my opinion, bankruptcy would not have any immediate adverse effect upon the railroad's ability to continue to operate, and might even improve its cash position temporarily. Nor do I expect its cash position to become so weak that it will have to suspend operations in the immediate future.

The Interstate Commerce Commission has authority (and we believe the responsibility) under section 1(16) (b) of the Interstate Commerce Act to direct one or more railroads to operate the essential services of a railroad which ceases operations. The ICC has prepared a preliminary contingency plan for directed service. This involved determining which D&H lines would be operated and assessing the pros and cons of various potential operators, together with an estimate of the cost of the directed service over the 240-day period for which service can be ordered.

Other than the financial assistance available through USRA, there are no direct actions which can be taken by the Federal government to strengthen the D&H at this time. Should it be forced into bankruptcy, funds would be available under the Emergency Rail Services Act, 45 USC 661 et seq., which is administered by the Department of Transportation. About $50,000,000 in funding is now available under that act to aid railroads in reorganization. If Conrail would agree to postpone debt payments owed to Conrail by the D&H and revise its trackage rights agreement so as to reduce the D&H's payment to Conrail, the D&H's cash flow would be increased somewhat. However, it is unlikely that Conrail would take either of these actions without prompting by Congress.

Question 3. Section 1171 of the Senate bill proposes that the Trustee shall submit a reorganization plan to the court within 18 months or show cause why such a plan could not be devised. I would appreciate your comments on this particular time limit. My initial reaction was that the time period was too restrictive; for instance, it took the Missouri-Pacific more than 12 years to develop a successful plan of reorganization.

Answer. Over the years much criticism has been leveled at the manner in which rail organizations have been processed. Most of it has been directed to the length of time required to complete reorganization proceedings. One of the basic causes of this delay problem has been the lack of an effective deadline on the submission of the plan. The most recent extreme example of delay at this stage of the proceeding is the reorganization of the Central Railroad Company of New Jersey. The reorganization petition was filed in 1967, and the railroad was ultimately reorganized in 1976 under the 3–R Act. No plan of reorganization was ever filed by the debtor, the trustee or any other party under section 77. The Missouri-Pacific is another extreme case. The creditors and shareholders waited for twelve years for a settlement.

As we have stressed in our testimony, the bankruptcy laws should not be designed to preserve, at any cost, a given corporate entity. In a railroad reorganization, the public interest must not be used as a tool to deprive the creditors of their rights for an unreasonable length of time.

For those reasons, the Commission supports the imposition of strict time limits on the submission of a plan by the trustee or an explanation of why such a plan cannot be formulated. Eighteen months appears to be a reasonable time limit.

Of course, section 1171 would permit the court to extend this time limit for good cause shown. This would allow the court to make adjustments if truly warranted. Further, the explanation required of the trustee should provide a base for an informed review of any decision by the court to grant an extension for the development of a plan.

Unfortunately, the ease with which extensions have been granted in the past has significantly reduced the pressure on trustees to confront difficult issues arising in the reorganization and prolonged the process. Section 1174 of the bill which provides for the conversion of a railroad reorganization to a liquidation, if among other things the trustee fails to submit a plan within the required time period or if a plan has not been confirmed within five years, should help reduce the length of time required to complete railroad reorganizations.

Question 4. Section 1168 of the Senate bill provides that "day-to-day" expenses of the railroad be given a priority status in the debt hierarchy. The most outstanding "day-to-day" expense that comes to mind is the per diem charges owed other rail carriers (per diem charges are fees rail carriers pay other railroads on a per day basis for the use of their freight cars). If this particular provision were law when your railroad went into bankruptcy—what effect, if any, would it have had on the reorganization process and the available cash reserves? (N.B. estimates for the Rock Island would be as high as $14 million right off the top.)

Answer. This question appears to have been directed to specific rail carriers rather than the Commission. I can respond only in general terms, and in so doing I would refer you to my testimony on behalf of the Commission on July 11, 1978.

I then testified that any restriction on payments ordered by the Commission on interline accounts would be likely to adversely affect the operations of both the debtor and the solvent railroads with which it deals. Unsure of payment, the solvent railroads would divert traffic from the bankrupt carrier whenever possible. This would further aggravate the debtor's problems by causing a reduction in its interline revenue.

I recognize, of course, that there may be a trade-off here, but overall I believe the debtor will be better off if it makes these payments and maintains sound relationships with the other railroads.

Question 5. Section 1178 of the Senate Bankruptcy Reform Bill proposes that the Bankruptcy Court shall have decisionmaking authority in rail abandonment cases involving bankrupt carriers. What are your comments on this section? Are you satisfied that a court could adequately perform what has traditionally been such an administrative/regulatory function?

Answer. As I testified on July 11, 1978, the Commission believes that it should have the authority to pass on rail abandonments involving carriers in reorganization. Section 1178 of S. 2266, as reported by the Judiciary Committee, would remove this authority from the Commission and vest it in the bankruptcy court. On the other hand, S. 2266, as originally introduced, would have preserved the Commission's prerogatives under Section 1a of the Interstate Commerce Act with certain modifications. The Commission has firmly supported the original bill. I think it is a carefully thought out piece of legislation, and I commented on it at some length in my testimony before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary on December 1, 1977. For your convenience, a copy of that portion of my statement before the Judiciary Committee dealing with the abandonment situation is attached to the answer to this question.

I believe that section 1178 of S. 2266, as reported, is seriously deficient. Even if Congress decides that the reorganization court should have the final responsibility to make determinations in the case of abandonments by railroads in reorganization, I think that the draft legislation needs to be revised because it lacks clarity.

Under subsection (b), if the trustee and the court determine that a particular rail line should be abandoned, the trustee must file an application for abandonment with the Commission. The court may then fix a time within which the Commission shall report to it on the application. I think it advisable that an application be filed with the Commission, whether or not the Commission is to have the final say in determining that application. The filing of the application triggers a number of steps which are designed to give the public ample notice of the abandonment proposal. I believe that the bill should make it clear that the application must be filed in conformity with the provisions of section 1a of the

Interstate Commerce Act and the Commission's regulations implementing that section. Thus the public will be assured of adequate notice and given the opportunity to present its views to the decisionmaking body, whether it be the Commission or the court. Thus I think that subsection (b) must include some provision to make it clear that the time limit imposed on the Commission by the court must be long enough to provide the opportunity for public notice as required by the Interstate Commerce Act and the Commission's regulations. Actually, as pointed out in my testimony in support of section 1179 of the earlier version of S. 2266, the Commission believes that the time limits which are now included in section 1a of the Interstate Commerce Act, and which required expedited procedures by the Commission, are tight enough to be made applicable to cases involving railroads in reorganization.

Section 1179 of the earlier bill recognizes that situations may arise in which faster action is necessary because of serious cash drains on the debtor's estate. It provides for emergency treatment in such situations, but still provides an opportunity for public participation in the decision to abandon.

In approaching the question of how to divide up the abandonment responsibility, I would suggest that the Subcommittee consider whether different treatment should be given to abandonment proposals made by the trustee during the course of the reorganization proceedings, and those which are incorporated as part of the reorganization plan itself. Such a proceeding, as is well known, can drag out for many years, and the trustee in effect becomes the management of the debtor railroad. In the course of the reorganization proceedings, abandonment applications are likely to be filed which represent routine management decisions. There appears to be no reason why these should not be handled in the same way as abandonments proposed by solvent railroads. Normally, there is no more urgency involved in processing an abandonment of this kind when filed by a railroad in reorganization than there is if the abandonment is one proposed by a solvent carrier. It appears that both the original version and the present legislation anticipated this kind of abandonment.

Where an abandonment is an integral part of the reorganization plan, the situation is different. The plan will have been submitted to the court and will have been given substantial publicity. The opportunity for the Commission and members of the public to make their views known on the reorganization plan exists. I suggest, therefore, that the Subcommittee consider replacing section 1178 of the reported bill with section 1179 of the bill as introduced, but that it add language to section 1179 which makes it clear that its provisions do not apply to line abandonments which are proposed initially as part of an overall rail reorganization plan. I would then also propose that section 1171, which provides for the review by the Commission of certain aspects of the reorganization plan, be amended to provide that the Commission would also be responsible for reviewing any line abandonment which is initially proposed as part of the plan.

Attachment.

Section 1179 of the bill covers the situation where abandonment of a railroad line or discontinuance of rail service is requested by a railroad in reorganization. In general this section preserves the Commission's prerogatives under the rail abandonment statute, section 1a(6) of the Interstate Commerce Act (49 U.S.C. 1a(6)), with certain modifications. We agree with this approach because the importance of rail service to the communities, shippers and passengers who rely upon it is such that, even for a railroad in reorganization, services should not ordinarily be terminated except in accordance with the abandonment provisions of the Interstate Commerce Act. Of course, the elimination of money-losing services may be an important, and even necessary, factor in turning a railroad in reorganization back into a profitable enterprise.

In general, section 1179 appears to be an improvement over existing law. It modifies the general financial assistance provisions of the abandonment statute, and the Commission's abandonment regulations (49 C.F.R. 1121.38–1121.46) to meet the distinct needs of carriers involved in bankruptcy proceedings. For example, the proposed bankruptcy legislation would require retroactive application of financial assistance to the day the abandonment would have become effective if the abandonment had not been postponed. This feature, which is not applicable in ordinary abandonment proceedings, appears to be a sound accommodation in the bankruptcy situation where the balance between the needs of the debtor and the needs of the public is somewhat different than in the situation where the carrier is solvent.

Section 1179(d) recognizes that there may be situations in which a debtor's rail service simply cannot be continued because the money is lacking to meet the payroll or to keep the track and trains in safe operating condition. It provides for the termination of service in such a case, but requires advance public notice and an opportunity for public hearing at which interested persons may submit alternative plans for preserving essential rail services. The Commission and other governmental entities are embraced within the term "interested persons." We believe this is an essentially sound procedure and would note additionally that this subsection should be read in conjunction with section 1(16)(b) of the Interstate Commerce Act which authorizes the Commission to make other arrangements for continued rail service in situations, among others, where a railroad "has been ordered to discontinue service by a court." It appears that section 1179(d) of the proposed legislation could be made to work in harmony with section 1(16)(b). Another provision of the bill is carried over from present section 77, namely the requirement that the Commission must make any needed valuation of the transportation property of the debtor. This provision, which is included in section 1180 of the proposed legislation, is clearly in the public interest, and we support it.

Senator LONG. Next we will call Mr. Les Holland, director of the rail division of the Iowa Department of Transportation.

STATEMENT OF HON. JOHN C. CULVER, U.S. SENATOR FROM IOWA

Senator CULVER. He is here, Mr. Chairman. I appreciate the opportunity to accompany him and introduce him.

Mr. Chairman, I am certainly pleased to be able to introduce my friend, Mr. Les Holland, to the members of the Surface Transportation Subcommittee.

Les is director of the Iowa Department of Transportation, railroad division, which is recognized, I think, throughout the country for developing some very innovative approaches for making the transportation of grain and other agricultural commodities by rail more efficient.

The railroad division is currently, Mr. Chairman, administrating a State vented branch line assistance program which is now upgraded in our State. I believe, something like more than 700 miles of track.

And this program has been responsible for significant savings for Iowa farmers and shippers. I think it is unique in the country while at the same time helping to avoid the often catastrophic effects that branch line abandonment can have on small, rural communities as you know so well, sir.

It is also working on a simulation model of grain car movement, which is designed to anticipate peak demands for hopper cars and boxcars, and try to help eliminate many of the flexibilities in the availability of this critical equipment to shippers.

And finally, Mr. Chairman, Iowa and the rest of the Midwest, as you very much appreciate, are facing the critical situation, again, with regard to grain cars.

The experience of the Iowa Department of Transportation regarding causes of this shortage as well as its recommendations to alleviate this problem, I hope will be of interest to the Surface Transportation Committee.

We are proud of what they have accomplished in our State. I want to thank you, Mr. Chairman, for letting him testify today.

Senator LONG. Thank you. Mr. Clark?

STATEMENT OF HON. DICK CLARK, U.S. SENATOR FROM IOWA

Senator CLARK. Just a word, Mr. Chairman. I want to, also, join in introducing Mr. Holland. He is a former employee of a colleague of ours, Senator Harold Hughes, some time ago when he was Governor. And I think he knows a great deal about this subject. He has followed it perhaps more closely than anyone else in our State.

I think he speaks with great authority as Senator Culver has said, Iowa is recognized throughout the country in the transportation world, generally, as having one of the most progressive and professional transportation departments in the Nation.

I am sure that Mr. Holland will be able to shed significant light on a very critical problem in our State.

We are second in corn production and soybean production. We have a great interest, and we are pleased that you have asked him to testify.

Senator LONG. Proceed.

STATEMENT OF LES HOLLAND, DIRECTOR OF RAIL DIVISION, IOWA DEPARTMENT OF TRANSPORTATION

Mr. HOLLAND. Thank you, Senators Culver and Clark. I appreciate the introduction.

Mr. Chairman, first I would like to express appreciation on behalf of the director of the Iowa Department of Transportation, Mr. Kassel, who planned to be here to testify himself, but he had a prior engagement with the UMTA officials.

He asked me to appear on his behalf today to give his testimony.

With that introduction, I would like to point out that 15 percent of the corn and soybeans are exported through New Orleans and virtually all of that comes from Iowa.

We in Iowa grow over 1 billion bushels of corn and beans each year. And more than half of last year's crop remains in storage today.

As you might have mentioned, the grain car shortage is of critical importance to us in Iowa. We have been working on this problem since last January when the shortage first came into focus and became serious.

We don't have any magical solutions or answers to offer, or else the problem would have been solved sometime ago. However, we have to say sometimes, we don't know of the answers to problems, but we do have some ideas we would like to share with you today.

First, I would like to bring you up to date on the situation in Iowa as of June 29, 1978.

We were about 6,000 cars short of which—most of which were jumbo hopper cars that haul our grain.

This represents a 20-percent improvement over a month ago. But we expect the improvement only to be temporary. As of last Friday, the difference between the price being paid at the gulf for a bushel of corn and the price for September delivery at Chicago was only 13 cents.

With the basis that narrow, many of our Iowa farmers are holding their corn in anticipation of better prices between now and the fall harvest.

31-890—78——3

We estimate as little as 5 to 10 cents per bushel increase in the gulf price for corn, given the volume of grain in storage, this facing most of our farmers, could result in renewed demand for rail cars.

Our prediction is that the grain car shortage will continue at current levels or higher until opening of the rivers next spring.

With that optimistic introduction, I would now like to address the subject of today's hearing, S. 3260.

Iowa DOT is not opposed to passage of this bill. It appears to be needed to reinstate the legislative intent originally contained in the 4–R Act.

We have discussed this proposed legislation with the railroads that operate in Iowa. They, of course, are in favor of it and tell us that if it were passed, we could expect moderate rate increases in the next year or so.

It would not be realistic, however, to expect the revenue from those rate increases to be applied to new car acquisition.

We are not particularly concerned about that since we do not believe car acquisition to be the best answer to the car shortage. In order to explain our reasoning here, I would like to take a couple of minutes to discuss the car shortage itself and describe to you what we think the shortage is and what it is not.

In our investigation, we have found the car shortage to be made up of two, closely related, but separate problems.

The first is the physical shortage of grain cars and the second is the controversy over alleged shipper discrimination.

The physical shortage of grain cars which we have faced in Iowa since January can be attributed to four major causes.

One, wide fluctuations in car demand. Two, poor car utilization. Three, weather. And four, disasters.

I would like to address the first two of these.

Car shortages do not result from changes in the supply of cars. Rather, they occur when the demand for cars exceeds the available supply. In fact, it might be more accurate to refer to the "car shortage" as a "demand excess."

Since last December, we have been trying to market 2 years' worth of Iowa grain within a short period of time.

As a result, we have exceeded the capacity of our transportation system. Remember that the barge shortage has been just as pronounced as the rail car shortage. In recent weeks, barge rates have ranged as high as 300 percent of tariff, as you probably know.

It is simply not reasonable to argue large sums of money in new car acquisition. The fact is that the railroads are buying new cars now.

There are also substantial numbers of cars being built for leasing, and promising programs are underway at such railroads as The Rock Island for car repair and rehabilitation.

These increases in the car supply are all that should be expected given the economics of grain transportation. It is not a good investment to build grain cars for peak demand periods if those cars are going to sit idle for 6 to 18 months when demand is low.

For that reason, we have been focusing our efforts not on encouraging new car purchases, but on finding ways to smooth out the wide fluctuations in demand for grain cars.

The most commonly discussed approach to this is peak period pricing, or seasonal rates. There is no reason why the railroads should not be more aggressive in attempting to implement seasonal rates.

We believe that the railroads' fears that grain shippers will shift to other modes are unrealistic when you consider that many of those same shippers are today completely unable to obtain railcars during shortages.

The railroads should also be reminded that the congressional intent behind the seasonal rates provision of the 4–R Act was that rate increases during peak periods would be tied to rate decreases during off-seasons.

It is difficult to be very specific about potential means for improving grain car utilization. In Iowa this spring, we had grain cars take as long as 45 days to go to the gulf and return—a trip which should be made in 15 days or less.

At Iowa DOT, initial efforts are underway to determine what causes long turn-around times. We would like to know specifically where grain cars spend that 45 days and what could be done to shorten the trip.

At this time, the only solid recommendation we can offer is that FRA take a more active approach in spending its title V money. It is a long way to the gulf at 25 miles per hour and mainline upgrading is one area where some improvement in car use could be achieved fairly quickly.

There may not be much we can do to prevent bad weather or disasters, but a real improvement in our response to them is possible.

This is the main thrust of our comments today, Senator.

We have, over recent months, become convinced that the information which ICC relies upon in issuing car service orders and in making other decisions is simply not adequate.

We have also become convinced that ICC needs to develop the ability to anticipate car service problems and take preventive action rather than respond to problems after it's too late.

To accomplish this goal, Iowa DOT has been working with ICC on the development of a grain car simulation model which will help us in this proposal.

The purpose of this model is to provide ICC with the ability to one, forecast car supply and demand; two, analyze impacts of new developments in export markets, prices, or weather; three, estimate the impact of proposed car service orders before they are issued; and, four, monitor the impact of car service orders after they are issued to see if they are having the desired effect.

This model is in preliminary stages only and is currently being reviewed by the ICC, the Association of American Railroads, USDA, and the professional staff members from this committee.

We anticipate that actual development of the simulation model itself will be done by a consultant experienced in this field.

Before that contract can be written, however, a source of funding needs to be identified and some commitment needs to be obtained from the ICC that the model will actually be used once it is developed.

We feel this is the most appropriate approach to this problem, and we would like to ask this committee's assistance in urging the ICC to

participate in the model's development and to attempt to employ the model in its decisionmaking processes.

As I mentioned earlier, the grain car shortage is, in fact, made up of two separate, but related, problems. I would now like to turn to the second of these which is the controversy over alleged shipper discrimination.

Section 1 of title 49 of the U.S. Code obligates common carriers by rail to adopt just and reasonable practices with respect to distribution of grain cars among shippers.

During times when there are more grain cars than needed to fill orders, the just and reasonable requirement is not, in general, a subject of contention.

But the existence of a grain car shortage creates an atmosphere in which distribution of scarce equipment becomes a matter of great importance to those who must rely on the railroads to ship grain to market.

Most railroads do not have a policy or formal system for the distribution of grain cars among shippers.

However, the extent to which cars are actually distributed according to these systems in times of shortage is unknown.

In any case, the shippers are not informed of their ratings. Thus, most shippers do not know on what basis their carrier is distributing cars—if, in fact, any consistent, nondiscriminatory basis exists.

It is the responsibility of the ICC to insure fair and equitable distribution of railroad-owned grain cars.

However, the car service issues which arise in times of grain car shortage cannot be adequately handled by the Commission through exercise of its emergency powers.

The fact is that car service orders combine some of the worst features of Government regulation.

Car service orders are too inflexible to allow carriers and shippers to devise their own best approaches to shortage-related programs, yet they are short-term rules designed for the specific problems immediately at hand and create an uncertain environment for industry decisionmaking.

Coupled with this, car service orders are often not issued until long after an emergency situation exists.

The Commission should define through it's rulemaking authority, the phrase "just and reasonable practices with respect to car service."

For this reason, the Iowa DOT will, later this summer, petition the ICC under rule 44 of its Rules of Practice, to institute rulemaking proceedings for the purpose of issuing a car service rule.

As I pointed out earlier, the impact of the ICC's various car service orders on the car shortage problem is not generally known. Neither the ICC nor anyone else has the technology or ability today to analyze that.

We do feel that the system which is being used at the ICC today is operated in good faith and sincerity, and functions as well as any system like that ever could. However, the grain car shortage is an incredibly complicated problem, and we feel that the only way the ICC will ever be able to adequately deal with it is through the development and implementation of a simulation model such as that proposed by the Iowa DOT.

We do not at this time have any legislation to propose which we feel would either improve car utilization or ease the car shortage.

We do, however, believe that adoption of Iowa DOT's proposed rule by the ICC would have an important impact on the grain car shortage as viewed by the Nation's grain shippers.

We feel that the use of seasonal rates, if implemented properly, could be effective in smoothing out some of the peaks and valleys in the demand for grain cars.

We feel the railroads have been unnecessarily reluctant to try seasonal rates because of their concern that grain shippers will shift to other modes of transportation. We also believe that seasonal rates will work only if they include both increases during peak seasons, and decreases during off-seasons.

Finally, we are not certain at this time whether the common ownership concept which is used in Trailer Train and Railbox could be applied effectively to covered hopper cars.

We believe there could be some improvement in car utilization as a result of some pooling effort like this. However, on most covered hopper car movements there will be little that can be done to eliminate the empty back haul.

We would also like to point out that the shipper discrimination questions which could result from the assignment of cars by a central pooling authority could be quite complicated and difficult to deal with.

For these reasons, we cannot at this time support the combined ownership concept as a solution to the grain car shortage.

This concludes my prepared testimony. May I answer any questions?

[The information referred to follows:]

DRAFT

IOWA DEPARTMENT OF TRANSPORTATION

PROPOSED RULE

Distribution of grain cars

(a) It is the intent of the Commission to encourage the efficient utilization and just and reasonable allocation of grain cars used in the movement of grain and grain products. When used in this section, unless the context otherwise requires:

1. The term "grain" means any unprocessed, raw, whole grain, including but not limited to barley, buckwheat, corn, oats, rice, rye, sorghum, soybeans, and wheat.

2. The term "grain products" means any non-liquid, processed product of raw, whole grain as defined in this section.

3. The term "unit grain train" means a multiple-car shipment of grain or grain products subject to a single tariff requiring twenty (20) or more grain cars, organized and operated as a unit from a single origin point to a single destination point and pursuant to one bill of lading.

4. The term "grain car" means any railroad car used for the transportation of grain or grain products, including but not limited to a covered hopper car or boxcar.

5. The term "shortage of grain cars" means when the supply of cars available for the transportation of grain is less than the grain car requirement of shippers of grain. The existence of a shortage of grain cars shall be determined by each carrier with respect to its own operations, or by the Commission.

(b) It shall be the duty of every carrier by railroad to furnish adequate car service and to make just and reasonable distribution of cars for the transportation of grain or grain products on behalf of shippers or receivers served by the carrier, whether located upon the carrier's line or lines, or customarily dependent

upon the carrier for grain car supply. During any period of shortage of grain cars it shall be the duty of the carrier to maintain and apply just and reasonable ratings, approved by the Commission, as to each grain or grain products shipper and to distribute grain cars proportionately based upon such ratings. It shall be the further duty of the carrier to count each and every grain car used by a shipper against that shipper. Grain cars supplied or owned by shippers or receivers of grain or grain products shall not be considered a part of the carrier's grain car fleet or included in determining questions of distribution or grain car count.

(c) In applying the provisions of this section, unit grain train service and nonunit grain train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service. Whether or not ratings as to the grain and grain products shippers or distribution of cars are just and reasonable shall be determined within each such class and not between them.

(d) In reviewing each proposed ratings system the following procedures shall be followed:

1. Each carrier by railroad subject to this section shall submit to the Commission its proposed system within 180 days from the enactment of this section. Each carrier shall attach to the proposed system an affidavit of notice certifying that a copy of the proposed system and a notice of intent have been sent to 1) the chief executive officer of each State in which any part of the carrier's railroad operation is located, 2) the director of the state agency that is charged with the duty to supervise or regulate carriers by railroad for each state in which any part of the carrier's railroad operation is located, and 3) all grain and grain products shippers who have made use of the carrier's line of railroad during the twelve months preceding the submission.

2. The notice of intent, referred to above, shall contain a brief summary of the proposed system, and shall state the date on which the proposed system will be filed with the Commission and the date on which any comments must be filed.

3. Upon receipt of a carrier's proposed ratings system and affidavit of notice, the Commission shall docket the same. Any shipper, State or interested party wishing to file comments with the Commission concerning the proposed system shall do so no later than thirty days after the submission of the proposed ratings system with the Commission. A carrier may file and reply to a comment within twenty days after filing of the comment with the Commission. There shall be no further pleadings filed with the Commission or hearings conducted, unless otherwise ordered by the Commission for good cause shown.

4. The Commission shall approve or disapprove each proposed ratings system within 180 days from its submission, and if any such action is not taken by the Commission within 180 days from the submission of the system the system shall be deemed approved.

5. Provided the notice requirements set forth in subsections d(1) and (2) are satisfied, a carrier may file with the Commission a revised ratings system at any time after approval of the initial ratings system. Upon the proper filing of the revised ratings system the procedures and time limitations set forth in subsections d(3) and (4) shall apply.

6. In the event the initial ratings system is disapproved by the Commission, the carrier proposing the ratings system shall file a revised ratings system within 60 days from the date of disapproval. The filing of the revised ratings system shall be subject to the notice requirements in subsections d(1) and (2).

7. The Commission shall not restrict the number or percentage of grain cars allocated to unit grain train or nonunit grain train service, and all service orders providing for such restrictions are hereby vacated.

Senator LONG. You made reference to cars taking 45 days to make a round trip, when you say that they could make it in 15 days or less.

What is the main reason; is that a rather typical situation, or is that an unusual situation, the 45 days?

Mr. HOLLAND. That seems to be more typical, particularly with the single-car rate movements. The unit train facilities have better turnaround time, and it will fluctuate. It will depend on what railroad, whether or not there are interchanges.

In our experience in Iowa shipping grain cars from our grain-producing areas down to the gulf and back, that has been generally the experience.

Senator LONG. What would seem to be the reason for the cars taking so long is that they just let him sit down there for a long time hoping to pick up a backhaul, or something like that?

Mr. HOLLAND. This is one of the things, as I stated in our testimony, we would like to find out. We would like to have more information.

We hear a lot of things from railroads, from shippers, and from others. But as you know, it is hard to get on a graincar and see what happens.

We do anticipate trying to find out where the delays are. We do know that in some cases, when they interchange from one railroad to the other, they will sit there for sometimes a week, perhaps more. The condition of some of the lines are such that they cannot move fast. We understand down at the other end at the terminals on the coast, that they will sometimes sit there for several days or a week before they are unloaded.

There are a combination of things that result in the long turn-around time.

Senator LONG. That leads me to wonder whether anybody is thinking about—in other words, I take it that that is part of the burden of your statement. Somebody ought to be thinking about the fact that at a certain time of the year, there will be a lot of grain moving down the road into the gulf coast parts. And in a port like yours, there will be about 50 cars down there.

Now it would be good if they had something to haul back and somebody might be able to have a cheap backhaul rate, maybe back up to Iowa. But there is not going to be enough to keep those cars busy. A lot are going to have to come back empty, and if they are going to have to come back empty, there is no point in leaving them down there for a couple of weeks when you need them on the other end. You want to get them back.

Mr. HOLLAND. Correct.

Senator LONG. So that way, a car can make three round trips. That is like having three cars instead of one car.

Mr. HOLLAND. Correct.

Senator LONG. You are saying, as I understand it, there is not right now the capability anywhere to look at where all of the cars are and where the demand is.

Mr. HOLLAND. That is correct. We feel that the issuing of the service orders, and even talking to the ICC about this problem—they really don't know what the impact is going to be when they issue those orders ahead of time, and after they are issued, they don't really have an effective measuring device to determine what the impact was.

It is kind of like shooting in the dark.

That is the reason that we feel that the development of a simulation model, which may not be 100 percent all the time, would at least be a more effective tool in taking into account all of the things that cause and lead up to a car shortage.

We are hopeful and optimistic that something can work out that will be a more helpful tool to offset a shortage before it is upon us.

Senator LONG. Why would you assume that—let's put it this way: Why has not such a computer model been established already to try to get this information and utilize it?

Mr. HOLLAND. Mr. Chairman, we have talked to a lot of people and have tried to find out what has been done in this area in the past.

I do know that the ICC has looked at various types of models and have found them not to be acceptable or workable.

I can't say why they discard them for sure, except that they feel apparently there are too many holes in them and that they would not be accurate enough to be a useful tool.

We think what we are proposing has some merit. We are trying to put it to the real test and go to the experts in the Government, the USDA, other States, a lot of people who are taking a look at it to see what they think about it. We are not sure it will work either, yet, but we would like to see it work and we would like to see it pursued because through the years we have been doing this same thing. The peaks and valleys keep going, and every time there is a shortage, we run in and say we have to do something about it.

We would like to develop something that would help us offset that, some type of forecasting model. We think that is the way we ought to go and look in the future.

Senator LONG. If you have the forecasting model, what you ought to be doing is putting your cars where the highest priority need is.

Mr. HOLLAND. That would be one way of doing it, plus the fact it would—the model would help the ICC determine where it is, and if they need to issue some service orders to get cars moved to that area, they could do it ahead instead of after-the-fact.

Senator LONG. Thank you very much for a very thoughtful statement.

Senator Clark?

Senator CLARK. I have no questions. I appreciate having the opportunity to sit in.

Mr. HOLLAND. Thank you for the opportunity, Senator.

Senator LONG. Thank you for your statement.

Now we will hear from Ronald Schrader, special assistant for transportation to the Secretary of Agriculture.

STATEMENT OF RONALD F. SCHRADER, SPECIAL ASSISTANT FOR TRANSPORTATION TO THE SECRETARY, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JAMES LAUTH; AND CHARLES PEARSON

Mr. SCHRADER. I am Ronald F. Schrader, special assistant to the Secretary. On my right is Jim Lauth. On my left, Charley Pearson.

I don't think there is a need to spend a lot of time talking on the importance of transportation to agriculture. We have outlined that in the first pages of our testimony. It is sufficient to say that because of that interest, along with the severe railcar shortages that existed late last year, Secretary Bergland has ordered the full resources of USDA to help the grain, cotton, and fertilizer shippers obtain the needed cars and to help the ICC in locating those cars.

We attempted in three separate areas to be of some help and assistance to the shippers and to the ICC.

We instituted a hot line, requesting that shippers, elevator operators, and so on, call USDA, let us know what the major problems were, particularly where grain was on ground and so forth.

We tried to identify with the hot line calls, the areas, the States, the commodities that were of most concern, and also the railroads that were giving the shippers the greatest deal of difficulty, and then to provide the ICC with the information that we obtained so that they could better carry out their statutory responsibilities.

We attempted also to pull together the statistical information that USDA has at its disposal, such as expert reports, the estimated fertilizer demand, crop reports, and so on, and try to help ICC interpret that data so that they could better make judgments.

I don't think that we were of much help in that regard, simply because there wasn't a sufficient data base with which they could use to interpret information.

We have attempted and are currently in the process of gathering more data to help ICC to interpret and predict.

Exhibit A of my testimony list those items to which I am referring.

Basically, what we are trying to do is go back about 7 to 10 years to determine a month-by-month estimation of the car shortages, the export sales, the barge loadings, railcar loadings, the prices by commodities, the storage capacity that is being used, and finally, how much grain is under loan. With this information we will try to correlate those figures with the railcar shortage problem so that we can estimate and project, at least on the short-term basis where those cars will be needed, in what areas, and by what commodities.

We have fed this information into computers and are currently in the process of trying to make a determination if it can be of any help to the United States.

Also on exhibit A, you will see the car shortages since 1970, please note that the previous high was in 1973 with an estimated 15,000 cars short per day. In 1978 the shortage has surpassed those figures.

The interesting part is that it occurred during nonharvest months. Early this year, for example, in April, we had a record of 36,000 cars short on a daily average.

We are of the opinion that that shortage will continue throughout this year and into next year.

Chairman O'Neal of the ICC mentioned some of the reasons for that shortage. We would like to outline some additional reasons. The severe weather was the initial part of the problem. Cars were stranded all over the Northeast and Midwest. Locomotive power was another problem because they had to cut those train units in half that couldn't get through the snow banks.

Therefore, we had to use double the locomotive power for the same number of cars.

In addition to that, the locomotives were shorted out as well as the generators because of the snow underneath. That put additional power out of use.

On top of that, we have a figure of about 10 to 15 percent of bad order cars today, cars that are in need of repair and are on the side railings.

The normal figure is about 3 to 5 percent, so we are triple the normal figure of bad order cars. Add to that the 8½ months——

Senator LONG. Just a moment, please.

[Pause.]

Mr. SCHRADER. I was about to say that you add to those problems an 8½-month strike of the Nation's largest car manufacturing concerns. and then probably most importantly of all, the poor maintenance of track. In the Midwest, where the granger railroads are the major grain haulers, they have 25,000 miles of track under slow orders, forcing them to move anywhere from 15 down to 5 miles an hour.

Plus with the 2 years supply of grain, you have some of the reasons for the problem. There are more problems obviously.

In my testimony, there is a table showing the number of cars that have been retired over the past 7 years—in particular, the narrow door boxcar, 40 foot narrow door boxcar.

The totals have dropped from a figure of about 190,000 down to this year's total of 86,000, an overall 50-percent decrease, which means about 200 million bushels, carrying capacity.

Now, we have had an increase of only 24,000 covered hopper cars, which means approximately 81 million bushels. So we have a net decrease of 120 million bushels of carrying capacity. We have a serious problem. In response to several of the questions that you asked about ICC, and their car service orders, we believe that the ICC has been doing a reasonable job under impossible conditions.

Their service orders, as Mr. O'Neal said, cannot increase the total supply of cars. All it can do is reallocate for improved utilization. They have made some mistakes, but I think they have tried.

One example would be service order 1322, where they tried to reallocate a greater percentage of their covered hopper cars to grain service.

But it aggrevated a shortage in the fertilizer and cotton areas, and so on. And they were quick to amend and finally cancel that order in response to the hue and outcry that came from those shippers.

We find no great fault with the ICC. We do believe that they have tried.

We also, by the way, asked the ICC to use the IPD funds incentive per diem, and release them for car maintenance. That is under consideration by the ICC. We note the ICC has levied fines on railroads for not implementing service orders. We would hope that that would not be necessary, but if it is, maybe this committee would consider earmarking those moneys for maintenance, rehabilitation of track and so on.

Finally, you asked us for some legislative direction. Unfortunately, we currently do not have that direction. Our Department has 14 agencies responsible for transporation. Frankly, we have been a bit disorganized. Not that we don't have the expertise and the knowledge. We do. But we have researchers in one area, education groups in another, regulatory and service agencies in other areas, and we have not had enough coordination. We are moving now to correct that problem, and hopefully in the near future we will be able to give you some legislative direction; not only you but the DOT which is responsible for the policy, transportation policy of this administration.

Finally, Senator Anderson has requested of the President the appointing of a national transportation task force, particularly on rural

transportation problems. We would hope that if, in fact, that is a possibility, that the USDA would be an integral part of that task force.

And finally, of S. 3260, USDA would have no objection to the 5-year extension of the no suspend provision of section 15–8 of the Interstate Commerce Act, provided that the market dominant restriction remains in effect.

I should add that this view is at variance with the administration's position.

Thank you.

Senator LONG. Mr. Schrader, what can be done to stabilize prices in order to prevent a radical cycle of increased car demand?

Mr. SCHRADER. I am not sure, Senator. It is controlled by the world market and many other factors, and I am not certain.

Senator LONG. Thank you very much.

Mr. SCHRADER. Thank you.

[The statement follows:]

STATEMENT OF RONALD F. SCHRADER, SPECIAL ASSISTANT TO THE SECRETARY, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee, I am pleased to be here today to present the views of the Department of Agriculture on S. 3260, the Administration's bill to modify and extend the seven percent "no suspend" zone provided for in Section 15(8) of the Interstate Commerce Act, and on railcar shortages and related topics.

THE IMPORTANCE OF TRANSPORTATION TO AGRICULTURE

The transportation system is particularly important to agriculture because of the perishability of many foods. Fresh fruits and vegetables and meat cannot be stored awaiting transport service, thus, a responsive transportation system is essential.

Agriculture is a large user of transportation:

Marketing about 425 million tons of farm commodities per year—equivalent of about 7 million rail carloads, and

Purchasing more than 100 millions tons of farm supplies.

Transportation is the third largest component of the agricultural marketing bill, ranking behind labor and packaging. In 1977, it exceeded $10 billion, 8 percent, of the marketing bill.

Rail and truck rates have increased substantially during recent years. During the last 10 years, a rail freight rate of $1.00 per hundred has risen to $2.55. Just a few years ago, fresh produce was moved by truck from California to New York for $1,400 to $1,600 a load. Today these loads range from $2,400 to $3,000.

The cash price of $3.20 per bushel, for wheat at Minneapolis returns to the farmer in Williston, North Dakota, only $2.56 after 64 cents of rail freight is deducted.

Inadequate or inefficient transportation adds costs. Grain car shortages result in reduced grain prices at country points, and unnecessary scarcities of grain at receiving points. Shortages of transport to haul perishables can result in actual loss of a portion of the crop.

Our appropriate concern today is whether, with increasing exports and domestic consumption, the U.S. transportation system will meet the future needs of agriculture adequately and efficiently.

THE CAR SHORTAGE PROBLEM

The attached exhibit A shows monthly averages of the reported daily shortages of covered hopper cars for each year since 1970.

Shortages of these cars to move grain have been with us in each of those years, although in varying amounts and at different times of the year.

In 1970, there was a continuous shortage throughout the year with the highest monthly average reaching 4949 cars during February, while in 1971, there was a surplus of cars during much of the year, particularly during the harvest months. Car surpluses were the rule in 1972, until sustained exports, particularly to the Soviet Union, began moving in large amounts late in the year. For 17 months, from December 1972, to April 1974, there was a critical shortage of cars to move grain, reaching a record of 15,992 cars during March 1973. The balance of 1974 and 1975, were more normal years with minor shortages during the fall harvests. The year 1976 showed relatively minor shortages during the summer and fall harvests while 1977 began with substantial shortages during February and March, improved with insignificant shortages during the summer harvest, but got worse quickly in November and December as prices began rising and exports increased. The shortages during the first 5 months of this year, all non-harvest months, dramatically shows the extent of the current car shortage problem. The monthly average of shortages reached 35,807 cars in April—more than twice the previous record high. The reported shortage declined some for May, down to 29,985, but still nearly double the record high.

We see no lessening of the demand for railcars for at least the rest of the year. Wheat stocks on June 1 totaled 1,174 million bushels, the largest on this date since 1963, and six percent more than a year ago. June 1 feed grain stocks totaled 87.4 million metric tons, a fourth more than a year ago and the largest since 1973. The indicated harvest of wheat for this year is likely to be down slightly while feed grain and soybeans production may be about the same as a year ago, depending upon weather conditions this summer.

The kinds of data shown on exhibit A are what we are trying to put together, and interpret, for the staff at the Interstate Commerce Commission.

Very briefly, a few causes of the shortage are as follows:

Severe winter weather conditions, including blizzards throughout the Northern tier of the United States interrupted railroad operations, trapped numerous freight cars in the East that resulted in extreme congestion and poor freight car utilization.

A lack of motive power to move trains in road haul service coupled with cold weather conditions, necessitated a reduction in train length. Thus, through trains were using the same amount of power to pull shorter trains.

The bad order ratio (rail cars unfit for loading) grew steadily as many of the nation's railroads continued to defer repair of bad ordered cars. Likewise, many locomotives were bad ordered because of electrical generators that shorted out due to light, dusty snow.

A prolonged strike at one of the largest manufacturers of jumbo covered hopper cars delayed delivery of additional equipment to the national fleet.

Poor maintenance of tracks has resulted in the imposition of "slow orders" by the Federal Railroad Administration. There are six granger railroads with nearly 25,000 miles of tracks that are currently under FRA slow orders. Inability to move cars with dispatch seriously cuts rail car utilization.

As shown on the attached table, there has been a dramatic reduction in the number of 40-foot narrow door boxcars that are badly needed for loading baled cotton. These cars are also needed for grain loading on lines where weight restrictions do not permit the loading of jumbo covered hoppers. While there was a net gain in the number of covered hopper cars from 1972 to 1978, these figures do not include a net increase during that same period of 33,428 cars in this type of equipment that are under the exclusive control of shippers and car companies.

During the last 2 years, market conditions led to a build up of grain stocks on farms and in country elevators resulting in large carryover stocks. The rise in grain prices early this year triggered substantial selling by farmers and created unprecedented demand for rail movement.

The acquisition of new equipment has not kept pace with the retirement of older cars thereby creating a direct loss in total carrying capacity.

Of course the above list is not all inclusive. There are other factors which contributed to the overall situation. While the weekly grain car loading nationwide have been increasing and the daily average shortage of both box and covered hoppers have declined, we are of the opinion that the situation will not improve significantly until after fall harvest of feed grains and soybeans.

RAIL CAR OWNERSHIP LAST 7 YEARS

	Plain 40′ ND	Plain 40′ WD	Plain 50–60′	Plain 60 plus	C/H	General service open hoppers	Flats TOFC	Plain gondolas
January:								
1972	189, 506	40, 442	118, 626	1, 939	138, 099	349, 525	7, 886	158, 746
1973	172, 508	34, 555	124, 872	2, 197	142, 976	344, 365	8, 463	159, 849
1974	163, 895	30, 819	135, 367	2, 703	151, 155	237, 010	10, 618	155, 458
1975	148, 119	28, 814	145, 369	3, 915	155, 281	316, 265	6, 918	153, 565
1976	131, 135	27, 183	150, 768	4, 892	158, 236	317, 888	6, 677	151, 731
9177	107, 269	27, 502	153, 042	4, 662	159, 924	311, 666	5, 885	146, 913
1978	86, 081	23, 371	155, 792	4, 803	162, 726	309, 540	5, 819	140, 128
Gain or loss	−103, 425	−17, 051	+37, 166	+2, 864	+24, 627	−39, 985	−2, 067	−18, 618

Source: AAR statements.

USDA ACTIVITIES

In late April, Secretary Bergland ordered an all-out effort within USDA to assist grain and cotton shippers with their car supply problems. Our transportation people are working with the Interstate Commerce Commission in supplying analysis of export sales activity, current crop reports, estimated fertilizer demand and other information that may be helpful in obtaining maximum utilization of available equipment and forecast future railcar needs. Exhibit A represents one method of analysis that may be useful in predicting future grain transportation demand.

In addition, we established a "hot line" within USDA, so that shippers could advise us about specific problems or alert us to serious shortage situations. So far, we have had over 300 calls on that line, most of them coming from country elevator managers in the Midwest. We have also received a number of calls from cotton shippers who are experiencing difficulties obtaining sufficient boxcars. The states most represented by their calls have been Illinois, Iowa, Minnesota, Montana, Nebraska, Kansas, Michigan, Ohio, and Mississippi. The hot line number was so well circulated that we even had a call from a coal mine operator seeking 60 cars for coal loading.

The following address the specific questions on which the Committee has requested comment:

1. What have been the effects of the Interstate Commerce Commission's various car service orders on mitigation of the car shortage problem?

USDA has made no studies purporting to show a quantitative measure of the impact of any one or more of the Commission's car service orders. Assuredly, the net effects are the balance of the good and any harm which result.

It is our assessment that car service orders are potentially effective in alleviating specific, isolated problems, but are not effective in dealing with a problem that pervades the entire industry or concerns a wide geographic region. We believe, in fact, that the more pervasive the problem, the greater the tendency for the net effect to be negative.

Obviously, a car service order does not increase the total supply of equipment. Any beneficial effect during a period of widespread shortage must result from improved utilization, and the evidence is mixed. An order requiring the return or reassignment of cars can result in increased movement of empty cars. When the overall capacity of the system is constrained by available locomotive power or yard capacity or other operational constraint, increased movement of empties may actually result in lower utilization of equipment.

Another point to consider is that service orders may increase equipment availability to some users at the expense of others. This is not necessarily wrong: certainly the Commission is charged with ensuring equitable availability of service. However, to the extent that equity dictates a reallocation of cars into a less efficient use, overall utilization is lowered.

One example may serve to illustrate the dilemma with which the Commission is faced in allocating equipment through use of service orders. In May of this year, the Commission issued Service Order No. 1322, which required the railroads

to allocate to grain service a larger percentage of their covered hopper cars. That order may have temporarily relieved a car shortage for grain, though it is arguably true, as opponents have maintained, that the railroads were hauling as much grain as they were able within operational constraints anyway. That order aggravated the car shortage for other commodities which compete for the same equipment, such as soybeans and fertilizer. The order was in effect only a very brief time. The Commission responded to an outcry from aggrieved shippers and cancelled it.

2. What, if any, legislation do you believe would be effective in either improving car utilization or easing the car shortage problem, or both?

While more equipment would help agriculture, our greater need is for increased productivity of the transportation system and better management of existing resources. Neither shortage of equipment nor poor utilization are problems which can be readily legislated out of existence. USDA is a strong supporter of a privately owned and managed rail system; and as long as it remains private, solutions to these problems must be worked out in terms of profit and loss.

One area in which we believe the Commission might concentrate some resources advantageously is equipment charges—per diem and demurrage. These certainly are not new problem areas. Many transportation specialists and economists have long felt that the rail industry has never been able to work out a system of charges which reasonably reflect the true ownership cost and/or opportunity cost of the equipment. The natural, economic incentive to improve utilization will come only with equipment charges which do reflect the costs. The Commission has recently approved increased per diem charges effective July 1 and should be watching closely to determine the effect on utilization.

3. Why has the use of seasonal rates been ineffective in resolving the burden of peak season demand?

In the first place, there have been only a few applications to date of peak season pricing under the new section 15(17) of the Interstate Commerce Act. The evidence is still minimal.

Clearly the concept of peak season pricing could shift demand to off peak periods only when the nature of the commodity allows the shipper to elect the time of shipping in order to take advantage of economic incentives.

This condition is not met by a large segment of agricultural traffic. Because of the perishability of many agricultural products, such as fresh fruits and vegetables, there is no opportunity to spread the demand more evenly. This type of agricultural traffic must be shipped at a particular time of the year, generally at harvest.

While grain is a physically storable commodity, peak period pricing will not achieve the objective of moving part of the shipping to a slacker period for numerous reasons. For example, the variable and uncontrollable harvest dates, affecting the size and timing of harvest, make advanced planning exceedingly difficult. The inability to plan is further complicated by fluctuating and largely unpredictable grain prices throughout the year. It is not feasible to build enough storage to hold each year's crop locally, and to vary that capacity each year. Yet this would be necessary to effectuate peak season pricing. Finally, the grain marketing system already provides substantial economic incentive for persons not to sell—and thus not to transport—at harvest so that it is unlikely that anything but an extremely high rate differential would produce a change in peak usage.

In Ex Parte 324, the ICC's rulemaking proceeding for the administration of Section 15(17), the Department argued that peak season pricing should properly apply only in instances where the opportunity does exist to shift demand and thereby achieve efficiency through better equipment utilization, one of the statutory criteria. The Department argued that seasonal pricing should not be used simply to increase revenue; and railroads have ample freedom to raise rates to meet revenue requirements under the rate filing procedures of Section 1(5).

Thus, the Department believes there is in actuality, little proper use in agricultural for peak season pricing, though ironically it is the only commodity areas chosen by the carriers to date.

The above views on peak season pricing are the views of the Department of Agriculture and do not necessarily reflect the views of the Administration.

4. Please comment on the possibilities and requirements for implementing a common ownership concept similar to trailer trains for covered hopper cars and gondolas.

There is apparently no legal prohibition against it. USDA has not undertaken a detailed study of this topic and our comments may be somewhat speculative.

But it does seem clear that the basic cause must be that the railroads do not see an economic incentive to do so.

The incentive which has resulted in the success of trailer trains, railbox, and perhaps other similar ventures, has been the opportunity to improve utilization. The opportunity exists for operational reasons, primarily the general purpose nature of the equipment and the relatively high loaded-to-total mile utilization factor for that type of equipment.

Covered hopper cars, on the other hand, are specialized equipment they are loaded one way and generally return empty. Because of the specialized operating characteristics of the equipment, the loaded-to-total-mile utilization factor is nearly constrained to 50 percent—regardless of ownership arrangement.

Another possible cause which the Commission might investigate is the one previously mentioned—that is, the possibility that equipment charges for covered hoppers are particularly out of line with true costs. If for instances, the per diem rate on covered hoppers is less than costs, there can be no incentive for one corporate entity to own the equipment for purposes of leasing it to railroads.

S. 3260

Turning to S. 3260, USDA would have no objection to a five year extension of the no-suspend provision of Section 15(8) of the Interstate Commerce Act, providing the market dominance restriction remains in effect.

I should add, however, that this view is at variance with the Administration's position. The amendments to Section 15(8) presented by DOT on behalf of the Administration do not contain a market dominance restriction. The Administration believes that, when all commodities are considered, the proposed amendments would result in better transportation service and a truer reflection of actual transportation costs. Actual and potential competition provided by trucks, as well as ICC refund authority, would serve to discourage any excesses by the railroads. The USDA position is based upon consideration of agricultural commodities only.

Under both proposals, the ICC would retain the authority to retroactively cancel a rate increase and require refund to the shippers. We are concerned that there would be a potential problem for the farmer in the distribution of any refunds the ICC might require. If I may, I shall elaborate upon both of these points.

The Department of Agriculture supports, in principle, a greater reliance upon the market place to establish just and reasonable rates, and a concomitant lessening of dependence upon administrative procedure. The Department supported enactment of the 4R Act which amended Section 1 of the Interstate Commerce Act to include the concepts of "going-concern value" and "market dominance" in the determination of just and reasonable rates and which also amended Section 15 of the ICC Act to include the no-suspend provision. Furthermore, the Department participated in the ICC's administrative proceeding to define market dominance.

With respect to determining a just and reasonable level of rates, the only qualification to full reliance upon the market is that there must be effective competition—that the railroads not have market dominance over the affected traffic. But there are still large blocks of agricultural traffic over which the railroads effectively have a captive market (as suggested, for instance, by the fact that rates on North Dakota wheat to the Minneapolis market exceed variable costs by approximately 100 percent). Section 15(8) of the IC Act, in permitting a no-suspend condition, includes the restriction that market dominance not be present, in recognition of the fact that competition is critical to effective self-regulation of markets.

USDA recognizes a legitimate concern with potential inequities to the railroads which arise when a rate increase is suspended and subsequently found to be just and reasonable for the railroads have suffered an unrecoverable loss of revenue. It can be argued that potential inequities to the shipping public are minimized by the refund provision, which applies when a rate increase is not suspended and later found unjustly high. The shipper who has paid too high a rate is refunded the excess plus interest.

There are undoubtedly some industries for which the refund provision offers adequate protection. It depends upon the marketing structure prevalent in the industry. The refund system would work where the party who effectively bears the freight burden also actually pays the freight bill and therefore would receive the refund.

For a large segment of the railroads' agricultural traffic, which includes a substantial amount over which the railroads have market dominance under the

ICC's current definition, the last condition is not met. In the grain business, the price the producer receives for the grain is the price at an established market less the rail rate to reach the market. The farmer effectively bears the freight burden. But the grain company to which the farmer sells generally pays the freight bill. In such a circumstanc the grain companies would reap windfalls from freight refunds unless there were a practical way to ensure equitable distribution of refund monies to producers.

Ultimately, the costs of transportation on grain are borne in some proportion by the farmers who produce it and the consumers of end products in the various forms in which grain is found on grocers' shelves. Farmers and consumers are at opposite ends of the economic chain. Intermediate processors, while providing essential services, are generally able to shift transportation costs either up or down the chain. But the producers must absorb at least part of the cost and would not be protected by a refund system.

Mr. Chairman, this concludes my prepared remarks. I will be happy to try to answer any questions.

EXHIBIT A

	C/H car shortage [1]	Exports (1,000 bu) [2]	Barge loadings (1,000 bu) [3]	Cash prices per bushel: Wheat [4]	Cash prices per bushel: Corn [5]	Cash prices per bushel: Soybeans [6]	Percent of capacity occupied at principal interior elevators [7]	Grain stocks [8]	Rail grain car loadings [9]
1970:									
January	−3,827	128,317	39,396	146	126	255		8,974,055	
February	−4,949	141,311	40,159	146	126	259			
March	−4,301	137,076	55,989	145	124	258			
April	−3,544	135,749	59,954	147	128	264		6,489,691	
May	−2,730	139,267	50,509	144	132	270			
June	−1,841	132,140	63,516	140	137	281			
July	−3,112	148,008	63,434	138	138	290		4,331,092	
August	−2,230	151,388	57,081	147	146	279			
September	−3,438	158,856	55,038	159	152	281			
October	−4,110	197,211	72,659	158	142	290		4,717,524	
November	−3,343	176,463	62,408	159	142	300			
December	−1,593	181,054	36,919	159	154	293			
1971:									
January	−862	154,739	35,084	158	159	303		8,085,098	24,609
February	−2,134	153,825	33,504	158	157	306			25,735
March	−2,651	147,864	58,863	155	155	304			25,414
April	−2,276	122,844	53,881	156	151	291		5,589,626	21,920
May	+216	149,035	33,324	161	152	303			20,067
June	+3,353	111,238	70,964	163	157	321			24,823
July	+802	129,567	69,233	154	148	338		3,481,426	27,076
August	−76	123,353	69,843	154	129	329			25,721
September	−362	174,017	52,940	153	116	312			21,963
October	+476	94,767	65,858	156	110	312		4,315,099	29,073
November	+551	151,343	78,811	156	107	300			29,185
December	+4,850	193,073	55,375	158	122	308			19,810
1972:									
January	+3,598	151,375	55,240	158	122	309		9,215,943	22,592
February	+3,040	141,286	51,755	157	121	318			22,172
March	+1,715	144,565	67,745	158	122	337			24,148
April	+1,270	163,889	84,761	161	126	349		6,680,740	22,287
May	+3,969	184,217	75,299	162	128	349			18,800
June	+3,399	183,338	100,697	155	125	347			24,341
July	+1,388	169,534	92,060	158	129	351		4,338,467	26,758
August	−732	209.082	103,897	182	129	355			30,311
September	−1,502	209,953	65,118	210	140	338			28,509
October	−2,932	238,262	99,753	215	132	333		4,643,558	31,682
November	−3,408	257,495	113,525	225	133	364			29,270
December	−6,438	261,817	65,875	262	157	413			31,643
1973:									
January	−11,269	270,460	75,009	267	158	449		8,923,137	33,442
February	−15,270	255,807	94,534	248	159	581			33,322
March	−15,992	274,007	76,213	242	159	624			30,654
April	−13,344	272,262	55,816	251	165	653		6,034,474	28,554
May	−11,911	300,799	47,971	263	201	899			30,547
June	−10,622	299,893	85,952	269	242	1,087			32,634
July	−10,817	293,301	97,464	290	252	860		3,363,743	35,342
August	−12,234	324,609	97,146	467	291	908			34,614
September	−11,425	285,294	71,021	501	247	650			31,884
October	−11,348	300,925	97,787	467	237	562		3,511,540	32,618
November	−13,346	336,512	123,823	478	250	565			35,219
December	−11,032	298,033	51,663	522	268	595			29,379

EXHIBIT A Cont.

	C/H car shortage [1]	Exports (1,000 bu) [2]	Barge loadings (1,000 bu) [3]	Cash prices per bushel			Percent of capacity occupied at principal interior elevators [7]	Grain stocks [8]	Rail grain car loadings [9]
				Wheat [4]	Corn [5]	Soybeans [6]			
1974:									
January	−11,995	262,724	66,587	568	290	617	----------	8,196,111	30,396
February	−13,354	247,767	73,046	582	313	639	----------	----------	29,983
March	−10,944	270,027	[10] 77,975	501	299	623	----------	----------	29,434
April	−4,994	258,477	80,000	407	269	556	----------	5,204,303	28,048
May	−273	256,323	82,913	359	270	542	----------	----------	23,616
June	+191	233,487	81,666	405	293	547	----------	----------	30,706
July	−1,327	233,444	94,587	436	335	697	----------	2,598,911	29,414
August	+480	192,048	88,405	433	363	755	----------	----------	27,259
September	+2,999	180,760	107,475	435	355	757	----------	----------	22,173
October	−1,096	205,409	128,887	494	374	833	----------	3,086,153	30,212
November	−2,141	267,655	[10] 100,000	488	348	758	----------	----------	30,637
December	−1,140	271,495	80,000	466	347	728	----------	----------	25,757
1975:									
January	−1,184	294,255	76,408	415	319	633	36.5	6,850,519	26,397
February	+368	246,750	76,992	393	296	568	31.8	----------	24,398
March	+2,160	244,621	[10] 86,000	369	290	556	27.0	----------	23,285
April	+5,056	216,162	94,160	366	296	576	21.7	4,188,659	21,531
May	+11,608	166,571	55,113	334	282	523	17.0	----------	15,469
June	+10,242	190,217	84,991	323	291	515	15.5	----------	24,520
July	+1,626	239,794	137,105	361	295	558	26.0	2,187,999	28,987
August	+1,478	243,866	90,821	412	311	597	34.6	----------	30,109
September	−1,086	255,589	126,441	421	299	555	39.1	----------	29,769
October	−6,889	368,375	138,959	409	274	497	47.8	3,289,410	30,692
November	−2,942	365,920	131,110	371	259	470	53.1	----------	27,694
December	+4,022	328,205	94,642	350	259	459	45.8	----------	23,321
1976:									
January	+4,783	298,697	116,084	357	262	465	42.0	8,368,527	24,470
February	+2,023	282,296	109,061	381	270	474	38.4	----------	25,592
March	−1,090	292,695	158,610	381	268	466	37.4	----------	24,608
April	+612	296,867	118,525	361	268	471	34.1	5,400,360	20,295
May	+3,368	273,561	152,381	357	284	521	28.6	----------	21,733
June	−63	294,784	169,411	375	296	625	28.4	----------	28,766
July	−3,244	280,634	116,876	383	291	515	40.5	3,583,007	30,291
August	−2,370	281,945	120,640	331	287	630	47.6	----------	27,977
September	−3,350	270,539	112,721	301	277	659	51.0	----------	26,199
October	−6,662	363,637	127,810	277	249	623	56.7	3,800,466	29,118
November	−4,471	353,341	158,600	262	233	658	62.6	----------	26,645
December	+3,920	273,642	124,790	264	244	686	59.4	----------	19,012
1977:									
January	−766	257,862	81,266	270	253	708	57.4	8,895,813	20,690
February	−10,953	260,365	61,005	273	254	725	53.9	----------	24,749
March	−10,725	299,540	126,784	263	252	833	51.9	----------	24,952
April	−6,602	300,843	151,098	252	250	974	49.1	6,055,424	22,592
May	+1,041	281,948	137,725	236	241	950	43.3	----------	20,292
June	+1,778	245,682	145,960	231	227	818	41.8	----------	22,522
July	−212	257,031	125,094	235	205	629	47.8	4,307,285	25,735
August	−114	267,628	139,082	231	178	566	53.3	----------	24,630
September	−65	298,649	140,602	247	180	521	56.4	----------	23,145
October	−5,558	286,869	129,243	256	184	505	59.8	4,282,806	26,425
November	−8,394	320,234	135,457	281	214	577	64.9	----------	26,301
December	−7,050	313,224	149,062	280	219	587	63.1	----------	23,638
1978:									
January	−9,170	267,674	102,599	282	219	565	60.6	10,289,989	21,489
February	−17,805	301,507	77,996	284	221	557	57.2	----------	21,607
March	−28,388	333,722	129,854	307	236	653	53.8	----------	23,485
April	−35,807	363,554	136,616	321	251	681	50.0	7,287,004	23,865
May	−29,985	468,083	171,765	----------	----------	----------	44.0	----------	25,356
June [11]	−25,903	----------	----------	----------	----------	----------	----------	----------	----------

[1] Average daily covered hopper car shortage (overage), for all commodities, as reported by individual railroads to the ICC.
[2] Total inspections for export as reported by the USDA in the "Grain Market News". Includes soybeans—does not include rice.
[3] Total barge loadings of grain as reported by the USDA in the "Grain Market News." Includes soybeans—does not include rice.
[4] Average price per bushel No. 1 Hard Red Winter wheat, ordinary protein, on the Kansas City market. From the "Grain Market News," USDA.
[5] Average price per bushel No. 2 Yellow corn on the Chicago market. From the "Grain Market News."
[6] Average price per bushel No. 1 Yellow soybeans in the Chicago market. From the "Grain Market News."
[7] Monthly average. "From Elevator Capacity and Grain in Storage at Principal Interior Markets," published by the Association of American Railroads.
[8] Grain stocks in all positions, on and off farm, as reported by the USDA in "Grain Stocks." Includes corn, sorghum, oats, barley, wheat, rye, soybeans, and flaxseed.
[9] Average cars per week. From statement CS-54A, published by the Association of American Railroads. Includes soybeans and Rough rice.
[10] Estimate.
[11] 3 weeks only.

31-890—78——4

Senator LONG. Next, we will call Mr. William H. Dempsey, president of the Association of American Railroads.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY RICHARD BRIGGS, VICE PRESIDENT, DIVISION OF ECONOMICS AND FINANCE

Mr. DEMPSEY. Thank you, Mr. Chairman. I have with me Mr. Richard Briggs, who is vice president of the Economics and Finance Division of the Association of American Railroads. We have submitted a lengthy written statement which I would like to have incorporated in the record.

I will summarize it briefly.

Senator LONG. It will be so.

Mr. DEMPSEY. I would like to compliment the gentleman from Iowa. I thought it was an extremely constructive statement, not only for this committee, but for the ICC for its consideration.

For reasons that I will indicate, it seems to us that one of the principle obstacles to a solution of the service problems of the American railroads right now are some recent actions taken by the ICC.

I want to begin with a consideration of S. 3260 and in that connection, with the general condition of the industry.

Here I would like to borrow a statement that I have just read from a summary of Mr. Church's testimony. Mr. Church is going to testify this morning, as you know. He says in this summary that the ultimate solution of the problem must include substantial improvement in the service of both ConRail and the railroad industry as a whole. I think that is indisputable. It seems to me that matters such as the car shortage are in part at least symptomatic of the general inability of the industry to provide the kind of service that the shippers want and that is altogether traceable to the continued financial anemia of the industry.

I would like to go to that first. We support S. 3260. But we don't think it goes nearly far enough. Now, 1977 was a pretty good year for American industry in general.

But it was a perfectly dreadful year for the railroad industry. In 1977 the rate of return of this industry fell to 1.26 percent on net investment. That wasn't just a temporary phenomenon.

In 1975 and in 1976 the rate of return was 1.20 and 1.64. Two of those 3 years it was lower than 1932.

I would just like to compare the rate of return on equity in our industry with other industries regulated by the ICC. Class I railroads, 1976, the latest year for which we have figures, class I railroads, 1.8 percent. Motor carriers, 23.67 percent. Water carriers, 17.8 percent. Pipeline companies, 26 percent. And again, railroads, 1.8 percent.

We ranked dead last in a listing of 73 industrial groups. Things are getting worse. The first quarter of this year, was the worst in the history of the American railroads.

We end up the 12 months ending in March with a return on net investment of 0.6 percent, and that must be the lowest in all reported history.

Now the ICC was charged by this Congress in the 1976 4-R Act with doing something about that. The Congress directed the ICC—I am

quoting now—in that act, quote, "to develop and maintain standards and procedures for the establishment of revenue levels adequate to cover total operating expenses plus a fair, reasonable, and equitable profit."

Now, I would like to turn to what the Commission has been doing in carrying out that mandate, because we think that not only has it not been carrying it out, it has been entirely frustrating it.

In the first place, the chairman of the committee, of course, is familiar with our position on the interpretation that the Commission gave the market dominance provision of the statute.

We think that the Commission gutted that provision and deprived us of the kind of rate flexibility that the Congress intended to give us.

Most recently, let's take another look at what we have had. On June 28 of this year they handed down an order ex parte 343, which had to do with the rate increase before this, a 5-percent general rate increase last year which was designed not to increase the earnings level but only to cover part of our increased costs.

It would have fallen $150 million short, if granted in full, of covering our increased costs. The Commission, on June 28, directed the railroads to roll back that increase on seven major commodity groups, to make $25 million in refunds, and to lower our future revenues by an estimated $50 million a year.

Senator LONG. Let me ask something. Is Mr. O'Neal still here and his associates? Are they still here, he and his associates?

I am going to ask that at the appropriate time that they come here and respond to your statements. If you are wrong, they will have a good response, but if you are right, then they ought to take another look at their situation and reconsider their position.

Mr. DEMPSEY. I would welcome the opportunity to have such a dialog with him and any of his representatives before the committee.

Senator LONG. Because if you are right about all this, I don't think that it ought to be just brushed under the rug. I think we ought to lay it out in the open, have it out, and then decide what we think is right about the matter.

Mr. DEMPSEY. That is why I am laying it out before the committee this morning. When they took this rollback action, they said that they discerned in the 4–R Act an intention on the part of Congress to emphasize selective rate increases.

I just say to the chairman there is nothing in the act that so indicates.

On the one hand, they gutted the market dominance provision.

On the other hand, they found in the act an intent which is not there to concentrate on selective rate increases, and I want to say further that if we are required to do that, if that is going to be the policy of the ICC, we are dead in the water.

We cannot in this period of horrendous inflation hope to recover these costs increases, which are so large and which come upon us so swiftly, by selective commodity—by commodity rate increases. There is no way we can do that.

If we are going to be barred from recouping these expenses through general rate increases, then we are dead in the water. In ex parte 343, for example, we were trying to recover increased costs of $1.1 billion since the last previous general rate increase.

Another indication that is disheartening to us is that the Commission is going to hold us to standards which we can't live with—they knocked down some increases in the last general rate increase application. Indeed, this seems to run contrary to what they said in the other proceeding.

There we did apply for higher rates on coal. We applied for a 7-percent increase on coal, 4 percent generally, except for 2 percent in the South. There they declined to give us the additional 3 percent on coal.

I think it is very interesting that Mr. O'Neal says in his statement this, and I read: "the statistics show that the only inhibition against use of the previous yo-yo provision was where there shouldn't be any increases anyway, that is, where there is market dominance."

If I read the Commission correctly, what they are saying is: Where you do have some freedom to raise your rates, the Commission isn't going to let you do that. There is another aspect that indicates that that is the case, and that is on these commodities where the Commission rolled back the previous rate increases.

They evidently did it on the grounds that the rates exceeded 180 percent of various costs. Of course, variable costs are far less than fully allocated costs. If you don't meet fully allocated costs and earn a reasonable profit, you go broke in the long run.

In the past the Commission has recognized that we must charge higher rates on some commodities than others. That is a fact of the economic market. That is a fact that we have to live with in this competitive environment that we now face and that we have faced since the 1950's.

On January 31, 1978, the Commission said that because of differing demands and competitive circumstances, there should be greater contribution from some commodities than others, but they apparently have changed their minds on that, and they are going to hold us to some cost-rate standard of 180 percent. And there, again, I say if that is going to be the policy of the Commission, there is no way that they can fulfill the mandate that this Congress gave them to increase earnings in this industry to a reasonable level.

We are not even beginning to approach that level when we are talking about rates of return that we have now. What the Commission is doing, I repeat, is to frustrate the intent of Congress. That is why we think that S. 3260 is a step in the right direction.

But we recommend that it go further. We recommend that the zone of reasonableness be raised from 7 percent to 15 percent, and that the Commission be barred from declaring rates unlawful that fall within this range of reasonableness. It would be illegal under section 1, not under section 2 or 3, relating discrimination and prejudice, but under section 1.

We recognize that there has to be some kind of ceiling put on that, and so we suggest that that rate freedom be given the railroads up to the point where they make a fair rate of return. That is, where they earn the cost of capital. Because we have concluded——

Senator Long. What do you call "capital" for your purposes?

Mr. Dempsey. 12½ percent after taxes.

I have told you where we are, and we recognize there has to be some limit, but we really have concluded that, based on recent actions by the

ICC, the only way that this industry is going to get its earnings up to the point that it can provide good service is to disentangle the railroads to the fullest extent possible from the rate regulation of the ICC, while maintaining, of course, those kinds of protections that are necessary to prevent discrimination and prejudice against the shipping public.

Our proposal is spelled out in more detail in my paper. That is the heart of it. Those are the basic reasons behind it.

Now, I would like to turn to the questions that were—that I was asked to respond to in connection with the car shortage. I may also say, by way of an aside, that this march of the ICC toward more regulation not only flies in the face of the 4–R Act, but also in the face of actions that are being taken by other regulatory agencies, even without congressional mandate in other transportation areas, to bring greater market freedom to those industries.

Senator LONG. As a matter of fact, the trend in the area where you need it the worst, where you need the freedom to operate the worst is for more regulation, Mr. Dempsey.

Mr. DEMPSEY. That is exactly right.

Senator LONG. The trend in the areas where you need the regulation the least—let's put it this way: In your area and in the energy area, we ought to turn free enterprise loose to serve the Nation's interest; let them go to it and provide more service. But the trend seems to be to put more bureaucratic regulation and constraint on it.

In the areas where it might serve a purpose to have more regulation, the trend is to do nothing about it.

Mr. DEMPSEY. Yes; I agree entirely.

And I may say that S. 3260 as well as the AAR proposal is keyed to elimination of the market dominance restriction—because there is no point in using the yo-yo provision in other circumstances, no point to it at all—that is why it has not been used.

Now, as to rail car shortages, this has been perhaps the worst car shortage in history, at least so far as we can tell. I want to start out by saying it is improving significantly. There is not any question about that. I will not detain you with any further discussions for the reasons for the shortages, because Mr. Sullivan yesterday and the witnesses today have amply covered those reasons.

I would like to give you one figure that is interesting, which indicates how the pressure is being relieved. That is this: That so far as covered hoppers are concerned, the shortage is now down from April 1 to July 1 by about 45 percent. So, that is a heartening sign.

I would like also to point out——

Senator LONG. It is what?

Mr. DEMPSEY. Down by 45 percent. Right.

And I would also like to note that the railroads are now moving more grain per week, more grain per week than we were in the record Russian export year of 1973. We are doing a good job under very difficult circumstances.

As one of the witnesses said, it is really impossible to expect the industry to move two seasons of grain in one season.

I think we are doing a good job. And the same thing is true with coal. Our coal loadings are way up. We had difficulty right after the

strike, in particular when the stockpiles were being rebuilt, but there, too, the situation is becoming increasingly good.

And then, so far as investment and costs, I would like to point this out: There are huge investments being made in railcars. There are 62,224 cars on order. That compares to 25,270 cars last year. It may be the total orders for this year will research 100,000. The backlog for the first 5 months of 1978 is 48,279 cars, as compared with 24,705 for the same period last year.

I do also agree with the representative from the Department of Transportation of Iowa that it does not really make any sense economically to expect the industry or the shippers to make large investments in additional cars to have them sit around idle for 6 months out of the year. That is not the solution to the problem.

He is exactly right when he says what we have is not as accurately described as a car shortage as an excess of demand. I think, really, the kinds of things that he is talking about are the way in which we ought to be looking to solve that problem.

Now, your first question had to do with the ICC's various car service orders. I would like to endorse the statement made by the representative made by the Department of Transportation of Iowa—and I quote him: "The fact is that car service orders combine some of the worst features of government regulation. They are too inflexible to allow carriers and shippers to devise their own best approaches to these problems."

A representative of the Commission asked me the other day if I thought the railroad people knew how to operate the railroads better than the ICC. I don't know if that is a rhetorical question or not, but I have to say yes, I really do. And I would like to discuss with you now, in particular, as one example, the car service order, of which the ICC spoke this morning, that is car service order No. 1309.

I will say that in the past, it has been our experience that the way in which the Commission exercised its authority to issue these car service orders has, by and large, been helpful. But that is not true of some of the more recent orders.

We think that these orders have and will continue to exacerbate the car shortage problem. As I say, I will use as an example car service order No. 1309, which Chairman O'Neal said they were going to enforce vigorously. I am not complaining about this order, even though the Southern Pacific was fined $4.4 million and ConRail $2.2, or whatever it was.

In the first place, I do not think that those fines are going to stand up. I do not think that those railroads really violated those orders. All we have now are citations. Even if that were not the case, I am not complaining about that.

What I am saying is that I want to address the question of public interest in the distribution of cars. What I want to say is that car service order No. 1309 is going to worsen this situation. The more strictly it is enforced, the worse the situation will become.

That order requires—I will put it in general terms, as Chairman O'Neal indicated—that order requires that cars be moved out of a terminal within 24 hours of their receipt. That may sound like a good idea on the face of it, but it is really a terrible idea, as any operating man on a railroad will be willing to swear to.

It isn't so much that you can't do it. But if you do do it, you are going to lessen the efficiency of the yard operation by a very large margin.

The Commission may say, as was said to me the other day, "Why didn't you railroads complain about that order? It has been issued at various times in the past."

The fact is: We did not complain. And we will not make that mistake again. It was never enforced as a 24-hour order. It was enforced only in those circumstances where there really was cause to believe that there was negligence on the part of the railroad.

We do not want to complain about that sort of thing. I do not want to say that there never is negligence on the part of a railroad, or that the ICC should not enforce in those circumstances. That is not what I am saying.

So, we let it go this time. When it was issued, we did not take it to court. But now, it is being enforced as a 24-hour order, and it never was before. There is now an injunction out against the Southern Pacific requiring them to move those cars in 24 hours. They are going to be moved, but where they are going to be moved, nobody knows.

It would be like the traffic policeman: You put a mark on it, and out they will go in the 24 hours. What you will not be able to do to the extent that you want to is to block that traffic. To block that traffic, that takes time. It may take more than 24 hours.

What you are not going to be able to do to the extent that you want to is to have a runthrough train with power going through the next terminal onto the next line, because you are going to need that power to move cars, out in 24 hours, among other things.

It is in the interest of the railroad to get those cars out, just as much as anybody else, certainly as much as the ICC. And what I am saying, in short, is that this order bears no relation to the realities of yard operations, just as the representative of the Department of Transportation of Iowa said.

It does not provide the kind of flexibility that operating people need in order to run a yard efficiently. It makes a lot of publicity. It hits the headlines. If the Santa Fe—and Southern Pacific, which are two of the very best operated in the country cannot comply, then I can guarantee that no major railroad in the country can.

The car service order that cuts back on the use of unit trains in the shipment of grain is quite properly criticized by the representative of the Iowa Department of Transportation. I recognize the interest in equitable distribution of cars, but I do believe that when the department of transportation of Iowa says that in the period of emergencies, such as we have now, we should not really be having orders out there that cut back on the efficient utilization of cars like that one does, we should not really be doing that. That is what that order does.

Mandatory car service rules No. 1 and 2 have contributed to the current shortages. Those rules say that when a freight car is unloaded on another railroad, it has to be sent back empty or loaded in the direction toward the owning railroad. There have been a number of exceptions made to that order, and quite properly so.

But what we say is when you have a period of car shortage of this sort, those orders ought to be, if not entirely eliminated, very sharply

curtailed so that we do not have empty cars shuffling around the country in the way that they have to under those car service orders.

Now, I would like to turn to legislation. The question is: Will there be legislation that could be effective in improving car utilization? The legislation that would be most helpful would the kind of broad-ranging legislation that would put us on competitive parity with the people that we do have to compete with. I am talking about deregulation so that we can respond to competitors like the barge lines. As the representative from the department of transportation of Iowa indicated, the rates of the unregulated barge lines, go up and have been up 300 percent—and I think Mr. Sullivan testified yesterday, in the spot market, 350 percent—of their base tariff, that is going to even up demand. And the question is: Why don't the railroads do that? The railroads don't do that because we can't do that because the ICC will not let us do that. The barge lines can do that over lunch. We have got to file 30 days' notice with the ICC to have them go up and 30 days' notice to have them go down. So, we have got to guess when the peak periods are going to be, and we have got to guess right or we are going to be dead.

This last time, if we had guessed, we would have guessed wrong, because the surge came at a time that was entirely unexpected, so, there again, if we are going to have peak pricing that is going to be effective and put us on parity with the barge lines, it has got be peak-and-valley pricing that, to the fullest extent possible, is free of the constraints that the ICC imposes on us when we try that kind of ratemaking.

There are other things that we think would help, and you are familiar with them. We do believe that, in the tax area, if we could get better investment tax credit relief, that that would be the single most important piece of legislation that we could obtain right now—higher investment tax credit, and refundable credits.

Because it just doesn't make any sense, when we are talking about the desirability of increasing the ability of the railroads to do their job, not to have that kind of assistance go to some of the railroads that need it the most.

We could use some additional Federal assistance under the existing provisions of title V of the 4R Act. I hope that, under the aegis of Mr. Sullivan, that that money will be more forthcoming than it has been.

I do note here some difficulties that we have under customs laws and regulations that may need legislative relaxation so that we can use the Canadian and Mexican fleets. They have periods of surpluses, and they would like us to be able to use their cars at that time. But we do have some inefficiency there, and that may require some legislative reform.

Your third question went to seasonal rates. I think I have already responded to that.

And your final question went to a "common ownership concept" for covered hopper cars and gondolas. I think that that is an interesting concept.

Trailer Train and Rail Box certainly have proved that we can get higher car utilization with free running cars, no question. Based on that experience, several major railroads have established what is

called a "clearinghouse" among themselves which permits the same sort of thing among those railroads.

There are eight of them involved in that, now. At the end of every period, they chalk up the debits and the credits and see who owes what company how much. And that has demonstrated an improved car-supply situation.

So far as gondolas are concerned, we do have some agreements between pairs of railroads like the Chessie and the Norfolk & Western, or ConRail and Chessie, which permit the same kind of pooling arrangement. It has proved to be workable there.

It seems to us that the pooling of gondolas could be a workable plan and ought to be given consideration and expanded to additional railroads.

As to the pooled use of covered hopper cars, we have a problem with because we transport lots of commodities in them, varying from toxic chemicals to food products. We are not exactly sure whether a pooling arrangement would work, but it is worthwhile considering, too.

Mr. Chairman, I have already taken up too much of your time, but that does conclude the remarks I intended to make.

Senator LONG. You made a very impressive statement here. I asked the Chairman of the ICC when he was here today if he thought that they ought to permit a higher price for the use of cars. In view of the shortage, why did they want to wait until 1979, sometime next year, for it to go into effect? Why not put it into effect, now?

I guess you heard his answer, did you not?

Mr. DEMPSEY. Yes.

Senator LONG. What is your reaction to that situation?

Mr. DEMPSEY. I may say, preliminarily, that I am constrained to disagree with your desire that they act, even if wrong, because my perception of their batting average is different than yours. On this question, we generally have been in favor of higher rates.

Dick, would you like to comment?

Senator LONG. I don't think that you would object too much to what I said about "acting even if wrong," if you would take the rest of it into account.

If they find it is in error, change it.

Mr. DEMPSEY. That's right.

Senator LONG. In other words, if they find that this order that you are talking about is wrong, and you can demonstrate that it is wrong, then change it.

Mr. DEMPSEY. I certainly agree with that. I perhaps have been too—maybe I am just a little bit too upset about these recent events. We are asking—the Southern Pacific is asking the Commission to reconsider Order 1309. I shouldn't indicate that I think they have a preconceived idea that they aren't going to modify, if it can be demonstrated that it is an unrealistic order.

Senator LONG. Go ahead.

Mr. BRIGGS. I think all I would add to that is whenever you change the per diem structure, it has very unequal effects within the railroad industry.

In other words, some railroads are creditors; some are substantially debtors. Therefore, there may be more argument for some sort of graduated phasein, a period for new car hire rates to take effect, than

there would be, for example, if you were changing the basic rate structure itself, which would accomplish, in significant part, the same objectives that you are talking about—and perhaps, in the long term, provide greater incentives to upgrade the number of cars in the fleet.

Senator LONG. Do you believe that the American Association of Railroads, if permitted to do so—I don't know whether there is any legal impediment or not—could set themselves up a computer model to see where all of these cars are, so that they could work together cooperatively to move them where they are needed, and from where they are not needed?

Mr. DEMPSEY. We do have that. We have an elaborate—and we think quite excellent—computer program located down in our office. We know where the cars are. We know where they are, and we issue orders to move them around the country.

Now Dick may want to expand on that.

Mr. BRIGGS. The model that we have is actually an operating system that covers all car movements as they flow over various regions in the country.

The data is reported showing whether the cars are loaded or empty, where they started out, where they are going, repair status, and various other data. It is a second-generation system to the one that we put in some 6 years ago. It actually allows us to predict where bottlenecks are going to occur substantially in advance of when they happen.

We would be glad to show the committee, or the committee staff, how that works. We used it very successfully when we had the problem during the coal strike and we wanted to find additional cars. I think those people at the Department of Energy who were worried about how you find coal cars were amazed when they came down and saw that you could produce current data that showed where all the cars were, loaded or empty.

It is a tremendous improvement over the other system.

Senator LONG. If you have that, it would seem to me that the people bringing cargo into the United States might be in a position—knowing if there were going to be a lot of empty cars piling up in New Orleans, or Houston, for example—that that would be a good point to bring some cargo into, because they would enjoy a backhaul rate into the heart of America.

Is that being done, or not? It seems to me that would go hand-in-glove with what you are talking about.

Mr. BRIGGS. One of the problems is that most of the traffic brought into the United States is containerized traffic that moves to rail; whereas, you are talking about covered hoppers, and boxcars.

But there is this allocation system that works. The port interests and the shipping interests follow it, in trying to move where they can obtain the greatest car supply, and we watch the ports.

Five years ago, we would embargo cars once Houston got blocked with grain cars. But there were 6 days of car loadings in the pipelines heading to Houston from various points, so the congestion got worse before it got better.

Now we have the ability, for example, to check back through the pipelines. We can examine the entire chain to see when a problem is going to occur, and act before it does.

I might add, also, that our system is designed for national control. Individual railroads have far more sophisticated systems with respect to the whereabouts of a particular car. There has been major improvement made, not the least of which evolved out of 1973 crisis in moving grain in which, because of the enormity of the problem, the elevator interests, the port interests, the shipping interests, the railroad interests, the whole combined group got together and figured "we have all got to cooperate to provide maximum input into the planning of this move," and they are doing it again this time.

It is a substantially improved level of cooperation over what we had 5 or 10 years ago in a similar kind of a situation.

Mr. DEMPSEY. I would like to say one thing. What it doesn't do is control the weather. So when we had all of the cars out East during the winter, and they got snowed in, they just got snowed in. And our computer told us where they were, but it couldn't dig them out.

Senator LONG. It has been suggested that the extreme length of the trains is partly to blame for poor utilization—it is said that the cars often sit at yards for days waiting for a long train. And once underway, it moves slowly and requires a lot of time for handling and switching. Is that a problem?

Mr. DEMPSEY. Well, there are different views on this in the industry. Of course when we are talking about "unit trains," we are talking about long trains, and they should be long trains. If we had to cut those trains back to 75 or 50, we would destroy many advantages of the "unit train" concept.

But you are talking about "mixed trains," and I have no doubt that there are many circumstances in which the railroads would prefer to operate shorter, faster, and more expedited service. But because of cost constraints, they are not able to do it.

Crew costs, for example, are one factor. But other costs also weigh into that.

Dick, what do you feel about that?

Mr. BRIGGS. I think the only thing that I could add to that, Senator, is that when you are moving grain in large volumes, you have less frequency of the so-called "mixed train" and less of the delay you described.

Where the problem does arise, as you describe, is where it takes twice as many people to move two 40-car trains than one 80-car train. But basically, the problem of making up grain trains is not the real constraint at this time.

Over the years, we have seen a trend toward more grain movement often by truck to central locations, where either blocks of cars or unit trains are made up.

Now this probably is a somewhat slower process than it was before, but the savings are enormous. I think, in the long run, you would much rather have the savings that we have from the present operations than you would from previous patterns.

It also allows you to use much more sophisticated loading and unloading equipment.

Senator LONG. Senator Magnuson has suggested one other matter that is not the subject of our hearing today, but while I have you here I would like to get your thoughts on the subject.

To avoid discontinuing some of these Amtrak routes, he suggested that, between some of these routes presently being served by Amtrak, that the trains—hook the passenger trains on the end of a fast freight.

In his part of the country, in the early days, that is how it was. You would have a freight train with passenger cars on the end of it.

What are your thoughts on that area, along that line? Couldn't that cut down the Amtrak losses if you simply attached those passenger cars to a fast freight between here and New Orleans, or between Chicago and New Orleans as an example?

Mr. DEMPSEY. I know that you would have some operating problems. You would have a lot of slack action back there.

Senator LONG. What is that?

Mr. DEMPSEY. If you are at the end, you have a lot of slack action. That is why the employees sometimes get thrown around in the caboose. You wouldn't want to have passengers ricocheting around on the walls.

I know that there would be that kind of a problem associated with it.

Dick, do you thing that that is a feasible idea?

Mr. BRIGGS. Over the years, as an alternative to total discontinuance, railroads have run some mixed trains. They are usually in areas where there is no other form of transportation, and the people are basically forced onto the railroad's rural routes.

I think that most expectations today for the modern-day traveler would be considerably above the comforts that could be provided in a single car attached to the end of a freight train. If you ask any conductor, I don't think that is the way he would want to travel, unless he earned his money at it. It is a very rough ride.

You have problems providing services. It may be, in some situations, that the need for transportation by a few people is so pressing that this might be an alternative. But as a viable form of everyday commercial transportation, Senator, I don't think it is very feasible.

Senator LONG. I thought by now you could overcome the technical problems involved in that. It seems to me you could find a way to beat that problem.

Mr. DEMPSEY. It is the impedance. It is the crack-the-whip. A skillful engineer can manage it pretty well, but you still have a problem.

Senator LONG. I would have thought by now that if you were working on the problem, you could have found a way to have a braking system that broke to where you would apply the brakes to all cars simultaneously. You can do it, can't you?

Mr. BRIGGS. We do that.

Senator LONG. I think I could do something that maybe you couldn't. Anybody could do that.

Mr. DEMPSEY. If you were on the end of that long freight train, you would notice from time to time that it is not as good of a ride. It might absolve us of the charge that we give priority to freight trains. I could say that.

Senator LONG. You are one to try to think for and provide help to the industry, it looks to me as though you are missing some bets.

Insofar as I am chairman of this subcommittee, we are missing some bets. And just to cite one simple example, we have got tracks moving into the metropolitan areas such as Washington, where I live,

Baton Rouge, La., we have those tracks moving in. And during the rush hour in the morning, there are tremendous numbers of people who could be moved down those tracks and to their place of business much more quickly than they are getting there.

Now in the Chicago area, apparently quite a job is being done of moving a lot of people into the metropolitan area during the rush hour; in fact, in the rush hours in the evening. The same thing cannot be said for Washington. It can't be said for New Orleans or Baton Rouge or many cities in this country, can it?

Well, the answer is no.

Mr. DEMPSEY. I guess not.

Senator LONG. And you can talk about your poor return and I am concerned that we ought to pay you something to use those rails to move a lot of people in and out during the rush hour.

That is a small item of income in the beginning, but if it improved the technical competence and develop ourselves a vehicle that can get on and off those rails—I know there is something that can do it, but it is not technically very good.

But if we could develop something better, and then I would think that it would help a lot to solve the problem and we ought to pay you well to help provide that service.

Mr. DEMPSEY. So far as experience has demonstrated across the country, moving people has not been a profitable enterprise. That doesn't mean we shouldn't do it. It shouldn't mean that we shouldn't cooperate in doing it.

Senator LONG. If you have a metropolitan area, Mr. Dempsey, and you have got bumper-to-bumper traffic getting into the heart of that metropolitan area in the morning and in the afternoon, then somebody ought to make some money out of this thing of moving a lot of people in and out at that period.

Now the rail is not being used much at that time anyway.

Mr. BRIGGS. There are examples of cooperation in Washington. The Metro from Silver Spring comes down the Chessie System's right-of-way. I believe they worked that out to their mutual satisfaction.

It does require a metropolitan authority, of course, that is willing to run the service and pay for it. Metro was constructed along that right-of-way, in large part.

Senator LONG. They use their own rails, though, Metro?

Mr. BRIGGS. Yes; for operating reasons on both sides.

Senator LONG. Yes. Well, it just seems to me that a better service could be rendered. It might be a small item of revenue, but in the situation, you are in right now, 1.8-percent return, every little bit helps.

Mr. DEMPSEY. That's right.

Senator LONG. Thank you very much.

Mr. DEMPSEY. Thank you, Senator Long.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey. I am President of the Association of American Railroads, with headquarters in Washington, D.C. The railroads which are members of the Association operate 92 percent of the line-haul mileage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States.

I welcome the opportunity to appear before you today to present the views of the Association on both S. 3260 and the current rail car shortages. The matter of rail car shortages grew to critical importance earlier this year when demand for certain rail equipment exceeded supply by a wide margin. The problem continues today, although the gap between demand and supply has lessened appreciably. I will return to this subject later. I would first like to address S. 3260.

S. 3260, A BILL TO ALLOW CERTAIN RAILROAD RATE FLEXIBILITY

S. 3260, which was introduced by request of the Department of Transportation, proposes the re-establishment and modification of the seven percent "no suspend zone" provided for in the ratemaking provisions of section 15(8) of the Interstate Commerce Act (49 U.S.C. §15(8)). Section 15(8) was added to the Interstate Commerce Act by section 202(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4–R Act) (P.L. 94–210).

Section 202(e) of the 4–R Act modified the Interstate Commerce Commission's power to suspend proposed rate changes by establishing, for a two-year period, an experimental seven percent no-suspend zone. The experimental period ended in February 5, 1978. Under that provision, the Commission could not suspend a proposed rate increase or decrease representing not more than a seven percent change over the rate in effect on the prior January 1 except (i) under Interstate Commerce Act section 2 (relating to unjust discrimination), 3 (relating to undue preferences), or 4 (relating to rates on long versus short hauls), (ii) upon complaint that the decrease was an unfair or predatory competitive practice, or unless (iii) a finding of "market dominance" was made. The seven percent no-suspend zone did not apply to general rate increases.

The practical use of the seven percent provision was limited, since, among other reasons, the provision applied only to non-market dominant traffic. A railroad proposing an increase in a rate applicable to non-market dominant traffic had no incentive to designate the proposal as one under the "no suspend zone" provision since, by reason of the amendment of section 1(5) of the Interstate Commerce Act by section 202(b) of the 4–R Act, the Commission no longer has authority to deny an increase on non-market dominant traffic on grounds of unreasonableness regardless of the percentage increase.

In re-establishing a "no suspend zone", S. 3260 would amend section 15(8) of the Interstate Commerce Act to permit the no suspend zone to operate independently of market dominance considerations. The provision would remain in effect for five years.

The AAR supports in principle re-establishment of a no suspend zone provision as proposed to be modified by DOT. Elimination of the market dominance standard from the provision is critical to its utility. We believe that S. 3260 moves in the right direction but that it does not go far enough.

A MORE PROGRESSIVE AARR PROPOSAL

The AAR therefore proposes additional changes in the rate freedom provision. which can be briefly summarized as follows.

We propose enlargement of the zone of rate flexibility or rate freedom from seven percent to 15 percent for any calendar year. Such changed rates should be exempted from suspension, investigation, or being set aside by the Interstate Commerce Commission on the ground that they are unreasonably high or low in violation of section 1 of the Interstate Commerce Act or that they contravene section 4(1) of the Act. The rate flexibility concept should be applicable to any proposed rate changes, including those of general applicability to all, or substantially all, traffic. Our proposal would set upper and lower limits of permissible rate flexibility beyond which such flexibility would not apply. In the case of rate increases, this would be at a point at which a carrier's overall revenue levels yield earnings equal to its current cost of capital, and in the case of decreases it would be at a point where a decreased rate does not equal or exceed the variable costs of providing the services. Finally, we propose that a tariff filed under such a provision should be permitted to become effective upon thirty days' notice without submission of evidence or justification in support of the change. No change would be made in the Commission's power to suspend or investigate and thereafter declare a rate unlawful under other sections of the Act, including sections 2 and 3.

THE RAILROADS' CONTINUED NEED FOR ADEQUATE REVENUE LEVELS

A major purpose of the 4–R Act was to increase rail earnings to adequate levels by relieving the carriers of some of the past regulatory restraints against their pricing practices. Although the 4–R Act became law over two years ago, that purpose has clearly not been achieved. To realize this objective it is estimated the industry would have to earn approximately $3.5 billion in ordinary income annually. This figure represents the levels necessary if the railroads are to achieve adequate earnings—i.e., those which will insure financial stability and the capacity to render service. The actual record of the industry provides a sad contrast to these objectives.

For the economy as a whole, 1977 was a good year. But for the railroad industry, rapid cost inflation and other factors put severe pressure on earnings. Net railway operating income—already at inadequate levels—dropped to the lowest in 45 years or $346.6 million. Its rate of return on net investment declined to 1.26 percent—one of the lowest in history and less than one-eighth of what is considered necessary in most regulated industries.

Unfortunately, the industry's poor 1977 earnings are not a temporary phenomenon. The fact is that the industry's rates of return on net investment for 1975 and 1976 were 1.20 and 1.64 percent respectively. The 1975 and 1977 rates of return are even lower than the 1932 depression year figure of 1.37 percent, the previous all-time low.

Measured in comparison with other industries with which railroads compete for investment money, railroad earnings remain chronically weak. Other freight carriers under Commission regulation earn five to twelve times as much as do railroads, as shown below for 1976, the latest year for which comparable data are available.

RATES OF RETURN OF ICC-REGULATED CARRIERS, 1976

	Percent	
	Return on net investment	Return on equity
Class I railroads	1.64	1.80
Motor carriers of property	19.23	23.60
Water carriers, inland and coastal	16.03	17.17
Pipeline companies	7.59	26.08

Other industries also enjoy of rates of return much higher than that of the railroads. The average return on net worth for leading corporations in 1977 was 14.0 percent. Manufacturing corporations averaged 15.0 percent and mining 9.5 percent. Public utilities, which are also regulated but which operate in less competitive markets than do the railroads, averaged 12.1 percent. Railroads averaged only 1.9 percent and ranked dead last in a listing of 73 industrial groups.

Poor as earnings have been in recent years, industry profits for the most recent period for which data are available, the first quarter of 1978, are worse. The effects of the harsh winter, the coal miners' strike and continuing inflation on the railroad industry during the first quarter were, in a word, disastrous. Based on quarterly reports filed with the Commission, the Nation's railroads emerged from the first three months of 1978 with deficits of $156.2 million in net railway operating income and $274.0 million in ordinary income before extraordinary items. The net railway operating income deficit was the biggest loss of any quarter in railroad history. The losses in ordinary income were also the largest for any quarter for which data are available.

The drastic downturn in earnings swept through the industry, with few exceptions. Declines in ordinary income were registered by 28 of 36 reporting roads. Half of the 36 carriers had deficits in the first quarter of 1978.

As a result of the first quarter, the rate of return on net investment for the 12 months ended March 31, 1978, dropped to 0.6 percent which is probably the lowest return for any four quarter period in recorded railroad history. While the 3.4 percent recent rate increase authorized by the Commission boosted the industry's current earnings up to the 1977 levels, the certain prospects of continuing high levels of national inflation and pending labor negotiations will cause further deterioration.

RESTRICTIVE RAILROAD RATE REGULATION BY THE INTERSTATE COMMERCE COMMISSION

Our proposal is particularly important in the light of recent actions by the Interstate Commerce Commission. As mentioned above, in the 4–R Act Congress directed the Commission to develop and maintain "standards and procedures for the establishment of revenue levels adequate under honest, economical and efficient management to cover total operating expenses, including depreciation and obsolenscence, plus a fair, reasonable and economic profit or return (or both) on capital employed in the business." Congress commanded the Commission to make an adequate and continuing effort to assist the carriers in attaining such revenue levels. And yet, the Commission has recently erected serious roadblocks in the way of the industry's revitalization.

I refer first to the Commission's decision of June 28, 1978 in Ex Parte No. 343 in which the Commission had under review a nationwide increase of five percent in rail freight rates and charges. That rate increase was designed to offset only in part increases in operatiing costs which the industry had sustained. If the rate increase had been approved in full, the industry would still have fallen short of its cost escalations by $150 million annually. This increase was not designed to improve earnings, but simply to cushion in part inflationary price increases and thus prevent further erosion of rail earnings.

In its report in this proceeding the Commission recognized that the railroads needed additional revenue and that the revenues produced by the increase would fall short of the railroads' additional costs. Yet the Commission directed the railroads to roll back the increase by significant percentages on seven major commodity groups and to make refunds of approximately $25 million to affected shippers. The Commission's action by its own calculations will result in a loss to the industry of $50 million annually. Added to the built-in shortfall of $150 million this produces a cost-revenue gap of significant proportions which the railroads can ill afford to absorb in view of their marginal earnings.

In explaining its action, the Commission announced that it is of the view that the railroads should de-emphasize general increases and look to selective rate increases on individual commodities to promote revenue adequacy. It also served notice that it will not favor such selective increases when the carriers have what the Commission deems to be already adequate earnings on the commodities in question. In other words the decision relegates the railroads to individual rate increases and those only where the rates in question now generate merely marginal or relatively low earnings. Obviously, most of this traffic carries such rates because of competition where the railroads' ability to raise rates is severely limited.

The industry cannot properly function under these newly announced policies. Although there maybe some situations where selective increases make sense, given today's inflationary climate every regulated utility in the United States, not just the railroads, must rely upon general increases to promptly offset their cost escalations. No privately owned regulated industry and certainly no railroad could remain viable unless its increased costs of providing service can be offset by general increases. These cost increases are of such magnitude and their onset is so sudden that it is ridiculous to believe that they can be offset by selective rate increases on individual commodities. As an example, in Ex Parte No. 343, the railroads presented evidence that the industry had sustained increased costs of over $1.1 billion since November, 1976, the date of the last previous general rate increase. Sole reliance on selective increases would produce an intolerable delay in recapturing increased costs and losses to the railroads would mushroom. Before earnings can be improved these cost increases must be offset. Express recognition of this economic fact of life is contained in section 205 of the 4–R Act, already cited, which provides that rail revenues should be adequate to "cover the effects of inflation." Even prior to enactment of the 4–R Act the Commission itself specifically recognized the need for general increases to combat inflationary cost increases. In Ex Parte No. 262 it said:

"In this economic climate a horizontal increase applied to all rates is the fairest means of distributing the burden of providing additional revenue."

This observation was made in 1970 and it is just as true today. It is the Commission's thinking, not the economic climate, that has changed. The new attitude places the railroad industry in jeopardy. In electing to pursue a policy de-emphasizing general increases, the Commission would partially substitute selective increases as a palliative for the industry's financial ills. The remedy is grossly inadequate. As an illustration, the Commission's $50 million revenue rollback in

Ex Parte No. 343 is almost twice as much as the total additional revenues that the railroads have attempted to obtain from all of the section 202 and 206 rate proposals filed since the 4–R Act became law. This is progress in reverse.

Another aspect of the Commission's decision in Ex Parte No. 343 is equally bad. The rates on which the Commission ordered a roll back were among those where, allegedly, most of the revenue earned on the movements resulted from rates which were in excess of 180 percent of variable operating costs. To keep this action in perspective it must be point out that variable costs are significantly less than the fully allocated transportation. The fully allocated costs are the break even point, leaving no room for profit. If a carrier earned only variable costs on all its traffic it would inevitably go bankrupt.

In the recent past the Commission has recognized that rail earnings on certain commodities must necessarily be greater than on others if the industry is to continue to remain solvent, let alone improve its earnings. In its January 31, 1978 decision in Ex Parte 338, the proceeding required by Congress to formulate the standards and guidelines for the establishment of adequate railroad revenue levels, the Commission said:

". . . although equality of contribution may be desirable as an ideal in an emergency or cost based general increase where revenue adequacy is lacking, it would be inappropriate to place undue emphasis on cost/rate ratios. Because of differing demand and competitive circumstances a greater contribution is available from some commodities than from others."

This statement, which recognizes the realities of railroad economics, is belied by the Commission's rollback in Ex Parte No. 343. It appears that the Commission is placing an undue emphasis on cost/rate ratios. It is also clear that the Commission's restrictive policy will be continued unless Congress intevenes.

In the most recent general increase proceeding. Ex Parte No. 349, the Commission rejected the industry's proposal for a seven percent increase on coal rates by rolling it back to four percent. This means a loss of $47 million in revenue annually, plus an additional $9 million in other rollbacks. The Commission has also placed under investigation the same commodities which it rolled back in Ex Parte No. 343 and added others as well. The railroads are fearful that the investigation will terminate in an order similar to that in Ex Parte No. 343—another substantial cutback in revenues. Where then are the railroads to turn? They cannot hope to achieve the needed six-fold increase in earnings by selective rate increases. Much rail traffic is subject to pervasive water and highway competition which is often the reason that the rates are depressed in the first place. There is a possibility, indeed a probability, that significant traffic losses in this class of traffic will ensue if the rates are raised to any material extent.

The amounts of revenue to be gained from increasing the rates on this category of traffic are limited in terms of the earnings gain the railroads must achieve. In addition, although the Commission has admonished the railroads to increase marginal rates, it has also inconsistently denied carrier proposals seeking to accomplish that result. For example, last year it rejected a nationwide increase in lumber transit charges even though it found that the existing transit charges were marginal or non-compensatory. (I. and S. Docket No. 9139, decided March 22, 1977). Thus, the railroads are by no means assured of obtaining adequate additional revenue from any source, given the present thinking of the Commission.

FURTHER EXPLANATION OF AAR PROPOSAL

The amendment we are proposing is intended to assure that the railroads will have the freedom to change their rates, free on interference from the Interstate Commerce Commission, in such a way as to assist them in attaining adequate earnings levels.

1. A larger zone of reasonableness.

It will create a zone of reasonableness of 15 percent up or down in which carriers are free to increase or decrease their present rates without Commission intervention. The increase in the size of the zone from seven to 15 percent is based on the need of the industry, above all else, to realize revenue levels adequate to produce an improved rate of return and to "provide and maintain adequate service in the public interest." (Report of the Senate Committee on Commerce on S. 7818 Report No. 94–499, 94th Congress, 1st Session, November 26, 1975, at 52). Approximately half of the 15 percent figure, if the present and recent past may be used as indicators, will be consumed by increased costs. Inflation

has been running at a rate of 11 percent for the rail industry for the past three years. It has averaged almost 10 percent in the last decade. Hopefully, the remainder of the 15 percent figures will be readily available for use, where competitive pressures permit, in the industry's attempts towards improving its rate of return.

2. Suspension and investigation restrictions

To this end, the AAR proposal would curtail the Commission's power to suspend, investigate, or set aside rate increases or decreases on the ground that the rate is unreasonably high in violation of section 1 or in violation of section 4(1) of the Act (except for protection of through routes and the aggregate-of-intermediates clause). The Commission retains full powers of suspension and investigation under the antidiscrimination provisions of sections 2 or 3. The Commission's powers under section 1 and 4(1) would come back into play once the carriers have achieved adequate revenue levels measured by a return based on current cost of capital.

The exemption of such changed rates from suspension, investigation, or being set aside by the Commission on section 1 or section 4(1) grounds is simply an extension of the approach taken in the original no suspend zone provision of the 4–R Act. The added exemption of changed rates from most of the provisions of section 4(1) of the Act is necessary since in many instances increases cannot be made effective without producing in some instances rates that yield greater compensation for the transportation of property for a shorter than for a longer distance.

3. Application to general rate increases

The application of the 15 percent rate freedom zone to general rate increases is necessary since general rate increases have been and will remain an essential part of the railroads' efforts to increase earnings as well as keep abreast of growing costs. As I have stated, individual rate adjustments on the most competitive rail traffic are not sufficient to produce adequate earnings levels. They do not provide a practical means of meeting the demands of inflation, increased labor costs, and higher prices for materials and supplies. General rate increases and individual rate adjustments are both necessary. They complement each other. They should both be subject to the proposed rate flexibility we are urging.

4. Further restrictions on the proposed rate flexibility

In addition to the rate change limits of 15 percent per calendar year, our proposal would deny rate flexibility in the event a reduced rate would not equal or exceed variable costs of providing the service. (Concededly there has been little regulatory interference with rate reductions in recent years.) Rate flexibility would also be denied where the carrier or carriers proposing a rate increase or increases will attain, by reason of the increase, revenue levels in excess of an amount sufficient to yield aggregate earnings in excess of current cost of capital. In other words, we recognize that unlimited rate freedom could be misused, so in addition to limiting the scope of the zone of freedom to 15 percent, we further limit it to variable costs on the low side and resultant earnings in excess of current costs of capital on the high side. This will provide protection to other carriers from unfair competition and to shippers from unreasonably high freight rates.

5. Elimination of ICC procedural and evidentiary requirements

The AAR proposal will carry out the will of Congress without further Commission-imposed delays and roadblocks. Under the proposal carriers will be free to adjust rates promptly without running the gamut of lengthy and burdensome Commission procedural and evidentiary requirements and without counterproductive holddowns or roadblocks. The matter of procedural and evidentiary stumbling blocks deserves comment. In many of the rulemaking proceedings covering the special rate provisions enacted by Congress in Section 202 of the 4–R Act, lengthy and cumbersome procedural and evidentiary rules have been imposed by the Commission. These delay, and, in the case of the market dominance provisions, defeat, the benefits that Congress intended to extend to the industry. Our proposal eliminates similar Commission interference with the 15 percent rate adjustment by requiring the Commission to permit the rate changes on thirty days' notice without the need for obtaining prior relief from outstanding rules or procedural requirements and without requiring prior evidence or justification.

CONCLUSION

The railroad industry believes that Congress intended in the 4-R Act that the industry should be freed from restrictive regulatory interference to the extent of being permitted to earn an adequate rate of return. Unfortunately the Commission has not heeded the will of Congress. Its latest actions, as discussed in this statement, run counter to the philosophy of the 4-R Act and its promise of a viable and healthy rail industry. The industry has been relegated to an even more restrictive regulatory scheme than has been the case in the past. Further legislation is needed, not to achieve any new purposes, but rather to advance present Congressional objectives and prevent continuing Commission intransigence.

The Interstate Commerce Commission's march toward more regulation of the railroads and less rate relief comes not only on the heels of the 4-R Act, which attempted to head the Commission in the opposite direction, but also at a time when various deregulation proposals affecting a number of industries are being made. And it comes at a time when the railroads, with their worst earnings in history, can hardly afford the losses imposed by the largest style of ICC regulation, whose results seem like a scheme designed to deal with the railroad monopolies of 100 years ago.

This problem is not simply a matter of private versus governmental interests. It is, or should be, a matter of grave public concern. Unless the majority of railroads achieve adequate earnings, there is no way they can provide sufficient freight cars, modern track, and efficient terminals, short of massive doses of taxpayer subsidies. There is no way the public will reap the full benefits which energy efficient, low cost rail service with its large amounts of unused capacity, can provide for the growing amounts of coal and other freight this Nation will require in the coming decades.

The provision of fully adequate rail service in the face of inadequate rail earnings is simply not possible in the long run, no matter how hard the ICC attempts to avoid that inescapable fact. Current earnings of even the strongest regional groups of railroads are only one third of what they need to be.

A more realistic regulatory framework won't guarantee that those earnings are fully achieved. It won't provide the full answer to the railroads' difficulties. But it will be a substantial step ahead and it stops the Commission from adding to the railroads' difficulties while the Congress and the Administration are attempting to find solutions.

CURRENT RAIL CAR SHORTAGES

In the Chairman's letter of June 29, 1978, I was asked to respond in this statement to four questions relating to current freight car shortage problems.

Before I respond to the questions I would like to say that it cannot be denied that a car shortage does exist, for which there are a number of causes. The shortage is due in part to the unpredictable surge in the volume of grain shipments which began late last year. This surge followed a two-year period when grain movements were light and the railroads had substantial surpluses of grain cars in storage. I understand that these surpluses developed because grain was being stored in record amounts, as a result of depressed market prices and government loan programs, rather than moving in normal channels of commerce. The onset of the current grain car shortage was a sudden and unforeseeable development which arose as grain prices increased and grain was removed from storage to take advantage of the rising prices. The car shortage was then aggravated by severe winter storms which tied up rail operations and much of the Nation in late 1977 and the first quarter of 1978.

The railroads are overcoming the operating problems caused by the winter storms and are doing a good job now in moving heavy volumes of grain traffic. We are now handling more grain per week than during the record year 1973, and will continue to do so barring unexpected complications. During the latest week ended July 1, 1978, the railroads handled 30,412 cars of grain, up 21.7 percent over the comparable week ending July 2, 1977. The ability to top 1973's totals in recent weeks is attributable primarily to the expanded use of jumbo covered hopper cars. These cars carry an average of 3,400 bushels each, compared to an average of 2,000 bushels for boxcars. Thus, the railroads have been able to transport 3.5 percent more grain than we did five year ago.

The railroad industry is also handling more coal this quarter. There was a temporary shortage of coal cars after the coal miners' strike, when an abnormal

demand arose due primarily to the coal users' efforts to rebuild their stockpiles which were depleted during the strike. During 1977 the railroads handled 4.7 million carloads of coal, the highest since 1970. Since April the average carloadings per week have been 17 percent above the full year average in 1977. Projected for a full year at this rate the coal loadings could equal or exceed the loadings for last year, and the railroads have the cars necessary to handle this traffic. We are also ahead of schedule in expansion of the coal car fleet to meet the demands of projected production increases under President Carter's energy program.

The railroads should not be expected to buy all the cars that would be needed to meet such abnormal demands as I have described. If we did, we would have thousands of cars sitting around idle for about six months of the year, and with each car representing an investment of some $35,000, the railroads simply cannot afford that kind of luxury. From a sound business standpoint, it would be a ridiculous investment, even if we could afford it.

Substantial investments are being made by the railroads to add needed freight cars to the fleet. Currently, there are 62,224 cars on order, as compared with 25,237 cars last year, and it has been projected that total orders for this year could reach 100,000 cars. The backlog for the first five months of 1978 is 48,279 cars, as compared with 24,705 for the same period last year.

I can assure you that the Nation's railroads share Congressional concern about the current freight car shortages. We have done our best to deal with these abnormal demands under adverse conditions, but there is no way that two years' grain crops can be moved in a single year without some problems. We are attempting to meet those problems in a fair and equitable manner. The railroads are the dominant form of transportation for moving most of the raw materials and agricultural products essential to the Nation's economy. We accept that responsibility and are doing everything possible to provide the transportation service needed.

Now, I will respond to your four questions.

1. What have been the effects of the Interstate Commerce Commission's various car service orders on mitigation of the car shortage problem?

Congress has recognized the likelihood of foreseeable freight car shortages such as that now existing, and has provided the Interstate Commerce with emergency powers in section 1(15) of the Interstate Commerce Act to issue car service orders to cope with such problems. Under this authority the Commission has over the years in its discretion issued car service and distribution orders which have in most instances accomplished their purpose and helped to mitigate car shortage problems. However, in recent years the Commission has tended to overreact to such problems with insufficient or incorrect data and the orders have been issued more frequently, for longer durations, and have tended to be more beneficial to special shipper interests than such orders in the past. Some of the most recent orders have contained requirements which are detrimental to good car utilization, unreasonable, impractical, or could even be characterized as arbitrary and capricious. Current examples of such orders are Service Order Nos. 1304 and 1309.

Service Order No. 1304 permits only 20 percent of a railroad's covered hopper fleet to be used in unit-train service. The railroads feel that this is detrimental to efficient utilization of covered hopper cars. Comments made by a majority of the grain shippers (both single and multiple car shippers) at recent I.C.C. meetings held throughout the country on current freight car shortages clearly indicate that very little improvement, if any, had occurred in car supply or utilization since issuance of that Service Order. The small grain shippers were still complaining that unit trains utilized too many freight cars and the unit-train shippers were critical of the railroads' reductions in the size and number of unit trains.

Service Order No. 1309, which has been in effect since March 15, 1978, has really had an adverse effect upon car utilization and overall railroad operations. This Order requires the Nation's railroads to place, remove, forward, clean, weigh, and give light repairs to system and foreign cars, both loaded and empty, within 24 hours. I am advised that full compliance with this Service Order on some railroads is an impossibility and would be economically unfeasible on others.

The Order does not recognize the everyday realities of railroad operations. Even in the best equipped and staffed terminals or yards, which handle thousands of cars daily, there will normally be some cars on hand in excess of 24, 48, or

more hours from arrival to departure time. In the expedited handling of many hundreds of thousands of cars daily, as required by this Order, delays in forwarding them could be caused by missed connections, adverse weather conditions, equipment failures, derailments, strikes, plugged grain elevators, congestion at ports or terminals and other real-life day-to-day occurrences.

I believe that the railroads have made a good faith effort to comply with Service Order No. 1309. However, the Commission recently announced in the press that it had assessed the largest fines in its history, totalling over $7 million, against three major railroads for many thousands of violations of this Order, and similar action has been threatened against other railroads. I submit that this raises some question as to the reasonableness and possibility of compliance with that Order. In my opinion, Service Order No. 1309 will make worse rather than mitigate the current freight car shortages. Railroad operating personnel will be more concerned with trying to comply with the Commission's Order than moving freight, which should be their primary concern.

Then, there are mandatory Car Service Rules 1 and 2, which were prescribed by the Commission some six years ago in Ex Parte No. 241 and have the same effect as car service orders. They also have contributed to the current shortages of freight cars. Although the Commission has granted numerous exemptions and exceptions to those rules for certain railroads, the majority of railroads still must comply with them. Under those rules, when a freight car is unloaded on another railroad, the car must be sent empty or loaded in a direction toward the owning railroad. Often shippers will reload cars that are made empty at their unloading docks. While this may be a desirable practice from the viewpoint of good car utilization, any shipment destined to a point away from the car owner could not be loaded or moved in that particular car. The car would have to be pulled empty and an appropriate car spotted for loading. During a time of car shortage it is essential for the railroads to extract maximum utilization from the existing freight car supply. The Commission should consider suspension of mandatory Car Service Rules 1 and 2 during such times.

The diversity of railroad operating practices, of traffic flow patterns, and of shipper service requirements make it virtually impossible to establish rigid or arbitrary car service rules or orders applicable to all railroads and still maintain a viable, efficient and competitive rail transportation system. A casual acquaintance with the magnitude of railroad freight car ownership, the problems of car distribution to all rail shippers in the United States, and the multifarious transportation operations involved discloses the complications that will result from unreasonable car service rules or orders.

2. What, if any, legislation do you believe would be effective in either improving car utilization or easing the car shortage problem, or both?

The railroads favor legislation that will enable them to cure their basic problem of inadequate earnings and will improve the competitive climate in which they are forced to do business with competitors that enjoy advantages over the railroads by reason of inequitable government action. We need a broad range of regulatory and ratemaking reforms. Such legislation would, in the long run, help the railroads to solve their car shortage problems. However, there are a few legislative proposals which would provide relief in the short run to the current freight car shortages.

The railroad industry has long advocated that the investment tax credit be made permanent and be increased as a tax stimulus to acquire additional freight cars. Our capital needs over the next five years exceed our ability to generate capital internally, and the investment tax credit is a proven means by which railroad investment has been stimulated. The industry also favors legislation providing that unused and unexpired investment tax credits earned by railroads be refundable. Such refundability is essential for those railroads which are not earning income and thus do not have any Federal tax liability. Also, we favor legislation that will provide favorable tax treatment for certain kinds of leasing transactions. Marginal and loss railroads have been able to lease at advantageous rates needed equipment which they could not afford to purchase. The railroad industry's tax incentive proposals have been submitted to the appropriate Congressional committee for its consideration.

The railroads also need continuing Federal financial assistance under existing provisions of the law to acquire additional freight equipment. Some railroads also could use financial assistance through loans or grants for the repair and rehabilitation of unserviceable railroad cars. At the present time there are 116,018 unserviceable freight cars in the United States. An additional investment

to rehabilitate these cars would add that many serviceable freight cars to the fleet.

At certain times the Canadian and Mexican railroads have large surpluses of freight cars and locomotives which they are willing to permit United States railroads to use for limited periods. However, before that equipment can enter the United States certain Customs laws and regulations require that an emergency exist and that either a General Term Bond or a Temporary Importation Bond be furnished by the U.S. railroad desiring to import such cars or locomotives on a temporary basis. The emergency and bonding requirements sometimes make it very difficult and time consuming to obtain that equipment at the exact time when it is needed. Under the provisions of 19 U.S.C. § 1322 and Section 123.12 of the Customs Regulations, whenever a Canadian or Mexican car or locomotive is moving in international traffic it is free from customs duty and such requirements. However, that same car or locomotive entering the United States for temporary use in domestic traffic would be free from customs duty, but would be subject to the emergency and bonding requirements under Item 864.40, Tariff Schedules of the United States. If these two statutory requirements did not exist, Canadian and Mexican cars and locomotives could move freely to the United States whenever they are needed, as U.S. cars move today into Canada or Mexico. Remedial legislation may be necessary to eliminate the customs emergency and bonding requirements which could make Canadian and Mexican owned freight cars and locomotives readily available for use in the United States whenever they have surpluses and agree to allow the U.S. railroads to utilize such equipment.

3. Why has the use of seasonal rates been ineffective in resolving the burden of peak season demand?

This form of ratemaking is possible only when the demand is seasonal in nature, the season is readily determinable, and the demand is fairly constant from year to year. The limited use of seasonal rates has been attributable to a variety of factors, including: (1) the difficulty in determining and specifying well in advance precise dates for the application of such rates; (2) the opposition of shippers and receivers to the establishment of peak demand rates; (3) the possible diversion of traffic to competing modes of transportation; and (4) the complexities and impediments in complying with the procedures for ratemaking and filing tariffs. While these difficulties have not precluded the publication and establishment of some demand rates, there have been few proposals where the railroads compete with truck and barge operators which are exempt from rate regulation.

Major grain interests have opposed the Commission's regulations and procedures established in Ex Parte No. 324 (355 I.C.C. 522), and are still seeking changes which would require: (1) that rates based upon seasonal regional or peak-period demand could not become effective on less than 180 days' notice; (2) that advance justification be filed with the proposed tariff; and (3) that refunds be made to those shippers whose daily volume during the subject period does not exceed 130 percent of the average daily volume during the balance of the year. These same interests have also attacked in court several seasonal rate proposals and have been successful recently in having two proposals remanded to the Commission for further consideration.

It is too early to determine the ultimate effects of this change in the law since the ICC and the courts are still reviewing the procedures and initial proposals.

4. Please comment on the possibilities and requirements for implementing a common ownership concept similar to Trailer Train for covered hopper cars and gondolas.

By way of historical illustration, in recent years various concepts have been developed to improve freight car utilization and to alleviate car shortages. In 1973 the AAR endorsed the concept of a nationwide pool of general purpose boxcars to improve freight car supply and utilization. A new corporation, American Boxcar Company (Railbox), was formed by the railroads to purchase and operate an initial fleet of 10,000 free running boxcars. Railbox has proven that higher utilization can be obtained with free running cars and that improved utilization can reduce care requirements substantially. I understand that there are plans to expand the size of the Railbox fleet.

Several major railroads a few years ago established a "pool" arrangement with their freight cars similar to bank clearinghouses. The clearinghouse concept for railroad-owned cars is also based upon a free running fleet which has been exempted from ICC mandatory Car Service Rules 1 and 2. If a car owned by one railroad participating in the clearinghouse locates on the tracks of another participating railroad, that railroad can load the car and send it in any direction the

same as if it were its own car. At the end of each week, the participating railroads settle on the basis of debits for clearinghouse cars received and credits for clearinghouse cars loaded. This pooling arrangement has saved these railroads considerable car hire costs and empty car miles, and has resulted in improved car supply and utilization. A study of the initial three-road clearinghouse disclosed that five million car miles were saved despite a surplus car situation at that time. The clearinghouse has been expanded to eight major railroads and is periodically being evaluated.

Another concept which is presently in effect permits the unrestricted use of gondolas by several railroads as if they were under common ownership. There are implementing agreements between pairs of railroads, such as Chessie System and Norfolk and Western, Conrail and Chessie, and Conrail and Norfolk and Western permitting unrestricted use of each others plain gondolas. Conrail also has similar agreements with a number of smaller railroads. Mandatory Car Service Rules 1 and 2 have been waived by the Commission on these cars. The pooling of gondolas has proved to be a workable plan and could be expanded to include additional railroads. However, the common use of covered hopper cars would present problems since a variety of commodities may be shipped in these cars, varying from toxic chemicals to food products for human consumption. The danger of these cars, and their contents becoming contaminated could present a serious threat to human life and would require constant cleaning and policing by the railroads.

The most recent common ownership concept which has been proposed, and is presently under study, involves the establishment of a corporate entity to repair and rehabilitate existing railroad freight cars which are unserviceable and cannot be repaired by the owner for financial reasons. Government or private financial assistance may be necessary. This concept may be a viable financial alternative to the acquisition of new cars and is another possible means of adding more serviceable freight cars to the national fleet.

Senator LONG. We will call Mr. Richard B. Hasselman—he won't be here today.

Then we will call Mr. Thomas T. Church, vice president of transportation, Bethlehem Steel.

Good morning, Mr. Church.

STATEMENT OF THOMAS T. CHURCH, VICE PRESIDENT OF TRANSPORTATION, BETHLEHEM STEEL, BETHLEHEM, PA.

Mr. CHURCH. Good morning, Senator.

With your permission, I am going to read a little bit of the initial part and then talk from it because it is somewhat repetitious in terms of what we have already heard this morning.

My name is Thomas T. Church. I am vice president of transportation of the Bethlehem Steel Corp. I certainly appreciate this opportunity to respond on behalf of the steel industry of the United States to the interest o fthe subcommittee in measures to deal with the continuing problems of car utilization and supply in the rail industry.

My statement is presented on behalf of the American Steel Institute, the Trade Association of Iron and Steel in the United States.

The membership includes about 94 percent of the total steel capability in the U.S. steel industry.

The presentation here is made in my capacity as chairman of the traffic committee of the institute. The steel industry is unusually dependent on the railroads, and probably more so than any other industry in the United States, primarily because of the large volumes of raw materials we need, which are, even if the rate would persuade you to move over the highway at times, it would be poor public policy to move the quantities in that manner.

And we are also very dependent for our outbound movements and our interplant movements. That is why we are here, because the gondola car situation has become a very major controlling item in the production and shipment of steel.

Obviously, 70 percent of the steel capability of the country is in the Northeast and about half of the ownership of gondola cars is in the Northeastern railroads.

As you might expect, the whole situation is dominated by ConRail in its performance because ConRail serves just about every major steel company plant in that geographic territory.

We have been feeling a very strong pinch in the gondola area to the extent of actually having to cancel rolling mill terms, send crews home, have crews standing around waiting to load cars, but nothing to load.

And even when we have had cars to load, to dig pieces of steel out of piles which are part of a 60,000-ton shippable material at a given point, rather than the 30,000 or 40,000 you would normally maintain—that is time-consuming and very expensive.

We have been working in many ways to try and improve the supply of gondola cars. The economics would seem to us to dictate that there should be a good supply. Steel traffic, generally speaking, is highly profitable. The railroads will acknowledge that. They benefit on both sides of the transaction.

However, the supply of gondola cars in the past 10 years, just as an example, has decreased better than 25 percent nationally.

At the same time, it is interesting to observe that the supply of specially equipped gondola cars, those that have some item on them which suits them for particular traffic and which the railroads can maintain very close control of, has increased by 25 percent.

That is a very small number of cars in total. And therefore, the aggregate gondola supply has come down certainly better than 20 percent.

I was very pleased to hear your comments to Mr. O'Neal because we felt that the best way to solve the problem in our analysis in the steel industry was to go toward the incentive per diem arrangement.

I won't say I am a great lover of that solution and I am not endorsing any particular level, but it is the only handle that we see readily available to quickly increase the incentives for the railroads to produce some more gondola cars so that we can continue to do our business.

I agree with you heartily. We are certainly urgently in need of a decision, even if it is against us. Then we can try something else. And we have not, of course, been entirely idle in that field.

There is mention in some of the papers that I have presented of a possibility of a national pool operated by trailer-train, or some other agency. And we certainly have no negative feelings on that.

As to the use of the car service rules which have been employed at times to try to solve the problem, we feel that they are—that they inhibit the best utilization of cars. Obviously, the nearer that you can find a load to where a car is made empty, the better utilization you are going to get.

I certainly am sure that we all would approve of the pools which have been used by the Eastern railroads on their gondola cars, in order

to circumvent, if you will, the imposition—by the Commission of the mandatory application of car service rules 1 and 2, which we found an absolutely intolerable situation in terms of loading certain of our products.

While we complied just fine on some products, in the case of structural steel and plates, we just could not comply 100 percent to those rules.

In addition to agreeing with you as to the decision, I agree with you totally as to your putting your finger on the fact that economic incentive is the best way to solve the problem. Administrative fists of one kind or another are not the solution to this problem.

So my emphasis in the paper, which I will leave with you, is that the economic incentives are the way to solve the problem. Obviously, it also will take better utilization and better operations of the railroad.

This gets into the financial area, which I am not authorized to speak on behalf of the Institute. But we need the strength of the railroads, which we believe that the permissions currently incorporated in the 4-R Act are favorable toward.

We are by no means negative on other methods of that sort to approach that aspect. The financial strength is necessary because ultimately, we need both the cars and the service capability. One without the other just will not do the job.

Thank you, sir.

Senator LONG. Thank you very much. Mr. Church?

You talk about the gondolas. You say that they often move off the owner's line and are used by other railroads in other services so that they benefit from the use of cars for both railroads.

Under those circumstances, in the total absence of payment for the use of cars, would there be any incentive to purchase new cars?

Mr. CHURCH. Obviously, no. It seems to me that is dictated almost like the revenue one would expect to earn and that the revenue is hauling freight, rather than from just owning the car.

But in the absence of one, you have to look to the other to provide incentive.

Senator LONG. Can you tell the committee generally what level of per diem charges on these cars has there been during the decade of declining ownership?

Mr. CHURCH. In view of the average age of the gondola fleet, which I recall is somewhere in the area of 15 to 20 years, the yield on those cars is very low. I could not dredge up the exact figure. It is a very low number.

Senator LONG. At what level had the per diem payments been for the equipped gondolas?

Mr. CHURCH. Substantially higher for the reason that, A, the value of the car is greater, and B, in most cases they are substantially newer cars. So you get it on both accounts. You start with the higher value and you have a newer car.

Senator LONG. Is the freight car shortage the result of the inadequate ownership or lack of utilization of existing equipment?

Mr. CHURCH. It is a combination of the two.

Senator LONG. Thank you very much.

[The statement follows:]

STATEMENT OF THOMAS T. CHURCH, VICE PRESIDENT—TRANSPORTATION BETHLEHEM STEEL CORPORATION ON BEHALF OF AMERICAN IRON AND STEEL INSTITUTE

Mr. Chairman and Members of the Committee, I am Thomas T. Church, Vice-President, Transportation, Bethlehem Steel Corporation. I am highly appreciative of this opportunity to respond on behalf of the steel industry of the United States, to the interest of the Sub-Committee in measures to deal with the pervasive and continuing problems of car utilization and supply of the railroad industry.

My statement is presented on behalf of the American Iron and Steel Institute, the trade association of the producers of iron and steel in the United States. The membership of the Institute includes aprpoximately 94 percent of the total steel productive capability of the United States steel industry. The presentation here is made in my capacity as Chairman of the Traffic Committee of the Institute.

This Statement is concerned with the problems and possible solutions to the chronic shortage of gondola cars of the railroads of the United States. Gondola cars are the primary railroad cars used in transportation of steel and iron and steel scrap from and to the steel plants of the United States. Ownership of those cars has been declining for many years and it has become increasingly difficult for shippers to obtain an adequate supply to meet their requirements for the transportatoin of these commodities. The difficulties in obtaining an adequate supply of these cars have been more severe in 1978 than at any time within memory.

The steel industry is concentrated in the territory served by Eastern railroads generally described as the area east of the Mississippi and north of the Ohio and Potomac Rivers. Approximately 70 percent of the iron and steel capability of the nation is located in that area. Railroads serving that area own approximately half the gondolas of the nation's railroads. Much of the iron and steel and scrap moves between points in that territory but a large portion of the finished iron and steel moves from that territory to the West, Southwest and South. The territory is dominated by ConRail which serves almost every steel plant in the territory.

The railroads provide an essential service to the steel industry. Substantially all the scrap and a volume approaching one-half the manufactured iron and steel moves by railroad. In addition, there is a substantial movement of semi-finished steel between steel palnts. A shortage of cars results in lost business to buyers of steel and sellers of scrap and either lost production or disruption and inefficiency among steel plants. Effective and efficient rail service, and particularly an adequate supply of cars at shippers' loading locations, is essential to the economic health of suppliers, steel plants and steel users.

The matter of car shortages, and particularly shortages of gondola cars, has been of serious concern to the members of the American Iron and Steel Institute and its Traffic Committee for many years. Our experience with the problem has developed a high degree of appreciation for its complexity. In many respects the problem begins with the decline in railroad ownership of gondola cars. On the other hand, an improvement in utilization, that is, an increase in the number of shipments handled per car per year, could solve most of the problem. Improvement in utilization is a very knotty problem involving almost every facet of railroad operations and thus reaching into the entire railroad problem of the nation, including technological, financial and labor problems which do not lend themselves to quick or easy solution.

The degree of the decline in the ownership of plain gondola cars is shown in the following table:

OWNERSHIP OF PLAIN GONDOLA CARS

Class I railroads

	Number of cars
January 1, 1968	176, 894
May 1, 1976	143, 344
May 1, 1978	132, 211

This declining ownership should be balanced against the increasing production and shipment of steel. The contrast between the declining ownership of gondola cars and the rising demand for transportation by the steel industry is shown in the attached graphs.

In seeking a solution for these problems, the steel industry has centered its attention on the need for an increase in the size of the gondola fleet and our belief that additional compensation to the owners of the cars is necessary in order to encourage railroads to acquire the additional cars necessary to provide an adequate supply. We have been in opposition to the Interstate Commerce Commission's endorsement of car service rules requiring the movement of empty equipment directly to the lines of its owners, believing that greater utilization can be obtained if the cars are moved direct to a loading point following unloading rather that being routed back to the owner for loading on its lines. Such a policy is believed to enhance efficient transportation but it serves also to reduce the attractiveness of investment in new cars unless per diem rates are high enough to provide an attractive return when cars are in the hands of other railroads.

The need for an additional investment incentive for gondola cars is primarily concerned with the plain gondola cars which are free-running equipment available for a great variety of transportation services for almost any shipment which does not require protection from the elements. These cars are to be contrasted with equipped gondola cars which are built with particular features limiting their use to particular types of shipments. The suitability of the plain gondola car for a variety of shipments makes it extremely difficult for the owner of the car to identify the particular service in which the car will be used and it frequently happens that such cars move off the lines of the owner and are used by other railroads in other services so that the benefit from the use of the car often accrues to other railroads.

Under those circumstances, in the absence of provisions for an adequate rental payment by other railroads for the use of the car, these appears to be an inadequate incentive to purchase new cars because the benefit to be derived from ownership may appear remote and ephemeral. It is noteworthy that while the supply of plain gondolas has continued to decline, the proportion of equipped gondolas has tended to increase in recent years. AISI has supported the proposal for incentive per diem for gondola cars in the currently pending proceedings before the Interstate Commerce Commission dealing with the proposal. We are hopeful for a decision on the proposal shortly.

We have been of the opinion that a joint ownership of gondola cars similar to the arrangement for a supply of long flat cars and box cars provided by Trailer Train would be a useful adjunct to the gondola fleet and enhance the flexibility and hence the utilization of the cars. The railroads have not yet seen fit to develop such a program.

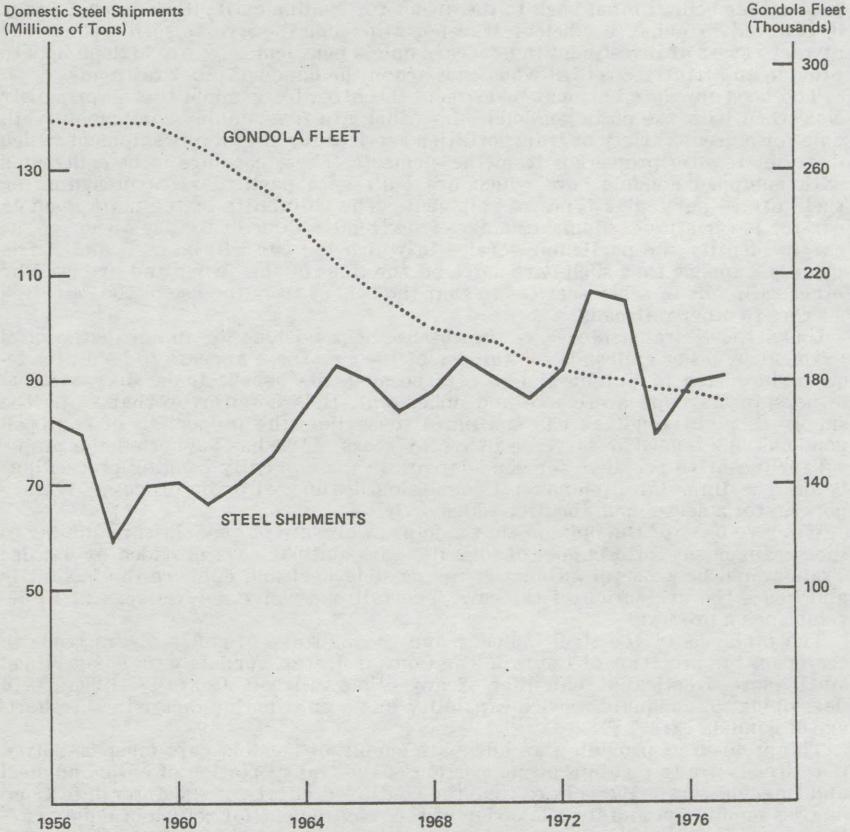
The problems of the steel industry and the shortage of gondola cars tends to center on the problems of Conrail. The Conrail fleet of gondola cars has declined much more drastically than that of any other railroad. Conrail's difficulty in developing an adequate service capability has been a major factor in the shortage of gondola cars.

The problem of providing an adequate supply of gondola cars must be solved if railroads are to regain a larger portion of the transportation of outbound steel and inbound scrap. We believe that the continued efforts of the Interstate Commerce Commission and its relaxation of the requirement for return of empty cars to owners' lines must be continued. We believe that greater compensation to the owner for the use of cars on lines of other railroads is an essential ingredient in any long-term solution. We continue to believe that a joint ownership program along the lines of the Trailer Train ownership of flat cars would be very helpful.

We also recognize that the onward development of Conrail is an essential ingredient. It is our view that Conrail was organized as a corporation for profit intended to provide a private enterprise solution to the problems of railroad operations in the East and Midwest. We think that Conrail has been modestly successful in preparing itself for operational improvements and that its partial success thus far merits continued support by the United States for a private enterprise solution. Strengthening ability of Conrail to operate in response to economic imperatives will, we believe, tend to solve the problems associated with shortages of gondola cars and maintain and restore the railroad opportunity to continue to serve the steel industry.

In summary, the steel shippers believe that the changes which appear most productive in the search for a solution to car shortage problems do not lie in the area of legislative initiatives. We are also convinced that the remedy can be found in economic incentives rather than in detailed administrative intervention in railroad operations. The changes in government policy toward improving the financial position of the railroad industry in the 4–R Act will, if properly imple-

mented, provide a promise that the railroads will be able to develop an improved capability for efficient rail operations and an improved supply of cars. The ultimate solution to the problem must include a substantial improvement in the service capability of both Conrail and the railroad industry as a whole.



Senator Long. Next we will hear from Mr. B. O. Smith, Dowell Division, Dow Chemical Co.

STATEMENT OF B. O. SMITH, SUPPLY AND DISTRIBUTION MANAGER, DOWELL DIVISION, DOW CHEMICAL CO.; ACCOMPANIED BY MR. HARMON, BUSINESS MANAGER, DOWELL DIVISION; AND MR. PATTERSON

Mr. Smith. Mr. Chairman, I am supply and distribution manager for the Dowell Division of Dow Chemical. We are in the business of providing a service to the oil and gas industry. That is the purpose of the Dowell Division.

Mr. Harmon is here as the business manager. He is an expert in oil and gas stimulation. Any questions related either to the stimulation

of the oil and gas industry or to that part of the business, we would like to refer to him.

As a part of our service to the oil and gas industry, we hydraulically fracture wells to increase the flow both in old and new wells. That service involves pumping a sand-laden fluid into the fracture closure. The sand remains in the fracture as a proppant, allowing the oil or gas to flow back at a higher rate and increasing production.

The unnecessary shortage of hopper cars by the end of this year will have had a $3.8 million impact on our company, an additional cost burden to the total energy production.

The rail car shortage results both from a short supply of railroad cars and from an increasingly high demand. It is difficult to control those problems by legislation, so I won't attempt to recommend any.

In 1978, it was our plan to procure and use some 200,000 tons of sand. And we move about 80 percent of that by rail economically. So this year we could have moved 160,000 tons by rail. We intend to increase our business so that by 1983, 5 years from now, we would double that amount—320,000 tons, which would require 4,200 rail cars.

I recognize that is not a significant number out of the total, but for us it was a very important part.

This year we needed, starting in the April high season, about 40 rail cars a week. We have only been able to obtain an average of 20 a week, and of that 20, part of those are provided by our company.

Our plan to move the 160,000 tons could only be achieved at a 50-percent rate. The balance was by common carrier. We estimate that will cost us, before the season is over this year, some $850,000 premium to move that sand.

The shortage of railcars—and this has been spoken to by several people already, results from a number of reasons. The ICC order 1322, which diverted the closed hopper cars that haul grain. We use the same type car in hauling sand.

Railroads are not adding the particular 100 ton, 3.200–3,500 cubic foot capacity that we need at the rate that we need to increase our business. The cars they are adding are those types that are open type for quarry materials, or for a larger cubic capacity for hauling grain.

Accidents are increasing. Derailments are increasing. All of which adds to a continuing shortage of cars for us. We only take something like one-tenth of all of the sand output from Illinois and Texas, where the suppliers furnish sand to us. The balance goes to furnish the glass foundries, abrasives, and other type materials. So again, we take a small part of that total.

This year we have already put into service 20 railcars and have an additional 20 coming in, which should be in by the end of the summer. Next year, because of the shortage, we intend to add another 65 railcars out of our capital, which will cost us about $2 million.

The Dow Chemical Co. would prefer to invest its capital in equipment and facilities which could provide a reasonable return on investment and would be related to our business of service to the oil and gas industry. We would prefer that the railcars be provided by the railroad companies that are in business for that purpose.

Because of the reduced rail service, last year and this year we spent $1 million in increasing our sand storage to level out the flow of material into our industry.

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To alleviate the shortage, we recommend a number of things that are generally known. We need to improve the railcar turn time and increase the miles per day. We need to increase the number of hopper cars that are available, particularly those that are closed hopper cars of the 3,200 cubic foot capacity, with 100-ton trucks.

We would like the railroads to take the initiative in upgrading that fleet, so that we wouldn't have to do it. We believe the railroads should be paid a profitable rate for the pounds that are hauled, and that those rates should be based on the value of the product.

Sand is a vital part of increasing oil and gas production, and the railcar is the best way we know to haul sand where we need to haul it; certainly the most economical over long distance. The diversion of the railcars to move the fertilizer and grain and other products did little to increase our oil production this year. It looks like a continuing problem.

To summarize, the cost impact of the items that I have mentioned that we have been able to measure, our total outlay is $3.8 million within the 2-year period of time. We think this cost would not have been necessary to our company with added hopper cars, and it would not have had a negative impact on the energy costs for the country.

Senator LONG. Did you say the moving of sand to where you needed it in your operation, in spite of the cost and car shortage, you used the highways?

Mr. SMITH. Yes.

Senator LONG. You got the job done. I assume it was a higher cost?

Mr. SMITH. That is exactly right.

Senator LONG. Would increased rail rates for sand obtained for service be reflected in consumer costs for energy?

Mr. SMITH. I think under the current situation, with the controlled price of oil and gas, we have a difficult time passing that on to the consumer. It would have to be absorbed by the service company and oil company.

Senator LONG. I see. And those companies absorb it?

Mr. SMITH. Yes, sir, at a decreased profit.

Senator LONG. I would think in your case, if you are paying something more for the rail service, but in doing so you are still saving, as opposed to moving it on the highway, you would have a net overall savings.

Mr. SMITH. That is true if the alternate is to move by road and not by rail.

Senator LONG. It seems to me that that is your alternative. In the long run, in other words, the testimony here today seems to indicate that you are going to have to let the people in the rail business and the business of manufacturing and providing these cars to make a fair profit if you are going to get them. I am not against the oil industry and I am not against your business or anybody's business, frankly.

But I am interested in production. Let's put it that way.

Mr. SMITH. We agree that the railroad should be paid a profitable rate for hauling material. If that means an increase in the rate, we would support that position.

Senator LONG. Thank you very much for your statement. I hope we can do something about it.

Mr. SMITH. Thank you, sir.

[The statement follows:]

STATEMENT OF B. O. SMITH, SUPPLY AND DISTRIBUTION MANAGER, DOWELL DIVISION OF DOW CHEMICAL

I am B. O. Smith. Supply and Distribution Manager, Dowell Division of Dow Chemical U.S.A. I reside in Tulsa, Oklahoma.

Dowell Division is the Oil and Gas Service Division of Dow Chemical, providing service to the Oil and Gas Industry.

As part of the stimulation services for the Oil and Gas Industry, we hydraulically fracture oil and gas wells to increase flow in both new and old wells. That service involves pumping a sand laden fluid into the fracture to prevent fracture closure. The sand remains in the fracture as a proppant, allowing the oil or gas to flow back at a higher rate and increasing production. Hydraulic fracturing has added over seven billion barrels of oil to the United States reserves in the thirty years since its advent, according to Robert L. Huggins of Amoco Production Company. He says, "World wide fracturing activity will increase tremendously as prime reservoirs decline and lower grade reservoir rocks become commercial with increasing demand and prices." Which says, there will be a constant and increasing need for sand as a proppant in hydraulic fracturing.

We use a select, high quality sand in the range from 100 Mesh to 10/20 Mesh, with the highest volume in the 20/40 Mesh size.

In 1978, it was our business plan to procure and use 200.000 tons of sand with approximately one-third of that source out of Brady, Texas and two-thirds from suppliers in the Illinois and Wisconsin area. Within the next five years, our fracturing business should double, which will double our requirements for sand as a proppant.

Rail movement of sand is economical for eighty percent of our total needs based on current rail rates. This year, we should have been able to move 160,000 tons or 2100 rail cars of sand. Forecast to 1983, we will require 320,000 tons or 4200 rail cars.

The peak fracturing season for oil and gas service starts in April, after the winter road bans have been removed. We needed forty rail cars per week at that time, but have been able to obtain an average of only twenty per week, including those furnished by Dow Chemical. (Chart I) Therefore, our plan to move 160,000 tons by rail car can only be achieved at a fifty percent rate. The balance of 80,000 tons must be moved at a premium cost by commercial truck. The difference in rail cost versus truck averages $10.66 per ton, or a total premium paid of about $850,000.

The present shortage of rail cars resulted from several causes:

1. The ICC Service Order 1322, dated April 17, 1978, to divert hopper cars to haul grain;

2. The railroads are not adding hopper cars of the 3200 to 3500 cubic feet capacity with 100 ton trucks; The new cars are large in cubic capacity with smaller trucks and are dedicated to the grain service. Other hopper cars added are open top for quarry type products. Conrail reports that there will be no addition of the type cars needed for sand service until after 1982;

3. Accidents per million train miles increased from eight to fourteen between 1967 and 1977, while total train miles decreased reducing available cars;

4. Derailments climbed forty percent from 1966 to 1974, increasing damage and outage.

The net result is fewer cars available to move materials. Our sand suppliers reported a decreasing number of rail cars and they also are currently adding to their fleet to stay in business.

Typical of the Northern suppliers, we take less than ten percent of their output for the Oil and Gas Industry. The balance going to glass manufacturers. One hundred tons must be procesed by the sand suppliers and ninety tons shipped before we can take ten tons. Shortage of rail cars this year severely curtailed total sand production, and therefore sand for oil and gas service.

The Dowell Division of Dow Chemical presently has twenty rail cars in rail service and will add another twenty this year. Our current plans are to add sixty-five rail cars in 1979 at a cost of $2,015,000. This will be a cost burden to the

company and will not generate any profit. The Dow Chemical Company prefers to invest its capital in equipment and facilities that provide a reasonable return on investment and that rail cars be provided by the rail companies in business for that purpose. (Chart II)

Because of reduced rail service, we increased sand storage capacity in 1977 and 1978 by fifteen million pounds at a cost of one million dollars.

Dowell rail costs have increased sixteen percent since 1976 (from $13.20 to $15.34 per ton), while commercial truck costs have decreased (from $18.80 to $18.35 per ton) two percent.

To alleviate the shortage, we recommend:

1. Improve the rail car turn time and increase miles per day to increase utilization of present fleet. Dow cars in sand service are now turning less than thirty days with constant surveillance, 100% better than the national average. The national average of fifty-six miles per day for a railcar must be improved for better utilization of capital invested in those cars. (Chart III)

2. Increase the number of cars available, whether we are compelled to spend our capital or if the railroads buy new cars. Closed hopper cars of the 3200 cubic foot capacity with 100 ton trucks are not being replaced at a rate to maintain the present fleet. We find no consideration by the railroads to build new closed hopper cars to take care of the growth in business for the future.

3. We believe the railroads should be paid a profitable rate for pounds hauled. Rates should not be based on value of the product.

4. Sand is vital to increasing oil and gas production, and rail cars are the best and least costly mode of transportation. Diversion of rail cars already in short supply, to move fertilizer or grain, while perhaps necessary, does not support increase in oil production. Neither seasonal rates nor service orders can overcome this shortage.

To summarize, the cost impact on the Dow Chemical Company resulting from rail car shortage is:

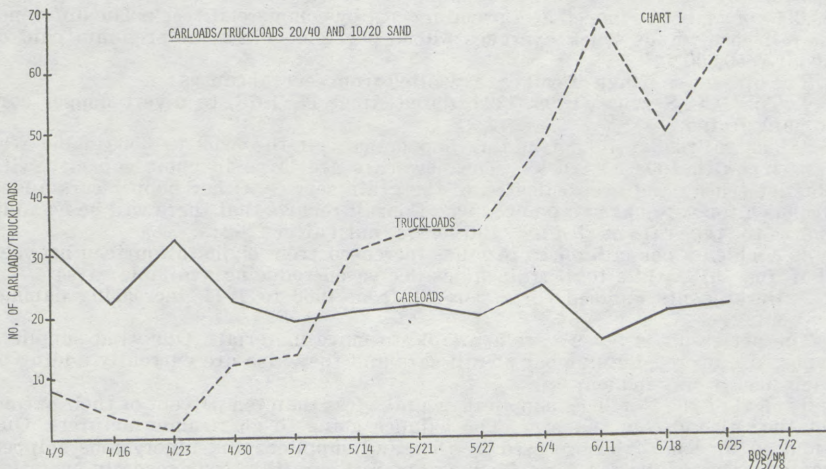
We will have spent $850,000 premium to haul sand by truck,

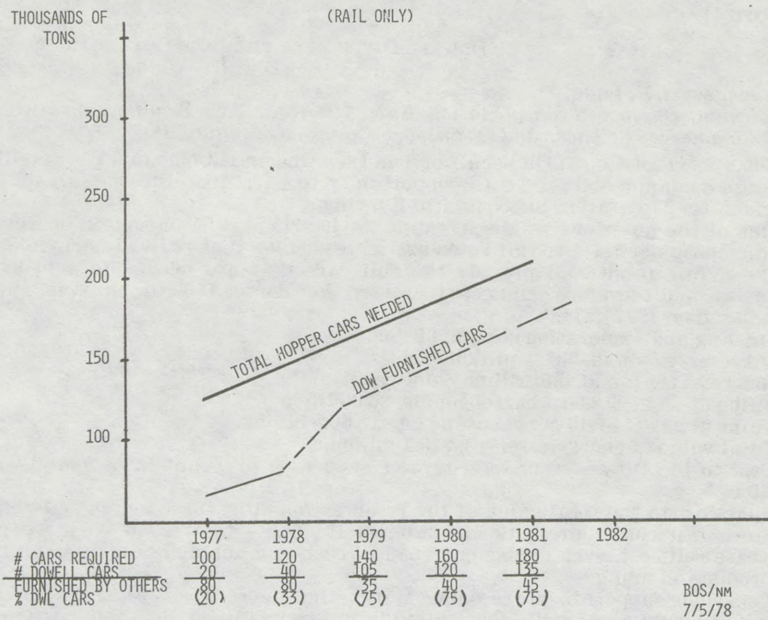
We will have spent one million dollars by the end of this year to improve sand storage,

We plan to spend $2,015,000 in 1979 for rail cars and whatever is necessary beyond 1978 to maintain the fleet,

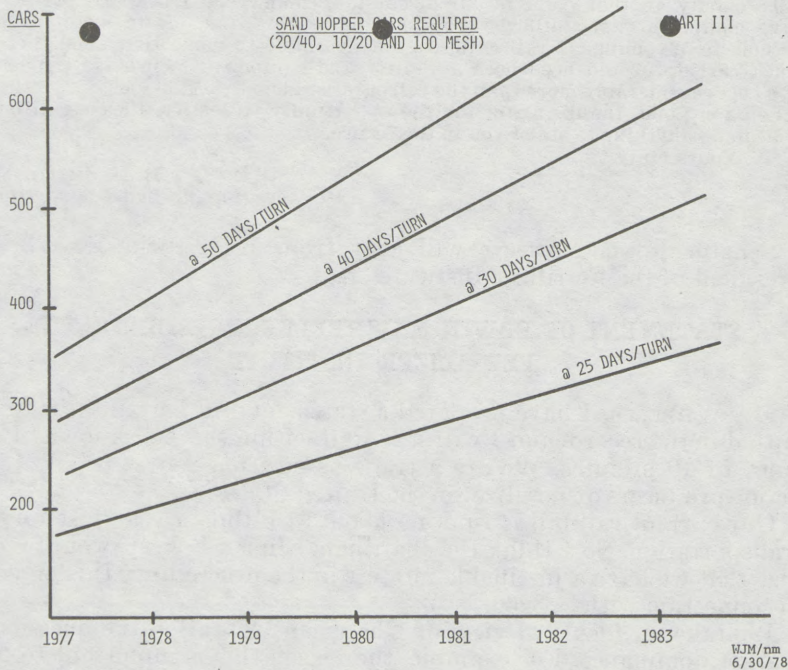
For a total outlay of $3,865,000 within two years.

With good service and adequate rail cars this cost would not have been necessary to the Dow Chemical Company and would not have a negative impact on energy cost.





	1977	1978	1979	1980	1981
# CARS REQUIRED	100	120	140	160	180
# DOWELL CARS	20	40	105	120	135
FURNISHED BY OTHERS	80	80	35	40	45
% DWL CARS	(20)	(33)	(75)	(75)	(75)



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

DOWELL DIVISION OF THE DOW CHEMICAL CO.,
Tulsa, Okla., July 20, 1978.

Hon. RUSSELL B. LONG,
Chairman, Surface Transportation Subcommittee, U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR SENATOR LONG: On behalf of The Dow Chemical Company, I would like to express our appreciation for the opportunity to participate in the July 12, 1978 Surface Transportation Subcommitte Hearing.

One of the questions we discussed at the hearing is the impact on energy cost at the consumer level if rail rates are increased, so that the rail companies can make a fair profit and provide the rail cars that are needed to support the industry, and therefore sand cost increased. Let me see if I can put it in perspective based on 1977 data:

Drilling and exploration cost, $9 billion.

Oil reserves found, 531.4 million barrels.

Gas reserves found, 4.5 trillion cubic feet.

Value of oil at $12.50 a barrel equals, $6.6 billion.

Value of gas at $1.45 per thousand cu. ft., $6.5 billion.

Total value of energy reserves, $13.1 billion.

Cost to the Oil and Gas Industry for sand as a proppant in new wells, $44.1 million.

That cost to the total value of the reserves found is, three-tenths of 1 percent.

Since rail cost represents about one-half of the total sand cost, we could increase rail cost, even double current rail cost, and not significantly impact cost to produce oil and gas.

This lends support to our recommendation that the railroads be paid a profitable rate and would agree with your stated interest of insuring that rail rates are set to provide that return for them.

To clarify another point in our discussion, commercial truck carriers neither have equipment nor authority for long hauls for sand, as an example, from Illinois to Wyoming. If rail cars are not available to move that sand then the truck carriers would need both authority and equipment to provide the service at a cost considerably more than the rail cars could do the same job.

Senator Long, thanks again for the opportunity to testify. Please call on me if I can do anything to assist you in the future.

Yours truly,

B. O. SMITH,
Manager, Supply and Distribution.

Senator LONG. Next we will hear from Mr. Edwin M. Wheeler, president of the Fertilizer Institute.

STATEMENT OF EDWIN M. WHEELER, PRESIDENT, THE FERTILIZER INSTITUTE

Mr. WHEELER. I have prepared a statement and I would like it submitted in the record, and I will stay well within the well-known "Long rule" of 10 minutes. We are a trade association representing all the major producers of fertilizer in the United States.

Our current rail bill is running about $1 billion a year just for this transportation. So I think the chairman, being a lawyer, would recognize that we have a justifiable interest in the proceedings this morning in connection with S. 3260.

We take an identical view of Chairman O'Neal on the question of market dominance. For example, the reason this is important to us is that the Seaboard Railroad is the only carrier that services the bulk of the phosphate mining in Florida. Keep in mind, they have an annual

output in Florida of 40 million tons of rock a year. So that where one railroad has us by the throat, we are very concerned that the market dominance rule, if it were dropped, we would pay a real penalty.

Now, the Senator made an observation this morning about the success of the deregulation of the airlines and the rates structure. That is well and good where TWA, United, and so on, are knocking each other flat for the business. But we are in a situation in Florida and Carlsbad, N. Mex. where only Santa Fe serves a 2-million-ton industry, with a monopoly. And I can hardly conceive of any politician, at least back in my home State of Kansas, advocating that the local power company be deregulated completely on setting rates, because the populace is at their mercy.

We are, too. On the other end of this distribution system, we have thousands of retailers where the actual sale occurs to the farmer, that they are on single-line rail service. There is no competition in those areas by motor truck.

Senator LONG. If I had my way, you would be able to use—could go ahead and rent a train and move it, hire the crew and move the stuff yourself if you wanted to.

Mr. WHEELER. In effect, many of the unit trains are that, because the companies own—the shippers own the cars in the unit train.

But I wanted to be sure that the Senator understood that we are talking about tremendous volumes of material that are absolutely locked to rail transport. So that any change in the rate structure immediately affects our farmers and the price that they pay for fertilizer.

Much of this material moves FOB and the local retailer pays the freight.

If I could, having adopted Chairman O'Neal's position on S. 3260, I would like to move quickly to the questions that you posed to us. The first question I have set out for you in the prepared testimony. I think the committee has already taken judicial notice of the freight car shortage. I have some figures in my testimony which indicate how it has affected us.

We have been before the Commission on a number of the service orders, discussing the problems with them. As the Senator indicated, we would rather have them take quick action than take no action at all, so at least we know what the heck the rules of the ball game are.

They did make a mistake in one of the car orders alluded to this morning. They directed 70 percent of the hopper fleet to go into grain service because it was right at the peak of the spring fertilizer demand, and we compete for those same cars. So, quickly, Chairman O'Neal did roll that order back from 70 percent to 50 percent, which was about where the carriers were in their own allocation system.

I am not going to be critical of the Commission, because it has made great strides under Dan O'Neal's chairmanship.

Senator LONG. You are saying the same thing I am. Give us a decision, even if it is wrong; give it to us.

Mr. WHEELER. They did. And I think that is a point you made well this morning. The shippers are on your side.

The first question was, what are the effect of these orders. What it boils down to is, the service orders are doing nothing but allocating the shortage. They are not adding anything to the fleet.

Basically we have the Commission down there trying to reflect the parable in the Bible of two loaves and three fishes, but they have no divine intervention to feed the starving multitude.

The service orders by and large have not in our judgment been particularly effective. They have caused a great deal of confusion. But always I hope the Chair bears in mind, service orders merely allocate the shortage. They don't really produce any new equipment.

Turning to the second question, what legislation do you believe is necessary, I will make only one quick comment, because I want to talk a little bit more on question 4 that you raised.

We are not sure, as a legal matter, Mr. Chairman, whether or not the reverse demurrage concept can be placed upon the carriers. Our shippers are very upset over the proposition of quick unloading of these hopper cars and then the hopper car sits there 10 days to 2 weeks before the carriers pick it up. They don't see why they should be charged demurrage time when the car is held at their plant under load and then the car sits out there idle for 2 and 3 weeks. They don't understand why, with this very, very slow delivery time, the carriers ought not to pay a penalty for failing to meet a reasonable delivery schedule. We think that the monetary penalty should be imposed upon the railroads in their failure to pick up cars or to detain the equipment, if you will, either idle or unlocated, sitting somewhere on their system.

And I think we got lost this morning in the discussion, but basically this is what Chairman O'Neal is talking about when we talk about reverse demurrage. If they have the authority, I hope they proceed on it; if they don't, I think they should run back to this committee and get that kind of legislation moving, because we have got to put some teeth in the movement of these cars.

The Chair then asked, what about seasonable rates; have they been effective or ineffective?

The carriers have been very reluctant to embark upon seasonal rates. Seasonal rates for us present some problems. For example, as I pointed out in the testimony, ordinarily the heavy demand should be in the Corn Belt country along about mid April. This year, however, because of just unheard-of rainfall throughout the entire territory, we didn't really start to move until about 30 to 45 days past the ordinary peak season. Peak season rules are so inflexible that both the shipper and the carriers have been reluctant to try them.

Last but not least, the shipper are uneasy about the general economic situation in the country. They are reluctant to load up with high inventories in offpeak, cheap-rate season for fear that pricing changes will have drastic effect on them. We do not see, Mr. Chairman, right now the off-season concept, peak-season concept growing, because it has got so doggone many difficulties with it.

Last but not least, the chair asked us to comment on the possibility for implementing common ownership in some arrangement similar to Trailer Train.

We honestly believe that anything new should be tried. Mr. Chairman, from the time that you came up here as a Senator until today, if you would go back and look at the numbers, I think you would be dumbfounded at what has happened in agriculture and what is causing this car shortage. When you came up here a number of years ago the

United States was exporting at a rate of about $5 to $6 billion a year in farm products. Over the last 3 to 4 years we have consistently delivered through our ports better than $20 billion worth of farm products. This year it will be close to $27 billion.

When I became president of the Fertilizer Institute 10 years ago we were selling about 36-million tons of material a year to our farmers. That figure now is at 51 million.

The growth in the movement of these bulk commodities—grain, fertilizer, and so on—has been steady, relatively predictable, and we believe it is safe to assume that U.S. policy will encourage the continuing growth of grain exports to pay for oil and so forth.

The trouble of it is that—Mr. Dempsey this morning was talking about the amount of equipment on order. What he neglected to tell you was that the carrying capacity is shrinking faster than new equipment is arriving. In other words, they are retiring equipment faster than they are adding it.

This period I described to you of phenomenal growth of U.S. bulk exports is occurring at the same time that the Nation's rail fleet is shrinking. It is no wonder that we have the shortage that we do now. I doubt if next year we will see quite as high farm exports, but I think it is fair to say that the country can plan on a minimum of $20 billion of exports over the next 5 to 10 years, and we have to have the rail fleet to meet those commitments.

Our industry is big in exports. We are beginning to get the reputation of being undependable. Why? Because the vessels have to stand off as much as 2 and 3 weeks awaiting material because the railroad doesn't have sufficient cars to get it there.

I might add, Mr. Chairman, that the demurrage runs from $10 to $15,000 a day, and I hear about it when they are standing off Tampa Harbor going into a second and third week.

What I am saying is this. We would support the chairman and this committee on any proposal they make to expand the hopper car, freight car fleet, particularly the hopper car. Our material is ideal to move in these cars. It is big; it is bulky; and the volume is staggering.

I have been accused of being a socialist, and I want the chairman to understand that I voted for Ghengis Kahn in the last election because I think it is time for us to consider a Government hopper car pool. This makes my rail friends very unhappy, but we cannot, as reasonable men, let this situation go on and on and on.

Your predecessor and their predecessor held the same kind of hearings, same kinds of excuses, but the problem gets worse, and it is time now to consider giving the patient a new course of therapeutic treatment, whether it be car pool or whether your other committee really come down with favorable legislation from a fast tax writeoff, whatever the concept is. I guarantee you we will be in Senator Long's army supporting some new approaches and some new medicine.

Now, I would like to conclude by saying it is a very frustrating thing for us in an industry that has to serve these farm customers or the country doesn't eat, because fertilizer accounts for not less than 40 percent of U.S. total farm output to be faced with a situation every season such as we have gone through this spring.

I will state flatly to the Chair that the hopper car shortage situation this fall will be even more critical than it has been this last spring. USDA advises us that farm exports are going to stay high on through the end of next year. Yesterday the Government announced that they estimated the current corn crop growing to be 6 billion bushels. It has got to move. We anticipate that we will have the biggest fall demand for fertilizer in the history of the industry. The corn is going to be moving, and the fertilizer is going to be moving, and people are going to be writing Chairman Long some very red-hot letters. The situation is not going to get better because, Senator, nothing is being planned to alleviate it.

We hope that the Congress will now say that enough is enough and take action on this.

Thank you, sir.

Senator LONG. Thank you very much, Mr. Wheeler. I think you made a very good statement. It calls for no further questions or comments. You made a very good statement.

Mr. WHEELER. Thank you.

[The statement follows:]

STATEMENT OF EDWIN M. WHEELER, PRESIDENT, THE FERTILIZER INSTITUTE

S. 3260, AMENDMENT OF SECTION 15(8) OF THE INTERSTATE COMMERCE ACT

By way of brief explanation, The Fertilizer Institute is the trade association of the nation's fertilizer industry whose membership is engaged in every facet of the business supplying our nation's farmers with plant nutrients. Our membership consists of investor-owner as well as farmer-owned cooperatives. Commercial fertilizer sales in the U.S. are currently at about the 6.5 billion dollar range. Over the last five years we have shipped to the American farmer between 45 and 51.5 million tons of material per year. This tonnage produces between 30–40% of the nation's total food and fibre output. No one challenges the need for this vital—lifegiving—material.

Rail transportation is likewise vital to assure our farmers of adequate fertilizer supplies. Our industry owns or leases many thousands of hopper, tank and box cars. Be it phosphates from Florida or Idaho, nitrogen from Louisiana, Texas and Oklahoma, or potash from New Mexico, Utah and Saskatchewan, Canada, all are absolutely dependent on rail. Much of this tonnage is single line railroad captive. Only Seaboard Coast Line serves the Florida phosphate mines where annual output is in excess of 40 million tons. Santa Fe is the sole carrier serving Carlsbad, New Mexico, with its 2+ million tons annual production. These are but examples but the list could extend ad infinitum. Equally critical, thousands of fertilizer retailers are served only by a single railroad. But be they large producer or small retailer, they are at the "mercy" of the railroads and usually at the "mercy" of but a single railroad. The rail carriers simply have no rail competitors at these points. We do move substantial tonnage by barge and 2+ million tons by pipeline but the overwhelming tonnage moves by rail. The tremendous quantities plus the sheer bulk of the commodities themselves have us wedded to rail transportation for better or for worse.

As a rule of thumb in our industry, for every dollar the farmer pays for fertilizer, 30–35¢ is for transportation costs. Any change in rail rates, therefore, has a critical impact on our farmers and our industry. We estimate the fertilizer industry rail charges are in excess of one billion dollars per year.

Turning to S. 3260 then, one can see we have a "justiciable interest" because the proposed legislation has a great impact on both ratemaking and ultimately our farmers' cost for plant nutrients.

Today the railroads have the freedom to rais all rates to a point at which level they would exceed the maximum reasonable level. This level has been defined as 160 percent above variable cost. Thus, over 80 percent of all tonnage handled by railroads could be increased to the maximum reasonable level without ICC pro-

cedures and a public hearing. The present law involving discrimination and preference complaint cases will remain unchanged.

Only where railroads have market dominance (20 percent of total tonnage) can ICC force the railroads to justify their proposals.

The definition of market dominance is presently under deliberation by the Court. Nevertheless, the Commission has established through the regulatory process three conditions or tests of what constitutes market dominance. These are:

First, if 70 percent of a shipper's traffic moves by rail; second, if the shipper possesses a substantial investment in equipment, or physical facilities which are served by a railroad; and third, if the rate is proven to be 160 percent or more above variable cost.

Documentation or evidence of all three conditions are desirable to prove market dominance; however, if the movement meets any one of the above three, market dominance is presumed to exist.

S. 3260, if enacted in its proposed form, would remove the shipper protection or rate increase limitation now afforded under the law. Indeed the proposed amendment would permit the carriers to raise their rates by over 40 percent during the 5-year period without any regard as to market dominance. Captive traffic would not only face monopoly of service, but a price monopoly as well. In all candor and as forcibly as we can make the point, removal of the market dominance safeguard is to substitute a loaded pistol placed in the shipper's ear. Section 15(8) as proposed to be amended and as construed by the Commission prior to its expiration permitted the carriers to raise and lower (Yo-Yo) its rates by 7 percent without suspension by the Commission unless market dominance could be proven. Now to revive the Yo-Yo concept without safeguards is to grant the carriers an unrestricted hunting license. Current law permits this same action so long as market dominance does not cut it off or so long as the rate does not exceed 160 percent above variable cost. S. 3260 is the wolf in sheep's clothing, for it removes the shippers' protection of the market dominance defense.

We as an industry are fully cognizant of the rail carriers' need for increasing its rates. Our industry knows we are all in lock step with the inflationary spiral. Rail rates have in fact risen faster than the Consumer Price Index over the last five years. We want the carriers—indeed we recognize the necessity—to earn a reasonable return on their investment. But where we are at their mercy on both service and price, we insist that there be a reasonable relationship among the rail traffic mix on who is to bear the burden of paying their bills and contributing to their stockholders. To permit them to arbitrarily pick and choose as to which lading is going to pay their bills is to invite them to descend on captive (market dominated) traffic with a vengeance.

We urge the Committee to carefully consider the practical effect of S. 3260 and ask of itself: "Who benefits from this legislation?" The answer is obvious: Only the carriers, not the people who pay their bills, in our case the farmers.

II.

LOCOMOTIVE AND CAR SHORTAGE

I testified before one of the Subcommittees of the Committee on Agriculture, Nutrition and Forestry relating to the rail car and locomotive shortage. I should like to begin my testimony today as I did then.

"There are four things that happen every year which signal the arrival of Spring. They occur every year without fail. First, the swallows come back to Capistrano. Second, the Farragut Square park at noontime is full of the city's young ladies and oglers thereof. Third, there is a railroad car shortage. Fourth, there is a formal Congressional inquiry into the rail car shortage problem. Accordingly, one can say that Spring 1978 has officially arrived because all four events have again occurred and right on schedule."

Per the Chairman's request of June 29, 1978, I shall address each of the four questions raised in his letter. First, however, I should like to briefly describe our real and pressing interest in this matter. Fertilizer consists of three major nutrients and comes to the dealer and ultimately to the farmer in dry, liquid or gaseous state. The dry material now moves almost entirely in bulk (not bagged) and is an ideal material to transport in hopper cars. At once you can see we "compete" for the same cars as does the grain shipper. This spring our need for

rail equipment and grain export traffic (moving in record setting tonnage) crashed head-on into one another. The results were at least chaotic if not catastrophic as is illustrated in the table below:

TABLE I.—SUMMARY OF CAR SITUATION REPORT OF CARS ORDERED NOT PLACED

	Boxes	Covered hoppers
Jan. 6, 1978	93	376
Jan. 13, 1978	186	655
Jan. 20, 1978	47	1,506
Jan. 27, 1978	90	816
Feb. 3, 1978	156	1,182
Feb. 10, 1978	65	732
Feb. 17, 1978	59	573
Feb. 24, 1978	169	568
Mar. 3, 1978	215	761
Mar. 10, 1978	215	1,048
Mar. 17, 1978	223	780
Mar. 24, 1978	341	898
Mar. 31, 1978	446	2,016
Apr. 7, 1978	401	1,979
Apr. 14, 1978	392	2,708
Apr. 21, 1978	398	2,118
Apr. 28, 1978	213	2,409

So much for past history, for this Subcommittee cannot alter the past; however, it can have a major impact on the future. I do not believe, based on what I see ahead, that we can continue on the present course which is basically one of Band Aids and prayer. Promises, promises or excuses, excuses simply are not the answer. Reasonable men may differ on the ultimate solution but surely no one can make a successful argument for the status quo. It takes little vision to see that over the long span of time more and more of this world's growing population is going to depend on the globe's biggest supermarket, the United States, to supply them with their food and fibre. Population expansion (or explosion) is only part of the story for around the world there is increasing clamor for a better more nutritious diet. Year in and year out only our truly amazing American farmers can supply the needs and expectations of these restless millions.

We are moving increasing tonnages of feed grains into the Eastern Bloc nations to supply their greatly expanded animal herds. High protein diet from meat is a goal that has been set and over the past several years poor indigenous crops have sent them scurrying into the international grain market. I see no reason to believe this will not continue, and with growth. Thus it is our U.S. farm exports this year will reach 27 billion dollars.

From a purely selfish standpoint we as a nation must export our farm products to pay for oil, raw materials, etc. I need not expand on this subject for the Committee members are well aware of the critical need for these materials and of its companion, a very soft dollar. I can see no way that any Administration or Congress could change our current farm export policy of full speed ahead wtihout the direst of internal problems. Farm exports must grow—our nation's future depends on it. Therefore, the ability to grow even larger crops means more fertilizer and the same expanding ability to deliver the resulting harvest to the ports on a dependable timely basis.

This means that looking to the decade of the 1980's our transportation system must gear up to meet those conditions. Procrastination will bring a heavy penalty, one that can be avoided if reasonable men will but put their minds to work.

Near term, i.e., this Fall, our industry is going to be in very serious transportation difficulties. Locomotives and cars are in short, almost unobtainable, supply now and when the fall corn and soybean crops begin to come in chaos is almost assured. Meanwhile experience has taught us that we will sell about 35–45 percent of the total phosphate and potash immediately following crop removal. We have no idea where we are going to get the rail cars to accommodate our traffic. To compound the problem, there are many indicators that we are facing the biggest fertilizer demand this coming Fall that we have ever had to meet. It is a safe prediction that our industry will be beset with the worst transportation problems we have ever had barring a collapse in grain exports.

Of equal concern, there is little on the horizon in the way of help from the carriers. Locomotives are as in short supply or more so than the cars themselves. Our retailers become extremely upset when they quickly unload cars only to have

them wait for days or weeks to be picked up. In Conrail territory more often than not the excuse is the lack of locomotives. On other lines when cars don't arrive anywhere near their scheduled delivery time the carriers can locate the cars but can't deliver them due to lack of engines. I urge the Committee to carefully review the locomotive situation with the same attention as they do the hopper car problem. All the hopper cars in the world are valueless unless there is adequate power to move them.

I turn now to the four questions specifically addressed to us.

(A) "What have been the effects of the Interstate Commerce Commission's various car service orders on mitigation of the car shortage problem?"

Car service orders have one major failing. They don't provide additional equipment for they merely re-allocate the shortage. For the first time in years the Commission has aggressively moved to enforce its orders particularly those orders issued to return cars immediately to their owners. Upon our request, for example, the Commission directed (Order No. 1319) that all Seaboard empty hopper cars be returned at once, and after their inspectors went to work on the Conrail system we obtained some relief at the phosphate mines and plants in Florida. On the other hand, when the Commission issued its Order No. 1322 mandating 70 percent of the hopper cars into grain service we immediately protested because the time frame was at our peak spring delivery. The Commission immediately took cognizance of the situation and lowered the figure to 50 percent which was about the allocation most carriers were making on their own volition.

Admittedly the reverse demurrage charge at first blush seems to be a drastic dose of medicine but we fail to see why this one way street ought not be made to work both ways. Restated, this car problem needs some harsh remedies.

(C) "Why has the use of seasonal rates been ineffective in resolving the burden of peak season demand?"

First, God apparently hasn't received the orders or He is denying that ICC has jurisdiction. With all the transportation problems we've had this past six months, I'm sure Heaven is the proper venue. Seasonal rate making assumes that certain calendar months will in fact be the season for either low or high demand. But nature rarely conforms to this manmade concept. For example, one need only examine what happened to our farmers in Spring 1978. Usually peak demand for fertilizer will be on us in the South and deep Southwest by March 15 and, as the weather warms in the North, farm activity will also. This year, however, the corn belt did not peak between April 15 and May 15 when it "should" because of very heavy widespread rainfall. In fact, the peak occurred nearer June 1. Most seasonal rate orders are so rigid in their time frame and the weather so unpredictable that the two rarely mesh. Lack of flexibility, change in buying habits—and they do change because of price variations—lack of super size storage facilities all combine to work against seeing this worthy concept. We do not anticipate seeing this approach growing too much particularly given the nation's unease over economic uncertainty.

(D) "Please comment on the possibilities and requirements for implementing a common ownership concept similar to trailer trains, for covered hopper cars and gondolas."

We should like to suggest several approaches not necessarily endorsing them, but to plant ideas. The suggestions are not particularly original, only a point of departure. In any event if I make but a single point in today's testimony, it is simply to reiterate this point: We cannot continue on the do-nothing path.

We should (once again) consider whether a pool of 70 and 100 ton hooper cars should be established. This pool, to be effective, would probably be in the vicinity of 5,000–10,000 cars, preferably the larger figure. The pool could take several varieties of ownership, i.e., a specially established corporation owned by the carriers, such as Trailer Train, or by the U.S. government. Guaranteed loans, or insured loans could be one finance route. Extremely fast (5 years, say) tax write-offs may be another choice. One must recognize from the outset that there could be a higher idle time for this fleet than those now owned by the carriers or by the shippers. As to this latter group, serious consideration should be given to encourage shipper-owned equipment by the same loan and tax-guarantee mechanism.

I would be both remiss and misleading if I did not publicly acknowledge that the present Commission and particularly Chairman O'Neil has been extremely responsive in trying to meet the problem; however, their role is one of two loaves and three fishes sans divine intervention. There simply aren't enough cars to go around and paper orders don't add to the fleet. In addition, there is grave legal

doubt the Commission could issue a lawful service order directing one railroad to share its locomotives with another. All in all, service orders are but a Band Aid, for they do nothing to permanently solve an ongoing problem.

(B) "What, if any, legislation do you believe would be effective in either improving car utilization or easing the car shortage problem, or both?"

Personally, I have grave doubts that legislation in the area of car utilization would be the answer. As to legislation on car shortage per se, please see "D" below. The carriers always insist on ever large demurrage charges and ever less free time. I am not being facetious when I suggest to the Committee that serious consideration be given to legislation authorizing the Commission to impose reverse demurrage. Reverse demurrage would inflict upon the carrier a monetary charge to be paid to the car owner (except, of course, where it was the owner/lessee) if upon release the carrier did not pick up the car within a 48 hour time period or where the car failed to be delivered within 24 or 48 hours of a scheduled or reasonable time period.

It is an undeniable fact that turn around time on rail cars is lengthening rather than diminishing. Our study shows that loaded hopper cars leaving Florida for the corn belt now take nearly a week longer to make the round trip journey than they did three-five years ago. This greatly decreases their utilization and has the effect of reducing the car supply. When thousands of cars are delayed the under-utilization becomes a very major factor. In this day of computers, continuous welded rail and locomotives capable of handling heavy trains in the sixty to seventy mile an hour range, it is difficult to understand what is occasioning this steady continuous rise in turn around time. Delays in congested yards, lack of engines and infrequent service on rural branch lines have to be major factors. Not only do the rails lose the use of their cars and their potential revenue generation but private owner/lessees such as our industry suffer great economic hardship. In the testimony before the Senate Agricultural Committee this past May several witnesses of small grain elevators indicated they had not renewed their leases on hopper cars for this very reason. Monthly leasing cost exceeded the value of the cars' utilization.

It is not generally understood but the shortage or absence of locomotives is more critical than the shortage of rail cars themselves. Railroads gain their revenues from moving loaded cars. They get nothing for moving empties back to their home road. When locomatives are in tight supply, as they are now, empty cars have the lowest of low priorities. For example, ConRail is obviously moving cars, in ascending priority, based on revenues. They have a very high ratio of other lines' cars within the territory they serve. Admittedly ConRail is short in its own fleet but due to inadequate power, they can't promptly return the empties.

Something must be done, then, on the locomotive problem for obviously all the cars in the world are valueless unless engines are available to move them. There is no good reason not to consider a power pool much along the lines suggested a moment ago as to the cars themselves. As a rule, when this suggestion is made, the railroads immediately raise the cry that this (the car and engine pool) would surely be the first step towards nationalism or socialism. It would not. Such an approach (or approaches) would be a miniscule addition to the nation's rail fleet and would be used primarily in a crunch such as we are now experiencing.

The carriers seem to be obvious that shippers are fed up with the shortage—excuses—hearing syndrome.

Excuses do not move current traffic; and worse, there seems to be little relief on the way for future growth either in the planning or purchase stage. If service grows worse and worse, the public will demand strong medicine and that prescription will be much stronger than an equipment pool! The carriers must recognize this and soon or the consequences to them will be far-reaching. Failure to come to grips with the truth has such grave national and international consequences that the railroad industry's arguments would be swept aside.

I would conclude on three points. First, we cannot continue on our present course of supplying foodstuffs and farm inputs by procrastination and prayer. Second, I do not purport to have the answers, for our industry which is moving 60–70 million tons a year will support about any proposition that will afford both short and long term relief. Third, we urgently ask the Senate Subcommitee on Surface Transportation to communicate their grave and serious concern to the full Senate Commerce Committee for prompt action which will bring meaningful transportation relief to not only the entire agricultural community but to our own populace and the millions around the world who depend on us as their source of food.

Senator LONG. Next we will hear from Mr. Ted White, manager of grain transportation of Far-Mar-Co.

STATEMENT OF T. C. WHITE, MANAGER, GRAIN TRANSPORTATION, FAR-MAR-CO, INC.

Mr. WHITE. My name is Ted White. I am manager of the grain transportation for Farmland Industries, Kansas City.

Farmland has submitted a statement addressing the issues as outlined by the Senate committee. However, we would like to comment briefly on the rail car shortage that we are faced with today.

We are here because Farmland and its 2,300 local cooperatives require the transportation service of the railroads. However, the problem we continue to have nationwide is railroad service, that is, inadequate car supply and the slow movement of cars after they are loaded.

Since December of last year we have experienced equipment problems. The situation deteriorated to a point during the months of March, April, and May of this year where our firm was penalized in excess of $3 million for late shipments on our contracts and had numerous contracts brought in for our account.

In addition to that, we had interest payments that we continue to pay.

We had sales that we could have made that were not because of the car shortage.

We feel none of these penalties would have been incurred had the railroads provided the only thing they have to sell, and that is service.

Our members and the country as a whole cannot continue to pay the bill for inadequate transportation. The carriers must improve and provide service.

In our opinion, the carriers must address themselves to what we consider to be obvious problems, such as outdated work rules, lack of locomotive power, poor track conditions, poor upkeep of equipment, and inadequately trained crews.

Each day I receive calls from our local members in the country stating that they have not had cars in weeks or months. In fact, yesterday I had a call from a gentleman who said that he had only received 30 cars the entire year.

We find that the car situation is still critical, as it has been for the last 6 months, and we see very little improvement by the railroads.

Thank you.

Senator LONG. Thank you very much for your statement, and that concludes our hearings for today.

[The statement follows:]

STATEMENT OF T. C. WHITE, MANAGER, GRAIN TRANSPORTATION, KANSAS CITY, MO.

My name is T. C. White; I represent Far-Mar-Co, Inc. (Far-Mar-Co). I have been associated with Far-Mar-Co for three months in the position of Manager-Grain Transportation within the Traffic Division. I have been associated with the grain and grain products industry for over twenty years in the midwest. Far-Mar-Co is a corporation existing under the laws of the State of Kansas with general offices at 1600 N. Lorraine, Hutchinson, Kansas 67501. It is engaged in the handling, storage and merchandising of grain for the account of its members located in the states of Iowa, Nebraska, Wyoming, Colorado, Kansas and Missouri. Far-Mar-Co owns and operates 12 terminal and sub-terminal elevators located in

the states of Colorado, Kansas, Nebraska and Missouri, with a total storage capacity of approximately 128 million bushels.

Far-Mar-Co is a subsidiary of Farmland Industries, Inc., which is a regional farm supply cooperative located in the midwestern United States, the agricultural heartland of the United States. Farmland is owned and controlled by over 2,300 local cooperative associations. Farmland provides petroleum, feed, fertilizer agricultural chemicals, and farm supplies to a half-million midwest farm and ranch families through their local cooperatives. Farmland and Far-Mar-Co comprise a vast complex of manufacturing facilities including oil wells and refineries, fertilizer plants, feed mills, and plants for the production of ag chemicals, grease, paint, batteries, and steel buildings located throughout the nation. Warehousing, transportation, and a variety of other services complete Farmland and Far-Mar-Co's network of assistance to member associations and their members.

We are also members of the Farmers Export Company. The Farmers Export Company operates an elevator at Ama, Louisiana, which is located about 10 miles from the city of New Orleans and another elevator located in Galveston, Texas. The members of Far-Mar-Co own and operate nearly 700 so-called "country elevators" with a total storage capacity of nearly 400 million bushels. For that reason, we feel we have a vital interest in rail transportation, i.e., rates, service and car supplies and are feeling the effects of poor utilization of equipment within our area.

Our statement was prepared in response to Senator Russell B. Long's letter to Far-Mar-Co's President, Mr. George Voth, on June 29, 1978, inviting our testimony regarding Senate Bill 3260, dealing with the so-called "yo-yo" provision of the 4R Act and other items affecting rail transportation including the current rail car shortages.

Our comments concerning Senate Bill 3260, which was introduced by Senator Howard W. Cannon at the request of the Department of Transportation, will be limited as we have had very little exposure to this provision. Our lack of expertise in regards to the "yo-yo" clause is due to the carriers lack of initiative in using the method of increasing or decreasing rates. To the best of our knowledge, the few attempts to use this provision have not been adjustments to help the shipping public but merely a means to increase by seven (7) percent specific commodities by individual carriers.

We feel the railroads presently have the necessary means to raise or lower rates within certain (perimeters) with certain guarantees to the shipping public as monitored by the ICC. We feel the elimination of the Market Dominance provision will provide the carrier with too much latitude to adjust his rates upward without the safeguards of the investigative forces of the Commission. Consequently, if the "yo-yo" provision of the 4R Act is re-established, the Market Dominance feature should also be added as part of the bill to provide limited protection to the shipping public.

I would like to address the rest of my testimony to the list of questions which the Committee has prepared regarding rail car shortages.

1. *What have been the effects of the Interstate Commerce Commission's various car service orders on mitigation of car shortage problems?*—After reviewing the numerous ICC Service Orders that have been issued within the last six months dealing with a variety of problems such as substitution of one size car for another, quantity to be moved in a unit, percentage of cars in grain service, etc., we continue to have critical problems regarding car supplies. In working with the various service orders and in conversations with our personnel and others within the industry, we find that the same problems exist today as existed six months ago when these Service Orders first began, such as poor service, equipment shortages, etc. It is our opinion the Service Orders have not had the desired effect the Commission has intended. As proof, Service Order 1309 was initiated to force the carriers to move cars within a specified period of time. After this order was put into effect, we now find carriers being fined for ignoring or not able to comply with the order; consequently, we feel the Service Order has had little or no effect.

2. *What, if any, legislation do you believe would be effective in either improving car utilization or easing the car shortage problem or both?*—We are not prepared to suggest any type of legislation; however, we do recognize that many railroad problems exist which need to be addressed by the Commission, rail carriers, and perhaps the shipping public as well. We feel our immediate problems have been created over many years and have no short term solutions, but require long range planning with input from all segments of the transporation community. A few of the problems which must be addressed are: better roadbeds,

lack of power, shortage of equipment, work rules, etc. We must all recognize that even though the problems are rail oriented, they are not necessarily all created by the railroads.

3. Why has the use of seasonal rates been ineffective in resolving the burden of peak season demand?—Our exposure to seasonal rates are limited due to the non-existence of seasonal rates within the midwest. It was our understanding when seasonal rates were first originated the shippers would be encouraged to move their product whenever possible during off season periods, thru rate incentives, thus creating better utilization of equipment and eliminating part of the car shortage which develops during a peak seasonal period. It seems obvious the carriers have taken an approach to peak period seasonal rates that was contrary to what congress envisioned. This can be readily verified by the fact that seasonal rates which have been published on grain, in all cases have all been increases rather than decreases. In our opinion one of the best inducements for shipping off season would be reduction in rates, not as the carriers instigated in the southeast where they have raised the rates. The carrier's approach has been to attack the commodity such as grain which must move at least in part during a peak season and increase that rate, rather than creating an incentive to ship off season by publishing reductions. Therefore, we feel until the carrier approaches the subject from the standpoint of equipment utilization rather than monetary return, it will not accomplish it's goal. We feel the carrier's approach to peak period rate making is strictly another way for the carriers to increase their revenue at the expense of the agricultural community in general and the farmer specifically.

4. Please comment on the possibilities and requirements for implementing a common ownership concept similar to trailer trains, for covered hopper cars and gondolas.—We feel the implementation of common ownership for covered hopper cars and gondolas has merit. In our opinion, one of the main problems is the empty movement of cars. For many years, the grain industry relied on boxcars for movement of commodities. This equipment was basically free running equipment which could be loaded and shipped to anyplace in the United States by any carrier. With the advent of hopper cars, which the carrier has deemed special equipment, we find we are restricted in our loading and use. We feel hopper cars should not be considered special equipment. The utilization of hopper cars is further reduced whenever service orders specify they are to be returned home empty. For example, we have had several instances where we were required to send empty hopper cars back to the home line several hundred miles away, where, if we would have not been restricted because of service orders, we could have utilized them loaded to a destination. It is our contention that hopper cars are used better than 80 percent of the time in loading of grain and they should be considered the normal loading equipment for the grain industry. Because of this, there should be more flexibility in the loading and moving of this equipment.

[Whereupon, at 12:27 p.m., the subcommittee adjourned.]

31-890 O—78——7

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. WENDELL R. ANDERSON, U.S. SENATOR FROM MINNESOTA

Mr. Chairman. I commend you on your interest in the problems relating to the boxcar shortage, and for bringing this matter to the attention of Congress and the Amreican people through these hearings. I appreciate the opportunity to add my comments to the extensive testimony already submitted by various interested and affected parties.

There is a great tradition in this country for using the railroad as a means of transporting agricultural goods. Minnesota farmers who produce largely corn and wheat have always depended on the rail system to move their grain from local elevators to the large shipping terminals in the Twin Cities and Duluth, and from there to the East Coast and the Mexican Gulf ports.

Shipping grain by rail has proven to be by far the most economical and energy efficient way, much preferred by both the farmers and the grain elevator operators.

In the past we have experienced delays with the shipments in the Spring simply because weather conditions made the return of grain cars to the Midwest very difficult. The problem usually tended to be solved as soon as the snow was off the ground and the river opened for barge traffic.

This year, however, the picture is quite different. Today, in the middle of the month of July, we are still faced with a railcar shortage. And this is a more severe one than we have ever experienced before. The Secretary of Agriculture has recognized this, calling this shortage "the worst in history."

But the problems are much more far-reaching than just the shortage of the grain cars. Recently, deteriorating and declining rail service has forced many farmers to use trucks to ship their commodities to the larger elevators. This is the only alternative available; it is however not a very good one since the capacity of trucks is much smaller, and they are not as easily loaded and unloaded as rail cars. Declining utilization of the trains by farmers of course means declining revenue for the railroad companies. They then file for abandonment of these small unprofitable lines—leaving trucks as the only means of shipment.

Another problem which adds to the severeness of the present situation is the lack of storage facilities on farms and in small elevators. Because many farmers are participating in the Government's grain set-aside program, their silos are already filled with no room for storage of what is expected to be another bumper crop to be harvested this fall. An alternative, it could be argued, would be to construct more storage facilities. This in itself is a great problem as the storage facility loan limits are too low, and there is presently a shortage of cement for construction in Minnesota. This last problem is again tied to the shortage of the railcars.

It is clear to me that we need to study all these problems together very carefully. I have asked the President to establish a joint task force of Congressional leaders and the Secretary of Transporation to suggest ways of solving the immediate problems as well as make recommendations for long-term solutions.

On June 8, 1978, the Senate passed S. 1835—a bill which directs the Secretary of Agriculture to develop a report which would identify the rail network essential to agriculture. Since farmers need the railroads and the transportation of farm commodities is vital to the existence of rural rail lines it seems obvious that the Secretary of Agriculture should play a big role in the study and future planning of an efficient rail system.

I am pleased that this problem is being recognized and taken seriously by members of Congress. I have received many letters and telephone calls from Minnesota state legislators who are concerned about the farmers within their districts. Unless something is worked out in the near future, the situation could be disastrous for many small farmers and elevator owners in Minnesota and other Midwestern states.

STATEMENT OF LON MANN, PRESIDENT, NATIONAL COTTON COUNCIL

My name is Lon Mann. I am a cotton farmer and ginner from Marianna, Arkansas and currently serve as President of the National Cotton Council, which has its headquarters in Memphis, Tennessee.

The National Cotton Council is the central organization of the U.S. raw cotton industry, representing all seven segments of the industry—producers, ginners, warehousemen, merchants, cottonseed crushers, cooperatives, and manufacturers. It is a voluntary association established in 1938. Services provided to members include technical recommendations, advice on foreign operations, public relations, and legislative activity on matters of importance to the cotton industry.

The National Cotton Council is greatly concerned about the proposed legislation. Cotton people are substantial users of rail transportation, and efficient and economical transportation is essential to the continued viability of our industry. The Council therefore welcomes the opportunity to comment on S. 3260, and on the even more extreme proposal advanced by Mr. William Dempsey of the Association of American Railroads.

S. 3260 would do far more than extend for 5 years the yoyo provision incorporated in § 15(8) of the Interstate Commerce Act by § 201 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). That provision authorized the railroads, for a period of two years, to file for increases of 7 percent a year, without being subject to suspension *except in those situations in which a railroad has market dominance.* S. 3260 would extend this authority for another 5 years but would also remove this exception. S. 3260 would reverse the basic decision made by the Congress, after extensive hearings and long deliberation, as to the extent to which railroads rates would be exempt from regulation by the Interstate Commerce Commission.

In the hearings preceding adoption of the 4R Act, the railroads argued that rate regulation was unnecessary because they encounter competition from other modes sufficient to limit their ability to raise rates above a reasonable level. They tried to persuade the Congress to ignore the fact that, while the railroads encounter effective competition on large segments of traffic, there are also important segments as to which they encounter no effective competition. The Congress understood this fact and it exempted from maximum rate regulation those movements on which the railroads encounter effective competition but preserved Commission jurisdiction over the rates for movements as to which the railroads possess market dominance.

On long hauls of bulk commodities to points which are not on or adjacent to navigable waters—a type of transportation on which many members of the National Cotton Council depend—the railroads still enjoy substantially the same monopoly that they enjoyed when the Interstate Commerce Act was adopted. S. 3260 would permit the railroads to raise rates on such traffic 7 percent a year and the Commission would have no power to suspend the increases.

Mr. Dempsey's testimony accurately reflects the current position of the railroads, that they intend to raise the rates on captive traffic just as high as the law will permit. Many of these rates are already excessive and the railroads recognize that they could not justify further increases before any fair tribunal. The Council recognizes that many, but by no means all of the railroads have financial problems. The railroads would try to solve those problems by imposing exorbitant rates on shippers which have no alternative to rail transportation. In the 4R Act, the Congress determined that this should not be permitted and that, where the railroads have market dominance, the power of the Commission to suspend rates in order to protect the shippers must be preserved. Nothing has happened since the passage of that Act to suggest that this decision should now be reversed.

STATEMENT OF HARLEY L. COLLINS, VICE PRESIDENT, SYSTEM POWER AND ENGINEERING, PENNSYLVANIA POWER & LIGHT CO.

My name is Harley L. Collins. I am Vice President, System Power & Engineering for Pennsylvania Power & Light Company.

Pennsylvania Power & Light Company (PP&L) is an investor-owned electric utility incorporated under the laws of the Commonwealth of Pennsylvania. Its service territory covers approximately 10,000 square miles in 29 counties of Cen-

tral Eastern Pennsylvania, with a total population of over 2.4 million, representing about 20 percent of the State's population.

PP&L strongly opposes enactment of S. 3260 because the predictable result of its enactment would be a sharp increase in the cost of transportation of coal to its steam electric generating stations. In calendar year 1977, PP&L received more than 9.1 million tons of coal by rail at its various steam electric generating stations. A 7 percent increase in coal transportation costs would add more than $3 million to its annual rail transportation bill, all of which would need to be reflected in increased costs to consumers of electricity. The cumulative 40 percent increase permitted by S. 3260 would be about $18,000,000.

Section 15(8), which was added to the Interstate Commerce Act by the 4R Act, permits the railroads to increase rates 7 percent per year for a period of two years without suspension but only if a carrier is not found to have market dominance over the service to which the increase applies. S. 3260 would extend this authorization for an additional 5 years but would also deprive the Commission of authority to suspend such increases, even where the railroads possess market dominance.

In the 4R Act, in response to the railroads' plea that regulation was not necessary because they encounter competition which is so effective that it sets their rates, the Congress granted deregulation in those situations in which the railroads encounter effective competition but it preserved Commission jurisdiction in those situations in which there is no effective competition, i.e., where the railroad has market dominance.

Subsequent events have demonstrated the wisdom of the Congressional decision to retain Commission jurisdiction over the rates on captive traffic. The railroads have made it abundantly clear in their representations to the Commission in Ex Parte No. 320, Special Procedures for Making Findings of Market Dominance as Required by the Railroad Revitalization and Regulatory Reform Act of 1976, Ex Parte No. 338, Standards and Procedures for the Establishment of Adequate Revenue Levels, and Ex Parte No. 349, Increased Freight Rates and Charges, 1978, Nationwide, that, if they can legally do so, they propose to raise rates on captive traffic far above any conceivable limit that could be justified as reasonable and they have focused on rates on coal as presenting a golden opportunity to recoup losses on all other traffic. The same philosophy was repeated by Witness Dempsey in his testimony presented at the hearing before this Committee on July 12.

The ironic thing about the railroad position is that rates on coal are already inordinately high. In *Ex Parte No. 349*, in which the railroads sought an increase in rates on other traffic of 4 percent in the east and west and 2 percent in the south for the purpose of recouping increased costs, they sought to apply a 7 percent increase on coal rates nationwide, not for the purpose of recouping increased costs but simply to improve their financial situation. PP&L joined with other electric utilities in opposing any increase greater than 4 percent. As part of their presentation they showed through Witness G. W. Fauth the revenue/variable cost ratio (revenue divided by variable cost) and the before tax rate of return on six representative movements. The revenue/cost ratios, without the proposed increase, ranged from 167.4 to 238.0, in contrast to a revenue/cost ratio of 135 for all commodities: the before tax rates of return ranged from 22.1 to an astronomical 156.2 percent. The latter is the rate of return being earned on one of the major movements to PP&L. The movements which were costed are as follows:

Origin	Destination	Railroads	Receiver of the coal	Revenue variable cost ratio	Before tax rate of return
Catale, Okla	Sibley, Mo [1]	ATSF–SLSF	Missouri Public Service	188.2	27.1
Sesser, Ill	Oak Creek, Wis.[1]	BN–CNW	Wisconsin Electric	205.9	61.8
Benjamin, Pa	Martins Creek, Pa[1]	CR	P.P. & L	238.0	156.2
Amru, Ky	Harlee, Ga[1]	LN	Georgia Power	178.4	26.3
Do	do[2]	LN	do	167.4	22.1
Blacksville, W. Va	Monroe, Mich	CR	Detroit Edison	178.9	34.3

[1] Shipper supplied cars.
[2] Railroad cars.

A complete copy of the testimony of Witness Fauth is attached as Appendix A.[1] The railroads filed voluminous reply testimony but they did not contradict the foregoing evidence; in fact, their cost witness, Marion Hall, implicitly accepted its accuracy.

Section 101 of the 4R Act declares it to be the policy of the Congress to "balance the needs of the carriers, shippers, and the public" and "permit railroads greater freedom to raise or lower rates for rail service in competitive markets." To take away the Commission's power to suspend annual increases of 7 percent on captive traffic would defeat these policies and would destroy the balance between the interests of carriers, shippers and the public which Congress attempted to strike in the 4R Act.

STATEMENT OF RICHARD P. ROUSE, ASSISTANT TO THE PRESIDENT, WISCONSIN ELECTRIC POWER CO.

My name is Richard P. Rouse. I am Assistant to the President of Wisconsin Electric Power Company, which has its headquarters in Milwaukee, Wisconsin.

Wisconsin Electric Power Company is an electric utility serving electric customers in southeastern, east central and northern Wisconsin and in the Upper Peninsula of Michigan. A substantial portion of the Company's generating capacity is coal fired and all of such coal fired generation is, because of location, dependent upon rail transportation for coal receipts. Wisconsin Electric received 3.9 million tons (during the same period it burned 4.2 million tons) of coal shipped by rail or by a combined rail-water movement during calendar 1977 and will receive a larger volume of coal transported by rail during calendar 1978.

Becuse of the substantial tonnage of coal traffic which the Company must move by rail, and because the transportation costs for steam coal form a significant part of the cost of generating electricity, the Company has a direct and vital interest in this legislation. This bill, if adopted, would amend the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) to extend, from two years to five years, the period during which the railroads have a general right to increase rates 7 percent per year without supervision by the Interstate Commerce Commission. At the same time it would remove the one existing limitation built into the Act to prevent the railroads from wielding this authority in an arbitrary and monopolistic fashion; i.e., the power of the Interstate Commerce Commission under § 15(8) of the Act to suspend increases where the railroads have "market dominance" over the involved traffic.

While recognizing full well the particular stake the Company has in the future availability of good and reliable rail services we simply cannot close our eyes to the fact that the bill now before you in the final analysis provides that the way to maintain or restore the railroads to good health is to remove all checks to the railroads' exercise of their monopoly power over traffic like steam coal and permit rates on such traffic to be imposed at whatever level the market will bear. One has to look no farther than the railroad position in Dockets Numbers Ex Parte 338 and 349 before the Interstate Commerce Commission to realize that utility coal is the commodity which would bear the full brunt of this legislation, for in both these cases the railroads' position was that railroad losses on other traffic, and on operations generally, should be recouped by increasing the rates on coal, which they confidentially stated was captive traffic, to whatever the market would bear.

It was to prevent just this kind of monopolistic pricing that the Congress, in the 4R Act, retained, in the form of the market dominance standards, the authority of the Interstate Commerce Commission to protect shippers of captive traffic from being compelled to accept monopolistic rate exactions by railroads. Nothing has happened since the 4R Act was passed which shows that the Congress erred in carefully retaining limited jurisdiction in the Commission in cases where the railroads have market dominance. To the contrary, the railroads have since that time demonstrated that, but for this provision, they would have raised rates on captive traffic like coal the full amount allowed by law without regard to the fact that such increases could not be justified before any tribunal. As a result we are opposed to S. 3260.

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[1] Appendix A is in the committee files.

ARCHER DANIELS MIDLAND CO.,
Decatur, Ill., July 14, 1978.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: On June 28, 1978, at the request of Secretary Brock Adams, Department of Transportation, you introduced S. 3260, reported in error at S. 10053 of the June 28, 1978 Congressional Record as S. 3060.

We would like to address this issue, in opposition, trusting the introduction of the bill was a courtesy to Secretary Adams and did not in any way intend or imply support by you or your committee.

We submit there is absolutely no need for this type legislation, and suggest the letter of transmittal accompanying this proposed bill, signed by Mr. Alan Butchman (for Brock Adams), and dated June 9, 1978, does not display the real world situation. I have attached, for your information, copy of a pleading filed with the Interstate Commerce Commission in March, 1978, which shows that from December 1, 1977, the U.S. Railroads had docketed, with their respective freight bureaus, over 150 separate proposals to increase the rates and charges on over 40 percent of all commodities they transport by from 2 percent to 20 percent. These proposals *were not* filed under the authority of § 15(8), here sought by DOT to be reinstituted. Just this week, the Eastern Territory Railroads announced they were intending to increase, by from 2 percent to 20 percent, the rates and charges on an additional 35 commodities, many essential foods and feeds for human and animal consumption.

In June, 1978, the ICC authorized the U.S. Railroads to increase all rates and charges by from 2 percent to 4 percent, such increase designed to improve the carriers revenues by some $719 million in the first 12-months. It is believed we will be confronted with an additional 6 percent to 10 percent increase in all railroad rates and charges before years end as a result of labor awards, soon to be announced, which retroact to January 1, 1978.

These increases result not in tens of millions of dollars added costs, but hundreds of millions of dollars which are passed onto the ultimate consumer through increased costs of finished or semifinished commodities. It is irresponsible for DOT to suggest, as they now do, that railroad rate flexibility (only increased rates—no reductions) will have no inflationary impact on the economy.

On October 5, 1977, the Interstate Commerce Commission, under the authority of § 202 of the Railroad Revitalization and Regulatory Reform Act of 1976 submitted a statement to Congress entitled, "The Impact of the 4–R Act—Railroad Ratemaking Proceedings." Therein, at page 2, the ICC discussed "Market Dominance" criteria, stating three threshold tests to be met, i.e.:

1. The railroads market share must be greater than or equal to 70 percent of the relevant market.
2. The rate must equal or exceed 160 percent of variable costs, and
3. Shippers or consignees must have made a substantial investment in rail related equipment or facilities which prevents or makes impractical the use of another carrier or mode.

Such criteria, when viewed by DOJ, would undoubtedly be labeled monopolistic. At page 8, the Commission, based on statistical analysis, concluded that while some 11.1 percent of all rail traffic would, based on the 160 percent cost presumption be market dominance, approximately 29 percent of all rail traffic is considered noncompensatory revenues being below the cost of performing the service.

The facts and carrier actions currently belie the alleged need to reinstitute § 15(8)(c)—especially absent the market dominance feature. It was only after the ICC admonished the railroads to place more reliance on the provisions of the 4-R Act, instead of general rate increase proceedings, that the carriers made an attempt to use § 15(8)(c)—the so-called "YO-YO" provision.

Of prime importance is the economic fact that transportation charges are not absorbed, but are passed onto the ultimate consumer in the price of durable or consumable products. In 1977, the railroads reported freight revenues of $18.9 billion. Each 1 percent increase in rates and charges places added costs on the consuming public of almost $200 million. Certainly, it cannot be said that such increases do not contribute to inflation.

We respectfully urge your committee to decline to take action on S. 3260.

Yours truly,

JOHN E. HARVEY.

INTERNATIONAL MINERALS & CHEMICAL CORP.,
July 14, 1978.

Hon. RUSSELL LONG,
Chairman, Surface Transportation Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: Congratulations, Sir, for taking a first step toward a coordinated effort to understand and bring a solution to the enormous problems associated with the rail transportation industry in this country. You may or may not recall that after the hearing you and I had a lively discussion on seasonal rates, rent-a-train, etc. It was a refreshing exchange after the time-worn phrases that I hear from the railroad industry—"All our hopper cars are in grain"; All our hopper cars are tied up on Conrail"; "All our locomotives are in the shop"; "It's been a hard winter and our equipment is frozen in," and on, and on, and on.

My interest stems from the fact that IMC is the largest shipper of fertilizer and fertilizer materials in the United States. We are highly dependent upon the railroad industry, as 87% of our tonnage moves by that mode. However, after reading Mr. William H. Dempsey's statement prepared for your hearing, I felt I had to comment on his interpretation of "Market Dominance." According to Mr. Dempsey, "Market Dominance" included in the Railroad Revitalization and Reform Act of 1976 (4–R Act) severely restricts the railroad from the ratemaking flexibility that was intended by the Act. According to Mr. Dempsey, market dominance restrains the railroads from increasing the rates in those areas where they have freedom to do so. This so-called freedom is the lack of competition. By the very fact that there is no competition, the railroads can act in a predatory, unjust and unreasonable fashion in their rate-making. The real purpose of the 4–R Act was to give the railroads complete rate-making flexibility in those atmospheres where competition could and would provide constraint. However, in those areas where there is no competition, and the railroads have market dominance, rate increases would be subject to shipper protests and ICC jurisdiction as to their "just and reasonableness." To remove the market dominance concept would give the railroads the ability to unjustly raise the rates on the land-locked bulk shippers in the West and Midwest, and thereby subsidize a lowering of the rates in the East (primarily manufactured goods) where tonnage was lost to a competitive mode.

On the surface, this may seem to be a reasonable approach, except when one realizes that it was not the rate level that drove the tonnage off the railroads onto competitive modes, but the level and dependability of the service. In addition, predatory rate levels for the Midwest bulk shippers of grain and fertilizer would result in reducing the competitive world position of the United States for basic foodstuffs. This, in turn, would have a significant adverse effect on our trade balance deficit. And finally, the establishment of market dominance does not mean that the proposed rate will be denied. It means only that the rate comes under the present jurisdictional authority of the ICC as to its "just and reasonable" nature.

Thank you again, Senator, for our discussion, and I am looking forward to more of the same in the future.

Yours very truly,

T. J. REGAN.

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., July 19, 1978.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: The Department of Transportation has recently secured introduction of a bill, S. 3260, to amend the Interstate Commerce Act. The bill would permit railroads to raise or lower rates within a seven percent "zone of reasonableness" in each of the next five years without fear of suspension by the Interstate Commerce Commission, even if the proposing carrier has market dominance over the traffic involved. This proposal is unjustifiable on its face, would set a bad precedent, and therefore should not be reported to the Senate floor by your Committee.

The railroad industry was granted significant new rate-making freedom under Public Law 94–210, the Railroad Revitalization and Regulatory Reform Act of 1976.

Section 202(c) of that Act provides that whenever a rail rate is challenged as being unreasonably high, the Commission shall investigate the situation and determine, within 90 days, whether the carrier proposing the rate has market dominance over the service to which the rate applies. If the Commission does not find market dominance, it may not suspend any future increase in that rate on the ground that such rate exceeds a just and reasonable maximum for such service, unless it finds that the carrier later achieves market dominance over the covered service.

Section 202(e) of the Act provided that for a two-year trial period (which ended February 5, 1978) the Commission could not suspend a proposed rate increase or decrease representing not more than a seven percent change from the rate in effect on the prior January 1st unless the proposed rate would violate section 2, 3 or 4 of the Interstate Commerce Act or the proposing carrier possessed market dominance over the traffic involved.

The railroads soon discovered that where they faced meaningful competition section 202(c) operates to permit unlimited rate increases. Thus, section 202(e) with its seven per cent per annum restriction was virtually ignored.

Now the Department of Transportation has proposed resurrecting section 202(e) for a new five year period and deleting market dominance as a basis for suspending increases proposed under that section. This would permit railroads which enjoy monopoly power over substantial movements to extract monopoly prices from captive shippers. The National Council submits that this would be bad government policy as it would run counter to existing programs to limit antitrust abuses and to slow the rate of inflation.

DOT's assertion that aggrieved shipeprs could secure adequate restitution by challenging the increase after the fact, in hopes of securing an ICC order for a refund plus interest, is untenable. Carrier legal challenges to a refund order could subject shippers to years of uncertainty as to proper rates. Also, any refunds secured would not be passed through to small, indirect payers of freight charges such as farmers who market their grain for a fixed price less transportation costs.

Finally, the Department of Transportation has followed a consistent and conspicuous policy of resisting effective implementation of the market dominance rule—the only real protection captive rail shippers have left from abuse of the monopoly possessed by many railroads over substantial volumes of traffic. Enactment of S. 3260 would encourage DOT to move toward total abolition of the market dominance rule, thereby subjecting shippers who must use rail service to virtually unlimited rate increases. When one remembers that these shippers are essential elements of our economy—food, coal, and steel—one must have doubts about the wisdom of following such a course.

The National Council agrees with DOT that reenactment of the original "zone of reasonableness" language of section 202(e) of the 4-R Act would be superfluous in view of the greater liberties granted the carriers under section 202(c) of the Act. We most strenuously object, however, to DOT's suggestion that the zone of reasonableness language be reenacted without reference to the market dominance rule. Therefore, we most respectfully request this honorable Committee allow S. 3260 to die in committee.

Sincerely,

DONALD A. FREDERICK,
Assistant General Counsel.

LAW OFFICES J. RAYMOND CLARK,
Washington, D.C., July 27, 1978.

Hon. HOWARD W. CANNON,
Chairman, Commerce, Science, and Transportation Committee,
Washington, D.C.

DEAR SENATOR CANNON: The undersigned represents the Middle South Utilities System composed of five electric utility operating companies in the states of Arkansas, Louisiana, Missouri and Mississippi. One of the operating companies in the Middle South System, Arkansas Power & Light Company, is presently constructing a new coal-fired electric generating station near Redfield, Arkansas and has another similar station near Newark, Arkansas scheduled for commercial operation by the mid-1980's. The System projects construction of three or four additional coal-fired stations within the next decade. Each of the coal-fired stations will require rail delivery of approximately 5 million tons of coal annually with the first two movements already being committed to Wyoming coal.

The Middle South System being located in the natural gas region has not previously utilized coal as a source of energy but in furtherance of the national energy policy is undertaking to reduce reliance on other fuels through the projected construction schedule that I have just described. Obviously with the implementation of this program, Middle South will necessarily become a substantial user of rail transportation. Moreover and even more significantly from the standpoint of the provisions of S3260, the requirements of an assured coal supply and unit train coal transportation will make Middle South a captive shipper not only to rail service in general but to specific lines of railroad.

As a consequence, Middle South and its electric ratepayers who must directly bear the cost of coal transportation have a vital interest in the preservation of Interstate Commerce Commission jurisdiction over the rates on monopoly or so-called market dominant traffic. Indeed, Middle South has a pending complaint proceeding before the Commission in which it has been obliged for the protection of its ratepayers to seek Commission prescription of a reasonable unit train coal rate from Jacobs Ranch, Wyoming to Redfield, Arkansas. Motivated by the same considerations, Middle South earlier participated both before the Commission and thereafter in the Court proceeding involving the Commission's promulgation, pursuant to the provisions of the 4–R Act, of the regulations establishing the threshold presumptions of market dominance.

Middle South, therefore, views with considerable alarm the provisions of S3260 to the extent that Section 15(8)(b) of the Interstate Commerce Act is proposed to be revised to eliminate the Commission's power to suspend a proposed increased rate on market dominant traffic. Bluntly stated, this would leave electric utilities like Middle South requiring substantial volumes of coal at the mercy of particular railroads upon which each must variously rely for service. Middle South's experience in this area suggests that the railroads if left to their own devices will seek to resort to the very type of monopoly pricing that the Congress in its wisdom undertook to preclude through preservation of Commission jurisdiction over market dominant traffic. I strongly urge, therefore, that whatever the justification for extension of the "yo-yo" provisions of the 4–R Act that extension not be made the device for depriving captive shippers of a forum in which to seek relief from rail rates which they believe to be excessive.

Very truly yours,

J. RAYMOND CLARK.

INTERNATIONAL PAPER COMPANY,
New York, N.Y., July 28, 1978.

Senator RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Thank you for your letter of July 6 inviting International Paper Company to submit comments relating to the rail car shortage problem. We will comment specifically on your first two questions and then offer other views on this critical problem.

The Forest Products industry is the largest single industrial user of boxcars in the country. International Paper Company is one of the largest companies in the industry, spending over $400,000 annually for freight transportation. Our operations have been severely hampered during this recent boxcar crisis and we welcome the opportunity to share our views with your committee.

Our comments will relate to boxcars and specifically, to the 50' and over plain (general service) boxcar fleet which consists of 170,544 cars.

TOTAL RAILROAD AND PRIVATE OWNERSHIP

	Jan. 1, 1967	Jan. 1, 1978
40-ft plain boxcars	348,095	109,853
50-ft and over plain boxcars	116,765	170,544
Equipped boxcars 40 ft, 50 ft, and over	126,840	170,412
Total	591,700	450,412

The 40′ fleet which is rapidly disappearing is essentially used by the argricul-ture industry and is being replaced by hopper cars. Special car rules are required for these cars.

The 50′ and over plain fleet is the general service car used by many industries, especially our industry.

The equipped fleet is a specialized fleet with special interior fittings and over 50 percent of this fleet is dedicated to special products. Our industry uses a portion of this fleet.

Question 1. What have been the effects of the Interstate Commerce Commission's various car service orders on mitigation of the car shortage problem?

Car Service Rules (CSR) 1 and 2 are permanent ICC rules for car distribution of general service boxcars and require cars to move loaded or empty in the direction of the owner.

Car Service Orders (CSO) are temporary orders issued by the ICC to rectify a shortage that has occurred due to uneven demand and/or wasteful practices by shippers or receivers.

CSR 1 and 2 cause delays and empty car miles. CSO's which are corrective rather than preventive do correct the short-term problem but also cause empty car miles. CSO's sometimes also cause a shortage in another area requiring a further CSO to rectify that short-term problem.

The entire concept of CSR's and CSO's should be reviewed. They should be used sparingly and should always be anticipatory in nature so as to prevent rather than correct car shortages. Before issuing a CSO, the ICC should consider the full impact of the order on the entire rail system and on the nation.

The net result from the CSR and CSO system is continuous poor utilization of cars.

Question 2. What, if any, legislation do you believe would be effective in either improving car utilization or easing the car shortage problem, or both?

It is difficult to assess the value of legislation or "threatened" legislation in this area. I recall only too clearly the extensive hearings and the several bills considered by Congress in 1972 and 1973. It was the threat of passage S–1149, the "Rolling Stock Utilization and Financing Act of 1973," that caused the railroads to form RAILBOX. This was to be the private sector solution to the general service boxcar problem. Yet today, some five years later, we find the RAILBOX fleet consists of only 12,000 cars, or 7 percent of the 50′ general service fleet. The recent car shortage crisis is the reason why RAILBOX is rushing to add cars in 1978 and 1979. Too little—too late!

In other words, although we strongly support a private sector railroad industry solution to these problems, it is apparent the railroads will continue to own and distribute general service boxcars as individual companies rather than under a national car fleet basis. The only time the industry operates as a national system is when there is a crisis with attendant public clamor and/or threatened government intervention.

RAILBOX is truly the primary answer to the general service boxcar problem. RAILBOX cars are loaded 89 percent of the time versus the industry average of 65 percent. RAILBOX cars are out of service 2 percent of the time. The industry bad order ratio of 15.4 percent is deplorable (See Exhibit 1). Thus, a car operated under the legislatively imposed RAILBOX principle is probably equal to 1.4 cars operated by individual railroads.

SUGGESTED SOLUTIONS

I. It is contrary to our long range policy of promoting a viable private rail industry to suggest that further regulatory direction be imposed on an already over-regulated rail industry. At the same time, some extraordinary action must be taken to reduce the continuing car shortage crises that arise.

We first suggest that each railroad should exempt a minimum of 15–20 percent of their general service fleet from CSR 1 and 2. This will improve utilization similar to the RAILBOX experience. These cars should be clearly painted with an insignia to indicate they are free-runners. These cars should also be maintained in serviceable condition subject to a penalty should they appear on the bad order list. Additionally, at no time would these cars be subject to any CSR or CSL.

Recently, leasing companies have been building huge numbers of cars and plac-

PLAIN BOXCARS

EXHIBIT 1

ROAD	40'ND Box Own	40'ND Box B/O	50' Box Own	50' Box B/O	Cov. Hopper Own	Cov. Hopper B/O	Plain Gon. Own	Plain Gon. B/O	Hopper Own	Hopper B/O	All Types
BO	1466	57.0	2188	49.6	3980	9.1	8590	32.6	25724	12.4	21.1
CO	518	6.4	764	36.0	2639	6.9	4655	23.2	45986	5.2	10.0
WM	-	-	150	18.0	-	-	645	45.6	5572	20.3	20.8
CR	7259	33.1	13468	38.8	11864	6.6	24809	10.2	39313	10.3	15.3
NW	4086	6.9	2488	49.1	7500	5.2	7837	10.9	53028	5.2	7.8
PLE	-	-	3827	10.0	-	-	-	-	5328	5.2	5.3
LN	2668	14.2	3879	12.9	5027	10.0	4809	13.1	-	-	9.0
SCL	1059	14.7	-	-	13961	6.5	-	-	3248	7.7	5.9
SOU	-	-	12186	5.9	-	-	-	-	-	-	3.9
BN	14730	9.8	12818	17.5	15471	6.0	6051	10.0	11493	5.8	9.8
CNW	8599	17.0	5631	12.8	7065	13.9	2310	21.4	2004	21.5	15.6
MILW	3887	10.3	5462	15.0	4017	9.4	602	13.5	1754	5.5	11.8
ROCK	4385	22.3	1446	10.3	6496	11.5	1747	19.3	1640	15.2	19.0
SOO	2094	6.7	2049	9.2	3266	6.4	1183	7.8	723	9.5	8.2
ICG	-	-	5458	37.2	6104	9.7	2191	5.7	8205	5.3	12.8
ATSF	-	-	6101	11.7	-	-	-	-	-	-	4.6
DRGW	-	-	705	32.5	-	-	-	-	-	-	5.8
MP	-	-	7868	7.9	-	-	-	-	-	-	3.7
SLSF	-	-	1695	7.8	-	-	-	-	-	-	3.1
SP	-	-	15405	6.0	3223	5.8	2381	6.6	3837	5.3	5.5
SSW	-	-	4427	7.4	4323	5.3	-	-	-	-	7.2
UP	-	-	9650	9.3	-	-	-	-	-	-	5.2
ALL CLASS I		13.3		15.4		6.2		10.2		6.8	9.3

AVE 14.8 %

- indicates under 5% B/O or small ownership

as of 3/1/78

1974 - 6.3
1970 - 5.7
1968 - 5.3

HISTORICAL RECORD OF PLAIN BOXCAR B/O RATIO

1971 8.1 %
1973 8.3 %
1975 9.8 %
1976 12.9 %
1977 12.3 %
1978 14.8 %

SOURCE - A.A.R.

I.P.CO.
7/20/78

ing them on short-line railroads. Some of these cars move under CSR 1 and 2 and may move as free-runners. This is the result of two factors:

A. The poor utilization of the present fleet causes shortages and creates a need for more cars.

B. The leasing companies find this is a profitable venture.

However, when the car shortage crisis subsides (as it does on a cyclical basis), the Class I railroads will enthusiastically return these cars empty to these small railroads and this will create a new problem.

We suggest the railroad industry should adopt this suggested solution as a means of reducing car shortages and minimizing the role of the leasing companies in this portion of the rail industry.

If this is not acceptable on a voluntary basis, then perhaps Congress should empower the ICC to require railroads to add 25,000 50' plain boxcars (15 percent of the fleet) to the RAILBOX fleet by simply taking cars in their existing fleet, putting them in "Class A" condition, painting them with RAILBOX marking and then turning them over to RAILBOX . . . (under sale or leasing arrangements).

The carriers would not incur any significant expense and the 25,000 cars would provide the same result as if 10,000 additional cars were instantly added to the national fleet (25,000×1.4=35,000).

II. For the remainder of the general service fleet, CSR 1&2 should be eliminated and replaced "with a quota system" thus improving the utilization of these cars. Since there is a recurring imbalance of boxcar traffic that is originated and terminated in various regions or on individual railroads, we will still require a quota system to place the empty cars in the deficit area. It will be necessary to supplement the quota system with temporary CSO's as required to correct short-term problems.

Exhibit 2 depicts the territorial imbalances of the 50' general service cars. We understand this study is now being updated using current statistics and could be used as a basis for developing the quota system.

III. Lastly, we suggest there is a great communications gap between the regulatory agencies, the carriers and the public. The public is the victim of car shortages but is kept totally in the dark as to the factual background. We get little or no warning of impending car shortages.

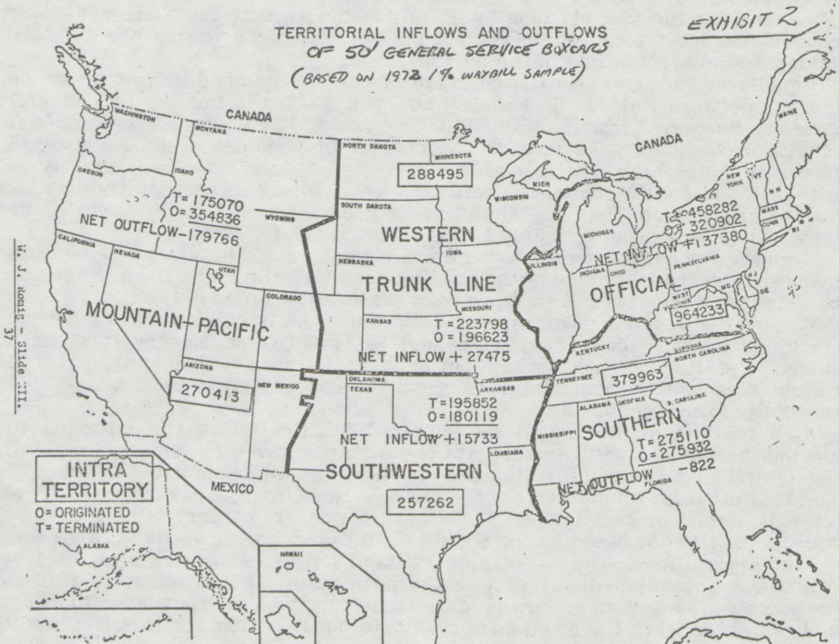
We recommend that timely car supply reports be published which, at a minimum, would show (by specific car types) individual carrier ownership, bad-order ratio and on-line to owned ratio with comments as to the effect this has on present and future car supply. We must also know, in advance, what actions are being taken to remedy car supply problems.

Additionally, reports (by specific car type) should be issued showing new additions and retirements to the fleet.

We have made several types of analyses of the boxcar supply and demand situation and are available to sit down and discuss this further with you at your convenience.

Sincerely,

H. J. Reitz,
Manager, Transportation Regulation.



INSTITUTE OF SCRAP IRON AND STEEL, INC.,
Washington, D.C., August 1, 1978.

Hon. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Senate Commerce, Science, and Transportation Committee, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is submitted on behalf of the Institute of Scrap Iron and Steel, Inc. (Institute), the national trade association representing the more than 1,530 member firms which process, ship or otherwise handle ninety to ninety-five percent of the purchased iron and steel scrap consumed domestically and exported.

The ferrous scrap industry relies on the railroads as the principal mode to distribute its products to markets. This reliance is based both on the efficiency inherent in using the railroads to carry such a bulk commodity, as well as on the fact that the majority of scrap consumers prefer, and in fact, require delivery by rail. These deliveries are made in plain (unequipped) gondola cars, when such cars are available.

Gondola availability obviously is limited by the absolute number of gondolas owned by the railroads, by the number of cars which are not in serviceable condition and by the utilization rate of gondolas. Before describing the one solution which the Institute believes will address all of these aspects of the gondola shortage problem, it is important to emphasize the magnitude of the freight car crisis as it impacts scrap iron processors.

The absolute number of plain gondolas owned by the railroads is shrinking rapidly. During the 1968–1978 period, the number of gondolas fell twenty-four percent. This downward trend is accelerating in the face of continued and increased demand for transportation. From January 1, 1977 to January 1, 1978 the number of plain gondolas plunged further from 142,545 to 134,516, the largest decrease in railroad ownership of plain gondola cars in any single year between 1968 and 1978. And the imbalance between shipper orders for gondolas and the railroad's ability to provide the requested equipment recorded and average daily car supply shortfall of more than 4,800 gondolas in the week of May 13.[1] The trend for the first six months of 1978 indicates that there are not enough gondolas to meet scrap shippers' demand for cars even during the relatively "quiet" business conditions of the year 1978.

Equally as important as the shortage of cars is the condition of many gondolas. (Between July 1, 1974 and January 1, 1978, the number of bad order gondolas fluctuated from 8,215 to 16,109, averaging 12,700 cars out of service for repairs each month.) As long as the number of gondolas needing substantial repairs remains high, the railroads' ability to produce revenue is greatly impaired. On a monthly basis, the railroads lost millions in revenue traffic which an average of more than 12,700 bad order gondolas would have generated had they been in service between July 1, 1974 and January 1, 1978.

Even the adverse impact of having fewer gondolas could be offset to some extent by more prompt turnaround of the existing fleet. Unfortunately, the average number of gondola trips per year is down from the levels recorded in 1974.

What these numbers mean to scrap iron processors is (a) lost sales when contractually specified delivery dates cannot be met, (b) unnecssary expenses incurred in storing materials which normally would have been loaded directly in freight cars had the gondolas been provided and (c) great uncertainty about the ability to conduct business.

As a solution to the freight car supply difficulties facing the railroads and gondola users, the Institute supports the incentive per diem program which is the subject of a current investigation by the Interstate Commerce Commission. The IPD program would increase the rental rate railroad A pays other railroads when it uses their cars instead of its own. Normally, without IPD, railroad A collects the revenue based on the freight charges for moving goods in cars owned by another railroad. The car-owning railroad only receives a rental fee from railroad A (basic per diem). One of the purposes of IPD is to give a railroad the incentive to buy more cars because these cars will earn a higher than normal rental fee when the owning railroad does not itself use the cars to generate freight revenue.

A second function of IPD is to encourage railroads to rebuild cars in disrepair and return them to the fleet of cars available to shippers.

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[1] While gondola car shortage figures normally are not available to the public, in comments submitted June 1, 1978, before the ICC in Ex Parte No. 252 (Sub-No. 2) the Chessie System Lines, Norfolk and Western and the Pittsburgh and Lake Erie together made available this above cited figure.

A third purpose is to improve the utilization rate by increasing the rental expense accruing on borrowed cars to the extent that nonowning railroads return these cars more promptly to the owning railroads.

The incentive per diem program represents the most advantageous solution to the gondola shortage problem. It offers the economic incentive both to increase the size of the car fleet via purchase and/or repair and to improve utilization.

The Interstate Commerce Commission has had Incentive Per Diem under consideration for three years and has not yet reached a final conclusion, having issued one favorable and one unfavorable opinion concerning IPD. The Institute believes that the gravity of the situation and the growing severity of the problem while the Commission's deliberations continue, is so significant that it has under study the feasibility of the direct purchase of gondolas by the scrap iron industry. This industry knows how to process scrap iron, not operate railroad cars but the problem is so bad the industry may have to do both. However, the more reasonable solution to the gondola shortage problem is incentive per diem or IPD.

The Institute is hopeful that this solution will be implemented soon.

Sincerely yours,

HERSCHEL CUTLER.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., August 21, 1978.

Hon. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The statistics appearing in my testimony before your committee on July 12, 1978, relating to railroad-owned flat cars used in TOFC service for 1978 did not include the number of flat cars that are owned by the Trailer Train Co.

The Trailer Train Co. is a wholly owned subsidiary of various member railroads. The Official Railway Equipment Register effective July 20, 1978, shows Trailer Train with 40,271 flat cars that can be used in TOFC service. This figure should be added to the previously reported figure of 5,819 railroad-owned flat cars used in TOFC service.

Please accept my apology for inadvertently not including this figure in my previous testimony before your committee.

Sincerely,

RON SCHRADER,
Special Assistant for Transportation.

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