INTERCOASTAL SHIPPING ACT OF 1933

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 6503

TO AMEND THE INTERCOASTAL SHIPPING ACT, 1933, AND FOR OTHER PURPOSES

AUGUST 29, 1978

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CONTENTS

INTERCOASTAL SHIPPING ACT OF 1933

TUESDAY, AUGUST 29, 1978

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM,
Washington, D.C.

The subcommittee met at 2 p.m. in room 235 of the Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. The Intercoastal Shipping Act of 1933 supplements the provisions of the Shipping Act of 1916, by authorizing the Federal Maritime Commission to regulate the rates of oceangoing common carriers serving the domestic offshore trade of the United States. There are the trades between U.S. mainland ports, ports of Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, Northern Marianas, American Samoa, Midway Island, Wake Island, and Johnston Island, as well as trade between ports in these offshore States, positions, and territories.

Except for the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Marianas, these domestic offshore trades must be served by U.S.-flag ocean carriers under the cabotage laws of the United States.

Under provisions of the act, steamship companies must file rates with the Federal Maritime Commission, and those rates may be disapproved if they are challenged and found unjust or unreasonable.

The FMC does not have authority to limit entry in the domestic offshore trades; on its own motion or upon protest, however, the FMC may hold a hearing to decide if a proposed rate in those trades is just and reasonable. Under current law, 30 days' notice must be given before newly filed rates can go into effect, and the FMC has authority to suspend these rates for 120 days pending a hearing.

The committee understands that these rate hearings customarily take from 2 to 4 years. The suspension time was originally provided so that the Commission would have an opportunity to hear and decide the lawfulness of rate increases before they went into effect.

Under present operating circumstances, where the FMC takes several years to reach a decision on the lawfulness of the general rate increase, it has not been possible to conclude the hearings within the suspension period of 120 days.

Although the challenge rate which goes into effect at the end of the 120-day suspension period may be reduced prospectively if it is found unlawful at the conclusion of the proceedings, there is no authority that would require refund of that portion of the rate which went into effect at the end of the suspension period that was later found unlawful.

Because the rate increase goes into effect before the hearing is concluded, the suspension power's only real effect then is to delay this rate increase for 120 days. Recently, there have been substantial increases in capital and operating costs for the domestic steamship industry. For example, according to Matson Navigation Co., the cost of a typical container ship rose from $21 million in 1970 to $65 million in 1977, an increase of 208 percent. Maritime labor costs have increased substantially, almost doubling in the past 5 years, and fuel costs have quadrupled.

At the same time that cost increases have risen dramatically, great growth in steamship efficiency resulting from the container revolution has stabilized. Consequently, in many cases rate increases have been required in order to cover costs. Thus, the necessity of requesting rate increases by carriers in these trades exacerbates and, in turn is excerbated by the regulatory lag when hearings on these rate increases are ordered.

The provisions of H.R. 6503 are therefore intended to avoid unnecessary interruptions in rate increases or decreases which may be lawful; to provide for refunds if rate increases go into effect and are later found illegal; and to extend the FMC suspension power to those cases where it is needed to protect legitimate interests of the shipping public.

The provisions are also intended to expedite the decisionmaking process of the FMC and its regulation of the domestic offshore trades and thus assure that the shipping public will receive the benefit of prompt adjudication of matters before the Commission, and that participants will be spared the time and expense of participating in unnecessarily long and complex proceedings.

The record of this hearing will remain open for 1 week to receive statements from any parties wishing to submit them.

I would like to report that the committee has received the written testimony from the following, and their statements, without objection, will be made part of the hearing record on H.R. 6503:

The Department of Transportation; the Department of the Interior; Congressman Baltasar Corrada, Member of Congress; the Honorable Rafael Hernandez Colon, former Governor of Puerto Rico; the American Retail Federation; Western Traffic Conference, Inc.; Sealand Service, Inc.; and United States Lines, Inc.

[The bill and agency comments follow:]

95TH CONGRESS
2D SESSION

H. R. 6503

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, APRIL 24), 1978

Read twice and referred to the Committee on Commerce, Science, and Transportation

AN ACT

To amend the Intercoastal Shipping Act, 1933, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Intercoastal Shipping Act, 1933 (46 U.S.C. 843), is amended by inserting "(1)" immediately before "The term"; and by adding at the end thereof the following:

"(2) The term 'general increase in rates' means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common

carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenues of such carrier for the particular trade of not less than 3 per centum.

"(3) The term 'general decrease in rates' means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.".

SEC. 2. The second paragraph of section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), is amended—

(1) by striking out "*Provided,*" and inserting in lieu thereof the following: "*Provided,* That no general increase in rates or general decrease in rates shall take effect before the close of the sixtieth day after the day on which such general increase in rates or general decrease in rates is posted and filed with the Commission: *Provided further,*"; and

(2) by inserting "or sixty days" immediately after "thirty days" in the second proviso thereto.

SEC. 3. Section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), is amended—

(1) by inserting "(a)" immediately before "Whenever" at the beginning of the first paragraph thereof;

(2) by amending subsection (a) (as so designated by paragraph (1)) by—

(A) striking out "complaint" each place it appears therein and inserting in lieu thereof "protest";

(B) striking out the colon after "practice" and inserting in lieu thereof a period; and

(C) striking out the proviso and inserting in lieu thereof the following:

"The Commission shall not order a hearing pursuant to this subsection, on its own motion or upon protest, unless the Commission publishes in the Federal Register the reasons, in detail, why it considers such a hearing to be necessary and the specific issues to be resolved by such hearing. For purposes of facilitating the administration of this Act, the Commission shall, within one year after the effective date of this sentence, by regulation prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water in intercoastal commerce. After the regulations referred to in the preceding sentence are initially prescribed, the Commission shall from time to time thereafter review such regulations and make such amendments thereto as may be appropriate.";

(3) by inserting "(b)" immediately before "Pending" at the beginning of the second paragraph thereof;

34-115 O - 78 - 2

(4) by amending subsection (b) (as so designated by paragraph (3)) by—

(A) inserting ", except as provided in subsection (c)," immediately before "from time to time" in the first sentence thereof;

(B) striking out "four months" and inserting "one hundred and eighty days" in lieu thereof in the first sentence thereof;

(C) striking out "and decide the same as speedily as possible" at the end of the last sentence thereof; and

(D) inserting at the end thereof the following new sentences:

"Notwithstanding any other provision of law, the Commission shall complete such hearing under this section within sixty days; the initial decision resulting therefrom, if any, shall be submitted in writing to the Commission within one hundred and twenty days; and the Commission shall issue a final decision thereon within one hundred and eighty days. The sixty-day, one hundred and twenty-day, and one hundred and eighty-day periods referred to in the preceding sentence shall each begin on the day on which such rate, fare, charge, classification, regulation, or practice first takes effect or, in the case of suspended matter, shall begin on the day on which such matter would have otherwise gone into

effect. However, the Commission may, in its discretion and for good cause, extend the time period or suspension period for a period of not more than sitxy days, if three or more Commissioners agree to such an extension. If such extension is granted, the Commission shall report in writing to Congress within ten days from the granting of such extension together with—

"(A) a full explanation of the reasons for the extension,

"(B) the issues involved in the matter before the Commission,

"(C) the names of the personnel of the Commission working on such matter, and

"(D) a record of how each Commissioner voted on the extension.

If a final decision is not issued by the Commission within the one hundred and eighty day period, or by the end of any extension period, such rate, fare, charge, classification, regulation, or practice shall, for purposes of this section, thereafter be deemed to be just and reasonable. However, if the Commission finds that it is unable to issue a final decision within such period or within such extension due to delays which are directly attributable to the proponent of such rate, charge, classification, regulation, or practice, the Commission may disapprove such rate, fare, charge, classification, regula-

tion, or practice, upon the expiration of such period or extension. This provision shall not preclude any remedies available pursuant to section 22 of the Shipping Act of 1916. Notwithstanding any other provision of law, in providing a hearing for the purposes of this Act, it shall be adequate to provide an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties. Any such conference may be chaired by an individual Commissioner, an administrative law judge, or any designated employee of the Commission.";

(5) by adding at the end thereof the following new subsection:

"(c) (1) Notwithstanding any other provision of this section, the Commission may not suspend—

"(A) any tariff schedule or service which extends to any additional port, actual service at the rates of the carrier involved for similar service already in effect at the nearest port of call to such additional port; or

"(B) the operation of that portion of any changed rate, fare, or charge representing an increase or decrease of 5 per centum or less and filed as part of a general increase in rates or a general decrease in rates, except that the aggregate of such changes exempt from suspension shall not exceed 5 per centum during any

period of twelve consecutive months; nothing in this subparagraph shall be construed as establishing a presumption that any increase or decrease in excess of 5 per centum is not just and reasonable, or that any increase or decrease less than 5 per centum is just and reasonable.

"(2) If the Commission finds, as a result of any proceeding under this section with respect to a general increase in rates, that any unsuspended portion of the increase is not just and reasonable, the Commission shall order the carrier involved to refund to any person who was charged on the basis of such general increase an amount equal to that portion thereof found to be not just and reasonable plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the refund applies.".

SEC. 4. Section 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845a) is amended by changing the period at the end thereof to a colon, and inserting thereafter the following: "*Provided further*, That upon such finding of unjustness or unreasonableness in a proceeding instituted by a complainant pursuant to the provisions of section 22 of the Shipping Act, 1916, the Commission shall direct full reparation to the complainant of the difference between the charge collected and the just and reasonable rate, fare, or charge, plus interest

on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the reparation applies.".

SEC. 5. This Act shall take effect ninety days after enactment.

Passed the House of Representatives May 8, 1978.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 21, 1978.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for Departmental comments on H.R. 6503, an act: "To amend the Intercoastal Shipping Act, 1933, and for other purposes."

The principal purpose of the proposed legislation is to amend the Intercoastal Shipping Act in various respects in order to expedite the regulatory process pertaining to general rate changes. To do this the act would:

(1) permit common carriers in the domestic off-shore trades to file, without suspension, annual general rate increases or decreases of 5 percent or less (the Federal Maritime Commission would be authorized, with respect to any unsuspended portion of any general rate increase later found unjustified in whole or in part, to order refunds to those charged such rates before the date of the Commission's final decision);

(2) require the Commission periodically to promulgate guidelines for the determination of reasonable rates of return, or profit, for common carriers subject to the Act;

(3) establish time limits by which the Commission would have to complete rate hearings, initial decisions and final decisions, which if not met would result in a presumption that the rates are just and reasonable;

(4) require the Commission to provide detailed explanation of its reasons for instituting a hearing on proposed rate changes; and

(5) extend the current period of suspension from four months to six months for any rate changes not filed as part of a general rate increase or decrease and for the portion of any such rate change exceeding 5 percent per year.

The Department opposes the provisions that would prohibit suspension of a general increase of up to 5 percent pending an investigation and hearing into the reasonableness of any such rate increase. DOT favors streamlining the regulatory process; however, we are concerned that the proposed no-suspend zone will invite automatic annual rate increases of 5 percent regardless of the annual rate of inflation or the amount of any legitimate increases in carriers' costs. DOT favors improving the regulatory process through utilization of no-suspend zones where there is adequate competition, but we believe that such procedures should be used for increases and decreases in individual rates and commodities. Such use will provide a better opportunity for the establishment of individual cost and service based rates—a goal which cannot be reached by increasing carrier reliance upon general rate increase or decreases.

The provision in the act for the refund of rate increases later found unjustified is also not satisfactory because seldom do such refunds flow back to the ultimate consumers, but rather tend to become "windfall profits" to third parties.

The Department generally favors the provisions of the act that would require the Commission to prescribe guidelines for the determination of what constitutes a just and reasonable rate of return.[1] We believe the publication of such guidelines can be used to expedite the consideration of rate changes. The Commission, working with carriers who reasonably anticipate the need for rate adjustments, should be able to expedite the consideration of rate changes where both the agency and the carriers have a clear view of the rate of return formula which is to be used. We note that the act does not indicate any of the factors that the Commission should consider in determining these guidelines. We believe that consideration should be given to the listing of guidelines in the statute that include consideration of such factors as: (1) the historical cost of existing debt; (2) the market costs of new debt; and (3) a rate of return on equity equal to that earned by an unregulated industry of comparable risk.

We firmly support the provisions of the act which would establish the completion of rate hearings, initial decisions and final decisions within the time limits set forth in the act. While we do not particularly favor increasing the period of suspension to 180 days, we do not oppose the proposed extension which will make identical the maximum suspension and the time by which the Commission must come to a final decision on the rates at issue; such a provision will simplify regulatory administration.

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[1] The act also indicates guidelines for determining a reasonable profit. We oppose this terminology because there are various definitions of profit and it is unnecessary since reasonable rate of return is a more meaningful concept.

Finally, given our opposition to the no-suspend provisions of H.R. 6503, we oppose the provisions found in Section 3, to limit the Commission's authority to order a hearing upon the receipt of protests.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Congress.

Sincerely,

LINDA HELLER KAMM,
General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 27, 1978.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR MR. CHAIRMAN: This is a report of the Department of the Interior on H.R. 6503 as passed by the House of Representatives, a bill: "To amend the Intercoastal Shipping Act, 1933, and for other purposes."

We recommend against enactment of H.R. 6503.

H.R. 6503 contains provisions which, if enacted, could have an adverse impact on the economy of the Territories of Guam and the Virgin Islands.

The Merchant Marine Act of 1920 (46 U.S.C. 877,883) extends coastwise laws of the United States to island territories, except the Virgin Islands, for which an exemption is provided. Those provisions also require that transportation of all merchandise by water between the United States and Guam be in United States bottoms.

Section 3(5) of H.R. 6503 would permit U.S. shipping companies to increase rates, fares, or charges five (5) percent during any period of 12 consecutive months without reference to the Federal Maritime Commission. Such increases would work a substantial hardship on Guam and would aggravate the already unsatisfactory situation caused by the requirement for Guam to use the more expensive United States botoms.

The provisions of H.R. 6503 would also cause similar hardships on the already fragile economy of the Virgin Islands. At present, even with the Merchant Marine Act exemption, the Virgin Islands rely on transhipment by United States bottoms for much of its foods, energy, supplies, consumer goods, and equipment and materials necessary for employment. This bill could cause both Guam and the Virgin Islands to rely more heavily on aid from the Federal Government to support their respective economies.

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

Sincerely,

JAMES A. JOSEPH, *Under Secretary.*

Senator INOUYE. Our first witness this afternoon is the Honorable Thomas F. Moakley, Vice Chairman of the Federal Maritime Commission.

STATEMENT OF THOMAS F. MOAKLEY, VICE CHAIRMAN, FEDERAL MARITIME COMMISSION; ACCOMPANIED BY DR. LESLIE KANUK, COMMISSIONER

Mr. MOAKLEY. Thank you, Senator Inouye.

I am accompanied today by Commissioner Kanuk. I appreciate this opportunity to testify on H.R. 6503, a bill to amend the Intercoastal Shipping Act of 1933.

Before addressing the particular provisions of H.R. 6503, it may be useful to provide some background on the trade between the U.S. mainland and the States, territories, and possessions of the United

States, and affected commonwealths which comprise the so-called noncontiguous or domestic offshore areas. Currently, these areas include Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, Northern Marianas, American Samoa, Wake Island, Midway Island, Johnston Island.

Under the 1933 act, the Commission is authorized to regulate the rates assessed by oceangoing common carriers between these areas and the continental United States and between any two or more of these noncontiguous areas to insure that such rates are "just and reasonable."

The major carrier in the Hawaiian trade is Matson Navigation Co., which carries approximately 90 percent of the common carrier traffic. In the Puerto Rican trade, the major carrier to and from the Atlantic/gulf ports is the Puerto Rico Maritime Shipping Authority (PRMSA), an agency of the Commonwealth of Puerto Rico. There is, however, a very strong competing tug and barge operation conducted by Trailer Marine Transport Corp. between Jacksonville/Miami/Lake Charles and Puerto Rico. In addition, Seatrain Gitmo, Inc., a subsidiary of Seatrain Lines, offers services between Atlantic coast ports and Puerto Rico, and Sea-land Service, Inc., offers service to Atlantic and gulf ports and Puerto Rico.

Matson and United States Lines, Inc., and, to a minor degree, Sause Bros. Ocean Towing serve the trade between Guam and the United States. American Samoa is served by an American-flag carrier, Farrell, and two foreign-flag carriers, the Pacific Island Transport Line and Polynesian Lines.

The Northern Marianas, which were recently brought under U.S. law, are served by several small carriers, primarily by Transhipment through Guam. The Virgin Islands trade is served primarily via Transhipment through Puerto Rico. The major carrier providing the portion of service between Puerto Rico and the Virgin Islands is the Inter Island Intermodal Lines.

Alaska is served by several large carriers and numerous smaller tug and barge operations. Most of these, however, offer joint service with a motor or rail carrier and, consequently, are regulated by the Interstate Commerce Commission.

In addition to the foregoing major vessel-operating common carrier services, numerous nonvessel-operating common carriers (NVO's) serve the regulated domestic offshore trades. These are generally freight consolidators. They neither own nor operate vessels, but publish tariffs and hold themselves out to provide common carrier services to the public. They usually provide services for small-lot shipments, utilizing the underlying vessel services of the major vessel-operating common carriers.

Overall, there are 283 domestic regulated carriers operating in the domestic offshore trade, and there are 242 domestic carrier tariffs currently on file with the Federal Maritime Commission.

The discrepancy in these numbers is explained by the fact that many household goods carriers operate under the single tariff of one of two large associations of such carriers. A breakdown of carriers and carriers into various categories is as follows:

Under the domestic regulated carriers, there are 45 vessel operators, 84 nonvessel operators, 150 household goods operators, and 4 passenger operators.

34-115 O - 78 - 3

The tariffs are broken down as 87 vessel operators, 91 nonvessel operators, 55 household goods operators, and 9 passenger operators.

Of the 10 domestic offshore areas mentioned earlier, 3 are exempt from U.S. cabotage laws so that they may be served with foreign-flag vessels. These three are the U.S. Virgin Islands, American Samoa, and Commonwealth of the Northern Marianas.

The Federal Maritime Commission is well aware of the need to assure adequate, safe, dependable, and efficient maritime transportation in domestic offshore trades. There simply is no alternative form of transportation for the vast preponderance of our domestic offshore cargo, since air transportation is not economically viable.

With this broad general background, I would like to discuss some of the provisions of H.R. 6503. I feel it is important at the outset to avoid labeling this bill. H.R. 6503 is neither procarrier nor proshipper. If anything, H.R. 6503 is antidelay and will benefit all those who are affected by domestic offshore rate regulation so that one might also say that it is procarrier, proshipper, and proconsuming public.

Under the provisions of this bill, the Commission will be required to make decisions expeditiously on domestic offshore rates, while questionable rate changes may be suspended until such decisions are reached.

The FMC's track record in regulating domestic offshore rates is not enviable, mainly because of deficiencies in the existing law. The rates under investigation in a formal proceeding always take effect before the end of the proceeding, and the decision is often made on a record that is several years old. The ultimate losers have been the ratepayers, the carriers, and the taxpayers, who have had to support long and expensive proceedings.

The ultimate futility of the existing process is the fact that there is no provision in the present law which would permit the Commission to order to refund to ratepayers should the rates ultimately be found unreasonable.

Under the provisions of H.R. 6503, the Commission must complete the hearing and the decision process in 180 days. While the first 5 percent of any general rate increase or decrease within a 12-month period will be exempt from suspension, the period of suspension available for all other changes will be increased in length to coincide with the hearing and the decision process.

The proponent carrier is additionally on notice that failure to reach a decision due to its delay may cause a finding of unreasonableness. Ratepayers under the bill, for the first time, will have the statutory right to a refund if any unsuspended portion of a general rate increase is found to be unjust or unreasonable.

In brief, H.R. 6503 serves to contemporize a 45-year-old statute by striking a balance between competing interests. First, the interest of the carrier in having a no-suspend zone is balanced against the shipper's right to a refund for any portion of the unsuspended increase found to be unreasonable.

Second, the Commission's ability to suspend most rate changes for a longer period of time is offset by the requirement to reach a decision during that same period.

And finally, the shipping public's more limited period of time in which to raise, develop, and argue issues is balanced by the assurance

of a swift decision on the reasonableness of the rates and, again, by the opportunity of a refund.

Under section 3 of the 1933 Intercoastal Shipping Act, the Commission is now authorized to suspend any proposed increase or decrease in rates for a period not to exceed 4 months whenever it orders an investigation and hearing concerning the reasonableness of such rate changes. This suspension authority is intended principally to provide a degree of protection to the interest of the shippers similar to the 7-month suspension authority of the ICC under the Interstate Commerce Act.

Unfortunately, however, unlike the statutory protection afforded shippers under the Interstate Commerce Act by a refund provision, the shippers' protection under the Shipping Act runs out at the end of the suspension period. Following the suspension period, shippers must pay the rates that are still under investigation.

At the conclusion of the investigation, the Commission may issue an order finding that the rates are unreasonably high, but the effect of the order is not retroactive. Shippers have no statutory means for recovering the difference between reasonable and unreasonable rates which were paid during the period after the suspension because neither section 18(a) of the Shipping Act of 1916 nor the Intercoastal Shipping Act of 1933 contains any provisions which authorize refunds in the event the rates are found to be unreasonable.

The Commission does have the authority to order rates rolled back if it finds them unreasonably high. However, because of at least two related problems, this authority is of little practical use.

First, the Commission cannot order rates rolled back for a specific period of time; therefore, nothing prevents a carrier from immediately refiling a rate increase after a rollback order. After the statutory 30-day notice period and a minimum suspension of 120 days, such rate increases would go into effect.

Second, in periods of high inflation, the Commission rarely has the opportunity to roll back carrier increases because the rates under investigation are superseded by new rates before the investigation is complete.

For example, Matson filed two general rate increases in 1975, the latter of which obviously superseded the former rate level. The Commission has no statutory authority to roll back a rate which is no longer in effect, nor can the Commission order a rollback of new rates which were never subject to investigation. This being the case, there is often no effective remedy by the time the proceeding is ripe for decision.

In view of these deficiencies in the Shipping Act, 1916, and the Intercoastal Shipping Act of 1933, it is not hard to see why shippers have found participation in general rate increase proceedings to be costly and frustrating.

Whether the shipper can presently obtain relief in a complaint proceeding brought under section 22 of the Shipping Act of 1916 is also uncertain. Section 22 of the Shipping Act, 1916, gives a shipper a right to bring action seeking retroactive reparation for violations of the act.

Section 16, first, of the Shipping Act expressly provides that it is unlawful to give undue or unreasonable preference or advantage to

any shipper. Accordingly, there is no question that in a section 22 shipper complaint proceeding the Commission may award retroactive reparation on a finding of undue or unreasonable preference or advantage. However, neither section 18(a) of the Shipping Act, nor sections 3 and 4 of the Intercoastal Act, provide that rates which are unjust or unreasonable are, indeed, unlawful. Those sections merely provide that carriers will file and observe rates which are just and reasonable and that upon a finding of unjustness or unreasonableness the Commission is empowered to prescribe and enforce rates which are just and reasonable.

In interpreting sections of part 2 of the Interstate Commerce Act containing provisions similar to sections 18(a) and 4, the Supreme Court held in *T.I.M.E. Incorporated* v. *United States* that a statute which entrusts rate regulation to an administrative agency creates a criterion for administrative application in determining a lawful rate, rather than a justiciable legal right. Thus, it is unclear whether the Commission is empowered under section 22 to award retroactive reparation to a shipper whose paid rates which were lawful when charged but later were found to be unjust and unreasonable.

There are several provisions of H.R. 6503 which would do much to remedy the problems which I've outlined. The suspension period would be increased from 4 to 6 months, with a possible extension of an additional 2 months. More importantly, the shipper would gain the protection of a refund provision with respect to any unsuspended portion of a general rate increase. Upon completion of a proceeding in which the Commission found that such an increase was not justified in whole or in part, the Commission will be required to order the carrier to make appropriate refunds with interest to any person who was charged the unreasonable rate.

The bill would also affirm the right of shippers to seek reparation for unjust or unreasonable rates in complaint proceedings brought under section 22 of the Shipping Act of 1916.

I do not believe that these benefits to the shipper are diminished because the bill permits carriers to file general rate increases without suspension of that portion of such increases or decreases not exceeding 5 percent a year. Carrier in the domestic offshore trade are subject to many of the same inflationary pressures that affect us all. It is simply unfair to deprive carriers of revenues much needed to defray cost increases by inflation, particularly when shippers are assured of a refund should the unsuspended increase be found unreasonable.

Of course, the level of annual increases required to offset inflationary increases in carriers' costs may change from one year to another. Five percent per year seems reasonable in view of the current inflationary trends. In view of the changeable nature of our economy, however, I would anticipate that this Commission would periodically review the standards and make recommendations to the Congress whenever it appears that the standards should be adjusted to reflect major changes in economic trends.

The key to effective rate regulation in the domestic offshore trades is timing. Therefore, we support a legislative deadline for completion of rate proceedings, as long as that deadline is coupled with other major provisions of H.R. 6503. However, in order to reach decisions

within the time prescribed, there will have to be a number of changes in the rules governing the conduct of rate proceedings.

First, the financial data which the carrier is required to file simultaneously with the filing of its general rate change will have to be essentially the evidence it will rely upon throughout the expedited proceeding. This means, at the very least, there can be no change in the test year used by the carrier in support of the rate increase. Otherwise, the parties will not have a proper opportunity to test the carrier's evidence.

Second, the methodology prescribed by the Commission for the determination of what constitutes a just and reasonable profit would have to be given substantive effect and be followed rigidly throughout each rate proceeding, unless otherwise ordered by the Commission.

Much of the time now consumed by rate proceedings is spent on arguments relating to methodology and the introduction of evidence in support of these arguments. The bill requires the Commission to prescribe appropriate methodology for arriving at a rate of return or profit for carriers in the noncontiguous trades. We believe this is a step in the right direction.

The Chairman has already directed the staff to prepare recommended rule changes which will resolve many of the questions of methodology which have plagued our rate proceedings in the past.

Third, the Commission will amend its rules of practice and procedure. Trial-type hearings must become the exception and not the rule. However, when evidentiary hearings cannot be avoided, there is room for protracted discovery and inspection. The staff of the Commission is presently developing further proposed changes to the Commission's rules of practice and procedure which are designed to expedite domestic rate proceedings.

If the Commission fails to reach a decision within the prescribed period of time through no fault of the carrier, the bill provides that the rates under investigation will be automatically approved.

I can think of no greater incentive, both for the Commission and for the opposing parties, to expedite rate proceedings. It would be extremely embarrassing to me, as a Commissioner, and, I am sure, to Commissioner Kanuk, to permit rates to be approved as a result of Commission inaction.

I am confident that, with the statutory and rules changes previously discussed, the Commission will be able to meet this challenge.

In conclusion, although the bill presents a formidable challenge to the Commission, I believe that it is necessary in order to establish effective regulation in the domestic offshore trades of the United States. The Federal Maritime Commission supports H.R. 6503 and urges its enactment.

Senator INOUYE. Thank you very much, Commissioner Moakley.

Dr. Kanuk, would you add to Commissioner Moakely's statement?

Dr. KANUK. No; Commissioner Moakley's statement reflects my view as well.

Senator INOUYE. Thank you.

I have a few questions here I would like to ask for the record.

When was the last time the Commission found a rate unreasonable under the law?

Mr. MOAKLEY. In 1964. In two related cases, the Commission found rates in the Alaska trade unjust and unreasonable in that they produced a rate of return of 19.75 percent.

Senator INOUYE. So, all of the rates submitted were reasonable and legal since then?

Mr. MOAKLEY. That is correct, sir.

Senator INOUYE. When was the last time the Commission set a rate?

Mr. MOAKLEY. I would ask, if we might, Mr. Blumenthal, from the Bureau of Hearing Counsel, might be more well equipped to say when that last rate was set.

Mr. BLUMENTHAL. The Commission last set a rate in 1965.

Senator INOUYE. Since then, the Commission has not set any rates?

Mr. BLUMENTHAL. No, it hasn't.

Senator INOUYE. What has been the period of time that it takes the Commission to reach a decision in a domestic rate case?

Mr. MOAKLEY. We have an average time of about a year and a half. But we had rate cases that were before us as long as 6 years.

Senator INOUYE. Six years?

This bill states, as you are aware, that if the Commission fails to reach a decision within the time frame, 6 months, imposed by the bill, through no fault of the carrier, the rates on the investigation will be presumed lawful. The shipper might urge the opposite presumption. What is your view?

Mr. MOAKLEY. My view is, quite frankly, that it puts a very strong pressure on the Commission to act judiciously and quickly. And it also puts the same pressure on the shipper. The shipper knows that if he puts his information before us he can have as much as 8 months in which to be heard under the bill, and during that period of time, if he puts case before us well, he will get a refund if the rates are unreasonable.

So, I think all parties are obligated now. The carrier knows if he doesn't put the information before us correctly his rates can be declared unreasonable. The shipper has a reasonable period of time to present his case, and it is to his advantage to do it quickly.

Senator INOUYE. I realize, as you have stated, that there are certain incentives in the bill so that it would be embarrassing for the Commission if it couldn't reach a decision within 180 days, and the shipper would have to pay the high rates because of the Commission's failure.

But under the present law, you have 120 days, and it takes you a year and a half. Won't the situation be the same?

Mr. MOAKLEY. No, because we will have to change our rules and procedures within our hearing process to make sure that it does not happen.

Senator INOUYE. What makes you believe that you can cut a 6-year hearing period down to 180 days, as H.R. 6503 would require?

Mr. MOAKLEY. I think—I might take a quick look at what took place on the longest one, which was the *Matson* case, on which test years were changed, the financial information was changed, the whole basis of the case was constantly changed.

Now, we have clearly defined that at the time you apply for the rate increase you must submit the financial information which will be used to determine whether the rate is reasonable or unreasonable. That

will not change. Therefore, the opponent to it will have their financial information in the beginning and be able to analyze it.

Senator INOUYE. And you think that this can be done now in 6 months?

Mr. MOAKLEY. I think it is the attitude of the Commission, that we will see that it will be done in 6 months.

Senator INOUYE. And do you believe that this would be sufficient time for the shipper, also? I presume shippers were involved in all of your rate hearings.

Mr. MOAKLEY. That is correct, they are involved.

Senator INOUYE. And they were not able to expedite the proceedings?

Mr. MOAKLEY. Well, they should have been able to expedite the proceedings, but now they have a real incentive to expedite the proceedings, in that if we reach our determination in 6 months and the rate is unreasonable, now they have a retroactive refund with interest due them. So, that is a real incentive to them, I feel.

Senator INOUYE. Well, under the bill, you have this refund. Under the present law, there is no refund. And that, to me, would be a greater incentive to have the matter expeditiously resolved. If it is not resolved in time, then it would mean that the shipper may be required to pay an unreasonable rate for 6 years.

Mr. MOAKLEY. Well, that is true, but under the old law, also, Senator, the carrier, if he filed another rate increase while the first rate increase was pending, he nullified or made moot the first rate increase, because that was no longer in effect after the second increase was filed. So, there were many ways that made it almost totally frustrating for the shipper to arrive at the end he wanted to arrive at.

Senator INOUYE. It has been suggested that the procedural changes for hearings under this bill would deny the parties to the proceeding the right to use the discovery procedures provided in the Commission's rules of practice and procedure and would also deny the right to cross-examine the carriers' witnesses.

Would you agree with this observation?

Mr. MOAKLEY. I do not think they would be denied discovery rights, but, again, I would ask my legal friend, Mr. Blumenthal, if he would respond to that.

Senator INOUYE. Why don't you come forward, sir?

Mr. BLUMENTHAL. Senator, I do not think that limiting the time frame will automatically preclude discovery procedures. Much of the discovery, as an example, is based on workpapers. Currently, there is a long delay in securing workpapers. Rulemaking requiring the filing of all pertinent workpapers along with rate increases would eliminate a significant amount of that time. We could still permit depositions or cross-examinations or any other method of cross-examining any witnesses who were presenting their testimony. It would have to be in an expedited time period, but it would not preclude it.

Senator INOUYE. The testimony submitted by the Military Sealift Command suggests that in this bill, on page 6, lines 3 to 11, discovery and cross-examination may be denied.

Do you agree with that?

Mr. BLUMENTHAL. I have not seen Military Sealift Command's statement, but I do not agree.

Senator INOUYE. You do not think that is the intention of the law?

Mr. BLUMENTHAL. Not in any sense, no. The only intention of the law is to expedite the discovery or any other procedure.

Senator INOUYE. Do you believe these changes would substantially affect the rights of any parties to the hearing?

Mr. BLUMENTHAL. No, I do not.

Senator INOUYE. Thank you.

Why don't you just stay here.

This bill provides that a rate increase will be deemed just and reasonable if the Commission is unable to complete a hearing in 180 days, unless the cause for the delay is attributable to the carrier seeking the rate.

Do you believe that the strict time limit, 180 days, will have the effect of denying the parties any necessary procedural rights?

Mr. MOAKLEY. I do not, no.

Senator INOUYE. Do you agree with that?

Mr. BLUMENTHAL. Yes, I do.

Senator INOUYE. Do you believe the Commission will be burdened with issues concerning whether the delays in the proceeding is directly attributable to the carrier seeking the rate increase? How do you decide whether the delay was caused by the carrier?

Mr. MOAKLEY. Well, under the bill, the carrier is required to submit all his financial information at the time the proceeding is started. Any deviation from that which would cause a delay would mean that the carrier was delaying the action. Any request for a change in test year or altering the financial information could be attributed to the carrier.

Senator INOUYE. What if the shipper wishes to carry out his rights of discovery upon the documents admitted?

Mr. MOAKLEY. As I see it, he will have rights of discovery, but limited rights of discovery. He will have the information very promptly at the beginning.

Senator INOUYE. The shipper will have limited rights of discovery.

Mr. MOAKLEY. Limited rights of discovery. Or better shortened rights of discovery.

Senator INOUYE. What are the present rights of discovery?

Mr. BLUMENTHAL. Presently the shipper or any party has full rights of presenting interrogatories, requests for production of documents and that would largely be eliminated and required to be produced up front. They have the right to depose any witnesses who have submitted written statements.

Senator INOUYE. And these would be denied him?

Mr. BLUMENTHAL. No; they wouldn't be denied. They would just be required to produce these requests in a shortened time period. And the person or party to which the request was addressed would be required to comply with the request in a much shorter period than is now permitted.

Senator INOUYE. And you think the shorter time period is a reasonable time?

Mr. BLUMENTHAL. Yes; I do.

Senator INOUYE. If you were representing a shipper, would you consider this to be a reasonable time?

Mr. BLUMENTHAL. From a legal standpoint, yes. It's always nice to have more time but it can be complied with, I think, if a shorter time period is allowed.

Mr. MOAKLEY. Senator, if I may say, when I said "limited rights of discovery," when the carrier first comes in under the present proceedings with his financial figures for a rate increase, there are rights of discovery. When he changes his test year, there are additional rights of discovery. When he wants to change the methodology used in determining his test year or the figures within his test year, there are additional rights of discovery. So the limitation on the rights of discovery are really up front, where we limit the carrier to the financial information that he started with and he has to stay with it. And that is the basis for whether they are just and reasonable rates.

Senator INOUYE. Under the present law, is the Commission authorized to order a carrier to refund to the shippers a portion of the increase that the Commission found to be illegal?

Mr. MOAKLEY. No, they are not allowed to order a retroactive refund under the present law. Certainly, it is highly questionable that they have that authority. They have never exercised it.

Senator INOUYE. You have never exercised that.

Mr. MOAKLEY. No. A retroactive refund on a rate, a general rate increase that was found to be unjust or unreasonable has never been made.

Senator INOUYE. What is the view of the counsel?

Mr. BLUMENTHAL. Under present law, I do not believe that the Commission has the ability to order a refund. It's not totally clear, but I think that under the current law, there is no provision for a refund. Under the wording of the statute which reads "unjust and unreasonable," rates are not unlawful when charged simply because the Commission later finds them unjust and unreasonable. A finding of unjustness or unreasonableness is prospective in nature only. It doesn't create a justiciable legal right itself and cannot be used to support a refund.

Senator INOUYE. If the rate is illegal, can the Commission order a refund retroactively?

Mr. BLUMENTHAL. If that were the interpretation, yes.

Senator INOUYE. But you haven't done this.

Mr. BLUMENTHAL. No, we haven't.

Senator INOUYE. Have you ever found a rate to be illegal?

Mr. BLUMENTHAL. No, we haven't done so under the sections of the act prescribing just and reasonable rates. Unjust and unreasonable, yes, but not illegal.

Senator INOUYE. What recourse does a shipper have if after 4 years or 6 years it was found that the shipper had been paying unjust and unreasonable rates?

Mr. MOAKLEY. Under the present statute, he has only prospective recourse. He has no recourse with respect to the unjust and unreasonable rate that was paid prior to the time it was declared unjust and unreasonable.

Senator INOUYE. It has been suggested that a 10-percent savings in freight costs translates into a 0.6 percent unlanded cost for the buyer of goods. Does the buyer of goods typically pass that savings on to the ultimate consumer?

34-115 O - 78 - 4

Mr. MOAKLEY. That would be one which I would suppose that the price of all goods is dependent upon the competition. And as to whether he passes it on or not, I would not know.

Senator INOUYE. Under this bill, H.R. 6503, although the FMC may not suspend a rate increase of 5 percent or less, it can still order a hearing to determine if the increase is just and reasonable, could it not?

Mr. MOAKLEY. Yes; it could.

Senator INOUYE. Even if it is below 5 percent?

Mr. MOAKLEY. That's correct.

Senator INOUYE. And if the FMC orders such a hearing, it would have to conclude that within 180 days. Now at the end of the time, if it found the 5-percent increase to be unjust and unreasonable, it would have to order a refund to shippers, would it not?

Mr. MOAKLEY. It would order a refund to shippers with interest, yes.

Senator INOUYE. Then would a 5 percent no-suspended zone be harmful to shippers?

Mr. MOAKLEY. Would it be what, sir?

Senator INOUYE. Harmful to shippers.

Mr. MOAKLEY. I don't see how it would be harmful to shippers because the no-suspend zone is protected by the right of the refund.

Senator INOUYE. The no-suspend zone is subject to a hearing.

Mr. MOAKLEY. Subject to hearing and investigation, yes.

Senator INOUYE. At whose initiative?

Mr. MOAKLEY. It could be at the initiative of the shipper or initiated by the Federal Maritime Commission itself.

Senator INOUYE. For the no-suspend zone 5 percent to be operative, a rate increase would have to cover more than half of the tariff items in all of the tariffs of a carrier in a particular trade, and the increase must result in an increase of not less than 3 percent of the carrier's gross revenues in that particular trade.

The bill does not define what is meant by a "trade." In your judgment, is the term "trade" as used in the context of this bill sufficiently clear and generally understood so that no definition of the term is necessary?

Mr. MOAKLEY. I have no problem with what is described as the trade.

Dr. KANUK. I believe I saw a definition of "trade" in the House report. I interpret trade as meaning carriage between two geographic areas. On the other hand, I certainly think a definition restricting the word "trade" to that meaning might be more clear to shippers, who may interpret the term "trade" in another way.

Senator INOUYE. So you have some problem as to the proper definition?

Dr. KANUK. I have no problem with the word; however, it is possible that some shipper may.

Senator INOUYE. Would you recommend that the committee amend this bill at some appropriate place to define the word "trade"?

Dr. KANUK. Yes.

Senator INOUYE. And what would your definition be?

Dr. KANUK. "Trade" would describe the carrier service between two geographic areas.

Mr. MOAKLEY. However, rather than amending the bill, I think the Federal Maritime, by definition, could well describe trade within its own rules.

Senator INOUYE. We can include that in the report.[1]

As I understand this bill, in determining whether a rate increase of 5 percent or less resulted in an increase of not less than 3 percent in the carrier's gross revenues in the trade in question, the bill intends that all inbound and outbound tariffs of the trade be included in calculating the 3 percent. Is this point clear in the bill?

Mr. MOAKLEY. I have no problem with that.

Senator INOUYE. It has been said that a general rate adjustment is a revenue-generating action as compared with specific rate adjustments, which applies to single or small range of tariff items. Does the FMC's current suspension policy extend to a specific rate adjustment?

Mr. MOAKLEY. Yes. The Commission currently can suspend specific rate adjustments and has exercised that authority on several occasions in recent years.

Senator INOUYE. The bill provides a no-suspend zone for general rate adjustments. Some critics have suggested that this no-suspend procedure should only be applied to increases and decreases in individual rates and commodities because such use would provide a better opportunity for the establishment of individual costs and service-based rates. Do you agree?

Mr. MOAKLEY. No, I do not. I think a suspension on the general rate increase is the appropriate way out of this.

Senator INOUYE. This bill does not specify what factors the FMC should consider is describing guidelines for the determination of what constitutes a just and reasonable rate of return. Do you believe the bill should be a bit more specific on that?

Mr. MOAKLEY. No. I believe that the guidelines would be spelled out under substantive rules and rules of practice and procedures of the Federal Maritime Commission.

Senator INOUYE. Do you have published guidelines?

Mr. MOAKLEY. We have published guidelines. We are now changing and updating our own guidelines to comply with this bill.

Senator INOUYE. When were the guidelines published?

Mr. MOAKLEY. The new substantive ones have not been. They have not been finalized and published as yet. The existing rules of practice have been in use for quite some time. Additionally our financial reporting requirements for domestic offshore carriers have been in effect since 1964.

Senator INOUYE. Why do you think it is necessary or desirable to place any limitation on the Commission's suspension power?

Mr. MOAKLEY. I think it is desirable because indefinite suspension, quite frankly, as I said, in this area of inflationary trends, could place some severe pressure on the carrier, who will have great difficulty meeting the costs. Second, it puts pressure on the Federal Maritime Commission to expedite its hearing and investigative process. And it puts pressure on the shipper to move fast when he feels the rates are unjust or unreasonable. I think it puts pressure on all parties to the hearing.

The hearings are taking much too long.

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[1] See p. 45.

Senator INOUYE. Under the present law, general rate changes must be filed with FMC not less than 30 days in advance of the effective date of the change and if the effective date is suspended for 120 days, 150 days must pass before the change actually becomes effective.

Mr. MOAKLEY. That's correct.

Senator INOUYE. Under this bill, however, all the general rate changes must be filed 60 days in advance and the first 5 percent may not be suspended. Is it your understanding, therefore, in such cases, a general rate change may become effective at a date 90 days earlier than when filed and suspended under the existing law?

Mr. MOAKLEY. It must be filed 60 days and then you have a suspension period of 180 day for that part over 5 percent, if challenged.

Senator INOUYE. If challenged, yes.

Mr. MOAKLEY. And the challenge can be either by the shipper or by the Federal Maritime Commission.

Senator INOUYE. But if not challenged, it goes into effect 90 days earlier.

Mr. MOAKLEY. That would be true assuming that the rates were suspended under existing law and not suspended under the provisions of H.R. 6503.

Senator INOUYE. You have indicated that you have no problem in determining as to whether the delays are directly attributable to the proponent of the rate. If the Commission finds that the delay is directly attributable to the proponent of the rate, this bill provides the Commission may disapprove the rate. Should the bill direct the Commission to disapprove the rate?

Mr. MOAKLEY. I find that "may disapprove" the rate is more satisfactory in that the opponents of the bill after initially opposing it later could remove their objections, and under those circumstances, if all parties are in agreement that the rate might be just and reasonable, we would then be forced to disapprove, although otherwise all parties might be in agreement.

Senator INOUYE. Do you believe that by limiting the Commission's suspension power on the general rate increase that carriers would be encouraged to file general rate increases?

Mr. MOAKLEY. By removing our suspension power?

Senator INOUYE. By limiting.

Mr. MOAKLEY. By limiting our suspension power under this bill? No. I don't see how they would because, of course, this bill says that the unsuspended portion would be only 5 percent per year if they file 5 percent once with us, then we can automatically suspend any filing within a 12-month period.

Dr. KANUK. So long as it is clearly understood that the no-suspend zone is still subject to investigation, I don't see how it would encourage carriers to file general rate increases.

Senator INOUYE. Do you believe that this bill places the burden on the carriers to identify the shippers who have been overcharged and then paying them the refunds?

Mr. MOAKLEY. Oh, yes. All of the major carriers in the domestic offshore trades have automated accounting systems from which they could easily obtain the information necessary to implement a refund order. The Commission intends to specify by rule the information it expects carriers to retain for this purpose if H.R. 6503 is enacted.

Senator INOUYE. We have several questions here we would like to submit. These would require statistics. So if I may, we will keep the record open to receive your responses.

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

FEDERAL MARITIME COMMISSION,
Washington, D.C., October 3, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The following are answers to questions submitted during the Federal Maritime Commission's appearance on August 29, 1978 before the Subcommittee on Merchant Marine and Tourism concerning H.R. 6503.

Question. You have said that it is unclear whether the Commission is empowered under section 22 of the Shipping Act, 1916, to award retroactive reparation to a shipper who paid rates which were lawful when charged, but later found to be unjust and unreasonable. H.R. 6503, however, expressly affirms the right of shippers to seek reparation for unjust or unreasonable rates in complaint proceedings brought under section 22. Is it your understanding therefore that H.R. 6503 clarifies section 22 in this regard?

Answer. Yes, H.R. 6503 would clarify both section 22 of the Shipping Act, 1916 and section 4 of the Intercoastal Shipping Act in this respect.

Question. Doesn't H.R. 6503 make it virtually impossible for a shipper to be charged a rate which is subsequently determined not to be just and reasonable? I mean if a general rate increase is in the 'no suspend' zone, the shipper gets a refund if the Commission subsequently determines the non-suspended portion is not just and reasonable. And if a rate increase is out of the 'no suspend' zone it can be suspended for 6 months which is the time within which the Commission must make a determination on whether the new rate is just and reasonable.

Answer. While H.R. 6503 will not make it impossible for a shipper to be charged a rate which is subsequently found to be unjust and unreasonable, the refund provision will remove any incentive for the carrier to charge such rates. In the case of the first 5% general rate increase within a 12 month period or in the case of any other rate increase which the Commission chose not to suspend, there is a possibility that the increase could later be found unjust and unreasonable. In that event the refund provision would essentially nullify the effect of charging the unreasonable rates.

Question. Under what circumstances do you believe that you would be unable to meet the 6 month deadline set forth in H.R. 6503?

Answer. It would be difficult to reach a decision on the merits of a rate increase within six months in those instances where the carrier does not promptly provide all of the information necessary for a determination of the reasonableness of those rates. However, based upon the fact that the carrier has the burden of proof, the bill permits the Commission to reach a decision adverse to the carrier in those instances at the end of six months since the carrier would be responsible for the delay.

We also anticipate cases in which the general methodology guidelines prescribed by the Commission's rules cannot be fairly applied to a carrier with unique characteristics. For return on equity method of measuring the reasonableness of rates to a carrier with little or no capital investment. In those instances, evidence and argument over appropriate methodology may consume some additional time and the commission may have to utilize the 60 day extension period made available by the bill. These instances, however, should be the exception and not the rule.

Question. Why have rate cases taken so long in the past? Why would you suddenly be able to complete cases in six months if this bill is passed?

Answer. Rate cases have taken a long period of time in the past for a number of reasons.

First, there have been frequent differences of opinion in such cases over the proper method of calculating rate base, net income and rate of return. The bill would require these issues to be resolved by rulemaking so that significant time can be saved in each general rate proceeding.

Second, the procedures utilized in past rate proceedings have been those designed for adjudications, not rate-making and have contributed to the length

of these proceedings. The Commission has already taken a number of steps to tailor its procedures to remedy this problem, the most specific of which are new rules 67(d) of our Rules of Practice and Procedure, which establish a shortened procedure for general revenue cases. H.R. 6503 will assist us in making further changes to our procedural rules since the mandate to complete rate proceedings within 180 days will greatly assist the Commission in overcoming arguments against the shortening of procedural steps.

Third, a major portion of the time consumed by rate proceedings in the past has been consumed after the record in the case has been closed. In revising and re-emphasizing Commission Order 87, the Commission has already taken steps to shorten this time at the Commission/General Counsel level. H.R. 6503 will further assist this effort toward expedition by limiting the time consumed by the Administrative Law Judge for issuing his initial decision and by further tightening the time for Commission review.

Fourth, carriers have often made major changes to their evidence after a rate case has begun, including the changing of test years. The legislative history of H.R. 6503 makes it clear that the carrier must henceforth use the evidence submitted with its rate increase filling to justify its increase and cannot make major changes or additions to that evidence which would require further analyses, cross-examination and, possibly, rebuttal.

In general, there are many causes for the delays experienced in past rate proceedings. Some of these the Commission can, and has taken steps to correct. The others, primarily those outlined above, can only be resolved by statute and H.R. 6503 does an excellent job in formulating the resolution.

Sincerely,

RICHARD J. DASCHBACH, *Chairman.*

Senator INOUYE. Dr. Kanuk, do you wish to add anything?

Dr. KANUK. No, I don't.

Senator INOUYE. Commissioner Moakley, I thank you very much for your participation.

Our next witness is the deputy counsel of the Military Sealift Command, Mr. Milton Stickles.

STATEMENT OF MILTON J. STICKLES, DEPUTY COUNSEL, MILITARY SEALIFT COMMAND, WASHINGTON, D.C.

Mr. STICKLES. Good afternoon, Mr. Chairman.

Senator INOUYE. Please proceed, sir.

Mr. STICKLES. Mr. Chairman, distinguished members of the Merchant Marine and Tourist Subcommittee, I am Milton J. Stickles, Jr., deputy counsel of the U.S. Navy's Military Sealift Command.

This opportunity afforded us to offer testimony concerning H.R. 6503 is very much appreciated. I have a brief statement that I would like to read into the record, with your permission. I should point out that your statement has been included within the Navy, the Department of Defense, and with the Office of Management and Budget.

All right. I shall mention that the Navy's Military Sealift Command has a direct interest in the proposed legislation, since MSC is the Navy operating agency for the Department of Defense Sealift.

In peacetime, as in an emergency situation, we are charged with the responsibility for delivery of all military cargo that moves by sea.

In fulfillment of that responsibility, we depend upon the U.S. merchant marine. The degree of that reliance is evidenced by the fact that approximately 92 percent of all sea-lifted military dry cargo moves on privately owned U.S. flagships.

The Department of the Navy looks at H.R. 6503 from the viewpoint of a shipper. The Military Sealift Command is the largest shipper of cargo with common carriers, serving any domestic offshore trades.

MSC has been equally involved with other shippers in the regulatory processes under the Intercoastal Shipping Act of 1933 and equally concerned with the shortcomings of those processes since the repeal of section 6 of that act in 1974.

Some features of H.R. 6503 are good from the shipper's viewpoint and some are bad. On balance, the bad features outweigh the good ones.

Therefore, the Navy and the administration oppose the passage of H.R. 6503, as it is now worded. First, the Navy supports the provision for refunds of freight payments that result from unjust and unreasonable rates. This is a provision that has long been needed.

It is not fair to allow a carrier to keep revenues that result from that part of freight rates found to be unjust or unreasonable.

Apart from the question of fairness, a refund provision serves two important regulatory purposes: First, it discourages carriers from setting rates at unjust and unreasonable levels. As the law now stands, carriers are encouraged to charge what the traffic will bear because they keep the amount collected before a final decision is rendered on the justness and reasonableness of the rates, whatever that decision might be. Second, if the view of the presiding administrative law judge in a recent decision in consolidated docket No. 73–22, an investigation of two general rate increases of the Matson Navigation Co. is correct, the absence of a refund provision renders moot an investigation of rates when the carrier filed a new rate increase before a decision is reached.

MSC does not agree with that view and as a party to that proceeding, asks the FMC to reverse it. The FMC served its decision on June 30, and did not decide that particular issue.

Consequently, unless a refund provision is added to the 1933 act, a carrier may be able to prevent any decision on the justness and reasonableness of a rate increase by simply filing a new increase in time to be effective before a final decision of the FMC on the increase being investigated.

This would totally negate the FMC's ability to regulate rates in the domestic offshore trades.

I'd like to interject, Mr. Chairman, at this point that since having this statement cleared, we have filed a petition for reconsideration of the ruling in that case. I was somewhat surprised to hear the view presented from the two FMC Commissioners that, apparently, a decision has been rendered that the Commission has no authority to allow reparations, and apparently, no authority to roll back a rate increase if it is superceded by a subsequent one.

As I said in the statement, we don't agree with that and we filed a brief and we hope we'll get a formal ruling on it from the Commission some time soon.

The Navy also favors authority for the FMC to order a longer suspension of rates than the present limit of 4 months. However, the Navy believes that the proposed prohibition of suspension in general rate increases of 5 percent or less per year will have the practical effect of ruling out suspension of general rate increases under the Intercoastal Act.

It will encourage more carriers to follow the practice of Matson to file one or more general rate increases of less than 5 percent each year.

That will undoubtedly mean more general rate increase proceedings will be pending at any one time. This will put a severe strain on the FMC's staff, as well as on MSC and other major shippers, to prepare and present their cases in such proceedings.

This limitation on the FMC's suspension authority can only be justified by the assumption that annual increases of 5 percent or less will be just and reasonable under all reasonably foreseeable economic conditions.

The Navy does not believe that will always be the case. Present day inflationary pressures may moderate, competitive condition may change, carrier costs may be cut by increased efficiencies.

In addition, the trades which would be affected by this provision have limited competition, as a rule. The administration has supported similar provisions in the rail and aviation areas, but only where accompanied by freer entry into the trade and increased competition, so as to insure that rate increases or decreases are justified.

These possibilities mandate a discretionary approach to the question of suspension, rather than the proposed mandatory approach. The FMC ought to retain discretion to suspend any general rate increase that is filed, regardless of the level of the increased rates.

The Navy does not believe that the FMC has abused its present discretion to suspend general rate increases. MSC has participated in five general rate increase investigations involving six general rate increases since the repeal of section 6 of the Intercoastal Act placed Government rates under the regulatory authority of the FMC.

One investigation concerned the Puerto Rico trade. A 15-percent increase was not suspended. Three investigations concerned four increases by Matson in the Hawaii trade. A 1973 increase of 12½ persent was suspended. A 1975 increase of 5 percent was not suspended.

Second increase in 1975 of 5⅘ percent was suspended. Finally, a 1976 increase of 3½ percent was not suspended.

The fifth case, concerning U.S. Lines and Matson's service to Guam, involved a 5-percent increase. It was suspended as to U.S. Lines but only after the FMC noted that the existing rate may have been excessive, even before the 5-percent increase.

Matson also filed two other general rate increases in 1977 and 1978 for 2 percent and 2½ percent, respectively. These are in the Hawaiian trade. Neither increase was suspended or even investigated.

Thus, the FMC's actions were fully consistent with the proposed change of the suspension power by H.R. 6503. A curtailment of the suspension power is not necessary to put the policy of H.R. 6503 in effect. The Navy recognizes that these suggestions retain the refund provision of H.R. 6503 while dropping the 5 percent no-suspension provision, upset the balance between shippers and carriers written into the bill according to the report of the House of Representatives Merchant Marine Subcommittee.

However, the clear need for a refund provision for effective regulation and a clear showing that the FMC has properly used its discretionary policy to suspend rates supports a conclusion that no unbalanced treatment will result from our recommendation.

The Navy shares the view of the sponsors of H.R. 6503 that the FMC takes too long to decide issues pending before it.

However, their solution of deciding the issues of justness and reasonableness in favor of a carrier solely because the FMC delays its decision is very unfair to the shippers of cargo with that carrier.

Those shippers should not have to pay rates that would have been found unjust or unreasonable but for the FMC's failure to decide those issues within the proposed statutory time limit.

The alternative permitted of a complaint proceeding under section 22 of the Shipping Act of 1916 is not an adequate remedy. Many shippers may not be able to finance such a proceeding, even in concert with others who can.

A shifting of the burden of proof from a carrier under section 3 of the Intercoastal Act to the shippers of cargo under section 22 of the 1916 Shipping Act may prevent them from establishing the unjustness or unreasonableness of rates. It could not have been supported by the carrier had he the burden of proof.

The Congress believed it fair to require carriers to justify changes in their rates and so wrote the present burden of proof rule into the intercoastal acts in a 1938 amendment. That burden was properly placed on the carriers. But whatever placed, it ought not to shift because of the FMC's failure to meet a rigid time limit.

The exception made in this rigid time schedule for "delays which are directly attributable to the proponent of the rate" will undoubtedly be the subject of much additional time-consuming litigation if enacted. Carriers will argue that any findings of such delay are erroneous. Shippers will argue that the failure to make requested findings of such delay are erroneous.

The creation of such issues for the parties to dispute is clearly inappropriate. General rate investigatory proceedings ought to be devoted to the issues of the justness and reasonableness of the carriers' rates and not to the issue of which party to a proceeding caused the delay.

Expiration of the suspension is ample protection to the carriers when completion of an investigatory proceeding is delayed. They will receive the increased revenue upon expiration of the suspension. They will be able to retain that increased revenue when the final decisions are favorable to them. They should not be allowed to keep increases when decisions are not favorable. They would not be allowed to keep excessive increases if the refund provision were enacted.

The Navy is very strongly opposed to the procedural changes for hearings written into H.R. 6503. These changes stated on lines 3 through 11 of page 6 of the bill could deny the parties to a proceeding the right to use the discovery procedures provided in the Commission's rules of practice and procedure, and could also deny them the right to cross-examine the carriers' witnesses.

The parties would almost certainly be denied these rights in a section 3 proceeding if the strict time limits in H.R. 6503 just discussed are enacted.

Discovery and cross-examination are essential tools of a trial lawyer. They may be dispensable in some proceedings, possibly even some involving general rate increases, but they will be indispensable in many proceedings under the Intercoastal Act.

From MSC's experience in the previously mentioned general rate increase investigations, it is seriously doubted that the parties could

expose any defects or deficiencies that might exist in a carrier's case in support of his need for a general rate increase, with the curtailment of discovery and cross-examination.

These procedural rights are required in hearings of all regulatorv agencies by section 7(c) of the Administrative Procedure Act.

Such a drastic change in these rights ought to be considered in the context of a reform of that act. Matters of procedure should be left to the discretion of the FMC and the administrative law judges within the limits of the Administrative Procedues Act.

The FMC and its judges are taking steps to simplify and accelerate the conduct of proceedings, while preserving their fairness to all of the parties.

For instance, in 1976, the FMC adopted a rule requiring the parties to submit prehearing statements of stipulated facts, facts in issue, and legal positions to simplify and speed up the conduct of the hearing.

On March 23, 1977, the FMC published a policy of directing administrative law judges to limit oral testimony and cross-examination to those issues not capable of resolution through the use of sworn statements, affidavits, or depositions.

These types of actions will accomplish what the sponsors of H.R. 6503 desire without its drawbacks.

It is MSC's experience from the five general rate increase investigations previously mentioned, plus two other proceedings directly involving DOD's problems stemming from the repeal of section 6 of the Intercoastal Act, that the principal cause of delay is the time it takes the Commission and its administrative law judges to decide matters once they are submitted to them for decision.

The pretrial and trial phases of a proceeding do take time, although the parties have proceeded diligently to complete these phases with the minimum time necessary for the orderly and fair conduct of these phases.

The presiding judges have not let the lawyers procrastinate. However, once the hearings and briefings have been completed, some of the judges in the FMC have taken too long to issue their decisions.

A solution to this problem of delay ought to be legislation that would not be unfair to either the carriers or to the users of their services.

A means used in the State of Washington to induce judges to decide cases expeditiously is to require each commissioner and administrative law judge to file an affidavit attesting to the fact that no matter at issue has been awaiting his action for more than 6 months, or some other appropriate period of time before he can receive his paycheck.

Receipt of his paycheck will be delayed for as long as he cannot sign and file that affidavit.

A provision placing this requirement on the justices of the Supreme Court of the State of Washington is found at section 2.04.090 of the Revised Code of Washington.

In summary, the Navy opposes H.R. 6503 as written. The power of suspension should remain at the discretion of the FMC in all general rate increases. No changes should be made in the rules for the conduct of hearings. They should continue to be governed by the requirements of the Administrative Procedures Act. Time limits on the conduct of proceedings should only relate to the time allowed for commissioners and administrative law judges to decide matters at issue before them.

And, finally, sanctions should be directed to the commissioners and the judges for failure to meet the time limits, not to the innocent parties.

That completes my statement, Mr. Chairman. I'm at your service for any questions that you might have.

Senator INOUYE. Are you serious about applying the so-called Washington law to the FMC?

Mr. STICKLES. I think it would be one form of sanction that should be given some serious consideration. I don't really want to put too much of a gun at the back of the commissioners.

I'm a little surprised that they want one placed that way by this legislation, because I don't want to get bad decisions from them because they are rushed. But I think that is the area to direct sanctions if there is a strong feeling that there must be something to force the Commission to act expeditiously.

Senator INOUYE. You've indicated that this bill would deny certain rights because the procedure would be changed. The rights of discovery, for example.

You've heard the counsel for the FMC indicate that according to the Commission, none of your rights would be denied you.

Do you agree with the explanation of the Commission's counsel?

Mr. STICKLES. No, I don't, Mr. Chairman. The bill at the places where I cited would specifically authorize the conduct of a hearing without those rights.

Now that doesn't mean that the Commission has to conduct it in that fashion. But my concern is that if you put this stringent time limit on them, they will be looking to every opportunity to speed up the proceedings to get the job done within that time limit and they will look to this means as one of the ways to speed it up.

So the practical effect will be that there will be no discovery and no hearings where live witnesses will be available for cross-examination.

Senator INOUYE. Didn't you indicate that this is being done at the present time?

Mr. STICKLES. No. The Commission's rules permit that, but only—it's up to the decision of the administrating law judge after he has allowed the pretrial phases to be completed, the filing of testimony, and the conduct of discovery. And I don't have any objection to that because I think that they will rule fairly and, of course, that would be subject to appeal to the Commission if it were unfairly done.

But at that stage of a hearing, you can decide whether you need any specific proceedings or not. We filed a pleading with the administrative law judge just on Monday of this week, in which we suggested that a hearing was unnecessary on Matson's rate increase for want of trade.

We have completed the discovery phase, or most of it, and have rendered testimony and we feel there's no reason to contest the increase that they've asked for.

Senator INOUYE. Under the no-suspend zone of this bill, the Commission may initiate a hearing to determine whether this less than 5 percent increase was just and reasonable.

Is that correct?

Mr. STICKLES. Yes, they can.

Senator INOUYE. And you as a shipper can also request or demand a determination whether that rate within the no-suspend zone was just and reasonable.

Mr. STICKLES. Yes, we can ask for that. Whether the Commission will grant it will be up to their discretion.

Senator INOUYE. So why are you so concerned about this no-suspend zone?

Mr. STICKLES. I pointed out in my testimony that the Commission, in practice, has rarely put that rule into effect. I don't object to what they've done. I say this about the no-suspend zone: If you have it, it will encourage carriers to file more frequent rate increases of 5 percent or less rather than fewer increases at higher percentage increase.

And the problem with that is that it means more rate cases will be proceeding at one time and will cause a burden on the people who participate. It would be just that many more going at any one time.

That's the only problem with that.

Senator INOUYE. Apparently, the commissioners aren't concerned about this potential burden.

Mr. STICKLES. No, they did not make a statement to agree with me, and the burden would be principally on them because they participate in all general rate increases and shippers only participate in selected ones.

Of course, MSC is a very large shipper on most of the domestic trades, particularly the ones to Hawaii, Guam, and Puerto Rico, and has felt it necessary to participate in those proceedings since our rates became subject to regulation in 1974.

Senator INOUYE. Now under this bill, the no-suspend zone is still subject to a determination. And if the determination should be unfavorable to the proponent of the rate increase, the FMC may order a refund.

Isn't that correct?

Mr. STICKLES. That's correct, yes.

Senator INOUYE. Now would that—do you still contend that carriers would be tempted to file rate increases of less than 5 percent continually?

Mr. STICKLES. Well, a refund provision will temper any feeling they might have of filing too frequent and excessive rate increases. And I agree that that's a desirable effect of it.

I believe I so indicated in my statement of the refund provision. But it's not so much that they will file an excessive number. It will be a strategy for them. Instead of filing every 3 or 4 years for 12 or 15 percent, which would be one way of getting the rate increases they want, they would instead choose to file more frequent increases of 5 percent or less to avoid the suspension.

The only problem that I see with that is the proliferation of cases. I have no other complaint about that.

Senator INOUYE. Isn't it also true that if, let's say, Matson filed in January of 1979 a general increase of 4 percent which comes under the no-suspend zone, and follows that up in July of 1979 with another 4 percent, as you suggested that they may do, only 5 percent of the total 8 percent would be in the no-suspend zone?

Mr. STICKLES. That's right; 5 percent in any one year.

Senator INOUYE. So the second 4 percent has only 1 percent covered.

Mr. STICKLES. That's right. That would be subject to suspension. But, you see, they could wait until a year and a day has passed to file the next 5 percent increase, and neither one, then, would be subject to suspension.

Senator INOUYE. Isn't that the present situation?

Mr. STICKLES. That's the way that Matson has been operating in the last few years, yes.

Senator INOUYE. How would it hurt you? In fact, it should help you now that there's a refund provision in there.

Mr. STICKLES. I suggest that it might encourage other carriers to emulate Matson, which would mean more increases.

We, for instance, have had the first increase in the Guam trade for many years as just now. We had the recent increase in the Puerto Rican trade after many years of no increase at 15 percent.

That's one approach. Fewer rate increases but higher percentage, and that means fewer cases that are subject to investigation. But that's not the way Matson has been doing it and that's up to Matson.

But as I say, it could encourage other carriers to do the same thing. That would mean more cases than we have today.

Senator INOUYE. Since the repeal of section 6, how many rate increases has Matson filed affecting Sealift Command?

Mr. STICKLES. Matson has filed two in 1975, one in 1976, one in 1977, and early one in 1978, and there's one, I believe, pending for the Commission's decision on investigation.

Senator INOUYE. So they filed five with one pending.

Mr. STICKLES. Yes; two of those were not ordered investigated, so they did not go to a proceeding.

Senator INOUYE. So three were investigated.

Mr. STICKLES.. Yes; one of them was coupled with the longstanding docket 73–22. Then there were two subsequent ones that were investigated.

We participated in all of them.

Senator INOUYE. And what were the results?

Mr. STICKLES. The rates have been found just and reasonable in docket 73–22 by the Commission.

In the other two cases, docket 75–57 and docket 76–43, the presiding administrative law judge ruled that they were just and reasonable and exceptions have been taken to that ruling. And so the matter will be before the Commission for a decision.

Senator INOUYE. So all of the rates filed by Matson since the repeal of sectiton 6 have been found to be just and reasonable.

Mr. STICKLES. Yes.

Senator INOUYE. Do you hold it against Matson for filing just and reasonable rates?

Mr. STICKLES. No; I don't, Mr. Chairman.

I might say in one of those cases, we contended that the judge was in error because he allowed too high a rate of return on equity to Matson.

Senator INOUYE. You've given the impression here earlier in the testimony that Matson was waiting for the year and the date had passed to file another one, suggesting that's all the legal department did.

I'm not trying to take Matson's part here, but are you suggesting that there may be some conspiracy between the FMC and Matson?

Mr. STICKLES. No; not at all. I think Matson has decided—they announced pubicly to the shipping community in Hawaii and on the west coast that they were going to file more frequent increases at lower levels than the reverse. And they contend they're justified because of inflation and because of the new ships that they have put in the trade.

And that remains to be seen.

When the Commission finally rules on two of the cases whether they may have a case, I'm not suggesting any conspiracy, but I'm just saying that that type of an approach causes a lot of proliferation of proceedings.

Matson is willing to occupy the times of its lawyers in conducting a greater number of rate cases and the rest of us have no choice but to follow along.

I'm not criticizing Matson's decision, but I wouldn't like to see all of the carriers emulate Matson, because then it would become truly burdensome. And this bill would encourage that approach.

Senator INOUYE. In your statement you spoke of increasing competition with respect to our noncontiguous domestic trade.

Isn't it true that there is absolute freedom of entry for U.S. flags?

Mr. STICKLES. That's correct, Mr. Chairman.

Senator INOUYE. So is there any restriction?

Mr. STICKLES. No; there isn't. I might add that that was a statement that the Office of Management and Budget asked us to add to this statement.

Senator INOUYE. Even if it's not accurate?

Mr. STICKLES. I don't know the extent to which they understand the situation, but I agree that there's complete freedom of entry.

Senator INOUYE. What was the purpose of putting that false statement in the testimony?

Mr. STICKLES. They're explaining the position of the administration and similar provisions, and I think they're talking about other forms of transportation, really, when they want that put in, such as the railroads.

They might have reference to the so-called 4–R Act.

Senator INOUYE. Even if you pointed this out to OMB, they insisted that you leave that portion.

Mr. STICKLES. In all candor, I didn't point it out to them, Mr. Chairman. They put it in, because they asked.

Senator INOUYE. Will you point out to OMB that under the present law, there's absolute freedom of entry?

Mr. STICKLES. Yes, sir.

Senator INOUYE. I don't want people to get the impression that the Congress of the United States has condoned the existence of monopolies in the offshore trade. We have a few questions we'd like to submit which are a bit more technical in nature.

Would you respond to them, please?

Mr. STICKLES. I'd be happy to, Mr. Chairman.[1]

I'd like, before stopping, Mr. Chairman, just to call your attention to a matter that was published in the Federal Register on June 26, 1978, by the Administrative Conference of the United States.

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[1] The questions of the subcommittee were submitted but were not answered by the witness in time for the printing of this hearing.

These are recommendations for the conduct of regulatory proceedings. And they made some suggestions there, and they suggested that rigid time frames not be adopted by legislation but be left to regulatory bodies for treatment by rulemaking, because there would be some discretion in the approach to it. And I think that that is something that the committee might want to consider in its deliberations on that portion of this bill.

Senator INOUYE. If we deleted this rigid time limit of 180 days, what would you suggest we place in lieu of that, considering the present circumstances of 4 years or 6 years for some proceedings to be concluded?

Mr. STICKLES. I think the Commission now has indicated its desire to speed up its proceedings. I think that we will not see those kinds of delays again.

I suggest maybe some other form of pressure on the Commission to speed it up, but not to place the punishment on this shippers by finding rates automatically just and reasonable.

As the law is now, once the suspension period runs out, rates go into effect, and the carrier collects the revenue. I have no problems with that. He would get to keep that if the rate was ultimately found to be just and reasonable. And with the refund provision, would have to refund it.

Senator INOUYE. Once again, I thank you very much, Mr. Stickles. You've been very helpful, sir.

Our next witness is the vice president of Matson Navigation Co., Mr. John Kuykendall.

STATEMENT OF JOHN R. KUYKENDALL, VICE PRESIDENT, MATSON NAVIGATION CO.

Mr. KUYKENDALL. Good afternoon, Mr. Chairman. If you prefer, I could read an abbreviated statement.

Senator INOUYE. Without objection, your full statement will be made part of the record.

I believe the burden is on your shoulders now.

Mr. KUYKENDALL. Fine.

H.R. 6503, through the establishment of deadlines, would require the Federal Maritime Commission to timely complete all proceedings undertaken by it pursuant to the 1933 act. As a frequent participant in proceedings at the Commission and its predecessors in the post-World War II period, Matson as a matter of general equity supports prompt adjudication and conclusion of all regulatory proceedings. Based upon our considerable experience, we are satisfied that the deadlines specified within the bill are both reasonable and feasible.

Under current law, the Commission is authorized without limitation to suspend the effective date of any change for a maximum 4-month period. Therefore, in the event that this suspension power is exercised, a total of 150 days have passed before the carrier may begin applying any new or revised tariff provision. To the extent that the effective dates of general rate increases are suspended, the increased revenue lost by the carrier during the supension period is never recovered, and as such can represent a substantial financial penalty

applied to the carrier before there has been any finding of unlawfulness.

This is especially punitive since common carriers serving the domestic noncontiguous trades are faced with unprecedented capital commitments for replacement of vessels and associated equipment, and further improvement of terminal equipment and facilities.

The bill would also permit a carrier to file one 5 percent general rate increases were suspended under existing law, without prejudice to the during any 12-consecutive month period, with an assured effective date of 90 days earlier than would be the case if the effective date of the increase were suspended under existing law, without prejudice to the Commission's right to docket the rate changes for hearing as to their justness and reasonableness, and with the carrier retaining the burden of proof.

Matson also supports this provision of the bill.

The bill's limitation on the Commission's suspension power will have a minimal and insignificant impact on the general consuming public and the economies of the domestic noncontiguous communities. In Hawaii, for example, it is customary to maintain 30- to 60-day inventories or nonperishable goods. Approximately 87 percent of the total cargo transported to Hawaii from the Pacific coast moves into inventory. Since these goods would have been transported prior to the effective date of the general increase in freight rates, there need be no immediate pass-through of such increase.

In certain instances there is no immediate pass-through of the carrier's rate increase. In the case of national retail organizations, especially those which extend national or regional pricing of their products to the domestic noncontiguous communities, they probably absorb the increase in freight rates until such time as they can combine it with other cost increases, and then effect an increase in the price of their goods.

Regulated shippers ordinarily cannot pass through the increase until at least 30 days after it becomes effective in the ocean carrier's tariff by publishing the increase in their own tariffs, and filing the same to become effective on 30-days' notice.

To the extent that a nonsuspended 5-percent increase is immediately passed through to retail consumers, the economic impact on such individuals would be minimal, as illustrated by the fact that a 5-percent increase in freight charges in the Pacific coast-Hawaii trade on an 18-cubic foot household refrigerator would only be $2.20; 94 cents on a household clothes dryer; 54 cents on a 23-inch television set; and 2½ cents on a 25-pound bag of rice. If 10 percent of the increase were to be found unlawful, those consumers purchasing the above items during the 180-day period required for the regulatory process would have been overcharged as follows: In the case of the refrigerator, 22 cents; the dryer, 9.4 cents; the television, 5.44 cents; in the case of the 10-pound bag of rice, a quarter cent.

In calendar year 1976, 6,681,000 weight tons of cargo were transported by surface means between the State of Hawaii and the U.S. mainland. Of that total, 45 percent was transported by nonregulated carriers not subject to the 1933 act, and thus not affected by this bill.

In calendar year 1976, also, over 12 million weight tons of cargo

were transported between the State of Hawaii and all points, including foreign and domestic. Of that total, 46 percent moved in foreign commerce, and thus also is not subject to the 1933 act.

The effect on the economies of the domestic noncontiguous communities of permitting a 5-percent general rate increase to become effective at a date 90 days earlier than would be the case if the effective date of the increase were suspended under existing law is clearly minimal. And in the case of Hawaii, with a total trade of $3,204 million, the 90-day effect of a 5-percent rate increase would be $1,825,000, or very much less than 1 percent.

In evaluating the benefit to carriers of the bill's modest revision of the Commission's suspension power, the fact that there is free entry to and from the noncontiguous trades should be considered. Any U.S.-flag carrier, provided that it does not receive Federal operating-differential subsidy for operation in the foreign commerce, may enter or withdraw from the noncontiguous trades without benefit of prior permission or certification.

Also worthy of note is the fact that carriers will not be permitted to make rates collectively in such trades, except in unusual circumstances where an overwhelming case can be made that such action would be in the public interest.

Mr. Chairman, we support passage of the bill, and very much appreciate this opportunity to present the basis of our support. Thank you, sir.

Senator INOUYE. You indicated in your opening remarks that the suspension of rates is unfair to carriers. Doesn't the present law authorize the Commission to suspend rates?

Mr. KUYKENDALL. Yes, sir, it does, but for a maximum period of 4 months. They may suspend them for a shorter period, but for a maximum period of 4 months. For example, if the carrier is seeking to improve their operating revenues by $6 million a year, then a 4-month suspension represents a penalty of $1.5 million.

Senator INOUYE. What do you think of the proposal suggested by the deputy counsel of the Military Sealift Command; to wit, that we amend the present law by just one provision.

Mr. KUYKENDALL. By what, sir?

Senator INOUYE. One provision, and that is to permit refunds.

Mr. KUYKENDALL. I don't think we would be opposed to that individual change as such. I've been asked the question, as a matter of fact, why we're supporting this bill, because it takes 2 or 3 years for a decision to be rendered. We are collecting the revenue during that total period of time. But as pleasant as that may be, as a matter of policy we don't really think that's good regulatory practice.

Senator INOUYE. What do you think are the major causes for this delay?

Mr. KUYKENDALL. It's not any single thing, really, Mr. Chairman. I think all participate in it. The lawyers on both sides will ask for delay or extensions of time. Perhaps the administrative law judge, for one reason or another, doesn't expeditiously schedule the prehearing conference. And it's just a whole series of things. I wouldn't say there was any single major cause. It's a composite of things, in which I think everyone has participated, under the existing rules, regulations, and law.

Senator INOUYE. Do you believe that the present personnel of FMC would be capable of carrying out the intent of this bill?

Mr. KUYKENDALL. I would say so. I would think there is a willingness to do things more expeditiously and in a more timely manner. But, human beings being what they are, I think that it would be helpful to have these mandated deadlines. I think they're capable of living with those deadlines.

Senator INOUYE. I would assume that in all the cases that were not resolved expeditiously, 4 years and 6 years, that the attorneys representing the parties all felt that their clients had a right to delay the proceedings under the rules. Now, if you limit that to 180 days, would that necessarily mean that certain rights would be denied the parties?

Mr. KUYKENDALL. I don't prosecute these proceedings on behalf of Matson. But certainly I've been connected with them long enough to, I think, answer that question. In my opinion, it would not. There's certainly nothing unique about any of these proceedings. I'll just limit my answer to Hawaii. We've had so many of these proceedings, and certainly the ins and outs are pretty well known in the case of those affecting Hawaii. It's certainly not a unique thing.

Senator INOUYE. What was the longest rate case you had?

Mr. KUYKENDALL. The 1973 rate increase was—let's see, that was filed February 15, 1973, and was decided June 30, 1978. I would say that's probably about—well, the longest that we've had since World War II.

Senator INOUYE. If all parties cooperated to expedite the matter, how soon could that have been resolved?

Mr. KUYKENDALL. I know no reason why it couldn't be done in 180 days.

In that connection, if I may, I'd just like to make this further observation. There hasn't been too much emphasis on it in the prior testimony, with respect to this 180-day limited period of time. We still carry the burden of proof, and yet we're supporting that provision of the bill. We feel that even though we continue to carry the burden of proof and thus have to prove that our rates are just and reasonable, we believe that we can do that within the time available to us during the 180-day period.

I really don't feel that anybody's rights will be abrogated in any way. I think the 180 days is a reasonable requirement.

Senator INOUYE. Can you give us an idea of the 1973 case, just for the record, how many days of hearings were held on the 1973 case?

Mr. KUYKENDALL. I wish I had that chronology with me, Mr. Chairman. I don't. I just don't recall. There was a consolidation along the line.

Senator INOUYE. Submit the file, just for the record, and I'll ask the FMC to do the same thing.[1] I'd like to know why it took so long.

Mr. KUYKENDALL. I did a chronology on it one time.

Senator INOUYE. I'd just like to see if we can convert that into 180 days.

Mr. KUYKENDALL. OK, yes, sir.

Senator INOUYE. Maybe you can tell us this at this point: How long did it take the administrative judge to render a decision?

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[1] See pp. 43 and 45.

Mr. KUYKENDALL. Yes; I do have that. The administrative law judge filed his initial decision on February 22, 1977. That would be just a little over about 4 years after the filing date. I do have a partial chronology here. There were filings of exceptions—well, this was of more recent vintage. The filing of exceptions was completed by March 24. And then, as I said, we did have a decision on June 30. But I realize you want much more than that. That's all I have with me here at this time in the way of a chronology.

Senator INOUYE. When were the hearings concluded?

Mr. KUYKENDALL. That's the kind of thing I don't have, Mr. Chairman. I'm sorry, I just don't have that with me.

Senator INOUYE. I think it would be very helpful for the subcommittee to have before it an anatomy of this 1973 case, in order to have an idea of why the delay.

Mr. KUYKENDALL. Yes, sir.

Senator INOUYE. Is it the intention of Matson, as suggested by the Military Sealift Command, that with the passage of this bill, you intend to, every year and a day, file?

Mr. KUYKENDALL. No; that's not correct. He was correct in indicating that we had publicly indicated that we were going to do this. That's been going on for some time now, much predating this bill. What it comes down to is, I think in prior years—of course, during the 10-year period, 1961 to 1971, we had no rate increases; we had rate stability. We would I think in error, tend to absorb cost increases, accumulating them, and then come in for 10, 12½, or 15 percent increases.

But I think it was recognized that that was not terribly good management technique. The thing to do, rather than suffer that accumulation and absorption of increased costs, was to come in at some decent interval, at some greater frequency, and attempt to pass through those costs to our customers.

But looking at the history, again, of our rate increases since 1971, we never have had two increases in a 6-month period. There's usually a 6-, 7-, 8, and 12-month interval between increases.

Senator INOUYE. I thank you very much, Mr. Kuykendall. I will be submitting a few questions for your responses, and I will be looking forward to receiving your chronology and explanation of this 1973 case.

Mr. KUYKENDALL. Thank you, sir.

[The statement, questions and answers, and additional information follow:]

STATEMENT OF JOHN R. KUYKENDALL, VICE PRESIDENT, MATSON NAVIGATION CO.

Mr. Chairman, we again appear in support of what we consider to be a long overdue and much needed updating of the 1933 Act—a regulatory statute enacted in an environment very different from that prevailing today.

H.R. 6503, through the establishment of deadlines, would require the Federal Maritime Commission to timely complete all proceedings undertaken by it pursuant to the 1933 Act. As a frequent participant in proceedings at the Commission and its predecessors in the post-World War II period, Matson as a matter of general equity supports prompt adjudication and conclusion of all regulatory proceedings. Based upon our considerable experience we are satisfied that the deadlines specified within the bill are both reasonable and feasible.

The Act presently requires that common carriers by water providing service between the U.S. mainland and the domestic noncontiguous communities of the

United States—primarily Guam, Hawaii, Puerto Rico, and the Virgin Islands and the State of Alaska in respect to certain carriers transporting a relatively minor share of its total domestic cargo—file all tariff changes, including general rate increases, on a date not less than 30 days in advance of the scheduled effective date of the change. The Commission is authorized without limitation to suspend the effective date of any change for a maximum four-month period; therefore in the event that this suspension power is exercised, a total of 150 days have passed before the carrier may begin applying any new or revised tariff provision. To the extent that the effective dates of general rate increases are suspended, the increased revenue lost by the carrier during the suspension period is never recovered and as such can represent a substantial financial penalty applied to the carrier before there has been any finding of unlawfulness. This is espeically punitive since common carriers serving the domestic noncontiguous trades are faced with unprecedented capital commitments for replacement of vessels and associated equipment and further improvement of terminal equipment and facilities. No longer can carriers acquire surplus World War II vessels and convert them to container or other types of specialized vessels; it is now necessary that vessels be constructed from the keel up—by law in U.S. shipyards—at a cost of $21,100,000 for a modern container vessel delivered in 1970 and $65,000,000 for the same vessel delivered in 1978. If the shipping public is to have the greatest possible opportunity for efficient transportation at the lowest possible cost, carriers and their investors must continue to timely provide sufficient investment capital.

As passed by the House of Representatives, H.R. 6503 permits a carrier to file during any 12 consecutive month period a general rate increase of 5 percent or a series of increases aggregating not more than 5 percent on an exempt-from-suspension basis. In placing this modest limitation on the Commission's suspension power, additional obligations or burdens were concurrently placed on the carriers, viz.:

1. General changes in rates must be filed on a date not less than 60 days prior to the scheduled effective date of the change, thus delaying the effective date for 30 days beyond the present 30-day filing requirement.

2. The Commission is authorized to suspend the effective date of all suspendable tariff changes for a period of 180 days and in some instances for 240 days, a considerable increase from the current 4-month period. Therefore, the scheduled effective date of that portion of any single general rate increase in excess of 5 percent or any portion of a general rate increase resulting in an aggregate increase in excess of 5 percent during any period of 12 consecutive months could be suspended for these extended periods of time.

3. If any part of the unsuspended portion of a general increase in rates is found to be unjust and unreasonable the carrier is required to refund with interest the unlawful portion of the increase. The carrier would be required to initiate payment of any refund ordered by the Commission and consequently would bear the administrative costs associated therewith.

In summary, H.R. 6503 permits a carrier to file one 5 percent general rate increase or a series of increases aggregating not more than 5 percent during any twelve consecutive month period with an assured effective date of 90 days earlier than would be the case if the effective date of the increase were suspended under existing law, without prejudice to the Commission's right to docket the rate changes for hearing as to their justness and reasonableness, with the carrier retaining the burden of proof.

I would like now to briefly comment on certain operative effects of the suspension power and the limited exemption from suspension authorized by H.R. 6503 as referred to this Committee:

1. The bill's exemption provision will not in many instances represent a change in regulatory practice. The Commission does not always exercise its present unlimited suspension power.

2. A general increase becoming effective as scheduled without suspension very probably contains within it a small portion, if any, that may be found unlawful. Normally, when hearings are ordered in connection with general rate increases, differences of opinion among parties to the proceeding and the resultant controversy focus on only a part of the increase—perhaps 5 percent to 10 percent of the increase.

3. This bill will not encourage carriers to file for general rate increases.—Carriers will file general increases in their freight rates at whatever frequency and percentage necessary to cover increased operating costs and to provide a rate

of return or profit margin considered just and reasonable by the regulatory agency. It is reasonable to expect that carriers are not anxious to assume the expense of participating in regulatory proceedings and run the risk of having to make refunds with interest, with the administrative costs attendant thereto, by filing increases that obviously are not supportable.

It is clear that the bill's very modest limitation on the Commission's suspension power will not adversely affect the economic interests of persons using these common carrier services subject to the 1933 Act. With the proposed 60 days advance notice of prospective general rate increases, such persons can more easily adjust their actiivties to this change in their operating or marketing costs. If a portion of a nonsuspended general increase is found to be unjust and unreasonable, then of course such persons would receive refunds with interest from the carrier. Shippers and consignees would also have the potential economic benefits of a 180-day suspension period for those increases or portions thereof not subject to the suspension exemption.

The bill's limitation on the Commission's suspension power will have a minimal and insignificant impact on the general consuming public and the economies of the domestic noncontiguous communities:

1. In Hawaii, for example, it is customary to maintain 30- to 60-day inventories of non-perishable goods; approximately 87 percent of the total cargo transported to Hawaii from the Pacific Coast moves into inventory. Since these goods would have been transported prior to the effective date of a general increase in freight rates, there need be no immediate passthrough of such increase.

2. In certain instances there is no immediate passthrough of the carrier's rate increase. National retail organizations, especially those which extend national or regional pricing of their products to the domestic noncontiguous communities, probably absorb the increase in freight rates until such time as they can combine it with other cost increases and then effect an increase in the price of their goods. Regulated shippers—freight forwarders, NVOCC's, and used household goods carriers—ordinarily cannot passthrough the increase until at least 30 days after it becomes effective in the ocean carrier's tariff by publishing the increase in their own tariffs and filing same to become effective on 30 days notice.

3. To the extent that a nonsuspended 5 percent increase is immediately passed through to retail consumers, the economic impact on such individuals would be minimal, as illustrated by the fact that a 5 percent increase in freight charges in the Pacific Coast-Hawaii trade on an 18-cubic foot household refrigerator would be only $2.20; $0.94 on a household clothes dryer; $0.54 on a 23-inch television set; and $0.025 on a 25-pound bag of rice. If 10 percent of the increase were to be found unlawful, then those consumers purchasing the above items during the 180-day period required for the regulatory process would have been "overcharged" as follows: Refrigerator, $0.2201; dryer, $0.0940; television, $0.0544, and rice, $0.0025.

4. In calendar year 1976, 6,681,334 weight tons of cargo were transported by surface means between the State of Hawaii and the U.S. mainland; of that total 45 percent was transported by non-regulated carriers not subject to the 1933 Act and thus not affected by this bill.

5. In calendar year 1976, 12,377,180 weight tons of cargo were transported between the State of Hawaii and all points including foreign and domestic; of that total 46 percent moved in the foreign commerce and thus also is not subject to the 1933 Act nor affected by the provisions of this bill.

6. The effect on the economies of the domestic noncontiguous communities of permitting a 5 percent general rate increase to become effective at a date 90 days earlier than would be the case if the effective date of the increase were suspended under existing law is clearly minimal:

	90-day effect of 5-percent rate increase	Compared with annual value of trade
Alaska	$338,092	[1] $10,742,809,000
Guam	321,325	292,772,882
Hawaii	1,824,588	3,204,700,000
Puerto Rico	3,093,638	9,385,105,046
Virgin Islands	108,657	477,300,133

[1] Gross business receipts.

We have previously mentioned the substantial commitments of private capital that will be required if the domestic noncontiguous communities are to have the best possible surface transportation system for movement of their commerce to and from the U.S. mainland. The largest single requirement for capital would of course be for new vessels which are specialized and much larger than the "standard" vessels previously operated by the Merchant Marine; the size of these greatly enlarged vessels introduces a new element of risk to the investor since a fleet's lift capacity cannot be as easily adjusted to a change in demand as was the case with the smaller units previously employed.

In evaluating the benefit to carriers of the bill's modest revision of the Commission's suspension power, the fact that we have free entry and exit to and from the noncontiguous trades should be considered; any U.S. flag carrier (provided that it does not receive federal operating differential subsidy for operation in the foreign commerce) may enter or withdraw from the noncontiguous trades without benefit of prior permission or certification. Also worthy of note is the fact that carriers will not be permitted to make rates collectively in such trades except in unusual circumstances where an overwhelming case can be made that such action would be in the public interest.

Mr. Chairman, we support passage of the bill and very much appreciate this opportunity to present the basis of our support. Thank you very much.

QUESTIONS OF THE COMMITTEE AND ANSWERS THERETO

Question. Is it your understanding that H.R. 6503 places the burden of identifying the shippers who have been overcharged and paying the requisite refunds on the carrier whose rates have been found unlawful?

Answer. It is our clear understanding of the bill that in being ordered by the Commission to make a refund to any entitled person that the burden of identifying those persons and making the required disbursement of the refund would be the responsibility of the carrier.

Question. By limiting the Commission's suspension power in this manner (general rate increase), won't the carriers be encouraged to file general rate increases?

Answer. It is our view that any limitation on the Commission's suspension power will not encourage carriers to file general rate increases.

Generally the magnitude and frequency of general rate increase filings are matters beyond the control of the carrier due to events beyond its control; with or without suspension, carriers undertake to increase operating revenues whenever that becomes necessary as a means of recovering increases in operating costs and/or to bring their financial results or rate of return to an allowable level.

Carriers are not anxious to undertake the expense and time required to prepare the supportive financial data that must by regulation be filed simultaneously with the tariff filing and to participate in regulatory proceedings. nor to incur the expense of disbursing refunds with interest.

Question. H.R. 6503 provides a "no suspend" zone for "general rate" adjustments (i.e., one which would affect more than half of the tariff items in all of the tariffs of a carrier in a particular trade and would result in an increase or decrease of not less than 3 percent in the carrier's gross revenues in that particular trade).

(*a*) Some critics have said they believe "no suspend" procedures should only be applied to increases and decreases in individual rates and commodities because such use would provide a better opportunity for the establishment of individual cost and service based rates.

Would you please comment?

Answer. We do not preceive any advantage in limiting the application of "no suspend" procedures to changes in individual rates; to the extent that it is necessary or desirable to review the level of individual rates on the basis of costs and service rendered, that can be done without making provision for a suspension exemption in the Act for individual tariff changes.

Question. If the FMC orders a refund after a hearing on a "general rate increase" only 6 months will have elapsed since the rate increase became effective. Under those circumstances, is it correct to maintain as some do, that such refunds seldom flow back to the ultimate consumer?

Answer. Due to the very large number of shippers and consignees from whom we receive freight revenue we would have no way of knowing to what extent this group of persons would undertake to pass through any refund to their customers, the ultimate consumer.

In the case of a large shipper paying us freight charges of $1,000,000 per year, a 5-percent general rate increase would represent an increase in freight charges for that shipper of $50,000 per year. Since the controversy during a hearing is nomally focused on some portion of the increase, a finding that an entire increase is unjust and unreasonable rarely if ever happens; therefore, if 10 percent of the 5-percent general increase were found to be unjust and unreasonable, the amount of refund before interest due to the shipper in this instance for the 6-month adjudication period would be only $2,500.

Question. It has been said that a 10 percent savings in freight costs translates into a 0.6 percent of landed costs for the buyer of goods.

(*a*) Does the buyer of goods typically pass that savings on to the ultimate consumer?

(*b*) Even if the buyer does, the savings would be minimal if at all, wouldn't you agree? Especially since the rate could only be in effect 180 days plus the time of appeal if any before the Commission ordered a refund.

(*c*) If that savings is minimal or non-existent, is it significant that H.R. 6503 provides for refunds to shippers where a rate increase is found to be unjust and unreasonable?

Answer. We have no information as to the extent that savings in freight costs are passed on by our customers to ultimate consumers but we would agree that the savings would be minimal in terms of the retail price of goods inasmuch as ocean transportation costs are only a part of the total distribution cost for the goods and a still smaller portion of the retail price of such goods. Consequently, a carrier refund may not be significant in terms of its relationship to the retail price of goods but could be more significant in terms of the operating costs of the shipper or consignee paying the ocean freight charges.

Question. (*a*) As a general rule, what percent of the "landed cost" of goods or commodities is attributable to ocean transportation freight rates?

(*b*) It has been said that a 10 percent savings in freight costs translates into 0.6 percent of landed cost for the buyer, whereas the same 10 percent to the ocean carriers may be the difference between survival as a viable transportation system and non-survival.

Would you care to comment on that statement?

Answer. As a common carrier by water we have no way of determining the relationship between "landed cost" of goods and the ocean freight charges for transportating such goods; but we have calculated, for example for calendar year 1975, that freight charges assessed by FMC regulated vessel operating common carriers by water serving the State of Hawaii reported 6.27 percent of the value of the state's total trade with the U.S. mainland of $2,326,300,000.

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

MATSON NAVIGATION CO.,
Washington, D.C., September 1, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN INOUYE: During my recent appearance before the Subcommittee in connection with H.R. 6503, you requested that we submit a chronology of FMC Docket No. 73-22, which as you will note was consolidated by the Commission with a later proceeding 73-22-1, and an explanation of why it took so long for completion of this proceeding. The requested chronology as well as an analysis in brief of it are attached hereto.

Although some portion of the overall delay was due to consolidated consideration of the February 15, 1973 and March 7, 1975 general increases and the necessity of reopening the record after the withdrawal of SeaTrain Lines, there were other major causes for the inordinate degree of delay. For example, 291 calendar days elapsed between completion of briefing and issuance of the Administrative Law Judge's initial decision, while 367 calendar days passed before the Commission served its decision after hearing oral argument.

As you will also note from the chronology there were several series of hearing days at various locations requiring a total of 52 working days for completion

of that phase of the investigation. It should be noted that two subsequent proceedings involving general rate increases in the Hawaii trade required 14 days of hearings for Docket No. 75–57 and 7 hearing days for Docket No. 76–43, thus demonstrating that the hearing phase of the proceeding need not take an extended amount of time.

In addition to a demonstrated ability to reduce the number of days expended on hearings, there are the following additional considerations that will make it feasible to conclude a proceeding within 180 days after the scheduled effective date of general rate changes:

1. The Commission has recently changed its regulations to provide that those issues pertaining to individual commodity rates will no longer be considered in general revenue proceedings. During prior proceedings a great deal of time was expended on examining the level of certain individual rates rather than focusing on the reasonableness of the carrier's earnings. (See Amendment No. 2 to General Order No. 16.)

2. Carriers will be filing exhibits and statements of direct testimony along with the usual financial data required by General Order No. 11 concurrently with the filing of the general increase, at a date not less than 60 days prior to the scheduled effective date of the increase. If this collection of data is made available to protestants they as well as the Commission staff can review and study the data during this 60 day period prior to commencement of the 180 day period specified for the completion of proceedings.

3. The requirement of the bill that the Commission publish the reasons for scheduling of a hearing and the specific issues to be resolved will contribute to the objective of expediting conclusion of proceedings.

4. Prescription of guidelines for the determination of a just and reasonable rate of return or profit, as required by the bill, will also facilitate the prompt conclusion of proceedings.

Consideration of the above, in its totality, indicates the feasibility of a 180 day deadline with sufficient time for adequate discovery on the part of any party of interest and for the provision of proof by proponent carriers.

Yours truly,

JOHN R. KUYKENDALL.

Enclosures.

ANALYSIS OF CHRONOLOGY

1. Between effective date and prehearing conference, 67 days.
2. Between prehearing conference and commencement of hearing, 61 days.
3. Between commencement and conclusion of hearing, 155 days.
4. Between conclusion of hearing and filing of petition for reopening, 74 days.
5. Between filing of petition and reopening prehearing conferece, 111 days.
6. Between reopening prehearing conference and commencement of hearing, 152 days.
7. Between commencement and conclusion of hearing before consolidation, 81 days.
8. Between conclusion of hearing and issuance of order of consolidation, 102 days.
9. Between order of consolidation and commencement of hearing, 111 days.
10. Between commencement and conclusion of consolidated hearing, 88 days.
11. Between conclusion of consolidated hearing and ALJ's initial decision, 382 days.
12. Between replies to exceptions to the initial decision and the Commission's decision, 463 days.

CHRONOLOGY—FMC CONSOLIDATED DOCKETS NOS. 73–22 AND 73–22–1

Date	Event	Elapsed days 73–22	Elapsed days 73–22–1
1973:			
Feb. 15	12½ percent general increase filed		
Apr. 20	Order of investigation issued		
Apr. 21	Effective date	0	
June 27	ALJ conducts prehearing conference in San Francisco	67	
Aug. 27–30	Hearing commences in San Francisco	128	
Nov. 6–8	Hearing resumes in San Francisco	199	
Nov. 13–16	Hearing again resumes in San Francisco	206	

CHRONOLOGY—FMC CONSOLIDATED DOCKETS NOS. 73-22 AND 73-22-1

Date	Event	Elapsed days 73-22	Elapsed days 73-22-1
1974:			
Jan. 29–Feb. 7	Hearing concluded in Washington, D.C	283	
Apr. 22	Petition to reopen proceeding (SeaTrain withdrew from the trade).	366	
June 19	Proceeding ordered reopened	424	
Aug. 22	A new ALJ assigned and conducts reopening prehearing conference in Washington, D.C.	488	
1975:			
Jan. 21–14	Hearing commences in San Francisco	640	
Feb. 19–20	Hearing resumes in San Francisco	669	
Mar. 7	5 percent general increased file	685	
Apr. 8–11	Hearing again resumes in San Francisco	717	
Apr. 24	Order of investigation as to 5-percent increase issued	733	
Apr. 25	Effective date of 5-percent increase	734	0
June 18	ALJ conducts prehearing conference on 5-percent increase	738	54
July 22	Order of consolidation of dockets Nos. 73-22 and 73-22-1	822	88
Nov. 10 14	Hearings commence in San Francisco	933	199
Nov. 17–25	Hearings resume in Honolulu	940	206
Dec. 1–8	Hearings again resume in San Francisco	954	220
1976:			
Jan. 6–7	Hearings resume in Washington, D.C	990	256
Feb. 3–5	Hearings again resume in San Francisco	1002	284
March 29	Opening briefs filed	1056	338
May 7	Reply briefs filed	1095	377
1977:			
Feb. 22	ALJ's initial decision issued	1386	668
March 9	Exceptions to initial decision filed	1401	683
March 24	Replies to exceptions filed	1416	698
March 28	A protestant requests oral argument	1420	702
June 3	Request for oral argument granted by Commission	1487	769
June 28	Oral argument takes place before Chairman and Commissioners	1512	794
1978: June 30	Decision by FMC issued	1879	1161

[The following was referred to on pp. 23 and 38:]

FEDERAL MARITIME COMMISSION,
Washington, D.C., September 13, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine & Tourism,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: During the August 29, 1978 testimony of Vice Chairman Moakley and Commissioner Kanuk on H.R. 6503 before your Subcommittee, two matters arose to which this letter responds. First, you requested that the Commission furnish a chronology of events in connection with Docket No. 73–22 Matson Navigation Co.—Proposed Changes in Rates Between the U.S. Pacific Coast and Hawaii. A chronology is attached.

Second, you questioned the Commission witnesses on whether H.R. 6503 should include a definition of "trade" and concluded that it would be appropriate to set forth such a definition in the report on the bill. The following language is offered for your consideration in so defining that term.

> "The term 'trade', as used in this bill means the carriage of cargo, both inbound and outbound, between geographic areas within the scope of the Intercoastal Shipping Act, 1933, by common carriers by water pursuant to tariffs on file with the Federal Maritime Commission."

Please let me know if we can be of further assistance.

Sincerely,

RICHARD J. DASCHBACH, *Chairman.*

Attachment.

[Docket No. 73–22]

MATSON NAVIGATION CO.—PROPOSED CHANGES IN RATES BETWEEN THE U.S. PACIFIC COAST AND HAWAII

April 20, 1973—Served Order of Investigation and Suspension to appear in Federal Register. Proceeding to be assigned for public hearing before an ad-

ministrative law judge to be held at a date and place to be determined by presiding judge. Persons having an interest in this proceeding and desiring to intervene should notify Secretary promptly and file petitions to intervene. Appeared Federal Register April 27, 1973, Vol. 38, No. 81—Friday, pp. 10503-10504.

April 23, 1973—Served notice assigning proceeding to Administrative Law Judge Stanley M. Levy for hearing and initial decision.

May 11, 1973—Served notice of prehearing conference scheduled for June 5, 1973, Room 1211, at 10:00 a.m., Washington.

May 25, 1973—Received Petition of Wine Institute for leave to intervene.

May 30, 1973—Served notice of Judge Levy Rescheduling Prehearing Conf. rescheduled for 10:00 a.m., June 27, 1973, Room 1211, Washington.

June 7, 1973—Received request of H.C. for Motion for Production of Documents.

June 8, 1973—Served notice enlarging time to serve discovery requests, granting request of Pineapple Growers Association until June 11, 1973.

June 11, 1973—Received H.C.'s Reply to Petition for Show Cause Order.

June 12, 1973—Served notice of reduction of time to reply to Motion for Production of Documents—documents sought by H.C. from Matson to be produced for inspection and copying at office of respondent on June 22, 1973, at 10:00 a.m. P.D.T.

June 12, 1973—Received Reply of Matson Navigation Co. to Petition of American Home Products Corp., the National Small Shipments Traffic Conference and Drug and Toilet Preparation Traffic Conference (served May 29, 1973).

June 13, 1973—Received First Set of Interrogatories to Matson Navigation Co. by Pineapple Growers Association of Hawaii. Also received Notice of Depositions.

June 18, 1973—Served notice enlarging time within which to respond to discovery requests.

June 25, 1973—Received Written Objections and Motion to Strike of Wine Institute to Requests by Matson Navigation Co. for Production of Data and Documents.

June 28, 1973—Served notice of hearing and schedule for serving prepared direct testimony. Phase I of hearing will begin at 9:30 a.m. August 27, 1973 in San Francisco, California. Location of hearing room to be announced. Phase II of hearing will begin at 9:30 a.m. Nov. 6, 1973, Room 1215, Washington.

June 28, 1973—Served notice of Judge Levy granting permission to Wine Institute for leave to intervene.

June 28, 1973—Serve Order on Requests for Information.

July 2, 1973—Served notice of location of hearing room: Hearing scheduled for August 27, to be held in Court of Claims, Room 2041, 450 Golden Gate Ave., San Francisco, California.

July 2, 1973—Received notice of Deposition Postponement filed on behalf of Pineapple Growers Association of Hawaii.

July 20, 1973—Served order of Denial of Petition for Insurance of Order to Show Cause.

August 23, 1973—Received Petition to Intervene from Traffic Managers Conference of California.

November 11, 1973—Received Statement on Behalf of the Atlantic and Gulf/Indonesia and the Atlantic and Gulf/Singapore, Malaysia and Thailand Conference.

November 11, 1973—Served notice of Change of Place of Hearings. Hearing changed to U.S. Customs Courtroom, 630 Sansome St., San Francisco, Calif. and will begin at 9:30 a.m. on November 6, 1973.

November 19, 1973—Served notice of further procedural and hearing schedule; evidentiary hearing will begin on January 29, 1974 at a time and place to be announced.

December 6, 1973—Served notice of continued hearing on January 29, 1974 at 9:30 a.m. Location of hearing room to be announced.

December 19, 1973—Served Judge Levy's notice of correction of transcript.

January 17, 1974—Served notice giving location of hearing room; hearing scheduled for 9:30 a.m. January 29, 1974 will be held in Room 1215, Washington.

February 27, 1974—Served notice of late-filed exhibit (Stipulation Between H.C. and Respondent) admitted in evidence as Exhibit 170.

April 8, 1974—Received Opening Brief of H.C.

April 8, 1974—Received Opening Brief of H.H. Goods Forwarders Association.

April 9, 1974—Served notice of late-filed exhibits, received in evidence pursuant to motions of H.C. and P.G.A.H. Exhibits 171, 172, 173.

April 10, 1974—Recieved Brief on behalf of Oroweat Foods.

April 11, 1974—Received Proposed Fndings and Brief of the State of Hawaii; Initial Brief of Respondent Matson Navigation Co.

April 11, 1974—Received Opening Brief of the Pineapple Growers Association of Hawaii; Proposed Findings of Fact and Conclusions of Law in support of the above brief.

April 19, 1974—Served notice of Judge Levy granting corrections to be made in transcripts as requested by letters of P.G.A.H., dated March 25, 1974 and Matson, dated April 4, 1974.

April 22, 1974—Received Petition of Matson Navigation Co. for Reopening of Proceedings.

April 23, 1974—Served notice enlarging time to file reply briefs to June 10, 1974.

May 14, 1974—Served enlargement of time to reply to Matson's petition to reopen until June 15, 1974; reply briefs now scheduled to be filed on or before June 10, need not be filed pending ruling on petition to reopen.

June 19, 1974—Served Judge Levy's notice granting Matson's Petition to Reopen Proceeding.

August 6, 1974—Served notice enlarging time within which to file testimony to August 12, 1974 (proposed testimony of F. Eugene Weaver).

November 1, 1974—Served Notice of Reassignment. Assigned to Seymour Glanzer, ALJ.

November 13, 1974—Served Notice of Hearing. Continued hearing in this proceeding will begin January 21, 1975, at San Francisco, Calif., with further particulars as to time and location to be announced later.

January 10, 1975—Received Petition of MSC for leave to intervene.

January 14, 1975—Served notice of Judge Glanzer, giving time and location of hearing; Continued hearing will begin January 21, 1975, at 10:00 a.m. at the U.S. Custom Court, 630 Sansome St., San Francisco, Calif. Petition of MSC granted.

January 20, 1975—Served Notice of Commission that the Commission has determined that this proceeding does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Sec. 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

January 29, 1975—Served notice of continued hearing; hearing in this proceeding will continue in San Francisco, Calif., on February 19, 1975, further particulars as to time and location to be announced later.

February 5, 1975—Received transcript of hearing for January 22, 1975, San Francisco, Calif. Pages 2659 thru 2797.

February 10, 1975—Served notice of time and location of Continued Hearing; hearing to begin February 19, 1975 at 10:00 a.m., United States Customs Court, 630 Sansome St., San Francisco, Calif.

March 17, 1975—Received Petition of Respondent Matson Navigation Co. for Modification of Order of Investigation and Suspension.

March 21, 1975—Received Reply to Petition of Respondent Matson Navigation Co. For Modification of Order of Investigation and Suspension and Request of Department of Defense and Military Sealift Command for Suspension of Rate Increase.

March 26, 1975—Received Answer of the State of Hawaii to the Petition of Respondent Matson Navigation Co. for Modification of Order of Investigation and Suspension.

March 28, 1975—Served Judge Glanzer's notice granting motion to correct transcript.

March 28, 1975—Served notice of hearing; continued hearing in this proceeding will begin April 8, 1975, at 10:00 a.m. at Courtroom No. 14, United States Court of Appeals for the Ninth Circuit, United States Court of Appeals and P.O. Bldg., 7th and Mission Sts., San Francisco, Calif.

March 27, 1975—Received Reply of H.C. to Petition of Respondent for Modification of Order of Investigation.

March 31, 1975—Memo to Commission from Judge's Office certifying Petition for Modification of Order to the Commission for such action as may be appropriate.

April 18, 1975—Served order re general rate increase filed by Matson. Ordered, that the general rate increase not be incorporated in this proceeding.

May 14, 1975—Served notice of continued hearing to begin June 17, 1975, at Washington, D.C. Further particulars as to time and location will be announced.

May 30, 1975—Served notice of location and time of hearing; hearing to be held

June 17, 1975, beginning at 10:00 a.m., or as soon thereafter as counsel may be heard, in Hearing Room No. 1, First Floor Lobby.

June 25, 1975—Received Transcript of Prehearing Conference June 18, pages 1 thru 4.

June 25, 1975—Received Transcript of Prehearing dated June 17, 1975 (Docket Nos. 73–22 and 73–22 (Sub. 1) Pages 1 thru 113; also Docket Nos. 74–36 and 74–36 (Sub. 1) Transcript filed in Docket No. 73–22.

June 25, 1975—Received Transcript of Prehearing dated June 18, 1975, Vol. II, Pages 114–176–B, (Docket Nos. 73–22 (Sub. 1), Docket Nos. 74–36 and 74–36 (Sub. 1). Filed in Docket No. 73–22.

July 22, 1975—Served Order of Consolidation consolidating Docket Nos. 72–22, 73–22 (Sub. 1), 74–36 and 74–36 (Sub. 1).

August 4, 1975—Served Notice of Hearing; Service of Prepared Testimony; Termination of Formal Discovery—Hearing to begin November 11, 1975 at San Francisco, Calif. Second and final phase of hearing to begin November 17, 1975, at Honolulu, Hawaii, and about December 1, 1975 at San Francisco. Time and location to be announced later.

October 7, 1975—Served notice of location of Hearing Room for hearings in Docket Nos. 73–22, 73–22 (Sub. 1), 74–36 and 74–36 (Sub. 1). Hearing to begin November 11, 1975 at 10:00 a.m. Courtroom No. 14, United States Court of Appeals for the Ninth Circuit, United States Court of Appeals and Post Office Building, 7th and Mission Sts., San Francisco, Calif. 94101. Use elevator to second floor.

October 23, 1975—Served Amended Notice of Location of Hearing; first phase of consolidated hearing will begin at 10:00 a.m., November 10, 1975 (instead of November 11, 1975, as announced in Notice of Location of Hearing served October 7, 1975) at Courtroom No. 14, United States Court of Appeals for the Ninth Circuit, United States Court of Appeals and Post Office Building, 7th and Mission Sts., San Francisco, Calif. 94101.

October 24, 1975—Received Notice of Appearance on behalf of Hunt-Wesson Foods, Inc. attys. Philip E. Diamond, Esq. and Howard D. Neal, Esq.

November 24, 1975—Received 2 volumes of Transcripts—pages 1 thru 269 (also Docket 74–36 and 74–36 sub. 1).

November 26, 1975—Received Vols. 3, 4, and 5 of Transcripts (Pages 270–545).

December 16, 1975—Served Judge Glanzer's notice of hearing; requirement for identification of issues. Continued hearing will begin at 9:30 a.m., January 6, 1976 Hearing Room No. 2 First Floor Lobby.

December 16, 1975—Received H.C.'s Motion for Transcript Corrections in consolidated proceedings.

December 19, 1975—Served notice of Judge Glanzer granting corrections to be made to transcript in Docket Nos. 73–22, 73–22 (Sub. 1), 74–36 and 74–36 (Sub. 1).

January 5, 1976—Received H.C.'s Motion to Correct Transcript of hearings of December 1 thru December 9.

January 9, 1976—Served notice of hearing in Docket Nos. 73–22, 73–22 (Sub. 1), 74–36 and 74–36 (Sub. 1) Continued hearing will begin at 10:00 a.m., February 3, 1976, Courtroom No. 3, United States Court of Appeals for the Ninth Circuit, United States Court of Appears and Post Office Building, 7th and Mission Sts., San Francisco, Calif. 94101. Elevator No. 4 to third floor.

January 21, 1976—Served notice of Judge Glanzer granting corrections to be made in transcript requested in Motion of H.C. dated January 5, 1976, Docket Nos. 73–22, 73–22 (Sub. 1); 74–36 and 74–36 (Sub. 1).

January 20, 1976—Received Motion of H.C. to Correct Transcript, at the request of Ford Motor Co. dated January 8, 1976.

January 27, 1976—Served notice of Judge Glanzer granting Motion to correct transcript.

February 23, 1976—Received Motion of Respondent Matson Navigation Co. for an Order Dismissing the Proceeding in Part.

February 26, 1976—Received Reply of Department of Defense and MSAC to Motion of Respondent, Matson Navigation Co. for an Order Dismissing the Proceedings, in Part.

February 27, 1976—Received H.C.'s Reply to Matson's Motion to Dismiss (Docket Nos. 73–22, 73–22 (Sub. 1)), 74–36 and 74–36 (Sub. 1).

March 4, 1976—Received H.C.'s Request for an Extension of Time for filing opening briefs (Docket Nos. 73–22, 73–22 (Sub. 1)), 74–36 and 74–36 (Sub. 1).

March 10, 1976—Served Revised Briefing Schedule; Simultaneous Opening briefs to be mailed not later than March 29, 1976; Simultaneous Reply Briefs not later than April 30, 1976.

March 10, 1976—Served Transcript corrections; late filed exhibits—corrections requested by Motions of Matson Navigation Co. and California and Hawaiian Sugar Co. granted. Motion of State of Hawaii to admit, as late filed exhibit, Chapters 26 and 27 of Textbook, Cost Accounting, by Metz, Curry and Frank granted, exhibit received in evidence as Exh. No. C–73.

March 9, 1976—Received Further Reply of H.C. to Matson's Motion to Dismiss (Docket Nos. 73–22, 73–22 (Sub. 1)), 74–36 and 74–36 (Sub. 1).

March 11, 1976—Served notice dismissing investigation of Docket No. 74–36.

March 24, 1976—Served Further Revised Briefing Schedule for Docket Nos. 72–22, 73–22 (Sub. 1) and 74–36 (Sub. 1)—Simultaneous Opening Briefs due no later than April 5, 1976; Simultaneous Reply briefs due no later than May 7, 1976.

April 5, 1976—Received Opening Brief of H.C.

April 7, 1976—Received Initial Brief of Hunt-Wession Foods, Inc. (only original rec'd—requested copies by letter dated April 8, 1976).

April 6, 1976—Received Opening Brief of Military Sealift Command.

April 8, 1976—Received Brief of Intervenor California & Hawaiian Sugar Co.; Brief of Matson Navigation Co.

April 9, 1976—Received Opening Brief of the State of Hawaii.

May 7, 1970—Received Reply Brief of H.C. Docket Nos. 73–22, 73–22 (Sub. 1), 74–36 (Sub. 1).

May 10, 1976—Received Reply Brief of Hunt-Wesson Foods, Inc.; Reply Brief of California and Hawaiian Sugar Co.; Reply Brief of Military Sealift Command.

May 10, 1976—Received Reply Brief of Respondent Matson Navigation Co.

May 13, 1976—Received Reply Brief of the State of Hawaii.

May 28, 1976—Served Judge Glanzer's notice Supplements to Reply Brief; Parties not in compliance with ruling (TR 2548) shall effect compliance by filing documents bearing "Supplement to Reply Brief of ——— not later than June 18, 1976.

June 7, 1976—Received Supplement to Reply Brief of MSC.

June 14, 1976—Received Supplement to Reply Brief, California & Hawaiian Sugar Co.

June 21, 1976—Received Supplement to Reply Brief of Hunt-Wesson Foods, Inc.

July 6, 1976—Received Supplement to Reply Brief of the State of Hawaii.

August 9, 1976—Served Supplemental Order in Docket Nos. 73–22, 73–22 (Sub. 1) and Docket No. 74–36 (Sub. 1).

August 17, 1976—Received Motion of MSC for an amendment to the Supplemental Order of the Presiding Administrative Law Judge to Permit Written Argument on the issue of mootness.

August 31, 1976—Served Judge Glanzer's notice Denying Motion to Permit Written Argument on the Issue of Mootness with Respect to Reasonableness of Rates.

September 1, 1976—Received Reply of Matson Navigation Co. to Motion of MSC for an Amendment to the Supplemental Order of the Presiding Administrative Law Judge to Permit Written Argument on the Issue of Mootness.

September 9, 1976—Received Response of Matson Navigation Co. to Order Requiring Supplemental Memorandum.

September 10, 1976—Received Supplemental Memorandum of Military Sealift Command.

September 13, 1976—Received Response of the State of Hawaii to Supplemental Order of Judge Glanzer Dated August 9, 1976 in re Methodology Issues.

February 22, 1977—Served Initial Decision of Administrative Law Judge Seymour Glanzer; exceptions due March 9, 1977; replies to exceptions due March 24, 1977.

March 9, 1977—Received Hearing Counsel's Exceptions, Docket Nos. 73–22, 73–22 (Sub. 1) and Docket No. 74–36 (Sub. No. 1).

March 9, 1977—Received Exceptions of Matson Navigation Co.

March 9, 1977—Received Memorandum of Exceptions of Military Sealift Command.

March 24, 1977—Received H.C.'s Replies to Exceptions.

March 24, 1977—Received Reply of MSC to Exceptions of Other Parties.

March 28, 1977—Received State of Hawaii's Reply to Other Parties' Exceptions to Initial Decision in Docket Nos. 73–22, 73–22 (Sub. 1) and Docket No. 74–36 (Sub. 1).

March 28, 1977—Received Reply of California & Hawaiian Sugar Co. to Exception No. 3 of MSC.

March 29, 1977—Received Reply of Matson Navigational Co. to Exceptions of H.C. and MSC to Initial Decision.

April 4, 1977—Sent memorandum to Commission recommending oral argument be granted and date and time set. Exceptions filed by Matson, MSC and H.C.; Replies by Matson, California & Hawaiian Sugar Co., the State of Hawaii, MSC and H.C.

June 3, 1977—Served notice of oral argument in Docket Nos. 73–22, 73–22 (Sub. 1) and Docket No. 74–36 (Sub. 1) scheduled for June 23, 1977, beginning at 10:00 a.m. Main Hearing Room, Lobby. Interested persons to notify Secretary on or before June 14, 1977 as to the amount of time desired.

June 7, 1977—Served notice of rescheduling of oral argument for June 23, 1977 to June 28, 1977, beginning at 10:00 a.m.

June 20, 1977—Served notice of allotment of time for oral argument in Docket Nos. 73–22, 73–22 (Sub. 1) and 74–36 (Sub. 1).

June 29, 1977—Received Transcript of Oral Argument for June 28, 1977, Vol. 1, pages 1–55.

March 24, 1978—Received Demand for Discharge of Decision by Deputy Attorney General of State of Hawaii.

June 30, 1978—Served Decision and Order Partially Adopting Initial Decision.

July 31, 1978—Received Petition for Reconsideration from Military Sealift Command.

August 16, 1978—Received Reply of Respondent, Matson Navigation Co., to Petition of Military Sealift Command for Reconsideration of Decision.

Senator INOUYE. Thank you.

Our final witness this afternoon is the chairman of the Intercoastal and Coastwise Transportation Committee, appearing on behalf of the National Industrial Traffic League. Mr. Robert Ricker.

STATEMENT OF ROBERT RICKER, CHAIRMAN, INTERCOASTAL AND COASTWISE TRANSPORTATION COMMITTEE, ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY JOHN K. MASER

Mr. RICKER. Mr. Chairman, I welcome the opportunity to be here. My name is Robert Ricker. I am chairman of the National Industrial Traffic League's Intercoastal and Coastwise Transportation Committee, and am here today on behalf of the league.

I am employed as manager of transportation, eastern region, for the Georgia Pacific Corp., Stamford, Conn. I have with me today on my left, attorney John Maser, who is affiliated with the league.

The National Industrial Traffic League appears today in opposition to the no-suspend zone of H.R. 6503 to amend the Intercoastal Shipping Act of 1933.

The league, however, strongly supports provisions in section 3 of H.R. 6503 to reduce time lag in general rate increase or decrease cases by imposition of a 180-day deadline.

I would like to say here, Mr. Chairman, that I heard, and I heartily endorse the statement of Mr. Stickles on behalf of the Military Sealift Command.

The league is a voluntary association of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic, and transportation services of all carrier

modes. It is the only shipper organization which represents all types of shippers nationwide.

Mr. Chairman, in the interests of brevity, I would like to skip through some of this with the understanding that the entire statement would be made part of the record.

Senator INOUYE. Without objection, it is so ordered, sir.

Mr. RICKER. The league's primary concern is to provide for the Nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

As presently written, H.R. 6503 would permit annually an increase or decrease of 5 percent or less filed as part of a general increase or decrease in rates; in the 4–R Act, Congress opted for a 2-year experimental period, as distinct from an indefinite authorization providing for a built-in inflation factor.

The league favors such a 2-year limitation in the event that this committee goes forward with such a proposal. At the league's 1976 and 1977 annual meetings league members voted to reaffirm their opposition to a no-suspend zone for water carriers involved in intercoastal States.

In addition, league members strongly support the retention of the right of shippers to seek and obtain orders of suspension and investigation with respect to such water carrier tariffs.

While the league is opposed to a no-suspend zone, Congress rejected unlimited no-suspend zones in Public Law 94–210, the recently enacted rail legislation. If this committee goes forward with such a proposal, then it should add the safeguards adopted in Public Law 94–210.

In the 4–R Act, the 7-percent up-and-down zone lasted for 2 years only and could be only utilized for increased rates where the railroads faced effective competition from other carriers or modes of competition for the traffic or movement to which the rate applies.

This is referred to as the so-called market dominance test.

Section 3 of H.R. 6503 also addresses time lag in general rate increase or decrease cases by imposition of a 180-day deadline on decisions. The league strongly supports reducing time lag, speeding up regulatory proceedings, and greater freedom for individual carrier management to experiment with innovative ratemaking.

At the hearings on the railroad regulatory reform during the 94th Congress, the league testified that it also favors reducing time lag. I won't go through all of the details of that support.

H.R. 6503 proposes to require the Federal Maritime Commission to periodically probe the rate of return guidelines for common carriers by water subject to the Intercoastal Act. The league's policy on this subject states A–5 fair return:

> The carriers are entitled to an opportunity to earn a fair return on their investment under honest, efficient and economical management to assure the public of adequate and efficient transportation service at reasonable rates and to assure a continuation of a privately owned and operated transportation system.

While the league agrees that carriers are entitled to a fair return, the league submits that these criteria cannot be considered by the FMC and need for the legislation is nonexistent. I give an example of FMC decision, docket 65–57 in 1965. They state,

The basic theory of rate regulation is to set rates at a level which on the basis of estimated future revenues will enable the carrier to recover its cost of operation.

Just a reasonable return on investment.

I submit, sir, that the FMC's recent decision in the Puerto Rican Maritime Shipping Authority case, 75–38, which I received on August 21; I was a participant in that proceeding. The FMC went to great lengths to explain the complexity of determining rate of return on investment and the factors that go into it. So, that we know that they now do consider those factors.

It is to be noted that Congress in section 205 of the new rail legislation did provide that ICC within 24 months established adequate revenue levels for rail carriers but included the prerequisite of honest, economic, and efficient carrier management. This latter set of standards is deemed essential, so that as the league is concerned, in any such legislation.

However, since the Maritime Commission can already consider the elements of rate of return as suggested here, there is no need for legislating such criteria for FMC consideration.

Finally, with respect to refunds to shippers of general rate increases found to be unjust or unreasonable, the league believes the shippers and receivers must be protected and a provision should be included requiring carriers to keep proper and accurate accounts and return amounts found to be unjustified to the person or persons on whose behalf the amounts were paid.

Sir, again I'd like to inject at this point: I heard the Matson witness and his statement, for example the increased cost on a refrigerator, on a 5-percent rate increase, as I understand it, would be 22 cents. We export—export—we ship a great deal of toilet paper from our mill in Bellingham, Wash., to Hawaii, for example.

In the present cost per case volume, that's almost $3.87. I submit that a 5-percent increase on a case of toilet paper would be 19 cents, which would be almost as much as on a refrigerator. This would have much more bearing on the average consumer.

In summary, the league on behalf of its member shippers and receivers in the trade subject to the Intercoastal Shipping Act, strongly opposes the no-suspend zone and rate of return provisions in H.R. 6503, but supports the provision for refunds to shippers with an amendment and strongly supports the provisions to speed up regulatory agency proceedings of the Federal Maritime Commission.

Thank you, Chairman Inouye. I appreciate the opportunity to appear before you, and I'd be glad to answer any questions you may have.

Senator INOUYE. Thank you very much, Mr. Ricker. As noted by you, this bill has a no-suspend provision for a general rate increase of 5 percent or less, but even that is still subject, either on the initiative of the FMC or upon the initiative of the shipper, to an investigation as to whether it is just and reasonable. And if found to be unjust and unreasonable, then the Commission may order the carrier to make a refund.

With that in mind, do you still consider that the no-suspend zone is an unfair burden on the shipper?

Mr. RICKER. I do, sir. I think it's also in a sense an undue burden on the carrier. Because, if they get the money and spend it, and possibly even try to earn dividends, then later on after a refund, I think it would raise a little bit of havoc with the Treasury.

As far as the shipper is concerned in the interim period, we could be forced out of the market.

Senator INOUYE. Five percent would force you out of the market?

Mr. RICKER. It could in certain instances. I mentioned 19 cents a case on a case of toilet paper.

Senator INOUYE. That would force you out of the market in Hawaii?

Mr. RICKER. The cumulative effect of it could, yes. Or it would be detrimental to us. I'm speaking of Hawaii and also Puerto Rico where we have some pretty strong competition down in Puerto Rico.

Senator INOUYE. At the present time, the FMC is authorized to suspend rates. Am I correct?

Mr. RICKER. Yes, sir.

Senator INOUYE. And as a practical matter, the Commission has a no-suspend zone. In practical application——

Mr. RICKER. Yes, sir.

Senator INOUYE. So, what this bill is trying to do, I presume, is to just codify the current policy at the present time. Do you think it's wrong to codify the present practice?

Mr. RICKER. Sir, I do believe that the length of time the suspension should be suspended—I do feel that suspension is necessary to prevent just what might appear to be automatic rate increases annually, but I would suggest the FMC might find it difficult to order a carrier to refund if there was not a suspension authority, which I think that the Commission has used relatively judiciously.

Senator INOUYE. So, you feel that the present law is adequate, provided we amend it by permitting refunds to the shipper?

Mr. RICKER. Permitting refunds and particularly eliminating that timelag in putting in the 180-day limit. I don't think it forces a hardship on shippers. We're anxious to get any evidence in that we have. But I think it does put the fire to the feet of the Commission, if I may say so.

Senator INOUYE. So, you believe the major culprit is the Commission, then?

Mr. RICKER. It could very well be, sir, particularly if the suspension time is extended. There's certainly no incentive to the carrier for that matter to expedite the proceedings.

Senator INOUYE. Mr. Ricker, we'd like to submit to you a series of questions based upon testimony we've received this afternoon, and at your leisure, we hope that you can respond to them, sir.

Mr. RICKER. I'll try to.

[The statement and questions and answers follow:]

STATEMENT OF ROBERT RICKER, CHAIRMAN, INTERCOASTAL AND COASTWISE COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is Robert Ricker and I am Chairman of The National Industrial Traffic League's Intercoastal and Coastwise Transportation Committee, and appear today on behalf of the League. I am employed as Manager of Transportation-Eastern Region for the Georgia-Pacific Corporation in Stamford, Connecticut.

The National Industrial Traffic League appears today in opposition to the no-

suspend zone of H.R. 6503, to amend the Intercoastal Shipping Act of 1933. The League, however, strongly supports provisions in Section 3 of H.R. 6503 that reduce "time-lag" in general rate increase or decrease cases by imposition of a 180-day deadline.

The League is a voluntary organization of 1800 shippers, shippers' associations, board of trade, chambers of commerce and other entities concerned with rates, traffic and transportaion services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee of a trade group, nor a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions eflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its more than seventy years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

The League testified against the no-suspend zone provisions at hearings on S. 3260, 3261 and 3180 during the 94th Congress as introduced by former Merchant Marine and Tourism Subcommittee Chairman Long.

H.R. 6503 would amend the Intercoastal Shipping Act, 1933, by adding a no-suspend zone, requiring reduction in "time lag" in general rate increase or decrease cases by imposition of a 180-day deadline, providing for guidelines to be prescribed by the Federal Maritime Commission for adequate rate of return, and provide refunds to shippers and receivers by carriers should rates not be found just and reasonable.

Under the provisions of H.R. 6503, once each twelve months, and commencing six months after enactment, a carrier subject to the Intercoastal Shipping Act could file that portion of a "general increase" (or decrease) in rates of 5 percent up or down.

A general increase is defined under the bill as any change in rates, fares, or charges which will (A) result in an increase in not less than 50% or more of its tariff items per trade, and (B) bring about an increase of three percent or more in the carrier's gross revenue. A general decrease is defined under the bill as any change in rates, fares, or charges which will (A) result in decrease in not less than 50% of its tariff items per trade; and (B) bring about a decrease in gross revenue of a carrier of not less than 3 percent.

The no-suspend zone portion of Section 3 of the bill is opposed by the League. The no-suspend zone concept in the past has been a favorite of such agencies as the U.S. Department of Transportation, and has been proposed in various transportation bills submitted to Congress. DOT proposed an up and down no-suspend zone for railroads and motor carriers of 7 percent the first year, 12 percent the second year; and 15 percent the third year and has suggested similar zones in its air carrier and motor carrier regulatory reform proposals.

During the hearings on the Railroad Revitalization and Regulatory Reform Act of 1976, (4R Act), (P.L. 94–210), before Congress, the League opposed no-suspend zones proposed by the Department of Transportation—noting that where there is effective competition, such competition itself provides the ceiling or maximum for such rates.

Also, during the 94th Congress the League testified on S. 3260, 3261 and 3180 and urged adoption of a "zone of reasonableness" which goes both up and down. The League is pleased to see this provision has been included in H.R. 6503. Additionally, the League also supported a provision to insure that competition, where it is effective, is substituted as a protection for the shipping public, in the place of regulation. H.R. 6503 does not include any such provision .

As presently written, H.R. 6503 would permit annually, an increase or decrease of 5 percent or less, filed as part of a general increase or decrease in rates. In the 4R Act Congress opted for a two year experimental period as distinct from an indefinite authorization providing for a built-in inflation factor. The League favors such a two year limitation, in the event this committee goes forward with such a proposal.

At the League's 1976 and 1977 Annual Meetings, League members voted to reaffirm their opposition to a no-suspend zone for water carriers involved in intercoastal trades.

Additionally, League members strongly support the retention of the right of shippers to seek and obtain orders of suspension and investigation with respect to such water carrier tariffs.

While the League is opposed to a no-suspend zone—and the Congress rejected *unlimited* no-suspend zones in P.L. 94–210, the recently enacted rail legislation—if this Committee goes forward with such a proposal, then, it should add the safeguards adopted in P.L. 94–210.

In the 4R Act the 7 percent up and down zone lasted for two years only, and could *only be utilized* for increased rates where the railroads faced effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies. This is referred to as the so-called "market dominance" test.

Section 3 of H.R. 6503 also addresses "time-lag" in general rate increase or decrease cases by imposition of a 180-day deadline on decisions. The League strongly supports reducing "time-lag"—speeding up regulatory proceedings and greater fredom for individual carrier management to experiment with innovative rate making. At the hearings on railroad regulatory reform during the 94th Congress, the League testified:

"The League also favors reducing 'time-lag.' The League believes that it is in the interest of the nation and the general public to reduce regulatory time-lag, such as the time between the increases in rates or other costs, and approval of increases in freight rates necessary to meet such cost increases, to the minimum consistent with the interests of consumers and the shipping public; provided there are necessary safeguards to assur adequate notice and justfiication of the proposed rates, timely receipt of the representations of shippers with respect to such rates, and prompt refunds in interim rate increases exceeding the maximum amounts found reasonable by the Commission in its final determination. The principle of reducing unnecessary regulatory delay applies as well to decreases as increases in rates, and in short, to all regulatory proceedings.

"The League would favor the speeding up of regulatory proceedings through granting the Commission the power to define or limit by general rule, notwithstanding present administrative law requirements, expedited new procedures to handle its proceedings through advance evidentiary filings, guidelines for desired presentations, and the limitation of the right to apply for reconsideration, rehearing or reargument, while preserving necessary safeguards. The ICC should be encouraged to experiment and innovate in handling its workload."

H.R. 6503 proposes to require the Federal Maritime Commission to periodically promulgate rate of return guidelines for common carries by water subject to the Intercoastal Shipping Act.

The League's policy states:

"A–5 Fair Return. The carriers are entitled to an opportunity to earn a fair return on their investment under honest, economical and efficient management, to assure the public of adequate and efficient transportation service at reasonable charges, and to assure a continuation of a privately owned and operated transportation system."

While the League agrees that carriers are entitled to a fair return, the League submits these criteria can now be considered by the Federal Maritime Commission and need for this legislation is non-existent. As an example, the Federal Maritime Commission Docket 65–57, page 37, paragraph 4 sets forth:

the basic theory of rate regulation is to set rates at a level, which on the basis of estimated future revenues, will enable the carrier to recover its cost of operation plus a reasonable return on its investment. The reasonable return on investment, in turn envisages an amount sufficient to meet imbedded debt, recovery of depreciation of assets used up in the public service, and sufficient return on the equity investment in light of comparable risks so as to attract equity sufficient to the needs of the company and the expansion thereof as may be prudently required."

It is to be noted that Congress in Section 205 of the new rail legislation, did provide that the ICC within 24 months establish adequate levels for rail carriers but included the prerequisite of "honest, economical and efficient [carrier] management." This latter set of standards is deemed essential, so far as the League is concerned.

However, since the Federal Maritime Commission can already consider the elements of rate of return as suggested here, there is no need for legislating such criteria for F.M.C. consideration.

As a means to assist the carriers to maintain competitive rate levels, the League adopted the following policy at its 1969 Annual Meeting:

"That the League support legislation that would allow new foreign built ships or partially foreign built ships to operate in domestic trades with United States crews under the U.S. Flag, provided there is a concurrently and equalizing subsidy to American shipyards to enable them to compete with foreign shipyards for the shipbuilding involved and further provided that a system of construction subsidies be provided for U.S. built ships on which construction began after January 1, 1968, designed to protect their economic competitive position."

Finally, with respect to refunds to shippers of general rate increases found to be unjust or unreasonable, the League believes shippers and receivers must be protected and a provision should be included requiring carries to keep proper and accurate accounts and return amounts found to be unjustified to the person(s) on whose behalf the amounts were paid.

In summary, the League on behalf of its member shippers and receivers in the trades subject to the Intercoastal Shipping Act strongly opposes the no-suspend zone and rate of return provisions of H.R. 6503, but supports the provision for refunds to shippers (with an amendment) and strongly supports the provisions to speed up regulatory agency proceedings of the Federal Maritime Commission.

The League would like to close by citing in specific terms its Transportation Policy A–4, as follows:

"A–4 Responsibility and Freedom of Carrier Management. There should be the greatest degree of responsibility upon, and freedom of, carrier management in providing the public with the transportation service which it needs. Regulation should be limited to that reasonably necessary in the public interest and should not encroach upon the proper sphere of managerial discretion and responsibility either in the field of traffic or actual physical operation."

Thank you, Chairman Inouye, for allowing the League this opportunity to present its views on H.R. 6503. I would be pleased to answer any questions you or your staff may have.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Washington, D.C., September 18, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Senate Commerce, Science and Transportation Committee's Subcommittee on Merchant Marine and Tourism, Washington, D.C.

DEAR CHAIRMAN INOUYE: Pursuant to your request for answers to a number of questions regarding H.R. 6503, the Intercoastal Shipping Act amendments, enclosed are the League's responses.

QUESTIONS POSED TO THE NIT LEAGUE

Question 1. It has been said that currently it takes 2–4 years for the FMC to conclude a rate hearing.

Under present law, however, the FMC can only suspend a rate increase for 120 days of the period it takes to conclude such a hearing; then the rate increase goes into effect.

Thus in a four year rate hearing the rate increase would be in effect from 1,340 of the 1,460 days (4 years=1,460 days—120 days suspension=1,340).

(a) At the end of the four year hearing if the FMC finds that the rate increase which has been in effect for 1,340 days is illegal, may it order the carrier to refund to shippers that portion of the increase it found to be illegal?

Answer. No it may not.

Question 2. (b) Does H.R. 6503 improve shippers' rights in this regard? In other words, would a carrier have to refund any portion of a rate increase it subsequently found to be illegal?

Answer. Yes, it does improve shippers' rights and we support this change.

Question 3. On page 3 of your statement you say that if the Committee goes forward with a no-suspend zone proposal it should add the safeguards adopted in Public Law 94–210.

That is, a two-year limitation on the life of the "no-suspend" zone, and a limitation on its use to situations where the railroads faced effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies. This is referred to as the so-called "market dominance" test.

(a) Isn't it true that the 'market dominance' test in the Railroad Act is only applicable to individual rate changes and not the general rate changes in H.R. 6503?

(b) And didn't the ICC in its decision in *Ex Parte No. 343* say that "Congress never intended that the market dominance test be applied to general rate increases, because the very nature of the general increase precludes application of the market dominance test . . . applying market dominance to the myriad of rates subject to a general increase would cause paralysis?"

(c) With respect to our non-contiguous domestic trades, there is absolute freedom of entry for U.S.-flags, is there not?

Answer. Yes, but only to U.S.-flag carriers. If new U.S.-flag carriers enter the Hawaii trades and provide "effective competition", Matson would no longer be market dominant.

As to (a) and (b) the questions confuse individual carrier increases in rates, and general increases (Ex Parte) of a group of carriers by permission of the ICC. Market dominance would apply if the Southern Pacific applied to increase all its rates, and thus would apply to an H.R. 6503 increase by a single carrier.

Question 4. (a) Under H.R. 6503, although the FMC may not suspend a rate increase of 5 percent or less, it could still order a hearing to determine if the increase is just and reasonable, could it not?

Answer. Yes.

Question 4b. If the FMC orders such a hearing it would, under H.R. 6503, have to conclude it within 180 days. At the end of that time if it found the 5 percent increase to be unjust and unreasonable it would have to order a refund to shippers would it not?

Answer 4b. Yes, unless a court appeal prevented it.

Question 4c. How then can a no-suspend zone be harmful to shippers?

Answer 4c. Consignees and consumers would pay higher prices for the 180 days. No guarantee exists that shippers receiving refunds would pass them along or consignees be eligible to receive them. This would depend on market place competition.

Question 5. It has been said that a 10 percent savings in freight costs translates into a 0.6 percent landed costs for the buyer of goods.

(a) Does the buyer of goods typically pass that savings on to the ultimate consumer?

Answer. Yes, in competitive markets.

(b) Even if the buyer does, the savings would be minimal, if at all, wouldn't you agree? Especially since the rate could only be in effect 180-days plus the time of appeal if any before the Commission ordered a refund. (c) If that savings is minimal or non-existent, is it significant that H.R. 6503 provides for refunds to shippers where a rate increase is found to be unjust and unreasonable?

Answer. The freight cost on diamonds is one thing and on a commodity such as toilet paper another. Freight costs aren't minimal on some goods despite averages. Please see our prior answer regarding refunds.

Question 6a. As a general rule, what percent of the "landed cost" of goods or commodities is attributable to ocean transportation freight rates?

Answer. The League has no way of knowing this and suggests you ask the Federal Maritime Commission for a manual on these types of statistics.

Question 6b. It has been said that a 10 percent savings in freight costs translates into a 0.6 percent of landed cost for the buyer, whereas the same 10 percent to the ocean carriers may be the difference between survival as a viable transportation system and non-survival.

Would you care to comment on that statement?

Answer. It could mean survival to a small shipper or consignee, too.

Question 7. H.R. 6503 provides a "no suspend" zone for "general rate" adjustments (i.e., one which would affect more than half of the tariff items in all of the tariffs of a carrier in a particular trade and would result in an increase or decrease of not less than 3 percent in the carrier's gross revenues in that particular trade).

(a) Some critics have said they believe "no suspend" procedures should only be applied to increases and decreases in individual rates and commodities because such use would provide a better opportunity for the establishment of individual cost and service based rates.

Would you please comment?

Answer. The League does not agree. There is no indication that the 3 percent dividing line would contribute whereas less than 3 percent would not contribute.

Question 8. If the FMC orders a refund after a hearing on a "general rate increase" only 6 months will have elapsed since the rate increase became effective. Under those circumstances, is it correct to maintain as some do, that such refunds seldom flow back to the ultimate consumer?

Answer. This would depend greatly on just how competitive the particular marketplace happens to be.

Question 9. By limiting the Commission's suspension power in this manner (general rate increases), won't the carriers be encouraged to file general rate increases?

Answer. The League does not know how carriers would react to this and suggests you ask the affected carriers what they may do under these circumstances.

Question 10. Is it your understanding that H.R. 6503 places the burden of identifying the shippers who have been overcharged and paying the requisite refunds on the carrier whose rates have been found unlawful?

Answer. Yes, it does place the burden regarding refunds on the carriers but this does not help the consignees.

Question 11. It has been said that to the extent that a non-suspend 5 percent rate increase is immediately passed through to retail consumers, the economic impact on them would be minimal, e.g., a 5 percent increase in freight charges in the Pacific Coast/Hawaii trade on an 18-cubic foot household refrigerator would only be $2.20; $0.94 on a household clothes dryer; $0.54 on a 23-inch television set; and $0.25 on a 25-pound bag of rice. If 10 percent of the increase were to be found unlawful, then those consumers purchasing the above items during the 180-day period required for the regulatory process would have been "overcharged" as follows: Refrigerator, $0.2201; dryer, .0940; television, .0544; and rice, .0025.

Do you agree that the impact would be minimal?

Answer. The League's witness, Mr. Robert Ricker, used an example of the impact this would have on freight rates for toilet paper and the great price increase at the marketplace that would likely occur. This is only one example of impact which would be other than minimal.

The League hopes these answers will be of assistance to the Senate Commerce Committee during any further consideration of H.R. 6503. The League continues to oppose the 5 percent no-suspend zone in H.R. 6503 unless a "market dominance" type section is included.

Sincerely,

J. ROBERT MORTON, *President.*

Senator INOUYE. Thank you very much for your participation this afternoon.

And ladies and gentlemen, the committee hearing is in recess now, and the record will be kept open for a week for further inclusion if you so desire.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]

ADDITIONAL, ARTICLES, LETTERS, AND STATEMENTS

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 28, 1978.

Hon. DANIEL INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism,
Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to confirm the conversation held on June 27, 1978, between Mr. John Hardy and Mr. Tony Castellanos of my staff, regarding H.R. 6503.

For the record, I want to make it clear that I am not opposed to H.R. 6503 as passed by the House on May 8, 1978. However, I want to be specific that my position is the result of an agreement entered into with the House Committee on Merchant Marine and Fisheries. The House Committee accepted to reduce from 7 to 5 percent the general rate of increase without suspension on the understanding that I would not be offering an amendment, when it came up for floor action.

It is to the 5 percent increase that I agreed and not to a higher percentage. It is my understanding that a percentage higher than 5 percent is inflationary and would have an adverse impact to the economy and the consumers in Puerto Rico.

I will appreciate you keeping me informed as to the progress of this bill.

Cordially,

BALTASAR CORRADA,
Member of Congress.

COMMONWEALTH OF PUERTO RICO,
OFFICE OF THE EX-GOVERNOR,
July 3, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine,
Senate Committee on Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: I understand that you have under consideration a bill amending the Intercoastal Shipping Act, 1933 (the "Act") which was passed by the House of Representatives on May 8, 1978 (H.R. 6503). The importance of this proposed legislation to the people and economy of the Commonwealth of Puerto Rico cannot be overstated. It deals with the rate regulation of a utility service vital to the economic well-being of our island community. As a former Governor of the Commonwealth who is keenly aware of the direct impact that increases in ocean freight rates have upon (a) the cost of living in Puerto Rico, (b) employment conditions in the island, and (c) the government's programs and policies for economic and social development, I feel compelled to express my views on the proposed legislation.

At the outset, I want to commend the drafters of H.R. 6503 for their attempt to remedy a very serious problem that has plagued the Federal Maritime Commission's efforts to regulate the rates of carriers operating in the domestic offshore trades of the United States. By imposing time limitations within which the Federal Maritime Commission must decide the lawfulness of a proposed general rate increase, the bill seeks to do away with the regulatory delays and agency inaction which have been typical of the Commission's efforts in this area. This provision, together with the one providing for refunds with interest of that portion of the rate increase ultimately found unlawful, will insure that the shipping public will get the effective "bond of protection" that the Act was designed to provide.

I am troubled, however, by the provision of the bill which diminishes the Commission's suspension power and allows carriers to file general increases in

rates without suspension of that portion of such increases not exceeding 5 percent per year. I recognize the need for allowing carriers to pass through legitimate increases in operating costs, as soon as they are incurred, without being subjected to the uncertainties of the Commission's exercise of its suspension power. I also believe that if adequate safeguards are not provided, the selective elimination of the suspension power might be interpreted by the carriers as an invitation to file 5 percent general rate increases every year. The refund provision is said to provide an adequate safeguard. But refunds may indeed prove to be an illusory deterrent if the Commission and other interested parties do not have available the necessary data to challenge the lawfulness of the increase.

In this connection I refer to the fact that the financial data filed in support of its general rate increase by a carrier are considered "confidential information" and are not made available to that segment of the public which may wish to protect the increase. The need for making these data generally available to those parties who are affected by the proposed rate increase is particularly acute in the Federal Maritime Commission's regulatory environment. In the past, either because of lack of personnel or possible bias in favor of carriers, the FMC staff has not proved to be an effective regulator. It has been necessary for the governments of Hawaii and Puerto Rico to take the leading role in challenging rate increases filed by carriers serving these two island communities. In so doing, it has been our experience that we were able to obtain the carrier's supporting data and underlying financial records only after extensive and protracted discovery, and well after the hearing process had been initiated.

As discussed above, one of the salutory aspects of the bill is that it seeks to expedite the decision-making process by imposing time limitations and streamlining hearing procedures. An intervenor or potential "protestant", who has been denied access at an early stage of the proceeding to the financial data filed by the carrier in support of its rate increase, will be seriously disadvantaged and, in effect, denied participation in the very important initial phase of the process where the determination is made on whether or not to hold a hearing.

I suggest, therefore, that H.R. 6503 be amended to make specific provision for those members of the public who may wish to protest the proposed increase to have timely access to the financial data filed by the carrier in support of its rate increase.

Very truly yours,

RAFAEL HERNANDEZ-COLON.

AMERICAN RETAIL FEDERATION,
Washington, D.C., June 26, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Merchant Marine Subcommittee, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN INOUYE: The Federation's Transportation Committee, while supporting other provisions of the above bill, which is before your committee for consideration. continues to oppose any elimination or restriction of the power of the Federal Maritime Commission to suspend rate increases.

It is true that the area of non-suspension for annual and general rate increases has been reduced from the original 7 percent to a more modest 5 percent but it is our belief that the suspension power should remain for any increases in rate levels. Protecting the interests of the shipping public necessitates retention of this suspension power in all transportation regulatory agencies.

Protection for the carriers is expressed in other provisions such as expedited FMC procedures and more stringent protest requirements. The various provisions should permit a greater degree of competition. However, shippers should be permitted to rely on the suspension provision, unrestricted, in order to guard against inordinate and unjustified increases.

Your consideration or your views in opposition to this particular provision will be appreciated.

Yours very truly,

CHARLES A. WASHER,
Transportation Counsel.

WESTERN TRAFFIC CONFERENCE, INC.,
Seattle, Wash., June 22, 1978.

Hon. DANIEL K. INOUYE,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR INOUYE: Western Traffic Conference, Inc., represents over 75 member firms operating in excess of 4,200 retail stores throughout the western United States, including Alaska and Hawaii. These firms move millions of pounds of general merchandise to their stores each year and are vitally dependent upon the regulated carriers of all modes for the continuous and economic movement of these goods.

We are concerned about three provisions of the Intercoastal Shipping Act—H.R. 6503—which we understand is to be brought to the floor of the Senate on June 30. The 5 percent no-suspend clause which permits carriers to increase or decrease rates 5 percent without any justification can lead to many abuses and we feel it should not be allowed to become law. We urge your deletion of this item.

Western Traffic Conference strongly supports the balance of the legislation, especially that portion providing for the elimination of regulatory delay. The major portion of the bill that has a very drastic effect upon all residents and businesses is that requiring the continuation of service to Hawaii during times of labor strife. We feel that no area should be placed in the position of being physically and economically harmed as happens during times of labor disturbances affecting west coast water traffic. For this reason we respectfully urge that this item, especially, be retained in H.R. 6503.

Very truly yours,

ROBERT G. GLEASON,
Secretary-Treasurer.

STATEMENT OF CHARLES I. HILTZHEIMER, CHAIRMAN OF THE BOARD, SEA-LAND SERVICE, INC.

Sea-Land Service, Inc., is grateful for this opportunity to submit comments on H.R. 6503, a bill to amend the Intercoastal Shipping Act, 1933, to provide for a more efficient disposition of general revenue increase/decrease cases.

Sea-Land Service, Inc. has been a major carrier in the domestic, non-contiguous trades since 1958 when it inaugurated container service between Atlantic ports and ports in Puerto Rico. Since that time, Sea-Land has expanded that service to include service from all major ports on the Atlantic Coast, the Gulf Coast, and the Pacific Coast to Puerto Rico and the Virgin Islands. With the exception of a short period of time during 1974–76, Sea-Land has been a major factor in the East Coast/Puerto Rican/Virgin Islands non-contiguous trades. In addition, Sea-Land provides a regular common carrier service between the Pacific Northwest and Alaska, although the rates in these trades are for the most part subject to the jurisdiction of the Interstate Commerce Commission.

H.R. 6503 makes the following basic changes in the Intercoastal Shipping Act:

1. Defines the terms general increase/decrease in rates.
2. Extends the notice period for such increase/decrease fom 30 to 60 days.
3. Requires the Commission with or without protest to specifically detail the issues that it orders into a hearing.
4. Requires the Commission by regulation to prescribe what constitutes a just and reasonable rate of return or profit.
5. Extends the discretionary period of suspension from four months to 180 days on general rate increases.
6. Requires the Commission to ultimately dispose of a general revenue case within the suspension period of 180 days with a discretionary extension period of both suspension and disposition of an additional 60 days.
7. Prohibits the suspension of any general increase/decrease of 5 percent or less during a 12-month period.
8. Directs the repayment by the carrier to any person who paid a rate which the Commission finds to be unjust and unreasonable. The repayment would be the difference between the proscribed rate and the rate which the Commission finds to be just and reasonable.

Sea-Land Service, Inc. supports H.R. 6503. As previously indicated, Sea-Land has had over 20 years current experience in rate and revenue cases before the Maritime Commission. It has been Sea-Land's experience that in the 12 years commencing in 1958 with the advent of containerization through 1970, the savings accruing because of the shift from a labor intensive service (breakbulk) to a capital intensive service (containerships) were such that Sea-Land and other carriers did not have to seek periodic general revenue increases; that is, the introduction and refinement of the containerization concept involving substantial capital investment dampened the inflationary pressures on the rate structure. However, by 1970 the efficiencies realized because of containerization had been consumed by inflation and it became necessary to file, on a regular basis before the Commission, general revenue increases that were caused by continuing inflationary pressures. As a general proposition, these increases were suspended by the Commission and hearings were ordered. The suspension period was four months and the hearing process could consume upwards of four years.

The ultimate conclusion was that by the time a general revenue case had been decided there was at least one and possibly two additional general revenue increases applied by the carrier. Moreover, there has not been a general revenue increase found unjust and unreasonable by the Commission since 1970. Thus, the only purpose served by the four-month suspension was that the carrier was denied revenue to which it was otherwise entitled. This in itself creates pressures for additional revenue increases.

With this background, Sea-Land now addresses itself to the specific provisions of H.R. 6503. Section 1 thereof defines the general increase/decrease in rates as one which will "(A) result in an increase in not less than 50 per centum of the items . . . in the tariff or trade . . . and (B) directly result in an increase in gross revenues of such carrier for the particular of not less than three per centum." (The obverse is true for decreases.)

As a threshold issue the definition of a trade must ultimately by clearly defined to assure uniform application to all competitors in a trade of the Section 1 standards of "50 per centum of the items" in a tariff or trade and of "3 per centum" charge in gross revenues. For example, in the trade between the East and Gulf Coasts of the United States to Puerto Rico, Sea-Land has five separate tariffs:

1. Between North Atlantic ports and Puerto Rico ports.
2. South Atlantic ports to Puerto Rican ports.
3. Puerto Rican ports to South Atlantic ports.
4. Gulf ports to Puerto Rican ports.
5. Puerto Rican ports to Gulf ports.

A competitor has but one tariff between the United States Atlantic/Gulf to Puerto Rico. Thus, identical rate action by Sea-Land and its competitor could result in a 3 percent increase in revenue for Sea-Land in one tariff but not in the entire trade, while its competitor would not realize a 3-percent increase in revenue in its tariff solely because of the broader area covered by the tariff. Therefore, it becomes critical that the Commission define "trade" not in terms of tariff coverage but in terms of trade areas. It is not believed that an amendment is necessary to H.R. 6503 since the Commission already has this authority under its general rulemaking power in section 43 of the 1916 Shipping Act.

Sea-Land endorses the requirement that the Commission publish in the Federal Register the reasons in detail why it considers a hearing to be necessary and the delineation of the specific issues to be resolved by such a hearing. H.R. 6503 requires 60 days' notice to the Commission and the public before a general increase in rates becomes effective. Within that 60-day period the Commission, based on the data bank which it has accrued from carriers over the years, together with specific requests directed to carriers to justify rates, should be able to resolve numerous factual issues informally rather than through a prolonged hearing process. Thus, the specific requirement to publish the reasons in detail in the Federal Register would serve to require the resolution of many issues prior to Federal Register notice.

In addition, section 3 of H.R. 6503 requires the Commission to prescribe guidelines for a determination of what constitutes the just and reasonable rate of return or profit. It is tragic that after 40 years of being subject to the Intercoastal Shipping Act in the non-contiguous trades, the carriers are completely unaware of what would constitute a guideline for just and reasonable rates of return and that issue must be litigated in each case. The publication of these

guidelines should serve to limit the number of rate increases sought by carriers and enable carriers to publish increases consistent with what will be accepted by the Commission and the shipping community.

Section 3 of H.R. 6503 also requires the conclusion of any hearing ordered under that section within 60 days and the ultimate decision within 180 days with a provision granting a 60-day extension for good cause shown. Thus, the maximum period of time for ultimate disposition of a general revenue case would be 240 days. The existence of this provision alone would tend to retard accumulation of general revenue increases upon general revenue increases and make the administration of the Intercoastal Shipping Act a rational and reasonable exercise as opposed to the chaotic situation which currently exists. Sea-Land endorses this measure.

If the Commission fails to dispose of the case within the maximum 240-day period, the only penalty is that the general revenue increase cannot be found unjust and unreasonable. However, individual remedies pursuant to section 22 are not extinguished and individual shippers may pursue those remedies, as they presently can. If, however, the Commission finds that it is unable to conclude the hearings within the 240-day period because of delays which the Commission finds are directly attributable to the carrier, then the Commission may disapprove the rates, charges, classification, regulation or practice upon the expiration of the suspension period or extension. These provisions would be sufficient to exert pressure on all parties to a general revenue case and the Commission to conclude the case and decide it on its merits within the allotted time.

Section 3 also provides for the imposition of an accumulative 5 percent increase/decrease over any twelve, consecutive month period without suspension. No presumptions as to the just and reasonable level of the rate are to be made because of this non-suspension provision. Moreover, if the Commission finds any portion of this non-suspended increase to be unjust, then the carrier is liable for repayment to the shippers. Sea-Land supports this concept although it submits that a zone of 7 percent—as contained in the 4R Act and as contained in an earlier version of H.R. 6503—to be in accord to the realities of current economics. The 5-percent increase not susceptible to suspension is less than the current inflation rate,[1] and as indicated previously suspension of rates ultimately found to be just and reasonable creates additional pressures for new rate increases.

As to the provision requiring carriers to make refunds for a portion of a general rate increase which the Commission may find to be unjust and unreasonable, as Sea-Land understands this provision, such a finding by the Commission would apply to all commodities subject to the general rate increase. Thus, for example, the Commission could not find the increase just and reasonable to all commodities except "X" commodity and require refunds to only shippers of "X" commodity. The rights of shippers of "X" commodity are still amply protected by section 22 and by section 4 of H.R. 6503. If this provision were to be interpreted in such a fashion that the Commission could find that a general rate increase would be just for some commodities and unjust for other commodities, the ordering of refunds to select shippers would place an unreasonable and unconscionable burden on the carriers in making repayment. General rate increase cases are addressed to the general revenue needs of a carrier and not to the individual rates involved.

In summary, H.R. 6503 addresses problems which have confronted the shippers and carriers in the non-contiguous trades for years. The solutions proposed by H.R. 6503—notably, strict time limits to dispose of a revenue case, clear profit guidelines, and a rational balancing between carriers' requirements for additional revenue and shipper protection against excessive increases—places burdens upon shippers, carriers and the Commission which will ultimately result in the efficient disposition of general rate cases on their merits.

Sea-Land supports H.R. 6503 and urges its passage.

STATEMENT OF EDWARD J. HEINE, PRESIDENT, UNITED STATES LINES, INC.

United States Lines appreciates the opportunity to submit its views on H.R. 6503. We provide shipping service to and from both Hawaii and Guam in con-

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[1] Consumer Price Index Report, Bureau of Labor & Statistics, Department of Labor, June 1978 indicates the inflation rate on a yearly average is 7.4 percent. The unpublished July issue indicates double digit inflation on a yearly average.

nection with both East and West coasts of the continental United States mainland. We have carefully reviewed the legislation and wish to endorse this bill without qualification.

In our view, this legislation is a balanced and reasonable response to a number of problems which have affected the operation of ocean carriers in these domestic noncontiguous trades. Carriers are frequently forced to bear increased costs for protracted periods before being able to recoup these expenses via tariff increases. Particularly in periods of rapidly inflating costs such as have been our recent experience, this represents an undue burden on carriers already under continuing financial strain as the result of the increasingly capital-intensive nature of the new shipping systems most are now employing. This bill seeks to provide a partial remedy to that situation by limiting FMC tariff suspension authority in such a manner as to make possible a ninety days earlier effective date for one 5% general rate increase per year. We feel this is a reasonable approach, represents an improvement to the situation from the carrier's point of view, and does not impose any significant additional burden on the shipping public concerned.

These amendments attempt in an even-handed fashion to speed up regulatory review. While carriers will have to give 60 days advance notice of general traffic changes vice 30 days as under present law, the FMC will be required to complete its action within 180 days of the scheduled effective date of the change. This together with the limitation on FMC suspension authority should have the salutary effect of both bringing these rate change matters to an earlier conclusion and easing the carrier's financial disadvantage. While carriers will be responsible to refund with interest any portion of an increase found unlawful by the FMC, the aforesaid 180-day ceiling on the time consumed in the regulatory review process will keep to reasonable amounts such revenues as might have to be refunded.

United States Lines respectfully urges the Subcommitte on Merchant Marine and Tourism and the Committee on Commerce to report out favorably H.R. 6503 and the Senate to enact this legislation.

CHAMBER OF COMMERCE OF PUERTO RICO,
San Juan, P.R., September 6, 1978.

Hon. SENATOR DANIEL K. INOUYE,
Chairman, Merchant Marine and Tourism Subcommittee, U.S. Senate, Washington, D.C.

DEAR SENATOR: Maritime transportation is of extreme importance to Puerto Rico because of our practically total dependence on it. Maritime rate increases have a particularly adverse impact on our consumers and industries because of our lower incomes and wages vis-a-vis other domestic areas. HR 6503, or the Murphy Bill, which would amend the 1933 Intercoastal Shipping Act, is, therefore, of great interest and concern to the people of Puerto Rico, its government, and to the Chamber of Commerce of Puerto Rico. We have studied the bill carefully, as it was approved by the House, and have the following comments on it, which we would appreciate that you consider carefully and include in the hearing record of the Senate Subcommittee on Merchant Marine and Tourism.

CONCLUSIONS AND RECOMMENDATIONS

After a careful review and analysis of H.R. 6503 and its proposed amendments to the Intercoastal Shipping Act of 1933, the Chamber of Commerce of Puerto Rico concludes that the proposed amendments, especially the nonsuspension provision of annual 5 percent rate increases, are against current U.S. Government Anti-Inflation Policy and thus have great significance, not only for the offshore domestic areas, but for all of the United States. The authorization by the Federal Government to a Federally-regulated industry, such as the maritime transportation industry, that it may put into effect rate increases of a substantial, predetermined magnitude automatically, after filing a rate increase petition, and without a finding by the regulatory agency that the rate increases are just and reasonable would constitute a bad example for other regulated and nonregulated industries of the institutionalization of inflation by the Federal Government.

The Chamber also considers that, all in all, the proposed amendments, far from adequately harmonizing and balancing the interests of all affected parties, incline

the balance heavily in favor of the carriers and against the shippers and consumers, especially those of the offshore domestic areas, who would be specially hurt by the amendments because of their practically total dependence on external maritime transportation and their low incomes. In fact, each and every one of the proposed amendments favors the carriers over the shippers and consumers, as will be demonstrated later.

The automatic price increases are especially shocking and inappropriate in the case of a Federal-Government-regulated industry whose operations and tariffs are supposed to be carefully regulated because of competitive restrictions and the essentiality of the service provided. In practice, we believe that the aforementioned measure insures, makes certain, minimum annual rate increases of 5 percent and much higher average increases in the future for the affected trades.

We also consider that the proposed refunds at prime interest rates in the case of unlawful rate increases will not be a deterrent for such increases, since these would be like loans at prime interest, hardly a bad deal for the carriers.

The provision requiring final decisions on rate increase petitions in 180 to 240 days will also work in favor of the carriers, since the 300–700 percent time reduction involved from the present 2 to 4 years it takes to resolve a case has no basis on fact or evidence and seems unfeasible and unrealistic. In view of that, the provision that a rate increase be regarded just and reasonable if the proceeding takes longer than 180–240 days is clearly favorable to the carriers. The same is true regarding the provision making it more costly and difficult to shippers and local governments of offshore areas to protest rate increases and make hearings possible.

It would seem fair enough for carriers and all other parties involved, and it is the recommendation of the Chamber of Commerce of Puerto Rico, that the following combination of measures be approved and implemented: Hearings should be made easier not more difficult to have; regulation should be speeded up as much as can be proven feasible by the proposed expediting measures in the Murphy Bill, by Federal Maritime Commission resources, and by available experience and evidence on the matter; at least the present 120 day suspension power should be retained; petitioning carriers should be allowed to, and in fact should, consider the financial effect of a possible rate increase suspension in their calculation of proposed rate increases, so that a suspension have no adverse effect on the petitioner's profit.

EFFECTIVENESS VS. LAWFULNESS OF RATE INCREASES

The mere nonsuspension of a rate increase without a finding of lawfulness amounts in fact to a presumption of lawfulness. The increase is in fact assumed lawful until a final decision is made by the Federal Maritime Commission.

It is more difficult to undo something that is already done, than to do it in the first place; to take back something that is already given, then to give it initially, to keep moving a moving object than to stop it; to try to move a still object than to keep it still; to withdraw or take back a rate increase that has been in effect for 180 to 240 days and require a refund, than to let it remain in effect. In nature it is called inertia. In the Bill Murphy case, it is an important and obvious advantage for the carrier.

The inflationary impact of a rate increase is determined by its effectiveness, not by its fairness or lawfulness. Its effect on the purchasing power of the consumer is felt at the time it becomes effective.

In industries where competition is effective in determining fair prices it seems reasonable enough to assume that a price is fair at the time that it becomes effective. That is an important reason why such industries and prices are not regulated by the Government. Government regulated industries are different. Their operations and prices are regulated because it is regarded necessary; because competition is restricted, and because the service provided is of an essential nature.

COMPETITION AND AUTOMATICALLY EFFECTIVE RATE INCREASES

Such is the case of maritime transportation, especially between the mainland U.S. and its offshore areas. Mainland U.S. ports not only enjoy competitive transportation media in their trade with other mainland areas—intercity cargo traffic is only 17 percent by internal waterways—but also in foreign trade, where foreign flag ships provide much more effective competition than the one among

a few U.S.-flag companies that we have. On top of that, carriers are guaranteed a healthy and relatively substantial 10 percent return on investment. Such a situation compelled the Puerto Rican Government to acquire "Navieras". In the face of such operating conditions and competitive restrictions, the allegation in the H.R. Committee Report that "carriers operating in the domestic offshore trades do so without the usual protection afforded by an operating authority or certificate" becomes relatively inconsequential. It is interesting and significant that the Government of Puerto Rico, in spite of the benefits that its shipping line "Navieras" would derive from the Murphy Bill, opposes the bill, particularly its nonsuspension provision, obviously because of the greater prejudice that it would cause to the Puerto Rican economy.

AUTOMATIC RATE INCREASE AND U.S. GOVERNMENT ANTI-INFLATION POLICY

Proposed changes in the Intercoastal Shipping Act would have substantial national significance and impact affecting all of the U.S. and not merely the offshore domestic trades and areas.

Automatic effectiveness of price increases in Government regulated industries is against Federal Government Anti-Inflation Policy, as it should be. What can be expected of other regulated industries if such a thing happens in maritime transportation? As a matter of fact, the mere presentation of the Murphy Bill and its approval by the House of Representatives last year has already prompted the Civil Aeronautics Board to follow the example in certain cases. What is worse, what can be expected of nonregulated industries, especially in the case of important oligopolies which the Federal Government expects to hold the line in price increases and to clearly justify them before they become effective?

All industries have suffered cost increases as a consequence of the inflationary pressures affecting the U.S. and world economies. This does not justify automatic effectiveness of price increases of pre-determined magnitude without specific justification, especially in Government regulated industries. Such automatic increases would allow the strong unions in the maritime transportation industries, which already enjoy above-national-average wages, to bargain for higher wages and benefits effectively on the basis that at least a 5-percent price increase can be automatically passed on to shippers every year.

The acceptance and generalization of the automatic effectiveness of price or rate increases would mean the institutionalization of inflation; not merely an acceptance of its inevitability, but an authority to act accordingly, raising prices on the assumption that a certain amount of inflation will inevitably take place. This would be wrong policy.

Inflation is an economic malaise. It hurts the economy in whatever degree it may take place. It should be fought and prevented to the highest possible extent, not only in benefit of the U.S. offshore areas but of all the United States.

ECONOMIC IMPACT ON OFFSHORE DOMESTIC AREAS

In the case of poor offshore areas like Puerto Rico, such price or rate increases are even less justified in view of our higher, almost total, dependence on maritime transportation and the lower incomes and higher cost of living of our population as compared to the high incomes of maritime transport workers and of the U.S. mainland population. Any given rate increase hurts more our people than the Mainland's.

The automatic effectiveness of the proposed rate increases makes practically certain that the islands will have general rate increases every year of no less than 5 percent, while they could be much higher than 5 percent. This would inevitably result in higher prices than in the past. Before, there have been higher increases than 5 percent in some years, while other years there have been none. The same is true about the Puerto Rican Consumer Price Index: in seven of the last 10 years it shows a lower increase than 5 percent. In the United States the median Consumer Price Index increase was 5.6 percent for the last 10 years and 4.3 percent for the last 15 years. However, these are averages, not minimums. (See the enclosed Consumer Price Index graph for the U.S. and Puerto Rico) Furthermore, both the U.S. and Puerto Rican averages are adversely affected by the unusually steep increases in 1974 and 1975. Considering that the proposed rate increases not subject to suspension would result in minimum (not average or maximum) annual rate increases of 5 percent the Chamber of Commerce of Puerto Rico does not consider such increases "modest" nor "fair", as they are called in the H.R. Committee Report.

THE FEDERAL MARITIME COMMISSION AND THE MURPHY BILL

Sincerely, we are not surprised that the Federal Maritime Commission, as indicated in the H.R. Committee Report, "acknowledges the fairness of the limited 7 percent restriction placed on its suspension power by the bill". It is interesting that the House amendment reducing from 7 to 5 percent the suspension-power restriction came as a result of requests to Representative Murphy from the Hon. Baltasar Corrada del Rio and Hon. Ron de Lugo, representatives of the Puerto Rican and Virgin Islands governments in the House, not from a request or recommendation by the Federal Maritime Commission. We believe that the Federal Maritime Commission has been more responsive to the influence and political power of the carrier company and maritime union lobbies than to the interest of the island populations, especially those of Puerto Rico, Virgin Islands, and Guam.

REFUND AT PRIME RATE: NO DETERRENT

The refund at prime interest rate of any unsuspended portion of a rate increase that is determined at the end of a proceeding not to be just and reasonable is something that should have been provided in the Law long before, but is hardly a deterrent against unreasonable increases. Collecting funds for 180 to 240 and then reimbursing them at prime interest rates is like obtaining a loan at prime interest—hardly a bad deal. It is in fact more of an incentive than of a deterrent for unreasonable rate increases. The burden of indentifying shippers that have been overcharged for refund purposes is hardly a burden since, according to the H.R. Committee Report, "carriers in the domestic offshore trades normally maintain records sufficient to identify shippers for such purposes."

REDUCTION IN REGULATORY DELAYS: FAVORABLE TO CARRIERS

The provision requiring that the Federal Maritime Commission issue a final decision in 180 to 240 days, even though it would have the desirable effect of speeding up the proceedings, would in practice be highly favorable to carriers vis-a-vis shippers. On the one hand, it would drastically reduce (from 2–4 years to 3–4 months, or 300–700 percent) the time that proceedings would last; on the other hand, it would regard rate increases "just and reasonable" if a final decision had not been made by the end of the 3–4 month period.

Although the bill has some three provisions that would speed up the proceedings, it is very highly questionable that it could do it by 300–700 percent without providing additional resources to Federal Maritime Commission and without affecting the quality, correctness and reliability of the studies, procedures, and deliberations involved. No evidence has been submitted and no attempt has been made to demonstrate that such a sizeable time reduction in the proceedings is feasible. Under such circumstances, the assumption that a rate increase is just and reasonable if the proceeding is not finished in 180 to 240 days would be favorable to the carriers and unfair to shippers, and would probably result in more cases being resolved in favor of the carriers and poorer case preparation, conduction and resolution by Federal Maritime Commission.

Extending from 30 to 60 days the time from the filing of a rate increase petition to the date of its effectiveness, as well as the preparation of guidelines for return-on-investment computation, and the flexibility to carry out various types of hearings would certainly be helpful in speeding up proceedings, but not nearly by 300 to 700 percent.

HEARING AVOIDANCE: FAVORABLE TO CARRIERS

It seems also unfair to protestant shippers and unduly favorable to carriers that while the latter have all the time, all the technical expertise, and all the resources needed to prepare and justify a rate increase petition, that shippers, specially in the offshore domestic areas, be given 60 days to receive all the documentations, and to join efforts and resources to obtain and finance the high technical expertise required to evaluate the carrier documentation, and prepare a case good enough to demostrate that "it will prevail on its merits" and that shippers will suffer "substantial injury", as the bill requires. Even the Federal Maritime Commission, with all its specialization, expertise and resources would seem to have comparatively little time to determine "detailed reasons why a hearing may be justified", particularly if petitioner's data is not to be accepted at face value.

It would seem that a hearing should not be so difficult to come by, and so difficult and expensive for protestant shippers, the Federal Maritime Commission, and affected offshore local governments to obtain.

Finally, honorable Senator, we believe that the proponents of the bill did not have in mind to deeply hurt their fellow citizens living in Puerto Rico as it would happen if it were to be approved in its present form. Your fellow citizens of Puerto Rico will be deeply grateful to you if you help us obtain a more balanced and fair treatment than the one afforded us by the Murphy Bill as approved by the House.

Sincerely,

EDUARDO ROVIRA SANCHEZ,
President.

Enclosure.

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