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RAILROAD DEREGULATION ACT OF 1979

GOVERNMENT
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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 796

TO REFORM THE ECONOMIC REGULATION OF RAILROADS, AND FOR OTHER PURPOSES

JUNE 21, JULY 5, AND 6, 1979

PART 3

Serial No. 96-41

Printed for the use of the
Committee on Commerce, Science, and Transportation

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

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RAILROAD DEREGULATION ACT OF 1979

Structure and Service Obligations

THURSDAY, JUNE 21, 1979

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

The subcommittee met at 10:15 a.m. in room 235 of the Russell Senate Office Building, Hon. Howard W. Cannon (chairman of committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order. Today the Surface Transportation Subcommittee is holding a hearing on the provisions in S. 796, the Railroad Deregulation Act of 1979, which relate to the rail industry structure and service obligations. Senator Long, chairman of the subcommittee, is unable to be with us today and has asked me to chair this hearing. The subcommittee will be examining, among other issues, the specific provisions of S. 796 which pertain to abandonments, mergers, and consolidations. Under the abandonment provision, certain procedural and substantive changes would be instituted in the process of obtaining an abandonment certificate. In particular, the profitability of a line would form the basis for determining whether the line should be abandoned or not. With regard to mergers and consolidations the bill would remove mergers from the ICC's control and place them under the purview of the antitrust laws but would maintain the Commission's power over consolidations and other similar agreements.

In reviewing these provisions it is important to note the excess trackage which exists in the rail system. The Department of Transportation has indicated that one-third of the rail route miles carry only 2 percent of the rail traffic. In this regard, no one would argue with the notion that the rationalization of the rail system by consolidation of plant and operations would promote efficiency and ultimately improve service. Any legislation which we review should encourage such rationalization. In this regard, the committee must be certain that the procedural and substantive proposals under S. 796 would facilitate abandonments while providing legal protection for small communities and shippers who depend on rail service. With regard to mergers we need to decide on a sound policy regarding them and determine whether the antitrust laws would promote these policies by encouraging or impeding such mergers.

Car service remains a serious problem in the rail industry. In response to strong criticism that the ICC with its car service orders has complicated an already impossible situation, this bill would remove the Commission's jurisdiction over car service, thereby leaving it to rail management with a provision for settling disputes by arbitration. The committee must question whether such transfer of control would create even more problems than now exist with car service.

As we analyze all these provisions, the committee must consider the extent to which the common carrier obligation of the rail industry would be eroded under this bill. While proposing a regulatory environment under which railroads can improve their financial situation, this legislation must guarantee that the basic responsibility of any transportation system to provide good service to those who need and desire it will be fulfilled.

The committee looks forward to exploring the issues before us today. I now call the Honorable A. Daniel O'Neal, Chairman of the Interstate Commerce Commission.

You may proceed.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ALAN FITZWATER, DIRECTOR, OFFICE OF PROCEEDINGS; AND JOHN ROBINSON, HEAD, RAIL POLICY BRANCH, OFFICE OF POLICY AND ANALYSIS

Mr. O'NEAL. Thank you. I have with me on my left Alan Fitzwater, director of the Office of Proceedings, and on my right, John Robinson, head of our Rail Policy Branch in the Office of Policy and Analysis.

I have a longer statement I would like to submit for the record and a short statement that I will proceed through.

The CHAIRMAN. All right, sir.

Mr. O'NEAL. We do appreciate the opportunity to present the views of the Commission on the nonrate provisions of S. 796. I believe several points made in our last statement on this legislation deserve a very brief reiteration in the context of today's subject matter.

First, inquiries into the proper mix of regulation and the forces of the marketplace are wholly appropriate in a period of a changing economy and populace. However, the issue of regulation is only one issue of several which need to be addressed. Others include the level of financial support of competing modes and the loss of traffic to other modes. It is essential that railroads improve their competitive posture with respect to other modes.

We firmly believe that the railroads' long-term fortunes depend on their ability to handle competitive traffic profitably. The key is service—service which will attract new traffic. In those instances where carriers have provided good service, they have been effective competitors. Clearly, Government policies should encourage this situation by recognizing the relationship between improving service and increased reliance on managerial discretion and competition.

A large part of service improvements can be expected to result from a rationalization of the system, involving consolidations and abandonments. Let me turn now to a brief analysis of the bill.

One of the most significant portions of the administration's proposal is that which would amend the laws relating to mergers and consolidations. In essence, the bill would remove the Commission's jurisdiction over all major mergers and consolidations and allow the antitrust laws alone to govern those large-scale transactions. At the same time, the bill provides that the Commission would retain some jurisdiction over lesser restructuring actions such as trackage rights, market swaps, reciprocal switching agreement, and the like.

Congress has previously recognized the importance of restructuring. The 4R Act contained a number of provisions directing that merger processes be altered by the ICC and the Department of Transportation. We believe that restructuring of transportation companies continues to deserve the attention of the ICC and DOT. There is a need for agency review of mergers and consolidations.

This review needs to be systematic and specialized because no generalization can be truly made as to whether mergers are desirable. Some are good and some are not. It is the Commission's present responsibility, in approving or denying mergers, to examine the benefits and costs of each merger on its individual merits and with relation to other merger activity.

The Commission views mergers not only in terms of competition but also in terms of transportation needs, which encompass the financial integrity of carriers as well as the service needs of rail users.

The approach by the Department of Justice would likely be quite different. The antitrust laws would provide the sole test—the only question to be resolved would be whether competition is enhanced or lessened. The statute today contemplates that other factors be examined. We are here dealing with a transportation system—a very interdependent yet severally owned system. A properly focused merger review process should set decisions against that system's backdrop. The antitrust approach affords no opportunity for such a review.

That raises another point—under regulation there are some 400 or so railroads of all shapes and sizes. The industry, in other words, is less highly concentrated than a number of industries such as steel and oil that are subject to the antitrust laws. Good or bad, that is something to think about. In some rail markets there may not be sufficient traffic to support multiple carriers, in which case service to all shippers may suffer, another point which deserves consideration.

While the ICC under present law has a maximum of 31 months within which to make a decision no matter how many tests or criteria it applies, there is no time limit in the proposal placed on anyone. Also, the proposal would appear to cut out the public input which is built into current law, and which we believe is important.

In the abandonment area, the bill would provide four new approaches for a carrier to take in submitting an application for abandonment. The bill does this by establishing four presumptions or conditions. When any one of these presumptions is met by the carrier, abandonment must be permitted. A carrier could still apply for an abandonment under more traditional procedures, if it desired.

We are in agreement with the intent of this portion of the bill, which is to simplify procedures and to place greater emphasis on economic costs and financial profitability in evaluating abandonment proposals. However, we do have reservations about some of the specific provisions. Generally, the effect of the bill is to move toward easing the burden on the carriers and increasing the burden on the public. Several of the provisions of the bill would not allow for sufficient public input into the process. Also, the bill would diminish the Commission's flexibility in weighing competing interests and fashioning appropriate remedies.

The bill dramatically reduces the Commission's authority to regulate car service. That authority includes power to regulate compensation for the use of rail cars and locomotives which embraces setting levels of per diem, incentive per diem, and demurrage. And it includes car service orders, which regulate for a limited time car movements.

We are aware of the claims that emergency car service powers have been overused in the past. But it does depend on one's perspective. Last year, while FRA was decrying the use of emergency car service orders, the Secretary of Agriculture sent me a letter commending the ICC for its work. Many executive agencies have promotional responsibilities. The FRA is one of those. When car service orders are issued they interfere with the marketplace as viewed by the railroad but assist the marketplace as viewed by some shippers. That is to say, those shippers may have an enhanced opportunity to compete because of the car service order. A serious question exists as to whether agencies which promote either of the affected businesses should decide whether to interfere.

The provision requiring Presidential declaration of an emergency seems like an altogether too cumbersome device. And the issues involved do not really seem worthy of Presidential-level attention.

The bill contains several other provisions involving securities, an accounting system, and an arbitration procedure, which are covered in the longer statement.

I would be happy to try and answer any question that you might have at this time.

The CHAIRMAN. In the section-by-section analysis of the bill, the Department of Transportation states that under current abandonment law, the criteria for judging abandonment applications are undefined. Would you please comment?

Mr. O'NEAL. Undefined?

The CHAIRMAN. Yes.

Mr. O'NEAL. Well, they are not as specific as contained in this bill. There is a lot of Commission discretion, no question about it. I would say the current practice of the Commission certainly is to give a great deal of weight to whether the line is losing money.The Commission would have to find a lot of mitigating circumstances before a protestant could be successful in arguing against the abandonment of a line that is losing money. It's true, though, that there is a good deal of flexibility today, however the standard that is used today is one that has evolved over a period of time.

Another feature of the present review of abandonment policy is our review of the opportunity cost approach which the Commission

has just started and which is included as one of the presumptions in this legislation.

The CHAIRMAN. You also say that generally the effect of the bill is to go toward easing the burden on the carriers and increasing the burden on the public. Would you expand on that a little?

Mr. O'NEAL. Well, I think the whole purpose of this thing is to simplify the process for the railroads. We are not necessarily saying that it shouldn't be that way, but I think it's a point that ought to be clarified or ought to be weighed by the Congress.

One concern I referred to earlier is that if the line, under the presumptions, is shown to be nonprofitable, then it must be abandoned. The Commission must order abandonment. The Commission could not look at whether there might be a future for rail service in that particular area. It could not look at potential subsidies to continue the line; there might be parties that would be interested in doing that. So in other words, it really reduces the flexibility that maybe someone, such as a user, might find desirable. It really just requires the Commission to lop the line off if it is not profitable.

The CHAIRMAN. I take it, then, that you feel that the discretion which is presently given the ICC in abandonment procedures is more desirable?

Mr. O'NEAL. I think it is. I don't think the Commission is requiring very many lines that are not profitable to be continued. Another problem with the bill is that it would not allow the Commission to look at the possibility of whether the railroad could increase charges on the line so as to make it profitable. I think that would be another way to deal in part with the problem of abandonments.

The CHAIRMAN. On the issue of mergers, referring this idea of transferring the jurisdiction to the Justice Department, I must say that I agree with you that the approach by the Department of Justice would likely be quite different than the one used today, which requires the examination of other factors. I notice that the Department of Transportation has stated that transportation interests would be weighed in any decision under the antitrust laws. What is your comment on that? Do you think that those transportation factors really could be examined under the antitrust laws?

Mr. O'NEAL. I really don't believe that that would happen. I think that the Antitrust Division goes at these questions from a much different perspective. They are going to look at the antitrust laws. They are not going to look at whether you need a railroad system to provide a certain service for the flow of goods around the country. That is not where they come from, and it would be very unlikely they would give much weight to that kind of consideration.

What we are really saying here is that we are dealing with a transportation system. We ought to apply some transportation expertise to these decisions. And I realize that these decisions in the past have taken much too long. We do have, however, time limits that are in the statute, 31 months for a major merger. And the Commission is adhering to time limits.

The CHAIRMAN. Do I fairly interpret you as saying that it might be possible that if competition were being lessened by a proposed

merger, there are other factors that still might make the merger desirable?

Mr. O'NEAL. Yes, indeed.

The CHAIRMAN. I must say that I completely subscribe to that. I think the Department of Justice goes into a proceeding with the built-in feeling that all mergers are improper and should not be permitted. I do not think that is undesirable. I think that each case needs to stand on its own. Some mergers are good and some are bad, and you have got to look at more than just the very narrow aspect of whether they just simply enhance or lessen competition.

Mr. O'NEAL. I think there is another factor here, too. I think the Commission has the expertise to look at a rail merger to see how it would affect different regions of the country. And I think that is something that should be considered, and yet probably wouldn't go into the decision made with the Justice Department viewpoint.

The CHAIRMAN. If the merger authority were to be retained under ICC jurisdiction, how would you suggest getting at this time problem? Would you suggest that the Congress just simply write in some time contraints imposed on you to hold your feet to the fire, so to speak?

Mr. O'NEAL. Well, I am always in favor of time limits. There are time limits in the existing statute that require a decision by the Commission in 31 months. I think that time limits are a good thing. They help an agency make decisions in a timely manner. I would like, however, as an agency head, to have some say over what those time limits are. But whether they are imposed internally by the agency or externally by the Congress, they do have an effect.

The CHAIRMAN. Under the 4R Act, an expedited merger procedure was enacted whereby merger proposals would be evaluated by the Secretary and then passed on to the Commission for prompt decision. Why have no proposals been filed under this section?

Mr. O'NEAL. Well, I am not really sure. But I think probably two reasons. One, the process as a whole is not much shorter in time. I think an application takes about 30 months under the expedited procedure, so you achieve a savings of about 1 month. While the ICC has shorter period of time thereafter, the time is about the same because the Secretary has 6 months to look at an application.

Second, it requires that instead of going to one agency, you have to go to two. I would assume that the carriers looking at that would decide that they might as well just go to one agency. They are not going to lose that much more time, and they could save themselves a lot of money.

The CHAIRMAN. You say that when you review merger and consolidation applications, you consider competitive implications. Now what do you mean by that, and how does that standard differ from the one which the Justice Department applies under the antitrust laws?

Mr. O'NEAL. Well, I am not sure how it would differ. Indeed, the Justice Department does come into these cases many times and is a factor in the cases. In fact in one case, the Penn Central merger, when the Justice Department changed its view and favored the merger, that was a critical element in the Commission's decision. So I am not sure that we look at the competitive issue that much

differently. What we try to do, though, is weigh the impact on different carriers. Carriers do have an opportunity to come in and file for various conditions to the merger to protect their interests, which is a different feature than you have under the antitrust laws, presumably. So to that extent, we look at it somewhat differently.

The CHAIRMAN. Thank you very much. We appreciate your testimony here today.

Mr. O'NEAL. Thank you.

[The statement follows:]

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

I. INTRODUCTION

Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to appear before the Subcommittee on Surface Transportation to present the views of the Interstate Commerce Commission on the non-rate provisions of S. 796, the "Railroad Deregulation Act of 1979". I have previously testified for the Commission on the rate related provisions of S. 796. In that testimony I gave an overview of railroad regulation. I will not burden the Subcommittee with a complete repetition of those remarks, but I believe several points made there deserve attention in the context of today's hearing.

First, inquiries into the proper mix of regulation and the forces of the marketplace are a periodic and wholly the forces of the marketplace are a periodic and wholly appropriate response to a changing economy and populace and the need to accomodate such change. However, the issue of regulation is only one issue of several which need to be addressed. Others include the level of financial support of competing modes and loss of traffic to other modes. The reasons for this loss of traffic are many. One has been the tremendous growth of other modes, often the result of government provided advantages. A second has been the rail industry's inability to cope with this increased competition. Although to some extent that has been the result of many years of pervasive regulation by the ICC, there are several more factors involved.

Response to this loss of traffic has often been inappropriate. Rather than competing more aggresssively, the railroads have for the most part relied upon raised rates and service on traffic where they face less competition, particularly with respect to the long-haul movement of bulk commodities on routes lacking barge competition. Concentrating on this traffic has not generated enough revenue for all carriers, in part because the Commission has safeguarded against the unlimited exploitation of monopoly power in noncompetitive markets. We firmly believe that the railroads' long-term fortunes depend heavily on their ability to handle competitive traffic profitably.

The key here is service—service which will attract new traffic. In those instances where carriers have provided good service, they have been effective competitors. More of that is needed, and it entails establishing and maintaining modern pricing, marketing, and operating strategies which will improve their competitiveness, both intramodally and intermodally. Clearly, government policies should encourage this result by recognizing the relationship between improved service and increased reliance on managerial discretion and competition.

A large part of service improvements can be expected to result from a rationalization of the system. I doubt that any parties to the debate would question the need for rationalization. The question that is argued is how this is to be done and by whom. The issues here involve the regulation of consolidations and abandonments. These are also some of the major sections included within the non-rate provisions of S. 796. Let me turn now to an analysis of those, and other sections of the bill.

II. INDUSTRY STRUCTURE

Mergers and consolidations

On of the most significant positions of the Administration's proposal is that which would amend the laws relating to mergers and consolidations. Before going into the proposed changes, I believe it would be useful to review the present state of the law in this area.

The Commission is presently empowered to approve consolidation proposals which it finds to be consistent with the public interest (49 U.S.C. 11344, formerly section

5(2) of the Interstate Commerce Act). This is a permissive provision, and requires initiatives by the carrier parties to the proposed transaction. In connection with its power to approve such transactions, the Commission may also impose conditions which are designed to enhance the public interest, including labor protective conditions, inclusion of other carriers, traffic conditions, and others. While transactions approved by the Commission are exempt from the operation of the antitrust laws, the Commission is nonetheless required to consider in its decision any competitive implications which the consolidation might entail. It is under this provision that all merger and consolidation proposals up to this time have been handled.

In 1976, in the 4R Act, Congress enacted an alternative merger provision (formerly section 5(3) of the Act, now section 11346). Under this procedure, proposals for consolidation would be presented to and evaluated by the Secretary of Transportation and then forwarded to the Commission for expedited handling. The purpose of this provision was to speed up consideration of worthy consolidation proposals under the auspices of the Secretary of Transportation. This alternative was further designed to tie in closely with the overall planning process outlined in section 401 of the 4R Act, and with financial assistance programs administered by the Secretary. Despite the fact that this alternative consolidation method has been in effect since 1976, as far as we are aware no proposals have yet been laid before the Secretary, and thus none have been forthcoming from him to the Commission.

The current Administration proposal would change both of those procedures drastically. In essence, it would remove the Commission's jurisdiction over all major mergers and consolidations and allow the antiturst laws to govern such large-scale transaction. At the same time, the bill provides that the Commission would retain some jurisdiction over lesser restructuring actions such as trackage rights, market swaps, reciprocal switching agreements, and the like.

Several observations need to be made about this proposal. The proposal would apply one test to rail mergers—the antitrust test. The test would be devised by the Justice Department or the Federal Trade Commission and would be administered by a court of law.

The following examination which is presently applied by the ICC, using its expertise in transportation, would not be applied: (1) The effect on adequate transport service to the public; and (2) the effect on public interest of including or failing to include other railroads in mergers; and (3) the total fixed charges (including the consideration paid, assumption of debts etc.) which could affect the carriers financial health.

A rather broad range of individual elements is considered by the Commission in the decisional process under its present authority. For example, the following operational aspects are considered: savings in administrative expense for operation through common officers; better performance on a small road through use of modern facilities provided by a large road acquiring control of the former; an increase in the supply of freight cars on the acquired road; elimination of duplicate facilities; economics resulting from the ability of the merged road to handle traffic with fewer train-miles; consolidation and modernization of terminals and other facilities; and more flexible and efficient use of motive power. Marketing and service advantages, such as those that result from single line service, are other elements that are considered by the Commission.

The ICC under the statute has a maximum of 31 months within which to make a decision no matter how many tests or criteria it applies. In the proposals, no time limit is placed on anyone.

We believe that the present procedure involving Commission approval of consolidation transactions takes into account the legitimate concerns of the various parties and Government agencies involved, including the need to promote rationalization of the system, potential reductions in competition, and other factors. We do not contend that our standards for implementing consolidation transactions have been perfect, and in fact we have taken recent measures to ensure that our standards—which implement the "public interest" test of the statute—are rational and understable to all involved. We issued a policy statement (attached) in December 1978 which outlines the critiera which we consider in these proceedings.

We believe there is more involved here than simply a question of which agency should retain control over these transactions; rather it is a question of the entire approach to be taken. A consolidation of any two or more large railroads may have a "domino" effect on the rest of the industry since railroads are highly interdependent competitors, with 70 percent of their traffic being interlined. This factor requires a decisional body to view the rail network as a whole. We believe that the Commission, with its improved standards and procedures in this area, can and should perform this important task.

Congress has previously recognized the importance of restructuring. The 4R Act contained a number of provisions directing that action in the area be taken by the ICC and the Department of Transportation. Under Title IV of the 4R Act, major changes were made in the Interstate Commerce Act to ensure speedy yet complete consideration of mergers and consolidations, including the creation of an expedited application procedure. Also under that title, the Secretary of Transportation was given authority to develop specific plans for mergers and consolidations. And under Title IX of the 4R act, the Secretary of Transportation was directed to "conduct a comprehensive study of the American railway system", including "a showing of the potential cost savings and or possible improvements in service quality which could result from restructuring * * *".

We believe that restructuring continues to deserve that attention of the ICC and DOT. There is a need for some agency to review mergers and consolidations. This review needs to be systematic and specialized because no generalization can truly be made as to whether mergers are desirable. Some are good and some are not. It is the Commission's present responsibility, in approving or denying mergers, to examine the benefits and drawbacks of each merger on its individual merits and with relation to other merger activity. The Commission views mergers not only in terms of competition but also in terms of transportation needs, which encompass the financial intergrity of carriers as well as the service needs of rail users.

The Department of Justice approach would likely be quite different, as it would probably assume that competition produces the best service for users. This may not always be true. In some rail markets there may not be sufficient traffic to support multiple carriers, in which case service to all shippers may suffer.

Furthermore, given the present rail industry structure, service and financial problems, concern over concentration in the industry may be misplaced. In any case, under present regulation, parties of all opinions may contribute to the decisional process which must take into account all relevant points—not only competition.

This brings up another point concerning public input into the merger process. The Commission feels it is important that transactions of this magnitude must be put through a process involving public participation. There is virtually no kind of transaction which can have greater impact on railroads and rail users than these. Yet, if this bill were enacted in its present form, public participation would appear to be virtually eliminated. If the transaction were of a type not previously endorsed by the Secretary, the only public participation could be in the complex forum of an antitrust suit in the courts. The Department of Justice could seek a preliminary injunction against consumation of the merger prior to completion of the antitrust suit, but issuance of such an injunction lies within the discretion of the courts, which it may or may not grant. Even if the proposal were of a kind submitted to and approved by the Secretary, the public participation specifically quaranteed under present law prior to the Secretary's decision would be expressly eliminated by the bill.

While we agree that consolidation proposals must be handled as expeditiously as possible, and are aware that they have not always been processed as quickly as they might, we believe nevertheless that efforts to remove public participation will simply not produce a desirable result as far as the future of the rail system is concerned. The problem would be aggravated further by the fact that the Department of Transportation's recent proposal regarding financial assistance to the railroads, S. 1151, would tie in most major financial assistance to the Department's planning process.

Abandonment

Basically the bill would provide four new approaches for a carrier to take in submitting an application for abandonment. The bill does this by establishing four presumptions or conditions. When any one of these presumptions is met by the carrier, abandonment must be permitted. In addition, a carrier could still apply for an abandonment under more traditional procedures.

The first presumption would be met if there is no objection to an abandonment. The second presumption would operate if the applicant carrier demonstrates that the line or service does not produce a profit. The third presumption involves the concept of opportunity cost. Under this provision a carrier could be granted an abandonment certificate if it could prove that the benefits of using its assets elsewhere outweigh the detriment to the protestant. Finally, the fourth presumption arises if the abandonment application has been approved by the Secretary of Transportation as part of a proposal under the planning process of section 401 of the 4R Act.

We are in agreement with the intent of this portion of the bill, which is to simplify procedures and to place greater emphasis on economic costs and financial

profitability in evaluating abandonment proposals. However, we do have reservations about some of the specific provisions. Generally, the effect of the bill is to go too far toward easing the burden on the carriers and increasing the burden on the public. In addition, several of the provisions of the bill would not allow for sufficient public input into the process. Also, the bill would diminish the Commission's flexibility in weighing competing interest and fashioning appropriate remedies. Those problems are manifested in some degree or another in all of the tests proposed by the bill.

Considering the first presumption—where there is no protest filed—there is, of course, by definition no public input in that type of case. Assuming that there has been adequate notice to the affected parties, we have no particular objection to this section as the bill would simply codify what is essentialy present Commission practice.

Second, the bill provides that where the line is demonstrated to be unprofitable, the Commission is required to find that the public convenience and necessity require and permit abandonment. Under present practice, we generally are reluctant to require a carrier to continue service over a "losing" line and generally will allow abandonment where a line is not profitable. However, the bill is somewhat different from present practice in that the Commission could not consider any possible mitigating circumstances. Under the bill a protestant could attempt only to refute the cost evidence submitted by the carrier applicant. The Commission would not be permitted to receive or examine any evidence of adverse effects on line users or on rural or community development. The bill would prevent the consideration of protestants' evidence concerning any possibility of future business development along the line, any likelihood of future subsidy, whether there exist other transportation alternatives for the shippers, or whether the parties could make use of rate changes (including surcharges) to cover the full costs of operation of the line. We feel that this type of input is important in abandonment proceedings, especially where minimal adjustments by both carrier and shipper would permit continuation of the service. Therefore, some provision should be made to continue to permit the introduction of this type of evidence, as an inducement to interested parties to explore thoroughly alternatives to line abandonments.

Third, the bill provides that a carrier may apply for abandonment using a theory of capital opportunity costs. This theory suggests that there are better opportunities for profit by shifting assets from one part of a rail system to another. This approach allows for public input and a balancing by the Commission as the carrier would present evidence of the benefits gained from putting the capital used on the line or service to another railroad use and the protestant could present evidence of the detriment from loss of service including any impact the abandonment might have on rural and community development. The Commission believes opportunity cost to be an important issue and is seeking comment on a proposed policy statement that opportunity cost of capital would be considered in abandonment proceedings. Two Commissioners have expressed their belief that existing law provides for consideration of opportunity cost.[1] Therefore, we believe this is a potentially useful concept, and are actively inquiring into the possibility of its use.

Fourth, a railroad may secure a certificate of abandonment by obtaining approval of the Secretary of Transportation as a part of a proposal under the section 401 program. Under this provision the Commission would be required to grant a certificate of abandonment, once approved by DOT under the 401 process, unless a protestant, by a preponderance of the evidence, could show that the detriment resulting from the abandonment exceeds the transportation benefit of the entire restructuring plan. This burden of proof would appear to be nearly insurmountable. As a result it is likely that abandonment applications approved by DOT would very rarely be protested. This result concerns us for reasons similar to our reservations about merger proposals under section 401, i.e., there is no assured public input into the section 401 process. This in combination with the effective prevention of protest at the stage of ICC review could mean the preclusion of public participation in the abandonment process.

The bill also would remove the Commission's power to modify or condition an abandonment application to reflect the public convenience and necessity as established by the abandonment proceeding. For example, it may be established in a

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[1] Commissioner Gresham opposes the Commission's institution of the proceeding in Ex Parte No. 274 (Sub-No. 3) because he believes the proceeding is unnecessary. Opportunity costs presently are considered in abandonment cases as they logically and realistically should be. Furthermore, he thinks the Commission must give more weight to the need of railroads to rationalize their systems in order to avert further financial deterioration of the railroads and the concomitant need for additional and wasteful financial assistance which must be taken from public coffers.

proceeding that there is justification to grant a certificate to abandon only 10 miles of a proposed 15 mile abandonment. The bill, however, would require an all-or-nothing approach to such an application. Also, the bill leaves unclear what procedures are to be followed where successive subsidizers or purchasers may be interested in a line and may wish to follow up after a default or termination by a previous subsidy or purchase offeror.

In addition, we have certain problems with the time schedules for processing abandonment applications. In an effort to cut down administrative lag, the bill appears to have created some problems of its own in this respect. We will forward further detailed views to the Subcommittee on this point in the near future.

III. OTHER PROVISIONS

Securities

The DOT bill eliminates all ICC responsibility for review of rail carrier securites. By the terms of this proposal, carrier securities would be subject to review only by the Securities and Exchange Commission (SEC).

Prior to 1976, rail securities were regulated solely by ICC, under exemptions in various acts administered by the SEC. In the 4R Act it was determined that a concurrent jurisdiction between the two agencies was appropriate. The SEC was directed to review all public rail offerings (except those for equipment trusts) to make sure that they contain sufficient information to enable the investing public to make rational investment decisions. The ICC, on the other hand, was to examine all rail carrier securities to ensure that the funds generated by the securities were not being misused in a manner which would render the carrier unable to perform its common carrier obligations. In other words, the ICC was given a broader mandate for reviewing rail securities than that given SEC. For example, we also have the responsibility for protecting the integrity of carriers' financial structure and, using a broader definition of the term "security", we examine all types of financing transactions, whether they involve sale to the public or not.

The Commission is aware of the possible burden of double reporting which the 4R Act imposes and we are working with the SEC to minimize this burden. In general, we believe that our experience in sharing concurrent jurisdiction with SEC over railroad securities has worked very well. Recently, the Commission completed a thorough review of our securities requirements and procedures. This review revealed that we have been successful in rapidly processing rail securities applications. On the average, such applications were acted upon within 22 to 25 days from the date filed. Every effort is made to expedite such applications since the money market is fluid, and funds must be obtained on schedule to meet the needs of the carriers.

We also believe that the original reasons for which the Commission was given responsibility for review of rail securities continue to exist. There is a long history of problems in the area of railroad securities which regulation by the SEC could not deal with. Prior to ICC regulation in this area, funds from rail securities often were siphoned off for improper purposes. For example, on several occasions prior to 1920, sales of assets, issuances of bonds, and other transactions were used in ways detrimental to the long-term public interest. As a result, the Commission's power to regulate securities transactions was conferred in 1920. The fact that similar abuses can be committed today by railroad holding companies, which are not subject to ICC securities jurisdiction, indicates that there is reason to suspect that similar problems could reappear if the jurisdiction which the ICC currently has over carrier transactions were eliminated.

We are well aware that in the long run the only real protection against disinvestment is an adequate rate of return, and that the Commission cannot hold captive industry capital. But providing regulatory restraints on transactions that clearly harm the public is an appropriate function for the Commission.

However, one change in current law may be desirable. We believe that the exemption contained in 49 U.S.C. 11302 for small motor carriers, could be usefully extended to small railroads. We think that carriers with outstanding securities of not more than $5,000,000 and short term notes not exceeding $1,000,000 might properly be exempt. There does not seem to be a good reason to subject small railroads to Commission jurisdiction, since their overall impact on national transportation policy is minimal, and their burden of filing a securities application is proportionately greater than that of large carriers. In addition, the Commission, on its own initiative is examining other methods of lessening the burden of our securities requirements and procedures.

Car service

The bill dramatically reduces the Commission's authority to regulate car service through the issuance of car service rules and car service orders. Currently, the authority of the Commission to regulate compensation for the use of rail cars and locomotives takes the form of car service rules which set the levels of per diem, incentive per diem, and demurrage. The bill would repeal the Commission's authority (under 49 U.S.C. 11122, former section 1(14)(a) of the Interstate Commerce Act) to issue these car service rules, and substitute a system in which compensation would be negotiated by carriers, with a possible appeal to an arbitration board and the federal courts. The bill also would eliminate the Commission's authority (now granted by 49 U.S.C. 11123, former section 1(15) of the Interstate Commerce Act) to issue car service orders, which regulate for a limited time car movements in emergency situations. Remaining car service order powers would be transferred to DOT, and exercised only with the approval of the President.

The arbitration proposal is an interesting approach to resolving compensation issues. However, we have some general problems with the arbitration mechanism which will be discussed later. In addition, we have several specific concerns about the application of the arbitration process to the area of rail car compensation. We fear that the opportunity for public participation in compensation determinations could be substantially reduced if this proposal were implemented. Currently, decisions on car service rules are made in a public Commission proceeding in which the public, shippers, and carriers are encouraged to participate. In contrast, the arbitration process set forth in the proposal would allow negotiations which are not open to the public. We are not sure that allowing these meetings to be held in private would be an improvement over the current process which includes open meetings.

In regard to car service orders, we are aware of the claim that we may have overused our emergency car service powers in the past. While we believe that it is necessary that some government agency have the power to order carrier action in bona fide emergency situations, perhaps some clarification and/or redefinition of the term "emergency" may be appropriate, if there is any validity to the overuse claim.

In addition, unless the Nation is willing to rely on the marketplace to resolve car service problems, it is necessary to provide some mechanism or agency for the protection of shippers in order to remedy cases of clear-cut economic discrimination. It also may be necessary to provide some means for ordering the movement of cars to shippers where the economic health of the Nation would be impaired by nondelivery. As one example, we have found that this type of situation arises with some frequency in the movement of fertilizer.

We also would like to point out that DOT has presented no compelling justification for its proposed transfer of car service order authority to DOT. In the absence of such justification, we do not believe this important responsibility should be transferred away from this agency, which has the expertise and experience to handle the complex operations problems which make car service orders necessary. Further, we feel Congress should keep in mind that under S. 796 the agency that would administer the program, FRA, is in some measure concerned with advancing the prospects of railroad businesses, which might pose a conflict for that agency.

In addition, we are concerned by the provisions of the bill which would require Presidential approval prior to the issuance of car service orders. We believe that any agency which is given this power should be able to exercise it without involving the President in the process. In our experience, emergencies often arise which justify issuance of an order, but which should not require the time or attention of the President. For example, flood conditions in late March on the Illinois River made it impossible for the Rock Island Railroad to conduct operations at Peoria, Illinois. In order for service to continue, we issued an order enabling the traffic to reach Peoria over any line not affected by the flood. The structure of the bill which would require Presidential approval in this type of case could cause substantial delays.

Finally, we think that prior to any legislative change in this area, the Commission should be permitted to complete its studies to determine (1) the impact of special rates for peak and seasonal pricing upon car distribution and service, (2) the use of distinct services pricing to encourage shipper control or ownership of rolling stocks, and (3) the adequate revenue needs of carriers. If the studies demonstrate that elimination of Commission controls best serve both carriers and shippers, they could be repealed at that time.[2]

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[2] The Commission has recently received comments in Ex Parte No. 241 (Sub-No. 1), Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution Rules and Practices. In this proceeding, in part, we are considering the repeal of 49 CFR Part 1033, Car Service, and in general, the effectiveness of the Commission's mandatory car service rules.

We should mention that the Commission has historically worked closely with the Car Service Division of the A.A.R. in matters concerning car service. Much of the activity of our Bureau of Operations is closely related to the activity of the Car Service Division, although our interests are not necessarily parallel. This is because the Car Service Division of A.A.R. takes those actions which are in the best interest of the railroads, while our actions must reflect the broader public interest. Furthermore, while our goals are often the same, particularly in such matters as improved car utilization, congestion problems and severe imbalances of equipment, we believe that historically, the A.A.R. has had difficulty resolving car service questions when the self interest of two or more carriers causes disputes. Such disputes, if unresolved, can lead to disruptions in traffic flow because the railroad industry is dependent on the ability to interchange cars readily between carriers. The ability to interchange cars is, in turn dependent on car compensation agreements among all railroads.

We are also involved with FRA on car service matters, but to a lesser extent. Our Bureau of Operations personnel do, from time to time, have discussions with FRA officials on matters of general rail transportation interest. Additionally, there is a liaison between our Bureau of Operations and FRA's Office of Safety, particularly with regard to track conditions.

Accounts and reports

The bill would require the ICC to develop a "Uniform Cost Accounting and Reporting System" which would identify and define: (a) Operating and non-operating revenues; (b) direct costs including labor, materials, and direct overhead; and (c) indirect costs. The Commission agrees that it is necessary to develop an accounting system which will require carriers to report on the costs of providing specific services. Those cost figures would be used by the Commission in making rate decisions in the areas of reasonableness, discrimination, and predatory pricing.

In fact, the Commission has been developing a regulatory cost center reporting system which appears to be similar to the system proposed in the bill. We have already revised the Commission's Uniform System of Accounts, and we expect to publish a notice of proposed rulemaking for our new regulatory cost center reporting system within the next month.

However, we are concerned by the bill's use of the term "cost accounting system". It is our understanding that this term refers to an accounting system which is an internal management tool for analyzing projected costs as part of a larger management program for utilization of corporate resources. This is not the intent of our regulatory cost center reporting system.

We do not believe that it would be appropriate for the Commission to prescribe an internal managerial cost accounting system which would involve the Commission in internal management decisionmaking. Nor do we believe that it would be practical for the Commission to devise such a system. Internal cost accounting systems are based on organizational responsibility areas designed specifically for expense control purposes. Since railroads differ in markets, costs of maintenance, geographic location, organization structure, and other factors, developing a uniform managerial cost accounting system for all railroads would be extremely difficult as well as inappropriate.

We also think that imposition of a uniform managerial cost accounting system could create new administrative problems for the railroads. Most railroads currently maintain an internal cost accounting system for management control and decisionmaking purposes. If the Commission were to impose a uniform managerial cost accounting system, railroads would either have to change their existing systems, or would have to maintain two systems in order to comply with the Commission's regulations. In either case, it would be costly and burdensome to the railroads and it would not supply the Commission with any necessary information which could not be obtained through our existing and planned systems. Finally, this proposal for an internal "cost accounting" system prescribed by the Commission, seems to be inconsistent with the other provisions of the bill which appear to be designed to encourage independent initiative by railroad management.

If the requirement for a cost accounting system is retained, it should not include definitions of accounting terms. Definitions of terminology change to reflect technological improvements and changes in operating procedures. Definitions of accounting terms should be developed administratively through regulations so that they can be reissued as required by changing conditions.

Arbitration procedure

S. 796 requires the establishment of an arbitration procedure, which would replace a number of the Commission's public decisional procedures. The purpose of the arbitration procedure appears to be to expedite decisionmaking where parties to

a dispute cannot agree among themselves, but where the matter is not one with such an overriding public interest as to require decisionmaking by the Commission or other government agency. Put another way, it is assumed in all arbitration proceedings that the public interest lies solely in completing the proceeding by reaching an expeditious agreement in conformity with the standards set forth in each specific arbitration authorization (see section 160(a) of the bill).

The arbitration procedure would be triggered by a request for arbitration filed with the Commission. Then, according to procedures outlined in the bill, members of the arbitration panel would be selected by the parties. An interesting feature of the proposal is that the arbitrators would have to be ICC Commissioners, except that the two Commissioners who ultimately end up serving on the arbitration panel would designate a third person to serve, who may, but need not, be a Commissioner.

The procedures of these arbitration panels would be significantly different than the Commission's procedures under existing law, however the Commission would have authority to establish arbitration procedures within certain limits. For example, the bill states that only the panel and its staff, the parties and their representatives, and witnesses and their representatives may participate or witness the proceeding. Further, the decision of the panel would not be considered a decision of the Commission and would not be considered precedent for future Commission or arbitration proceedings. Decisions of these panels could be appealed to the United States District Courts; however, the Courts could not stay implementation of a decision pending appeal, except where the petitioner alleges and proves that there has been fraud in the arbitration process. The findings and decision of the arbitration panel could be set aside only of its decision did not conform to the substantive requirements of the Act, if the proceedings of the panel were not substantially in conformity with the Commission's arbitration regulations, or if the decision was procured by corruption, fraud, or undue means, or there was evident partiality or corruption in the arbitrators.

Several observations are pertinent here. First of all, there may be instances where arbitration may be useful; that is, where the matters in dispute are so clearly of private concern that public administrative proceedings might not be necessary. The bill flatly states that matters covered by the arbitration procedure involve no public interest except that of resolving the dispute as quickly as possible. Assuming that to be true, the bill does not make clear why it is necessary in such instances to involve ICC Commissioners in the process. As long as the matter is one of no significant public importance, there seems to be no reason why the arbitration could not be handled under procedures of the American Arbitration Association or other similar means, rather than tie up the time and effort of Commissioners in these proceedings.

However, it appears that some matters committed to arbitration by the bill may indeed have important public policy implications. One such possibility is the review of car service agreements under section 140 of the bill. In those instances, the arbitration procedure would, in our view, be inadequate. First, by definition, the procedures would prevent the Commission from developing any sort of continuing policy on the matter for the future guidance of carriers or shippers. One could envision the possibility where car service arrangements would be reviewed by a series of different arbitration panels, with different memberships, each conducting its own non-public proceedings, and by specific statutory directive prohibited from any attempt at making their decisions consistent with each other or from laying out guidelines for future reference.

Second, the procedure would so limit judicial review of the decisions of the arbitration panels that even the Courts would be in no position to examine the rationality and consistency of the administrative process. The overall effect of these provisions would be to substantially remove the Commission from important areas of national transportation policy. If the motivation behind this plan is simply that the Commission is too slow, we think the record shows that the Commission can be and has been effective in substantially reducing decisional time. The ICC does adhere to time limits whether imposed by statute or imposed internally and has been able to do so without effectively removing the public from our deliberations.

In our view, the arbitration provision in its present form simply reinforces the notion that the bill as a whole does not strike a fair balance among competing interests. In some important respects it tilts too far in the direction of the railroads in its effort to solve railroad financial problems.

Railroad transportation policy

The bill would add to the existing National Transportation Policy (NTP) a new policy section regarding regulation of rail carriers, which differs significantly from the policies which would continue to exist for other modes. This new section would contain none of the provisions which exist in the current NTP in the areas of:

preserving modal advantages; encouraging sound economic conditions in transportation; encouraging cooperation between the federal government and the states; and prohibiting unreasonable, discriminatory, and unfair ratemaking practices. Any implication that the rail system is to provide for the needs of the postal service or national defense also has been removed. Most importantly, the new railroad policy statement would modify the existing language to place additional emphasis on competition to "encourage sound economic conditions in transportation".

As recent ICC actions have indicated, the Commission is in favor of increased reliance on competition in the marketplace as a mechanism for allocating and pricing transportation services. This pro-competitive Commission policy is in accord with the 4R Act which emphasized competition and specifically prohibited holding up rail rates to protect the traffic of other modes, unless predatory pricing was involved. However, we have some reservations about the DOT approach.

Most importantly, we think that it may not be appropriate to establish a separate and distinct transportation policy for a single mode. While it is difficult at this point to perceive the interrelationship of two separate policies, it seems apparent that this approach could create some problems. For example, how would the Commission recognize and preserve the inherent advantage of each mode (as required by the existing NTP) and at the same time place maximum reliance on actual and potential competition among all modes (as would be required by the proposed policy statement)? Perhaps there is a need for revision of the NTP. However, if such a revision is to be truly useful, it should be directed to all modes, and should be directed at attaining long-term transportation goals for all segments of the public and private sectors. The NTP should reflect the necessary balance between different groups and forces—transportation providers and users, government regulation and market forces, large businesses, communities, shippers and small businesses, communities and shippers.

There are important questions which need to be addressed in revising the NTP as well as in reforming the entire rail regulatory structure. What is it that the country wants from railroad transportation? What are the energy, environmental, economic, and societal implications of present government policy toward railroads? Of proposed policy? How much more or less of taxpayers' money is the country willing to spend on railroad transportation? How much more or less reliance on the free market will help achieve the Nation's objectives without spending tax dollars? Is there potential for federal conduit of user fees to help attain rail transport objectives?

This concludes our prepared statement. I will be glad to attempt to answer any questions you may have.

Commissioner Christian has the following separate expression: I am in substantial agreement with the positions expressed in the statement presented by Chairman O'Neal. Nevertheless, I am not convinced that our current regulation of carrier securities is actually accomplishing any public interest goals. Therefore, I can see no real objection to transferring all securities jurisdiction to the Securities and Exchange Commission.

APPENDIX A

Served December 27, 1978

31112

INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 282 (SUB-NO. 2)

RAILROAD CONSOLIDATION PROCEDURES

Decided December 6, 1978

General policy statement adopted as a guideline for parties to railroad consolidation proceedings.

DECISION

BY THE COMMISSION:

On April 14, 1978, we published a proposed general policy statement on railroad consolidation procedures (43 F.R. 15753). The proposed policy statement was prepared after an extensive study was completed by the Rail Services Planning Office (RSPO). The RSPO study culminated in the publication of a document, entitled "Rail Merger Study, Final Report," which was published February 1, 1978. That document recommended that we adopt a general policy statement to advise potential participants in railroad consolidation proceedings of our role and principal concerns.

In adopting this policy statement we have considered the comments offered by parties at all stages of the RSPO study. As a result of these comments and the comments submitted on the proposed policy statement published in April, some relatively minor changes have been made in order to clarify the intent of the policy statement and to simplify its language. Two changes affect the entire statement. First, in most cases, the word "consolidation" has been substituted for the word "merger." Second, citations to the Interstate Commerce Act are to Recodified Act (Public Law 95-473), which was signed into law October 17, 1978. Other changes are discussed below in the order in which they appear in the policy statement.

General.—Several of the comments have questioned the necessity, purpose, and effect on substantive law of this policy statement. We emphasize that we are adopting a policy statement, not a regulation. The statement is intended to offer guidance to parties planning and participating in railroad consolidation

proceedings. We believe it will aid in the preparation and presentation of evidence. It does not establish a binding norm, and it is not finally determinative of the issues or rights which it discusses. When the policy enunciated in the statement is applied in a specific proceeding, parties to that proceeding will have the opportunity to challenge or support the policy through appropriate evidence or argument.

Consolidation criteria.—This section of the policy statement has been modified to include a reference to the criteria which the Interstate Commerce Act requires us to consider in consolidation proceedings. In addition to the statutory criteria, the policy statement lists seven others which we will consider. Two minor changes have been made in the proposed criteria. First, we have added intermodal competition as one of the factors to be considered. Second, we have eliminated the labor protection criterion because it is one of the statutory criteria which we must consider.

It should be emphasized that the list of criteria is not intended to be a ranking of priorities. We recognize the need to balance considerations which sometimes may conflict. Furthermore, the weight given to each indvidual criterion may vary in different consolidation proceedings.

Inclusion.—One of the comments expressed concern that the Commission would require inclusion in a consolidated system of a portion of another railroad without its consent. Transactions under sections 11344 and 11346 are consensual. We can impose conditions upon our approval of a consolidation proposal, but we cannot require the applicants to consummate the transaction, nor can we require another railroad to relinquish parts of its system to a consolidated system. Thus the Commission may not force an inclusion, except to the extent parties involved are willing to accept the inclusion in order to obtain a decision approving their consolidation proposal.

Inclusion is an extreme measure. A party seeking inclusion must establish that there is no other reasonable alternative for preserving essential services, that the facilities to be included fit operationally into the merged system, and that inclusion can be accomplished without endangering the financial success of the consolidated system. Clear and precise quantitative data must be produced.

Labor protection.—The Commission has a duty to require a fair and equitable arrangement to protect the interest of railroad employees affected by a proposed transaction. If a bargaining

agreement is reached between the parties, we have a duty to review the adequacy of its protective provisions. An adequate agreement must contain provisions no less protective of the interest of the employees than those imposed previously under section 11347 and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). This is the statutory minimum level of protection required either by an agreement or our imposition of conditions.

We favor voluntarily negotiated labor protection agreements, tailored to the particular transaction and addressing the concerns of affected employees. However, in the absence of such an agreement, we will ordinarily impose the protection prescribed by statute. In this manner, similarly situated employees may expect to be treated equally when we must fashion the protection. Of course, in each case, parties will have the opportunity to establish that special circumstances require the imposition of a greater level of protection to achieve a fair and equitable arrangement.

Inclusion in section 11346 proceedings.—The comments expressed some confusion regarding the Commission's authority to condition a section 11346 transaction on inclusion. A petition for inclusion may not be filed in response to an application filed under section 11346 of the act. The legislative history is clear: " *** the Commission is directed to approve, disapprove, or modify the application before it, based on the public interest test and without concerning itself with inclusion applications ***." H.R. Rep. No. 94-781, 9th Cong., 2d Sess. 175 (1976). "Also, under the proposed procedure the carriers attempting to merge would be able to propose their merger to the Commission without fear of inclusion petitions." H.R. Rep. No. 94-725, 94th Cong. 94th Cong. 2d Sess. 63 (1975).

However, section 11346(d)(2) authorizes the Commission to approve a transaction " *** with conditions and modifications that it determines are in the public interest." When discussing protective conditions, we have stated that " *** of these conditions, requiring inclusion of another railroad in the system resulting from the transaction, is the greatest amount of protection we can provide short of denying the proposal." Ex Parte No. 282 (Sub-No. 1A), *Railroad Consolidation Procedures* (not printed), decided March 23, 1978.

Applications for control under section 11346.—Section 11346(a) permits rail carriers subject to the act or the Secretary of Transportation to seek " *** approval of a merger, consolidation, unification or coordination project ***, joint use of tracks or other

use of facilities, or acquisition or sale of assets ***." The section does not specifically provide for railroads to seek approval for control transactions. We believe that it should be possible to initiate control transactions under this section of the act, and we see no indication that Congress intended them to be excluded. Therefore, we will consider control transactions proposed under section 11346(a) of the act, in addition to those transactions specifically listed in that section.

This decision is not a major Federal action significantly affecting the quality of the human environment or energy consumption.

Parties participating in this stage of this proceeding were: the United States Department of Transportation; the Office of Rail Public Counsel; the Iowa Department of Transportation; Stanley E. G. Hillman, trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor; William M. Gibbons, trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company, Debtor; the Norfolk and Western Railway Company; the Soo Line Railroad Company, the Southern Railway System; the Western Pacific Railroad Company; the Railway Labor Executives' Association; John W. McGinness, Illinois Legislative Director of the United Transportation Union; and Garvey, Inc.

It is ordered, Part 1111 of Title 49 of Chapter X of the Code of Federal Regulations is amended by the addition of new section 1111.10 General Policy Statement, set forth below.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, JR.,
Secretary.

(SEAL)

§1111.10 General Policy Statement.

(a) *General.*—The Interstate Commerce Commission encourages the rationalization of railroad facilities and the reduction of excess rail capacity through private industry initiatives rather than active Government intervention. The Commission favors consolidations where operating efficiencies will occur, marketing opportunities will be enhanced, essential rail services will be retained, and competition will not be unnecessarily diminished. The Commission also encourages other means of attaining these ends, including the joint use of rail facilities and the use of run-through trains. It does not favor rail industry restructuring through the exercise of managerial and financial control unless the controlling entity assumes full responsibility for carrying out the operating railroad's common carrier obligation to provide adequate service upon reasonable demand.

(b) *Consolidation criteria.*—The Commission's consideration of rail consolidation proposals is governed by the criteria prescribed in sections 11344 and 11346 of the

Interstate Commerce Act and by the national transportation policy set forth in section 10101 of the act. In addition to the statutory criteria, the Commission will consider:

(1) Whether essential rail services will continue to be provided, either by the consolidating companies or by other railroads which may be affected by the consolidation ("essential services" include, but are not limited to, those required by the national defense and those shown necessary to achieve other established national goals, such as energy conservation and rural and community development);
(2) Whether opportunities to achieve operating efficiencies will be increased;
(3) Whether redundant facilities will be eliminated;
(4) Whether the ability of the consolidated system to attract new business will be enhanced;
(5) Whether the consolidated company will be financially viable;
(6) Whether effective inter- and intramodal competition will be maintained wherever economic realities make it possible; and
(7) Whether there will be any adverse impact on the environment of the region served.

(c) *Public interest considerations.*—Individual rail consolidation proposals may have a profound impact upon the national rail system. The Commission will examine each proposal in light of the significant public policy issues raised. In deciding whether to approve a railroad consolidation application the Commission will examine the effect which the proposed consolidation would have on the total rail system and the needs of the users of rail service. Proposals which fail to take advantage of potential long-run efficiencies, or to provide for the utilization of the most efficient and best located rail facilities, may be denied as not being in the public interest, or approved only subject to conditions. The Commission interprets the public interest tests under sections 11344 and 11346 of the act to be the same.

(d) *Public participation.*—In an effort to assure a fully developed record on the impacts of a proposed railroad consolidation, the Commission will—

(1) Encourage participation in railroad consolidation proceedings by other Government departments and agencies, particularly those with direct responsibility for issues related to the Nation's defense needs, transportation policies, environmental and energy policies, rural and urban needs, employment policies, and business development;
(2) Encourage participation by State and local governments and regional and local planning bodies;
(3) Permit participation by interested persons;
(4) Assure that environmental and energy issues are adequately addressed; and
(5) Provide, if necessary, for the intervention of Commission staff to develop the record.

(e) *Inclusion of other carriers pursuant to section 11344(c).*—(1) The Commission believes that the railroad consolidation process should not be used as a means for preserving the systems of financially weak and marginal railroads or for protecting them from undergoing reorganization, if necessary, under the bankruptcy laws. The Commission is concerned with the preservation of service, not of companies or railroad systems, and will, therefore, use its powers to condition approval of a railroad consolidation upon the acceptance of inclusion of all or parts of other railroad

systems only when it can be shown that there is no other reasonable alternative for preserving essential services; that the facilities to be included fit operationally into the new system; and that inclusion can be accomplished without endangering the operational or financial success of the new company. Application of these criteria will mean that requests for inclusion of an entire railroad system are less likely to be successful than those offering more limited, and clearly identified, facilities for acquisition by the railroad consolidation partners.

(2) The Commission recognizes that a particular consolidation of strong carriers could worsen the condition of other railroads to the extent that they could not survive. In such a situation, the Commission will attempt to assess the impact of a particular carrier's being forced into reorganization or having to terminate service. If it appears that the end result of a proposed railroad consolidation would be the permanent cessation of essential services by some other railroad, the Commission may deny the consolidation application or condition its approval upon the willingness of the applicants to restructure their proposal.

(f) *Labor protection.*—The Commission encourages voluntary negotiation of labor protective conditions in individual rail consolidation proceedings. The Commission will, however, review negotiated agreements to assure that they provide adequate protection for railroad employees and do not jeopardize the future viability of the consolidated company. In the absence of a negotiated settlement, labor protective conditions will normally provide for protection at the level mandated by law, unless it is proven that more stringent protection is required to provide a fair and equitable arrangement to protect the interests of the railroad employees adversely affected.

(g) *Procedures.*

(1) Generally the Commission will consider applications on an individual basis in order to expedite the proceeding and insure compliance with the statutory time limits. However, related applications by protestants seeking protection from the proposed consolidation will normally be consolidated with the primary application. Other related applications, such as those seeking inclusion or trackage rights, may also be consolidated. Other applications in the same geographic area may be consolidated when appropriate, if they are in similar procedural stages, have common parties, and involve potential cumulative and crossover effects on those parties.

(2) The Commission will not accept petitions for inclusion in proceedings governed by section 11346 of the act. If, however, the record in such a proceeding showed that a transaction would be in the public interest only if some or all of another carrier's system were included to preserve essential rail services, the Commission would consider conditioning its approval of the transaction on the inclusion.

(3) The Commission will accept applications for control under section 11346 of the act, in addition to the transactions specified in that section.

(h) *Expiration date.*—Unless previously extended by the Commission, this section expries (5 years from the date of publication in the Federal Register).

The CHAIRMAN. Next we will hear from Mr. William H. Dempsey, president, Association of American Railroads.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY J. THOMAS TIDD, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Good morning, Senator.

The CHAIRMAN. You may proceed.

Mr. DEMPSEY. Thank you. I am accompanied by Mr. J. Thomas Tidd, general solicitor of the association.

I would appreciate having our prepared statement entered in the record.

The CHAIRMAN. It will be made part of the record.

Mr. DEMPSEY. I will attempt to summarize the points. We are speaking this morning, of course, about the provisions of S. 796 that bear upon restructuring and car service. We have already stated our positions respecting ratemaking.

I would like to begin with a few words about the portion of the bill with which, by and large, we do agree. That has to do with car service. About half of the industry's $28 billion investment in track and equipment is locked up in cars, so that the efficiency of utilization of this huge investment is of critical importance to the industry.

The fact of the matter is that in recent years, particularly, the Commission has been intruding into the day-to-day operations of the railroads in a pernicious way that has defeated the efforts of the industry to increase the efficiency of utilization of this equipment.

A number of examples I cite in my prepared statement, and I simply draw one or two to your attention for purposes of illustration.

During the recent car shortage the Commission ordered that a freight car entering a yard be dispatched from that yard within 24 hours. I venture to say that any operating man in the country would say that that is an enormously counterproductive measure.

Of course it is possible to do that. The result then is that you have empty cars rattling around the country instead of being assembled to move freight.

The Commission ordered the repair and return to service of 40-foot boxcars. Those are the dogs of the fleet. The reason money is not spent in returning them to service is that that is a wasteful use of scant resources.

The Commission ordered the breakup of unit trains. Cars in unit train service are seven to eight times more efficient than cars in single line service, and on and on.

So that we support the provisions of the bill that would restrict the Commission's authority in this area, and remand disputes to arbitration.

Generally speaking we support the provisions of the bill having to do with car hire. There are some important differences between our views and those of the administration in this area, and with respect to the mechanics of arbitration; but I leave those issues for the written statement, Mr. Chairman.

Let me turn now to restructuring. Our principal problem here is the one that you identified in your opening remarks. One can approach the economic difficulties of the industry either on the income side of the ledger—that is what the ratemaking provisions attempt to do—or on the cost-reduction side of the ledger—and that is what the restructuring provisions have to do with.

As you pointed out, the Department of Transportation has concluded that some 33 percent of our tracks carry some 2 percent of our traffic. It also concluded that outside the Northeast we have something in the way of 25,000 miles of marginal track that cost us out of pocket $150 million a year. That is without regard to the lost investment return on hundreds of millions of dollars of investment in that track and roadbed.

Within the Northeast, the USRA concluded that about 25 percent of the trackage should be abandoned. Now this is the kind of burden that this industry is no longer in a position to bear, and means must be found, as you indicated, to lift that burden.

The CHAIRMAN. Why is that situation existing now? Do you simply have many abandonment and merger requests on file which have never been acted upon?

Mr. DEMPSEY. Taking abandonments first: The 4R Act made some improvements with respect to abandonment procedure which theretofore, in our judgment, had been appalling. But it didn't go far enough.

Delay by the Commission is still an important consideration. I have given some examples in my prepared statement. Taking one railroad, for example, that has a number of applications on file, the average age of its pending applications is 28½ months. In our judgment that is just much too long a time for these proceedings to linger on.

They have one pending application that's been there for 33 months. So that is one of the problems. It is still much too long a process before the Commission.

Another problem has to do with the standards that the Commission applies. For example, the Commission, quite mysteriously so far as I am concerned, does not include as an element of cost, return on investment.

So that if you take, for example, an investment of $1 million and assume a modest 10-percent annual rate of return, if you made nothing at all in terms of net revenue on that $1 million investment, in any other business you would say that you would have lost $100,000. But for some reason the Commission doesn't count that as a cost in abandonment proceedings under the 4R Act.

So it is a combination of this kind of erroneous application of economic standards, and delays, that remains as a roadblock for rationalizing the system through abandonments.

We think the administration's bill is a significant step forward. It would, as Mr. O'Neal said, require the Commission to permit abandonment where lines were losing money, including return on investment as a cost.

But, contrary to Mr. O'Neal's views, we think it doesn't really go far enough, although I was glad to hear him say that he believed there should be some changes in order to expedite abandonments to assist the industry.

We think that the railroads should be as free as any other business to make the decision that a line ought to be abandoned; now to be sure, with notice, and adequate opportunity for affected parties to decide whether or not to purchase the line and operate it, or enter into an agreement with the railroad to operate it under subsidy. But we do say, I repeat, that the administration's proposal is a step forward.

I know that there is concern in communities and among shippers about abandonments, and we are sensitive to that concern. But, by and large, every disinterested study of which we are aware has concluded that these fears are unfounded. I have included in my statement a summary of those studies. Their conclusions almost without exception are that communities that have suffered the loss of railroad service do as well as, if not better, than comparable communities that continue with rail service; and that individual shippers, such as elevator operators, that lose railroad service by and large do as well as, or better than those elevator operators or other shippers that continue with rail service.

As I say, that doesn't mean that there should not be an opportunity to phase in that kind of adjustment. We are in favor of that. But I do want to point out that the fears expressed generally do not materialize.

We are conscious and sensitive also to our employees' concerns about loss of jobs occasioned by abandonments, and we are engaged in intensive discussions with the representatives of the brotherhoods, that I have every hope will be fruitful. I am hopeful that in the end we will be able to join with the brotherhoods in support of a complete deregulation program, including disposition of the question of abandonments.

I would say a few words about mergers and consolidations, although very few—not because the issue is not of great importance to us, because it is, but because we are in accordance entirely with the views of Mr. O'Neal and the views that you have stated this morning, Mr. Chairman.

That is to say, mergers and consolidations are of continued importance in the railroad industry, both in terms of restructuring opportunities they provide, and in terms of increased service.

The administration's proposal to expose these mergers and consolidations to the antitrust laws as the exclusive test of their legality seems to us to march in precisely the wrong direction. There is, to be sure, some confusion as to exactly what would happen under section 7 of the antitrust laws; but I think there can be no reasonable dispute that under existing section 7 law, the courts would look only to the anticompetitive consequences of mergers, and not to the transportation consequences.

We would therefore much prefer to have this matter rest with the Commission; its record in this area is scarcely unblemished, with the infamous Rock Island proceeding dragging on for some years and with the patient dying on the operating table.

Nevertheless, it seems to us it is an agency charged with the broad-gaged investigation of all the relevant factors; and we have hope, as Mr. O'Neal indicated we should, that the proceedings will be expedited before the Commission in the future, as they have not frequently been in the past.

I would say finally just a word as to certain other provisions in the bill that have to do with structure, that is to say entry and free reciprocal switching across the broad front. We are opposed to those provisions.

They are without parallel in other areas of the law, and it seem to us there is no warrant for this kind of expropriation of one railroad's property for the benefit of another railroad.

Thank you, Mr. Chairman.

The CHAIRMAN. Why do you say on that point that it would be an expropriation of property if a railroad is required to pay a reasonable fee for that kind of a crossing?

Mr. DEMPSEY. If General Motors has a plant and Ford wants to produce some of its parts in that plant, the law doesn't oblige General Motors to permit Ford to do that, even though Ford is willing to pay whatever fee arbitration establishes as reasonable. It just isn't the tradition of the use of private property in this country.

That is not to say, if a case is made of abuse of monopoly power or something of that sort, that something of this order might not be an available remedy. But under the administration's bill, a shipper could be served by trucks, by barge, and by one railroad—and that railroad, let's say, has 20 percent of the traffic—and the single railroad serving that customer for 20 percent of its traffic would have to provide reciprocal switching for another railroad, thereby losing half or all of its share.

There is obviously no monopoly in that example. There is just no situation in any other field of law of which I am aware that would permit that kind of commandeered use by one railroad of another railroad's property.

The CHAIRMAN. Some have argued that under this bill there would be wholesale abandonments of branch lines. Would you comment on that?

Mr. DEMPSEY. I think that under this—well, that is clearly a colored word designed to arouse opposition or emotions of one sort or another. I don't know about wholesale.

I think it is clear, though, that under this bill, there would be more abandonments. If it is true as the Department indicates, that there are thousands upon thousands of miles of track that ought to be abandoned because they are costing the industry hundreds of millions of dollars a year, then those lines of track should be abandoned as swiftly as possible. If that is what is meant by wholesale, then I would say yes, there would be wholesale abandonments.

In any case, I say that is what ought to happen, whatever adjective you use to characterize it.

The CHAIRMAN. You support the provision of the bill that deals with restructuring actions such as exchange in markets, joint use of facilities and trackage rights. If two or more railroads can get together and straighten out their systems by swapping tracks and arranging joint use of facilities, would that not largely replace the need for mergers?

Mr. DEMPSEY. Well, this is the position that the administration has taken.

We certainly support those provisions of the bill that would encourage or facilitate this kind of coordination of services and consolidation of facilities.

But one problem is that if one looks at the history of efforts to do this in the last year or so—and there have been intensive efforts in the Middle West under the aegis of the Department—there is very little to show for it.

So that while we remain hopeful that this will be a useful instrument, we think the situation is so grave that we need to have all the tools available to us that we can get. Mergers and consolidations are one tool. We need to keep it. There is no reason to take it away just because something else may also be useful.

The CHAIRMAN. You provide some data in your statement which indicates that the mergers which have occurred over the last 60 years have involved class 1 railroads, the most profitable railroads. Could you please explain that phenomenon? Let me also ask you if it would be advantageous to encourage consolidation of some of the smaller railroads for better efficiency with less interlining?

Mr. DEMPSEY. Yes. The data indicate—and they are not entirely accurate because of changes in definitions of the class 1, class 2 carriers. What they indicate is that from 1920 to 1978, we have gone down from 186 to 39 class 1, and from 303 to 36 class 2. So, for the most part it is the class 1 and class 2 railroads that have been involved in mergers. Major systems, like the Southern system, have grown out of these mergers.

I would have to take a more careful look at the class 3 situation to see how I could respond to that question. I am just not sure what relevance mergers and consolidations have with respect to class 3 carriers.

Could I provide a written answer to that?

The CHAIRMAN. Yes. Take a look at your statement where you give some statistics and supply us with a statement for the record.

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

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., July 13, 1979.

Hon. HOWARD W. CANNON,
Chairman, Commerce, Science, and Transportation Committee,
Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing on June 21 regarding S. 796, I stated in my written testimony that, between 1920 and 1978, there had been substantial consolidation among Class I and Class II rail carriers. I also cited a statement by the Task Force on Railroad Productivity that, between 1957 and 1973, more than 40 Class I railroads had been absorbed into other systems. Finally, I included a table which indicated that the total number of railroads had declined in that period from 872 to 505. This testimony prompted a question by you as to whether it would be advantageous to encourage consolidation of some of the smaller railroads for better efficiency and less interlining. I requested the opportunity to submit this written response to that question.

As I mentioned in my testimony, it is difficult to make comparisons based on the classes of carriers because the classifications are determined by revenues and, as a consequence, change over time. Currently, railroads with annual revenues in excess of $50 million are Class I, those with $10 to $50 million are Class II, and those with less than $10 million are Class III. There are currently 18 railroads in Class II and 278 railroads in Class III engaged in line-haul operations (this excludes companies engaged only in terminal and switching operations). The total track mileage of these carriers is about 9,000 and 7,000, respectively. The mileage of the railroads in Class I, on the other hand, is about 191,000 or 94 percent of the total mileage, and the

revenues of Class I carriers constitute about 99 percent of the total revenues of all classes.

As you can see, while the number of companies in Classes II and III is large, their share of total mileage and revenue is small. Consequently, the impact of any consolidation among railroads in these classes would be correspondingly small. It is also quite likely that the railroads in these classes are physically separated so that in most cases a consolidation involving one of them would be possible only with a Class I carrier rather than with another carrier in Class II or III. Consolidations among Class I and Class II or III carriers would reduce the need for interlining somewhat; but, given the disparity in mileage among the classes, significant reductions in interlining can only come about through consolidations among Class I carriers.

Sincerely,

WILLIAM H. DEMPSEY,
President and Chief Executive Officer.

Mr. DEMPSEY. I appreciate that.

The CHAIRMAN. You favor removing ICC jurisdiction over car service as proposed in this bill. How would the industry envision solving the car shortage problem from a managerial point of view, if this bill were adopted?

Mr. DEMPSEY. In terms of day-to-day management of the fleet, we at the AAR at the present time do 99 percent of that work. We would not visualize that changing at all.

We have an elaborate computerized system that enables us to keep track of cars as they are distributed throughout the United States and the percentage of each railroad's cars on line. When we see abnormalities developing we issue car service orders that direct movement of cars in a way to eliminate those problems.

We see that going on just as it is.

The CHAIRMAN. You complained about some of the car service orders issued by the Commission.

Mr. DEMPSEY. That's right.

The CHAIRMAN. They seem to be directed toward an abnormality. Had you attempted to do something about that?

Mr. DEMPSEY. Oh, yes indeed. I mean the utilization—there couldn't be anything more important to the industry in terms of daily operations than efficient utilization of the fleet. As I say, we spend countless hours and time on that question.

What happens when the Commission steps in is that the Commission says, in their judgment, something else ought to be done besides what we are doing, so they impose the 24-hour rule, for example.

Well now, we would never do that, because our operating people would know immediately that that would be a counterproductive kind of order.

The system in operation right now administered by the AAR is about as good a system as we can have. It is the overriding of that system by the ICC that is causing us all of this pain.

There will be situations in which a shipper will say, well, one way or another I am not being treated right. And we wouldn't agree. There would have to be an arbitration procedure to take care of that.

We propose commercial arbitration for those kinds of disputes. The administration also proposes arbitration that is sort of halfway private and halfway under the Commission, with two commissioners as part of the three party panel.

That seems to us to be a strange approach if the objective is to get the Commission out of the process. In any case, arbitration would be the avenue both for the administration and for us with respect to those occasional disputes that will arise.

The CHAIRMAN. Of course, arbitration is a pretty slow process when you are looking at the political problems which arise when we start having our phones ring off the hook, you know, because people cannot get cars, and you find that there is a batch of cars sitting on tracks in someone's yard.

Mr. DEMPSEY. Let me make two observations, Mr. Chairman. One is that commercial arbitration can be as fast as the parties want. You are not held up by the resources of a bureaucracy. We are familiar with that in the labor area. If you say to the arbitrator, you have got a 5- or 10-day limit, or whatever it is, he wants to keep on arbitrating for you, and he keeps up with that. I think commercial arbitration is by and large a speedier process than the Commission.

Now the Commission does act fast on occasion, and it is exactly the kind of circumstances that you have described in which they do. When they act fast, they are reacting to political problems, and they are not thinking much of the time. That is the kind of thing that causes the problem.

I suggest that everyone might be better off, including the Congress, if the avenue available was commercial arbitration. I think you could include a provision in the bill that would require expedition of those kinds of cases.

The CHAIRMAN. Senator Exon.

Senator EXON. Thank you, Mr. Chairman.

Mr. Dempsey, I appreciate very much your coming and giving your testimony. I have been reviewing your written testimony while I have been listening to you respond to the questions from the chairman.

I think it is safe to say, getting back to abandonment, which is a major concern, of course, to those of us who sit up in these shows up here, I think it is safe to assume that since you point out in your testimony that DOT's 1977 study found that 33 percent of the rail network now produced less than 2 percent of the traffic, I think it is safe to assume that if we went ahead with deregulation as you recommend, that it is pretty safe to assume that all or most of that 33 percent would disappear.

Is that fair?

Mr. DEMPSEY. A lot of them would disappear. Without being familiar with the detail of that study, I am just not in a position to say it would all disappear. Some of it might be useful trackage, some of it might be potentially useful trackage.

I guess I would say that one could be pretty confident that if the railroads were acting as prudent businessmen, that all trackage that is losing money would be abandoned. Now that is a lot of that 33 percent; probably not all.

Senator EXON. All right. In your statement here you say, again, that this 33 percent now produces less than 2 percent of the traffic. Does traffic there convert automatically to revenue; or revenue and traffic, are they the same in that context?

Mr. DEMPSEY. No. I would be confident it wouldn't. We are talking about gross ton-miles; and of course, some traffic is more profitable than others. That is why I draw back from saying all that line would be abandoned. There might be some lines there, I am sure there must be, that are is not losing money, because it is profitable.

Senator EXON. On some of these—and I think I generally understand the financial plight of the railroads, and I think I would generally agree with those who say that the whole railroad system in the United States is under decay, generally speaking.

I suspect that some of the less profitable lines are making it very much more difficult for the railroad to operate efficiently, in your words, as a business should operate. But of course then we get back to the matter of captive shippers, that I wouldn't go into now because I know that you know that those of us, especially in the rural areas, are very much concerned about that most difficult problem.

In your testimony I notice you cite here a 1973 task force report on the railroad productivity. I just underline a portion or two there. I assume that you agree with this. There is presently neither effective cooperation nor effective competition within the industry.

Do you agree with that statement?

Mr. DEMPSEY. I think that in the context in which I recall that statement, I would agree with it. I think that it is an awkward situation in which railroads must deal with each other both as partners and as competitors.

Now that doesn't reflect at all on the management of the railroads. It is inherent in the situation. Therefore, as the study indicates, whatever steps can be taken to eliminate that built-in problem of the industry, I think is all in the public interest.

Senator EXON. You say in your statement that the industry is in a sorry financial state, with many firms operating at or near the margin. There seems to be little virtue in pursuing a national policy of competition for competition's sake.

Other places in your testimony, I at least thought that you were indicating competition was in order. Realistically speaking, with the structure of the railroads today—I don't know the total railroad system. I know something about the system in our part of the country where Union Pacific does quite well.

Do you really believe that in the future we are going to see real competition among the railroads as opposed to the trucks and barges? Are we going to see real competition among the railroads in the future?

Mr. DEMPSEY. Mr. Exon, I think our problem is that we have too much competition, although perhaps not in the territory you are familiar with. But in other parts of the country, one of our difficulties is that we have too much competition among railroads.

Take the situation of the Milwaukee. The trustees report, it seems to me, is right on target. There has never been enough traffic to support the Milwaukee's line to the west coast in competition with the northern lines, even before trucks and the Interstate System were on the scene.

The Milwaukee, as you know, has gone through three bankruptcies. That whole area is just saturated with too many railroads, too

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many railroads competing for a too small and an ever-declining share of the traffic.

So one answer is to reduce that competition.

Until the industry gets to the point at which it is making the 10.6-percent rate of return that the Commission says is reasonable, or the 12½ percent that we say is, it seems to me premature to consider reciprocal switching, trackage rights, or other techniques that might be used to introduce more competition into the system.

Senator EXON. Returning again to your statement, you said that 33 percent of the rail network now produces less than 2 percent of the traffic, how good a job do you think railroad management has done in cooperating with branch lines that are feeder lines into the main stream, with regard to maybe having some of the shippers on those lines or combination of those shippers to provide their own cars?

I am thinking of grain cars, things of that nature. We had testimony yesterday that the fertilizer people, I think, are supplying some rail cars. How much cooperation do you think there has been? Or do you think we should do more of that in the future, to attempt to have some of the captive or semicaptive shippers on some of those lines possibly make some contribution of their own in equipment that might allow the railroads to show a somewhat better picture profitwise on those lines than has been the case in the last 10 or 15 years?

Mr. DEMPSEY. Senator, I think that is a very constructive approach. I am not in a position to generalize about how it's been in the past, except that I think there has been a reluctance on the part of many shippers on branch lines to do that sort of thing because they have felt that the railroad would be obliged to continue service irrespective of whether it is making money.

Now that the 4R Act has been passed and there is more impetus for abandonment, I think there are more incentives on the part of shippers to do that, and we are seeing more and more of it.

In Iowa, the Chicago & Northwestern and the Rock Island, working with the Iowa Department of Transportation, have made very constructive steps in identifying those branch lines that may be made profitable, then devoting the resources of the State, the shipping community, and the railroads, toward an effort to make those branch lines profitable.

So I think that is the way to go. I really do. But I do say at the same time that the way to get there is to put more authority, more discretion, more ability in the hands of the railroads. They have to be able to go to those shippers and say, look, you really must understand that if this line is to be kept functioning you have just got to be able to make it pay for us. And providing equipment is one approach to it.

Senator EXON. We are now in kind of the heart of the situation. While some of us are very much concerned about total deregulation and the right to abandon at will—because I suspect that if you were a businessman, if I were sitting in your chair, I might too say, why should I, if I have got a branch line out here that isn't giving me return on my investment, it would be much better for me to invest that somewhere else in other railroad property or elsewhere, to get a better return on my investment.

And if we allow you, the railroads, to deregulate at will, I am afraid there might not be the attitude that you have just expressed, where you might be going out there. The other problem we have, of course, I don't know who is at fault. I suppose like in most cases there is plenty of shoulders for the fault to fall on, the trackage in some of those branch lines today has been allowed to deteriorate to the place that I suspect that if you made a projection even on doubling the freight on some of those lines, it might not be economically feasible for the railroad to make the investment to repair and bring trackage up to date that have been allowed to deteriorate, rightly or wrongly.

Would you agree with that?

Mr. DEMPSEY. Yes, I think there is a good bit of that. That is why we supported the legislation last year that permits Federal funding to be employed prior to abandonment to rehabilitate branch lines that, if rehabilitated, might be profitable.

I think also, however, that many branch lines could never be made profitable. And the reason the railroad isn't putting money in is that they can see it could never be made profitable. So there are two kinds of situations, I think.

May I say, Senator, that I recognize the problems of the captive shipper, both in respect to rates and branch lines. That is a key problem in this legislation, and we are working on it. We don't propose to have legislation enacted that doesn't afford adequate protection for the captive shipper.

Now we are convinced that, as the Canadian experience shows, all of the other competitive forces would prevent a prudent, wise railroad businessman from engaging in short-run pricing practices that would in the long run cause him to lose his captive traffic. But we know that there must be a test period to satisfy people that that is the case.

I didn't want to leave the witness stand without expressing our agreement that that is a major concern.

Senator EXON. There are some of us that, while I have listened to the presentation made by the Canadians, we are not sure the situation in Canada is a parallel in many instances to what we face in the United States, both from the standpoint of geography and the standpoint that we have about—they only have about 10 percent of the people we have in the United States.

With that comment, I thank you for your testimony and thank the Chairman.

The CHAIRMAN. Thank you, Mr. Dempsey.

Mr. DEMPSEY. Thank you.

[The statement follows:]

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

Mr. Chairman and Members of the Subcommittee. I appreciate this opportunity to testify with respect to the restructuring and car service provisions of S. 796, the Administration's bill to reform the rail regulatory system. The restructuring provisions are those dealing with mergers, coordination actions short of mergers, entry, and abandonment and appear in sections 120, 121 and 122 of the bill. The car service provisions appear in section 140.

The need for restructuring in the railroad industry embraces the physical plant as well as the corporate components. If there has been one persisting, fundamental problem in the railroad industry, it is the problem of excess plant. In 1890, three years after creation of the ICC, rail lines totalled about 167,000 miles. In the next 30

years, another 76,000 miles of lines were created. By 1920, the system had reached its peak. While this expansion undoubtedly served to open up new markets, it also added uneconomic redundancy to the system. So much so that one of the prime objectives of the Transportation Act of 1920 was to restructure the railroad industry.

The 1920 Act directed the ICC to develop a plan for consolidating the railroads into a limited number of systems. Such a plan would have created—from more than 800 separate companies—21 railroad systems. The 1920 plan was never implemented—in part because of the ensuing depression which caused widespread bankruptcy. But the problem it was attempting to grapple with has not gone away and, planned or unplanned, the consolidation of the railroad plant has been proceeding.

In 1920, there were 872 railroad companies in the United States. Today there are 505. Because the "classes" of railroad are determined by a revenue standard which has changed over the years, any meaningful comparison between classes is difficult. But the data provide some indication of the extent to which consolidation have occurred among Class I and II carriers:

	1920	1978
Class I	186	39
Class II	303	36
Class III	383	430
Total	872	505

The Task Force on Railroad Productivity [1] reported that, between 1957 and 1973, more than 40 Class I railroads were absorbed into other systems through a process of mergers, acquisitions, and lease agreements. Given the mergers now before the ICC and others in the exploratory stage, it is obvious that the consolidated process has still not run its course.

And there would seem to be good reason for this. In 1920, when the Congress first found a need to restructure the railroad industry, there were 252,845 miles of railroad line in the United States. In 1970, there were 206,265 miles of line. Thus, in 50 years, the size of the plant has been trimmed by only 18 percent. But in that same 50-year period, the need for the plant in place in 1920 has radically changed. From a position of almost total dominance in the movement of intercity freight in 1920, railroads now carry about one-quarter of the total tonnage and only 36 percent of the intercity ton miles. While the total volume of intercity freight gas grown enormously, the tonnage originated by railroads was less in 1978 than it was in 1920. In that same period, of course, the railroads completely lost their preeminence as public carriers of intercity passengers.

A DOT study [2] published in 1977 found that 33 percent of the rail network (about 60,000 route miles) now produces less than 2 percent of the traffic—and that 20 percent of the route miles produces 67 percent of the traffic. In an earlier study,[3] DOT found that, excluding the Northeast, there was in excess of 25,000 miles of line classifiable as "potentially uneconomic light density lines." By any measure, it is obvious that the railroad industry is still confronted with a substantial structural problem.

The Northeast region is a case in point. In its Final System Plan,[4] the United States Railway Association recommended the elimination of fully 25 percent of the route miles operated at the time the Penn Central went into reorganization. Some of that trackage was duplicative of other lines. Some was simply of such light density that abandonment was the only reasonable route. In other cases, duplicative main lines was changed to branch line or feeder line status, with very substantial cost savings. Thus, mergers, consolidations, and abandonments are important tools in the creation of an economically viable railroad system, and our efforts should be directed toward sharpening rather than dulling those tools.

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[1] Created by the National Commission of Productivity and the Council of Economic Advisors.

[2] "Final Standards, Classifications, and Designations of Lines of Class I Railroads in the United States," January 1977.

[3] "Railroad Abandonments and Alternatives: A Report on Effects Outside the Noretheastern Region," May 1976.

[4] United States Railway Association, "Final System Plan for Restructuring Railroads in the Northeast and Midwest Region Pursuant to the Regional Rail Reorganization Act of 1973," July 1975.

MERGERS

The Administration proposes to divest the Interstate Commerce Commission of its jurisdiction to approve rail mergers and, instead, to subject those mergers to the judicial process and the strictures of the antitrust laws. While professing, by that process, to treat the railroads like all other businesses, the Administration would treat us like no other business by continuing to apply labor protection provisions to rail mergers consummated under the antitrust laws.

The antitrust laws are single-minded in their approach to mergers, measuring the public interest only by the competitive effects of the transaction. The transportation consequences of such mergers would be irrelevant. Therefore, the Administration's proposal can only be described as an attempt to put an end to rail mergers. And, frankly, we fail to understand why. Every government study of which we are aware has concluded that additional mergers and consolidations should be encouraged.

In 1969, the DOT published a staff study on western railroad mergers.[5] That study set forth six plans for merging the then 23 western roads. Five of the plans would have created four systems in the west, and the sixth would have created five systems.

In 1973, the Task Force on Railroad Productivity studied, among other things, the corporate structure of the industry. It reached the following conclusion which sets forth very briefly the basic case for mergers:

"The railroad industry is presently composed of 68 Class I operating, line-haul railroads plus several hundred smaller companies. This fractured or Balkanized structure has been a primary factor in preventing the industry from developing and implementing an industry-wide strategy for responding to changes in the freight market. The fact that individual railroads must depend on one another for cooperation at the same time that they compete with one another creates a set of internal pressures and incentives that have numerous perverse effects. There is at present neither effective cooperation nor effective competition within the industry. Profound changes during the past century—in the character of freight demand, in the extent of truck competition, and in rail technology—all argue for a distinctly different corporate structure for the industry than that which survives today. The industry should be restructured into four, five or so continental railroad systems that operate and compete with one another nationwide. This would give managements of individual railroads the opportunity to manage independently of other railroads and would create effective intramodal competition in all the major regions of the country. Such a restructuring has the incidental advantage of providing a most attractive long-run solution to the railroad crisis in the Northeast."[6]

In 1978, the ICC's Rail Services Planning Office issued a final report[7] on a comprehensive study to develop rail merger policies for the Commission. Among their recommendations to the Commission were the following:

Encourage rail restructuring through the merger process and spell out policies which the Commission intends to follow in deciding merger proceedings;

Recognize that end-to-end mergers generally provide potential for greater long-term advantages with fewer risks than parallel mergers;

Emphasize that voluntary agreement among carriers rather than governmental directive is the preferred method of rail restructuring; and

Declare that the merger process should not be used, as it has been, as a method of preserving the corporate entities of marginal carriers.

Given the continuing structural problems of the industry and the studies to date, I think it is reasonable to conclude that railroad mergers should still be encouraged, not discouraged.

I suppose it is axiomatic that, by some measures, mergers tend to reduce competition within the railroad industry. Certainly, they reduce the absolute number of competitors, but the expectation is that the overall quality of both intramodal and intermodal competition will be enhanced. The industry today is in a sorry financial state and, with many firms operating at or near the margin, there seems to be little virtue in pursuing a national policy of competition for competition's sake.

Compared with the average 10.6 percent return on net investment which the Interstate Commerce Commission has said is necessary to sustain adequate rail service—and the 12.5 percent return which the industry believes is needed—the railroad industry earned a return of only 1.6 percent in 1978, the fourth consecutive year it has not exceeded 2 percent.

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[5] Western Railroad Mergers, Jan. 1969.

[6] "Improving Railroad Productivity," final report of the Task Force of Railroad Productivity for the National Commission on Productivity and the Council of Economic Advisors, November 1973, p. 231.

[7] Rail Services Planning Office, "Rail Merger Study," February 1978.

While the industry's recent earnings, are of course, reduced by the operations of some deficit carriers, the alarming facts are that even the strongest regional group of railroads has achieved only about half of the Commission's figure of 10.6 percent. In 1977, only three major railroads managed to achieve a 7 percent return, and none exceeded 9 percent!

Unfortunately, low earnings are not a recent phenomenon in the railroad industry. The rate of return on investment has been below 4 percent for 39 of the last 48 years. In not one year since 1955 has the industry's rate of return been as high as the cost of its debt capital!

The DOT has estimated that by 1985 the capital short-fall within the industry, excluding the Northeast, will be on the order of $13–$16 billion. Those funds can be generated from private sources only with a very substantial improvement in rail earnings. Obviously, restructuring is not the total solution to this problem, but it is certainly part of the solution.

If the only competition a railroad faced were competition from another railroad, one might properly choose to make the maintenance of competition a matter of high priority in addressing the overall financial problems of the industry. But that is not the case. The railroads face intense intermodal as well as intramodal competition. Indeed, one of the major disadvantages the railroads face vis-a-vis their truck and barge competition is the need to interline a large percentage of rail traffic—some 70 percent compared to only 10 percent of truck traffic. The Task Force on Railroad Productivity characterized this condition of the railroads—requiring the cooperation of two or more carriers for most moves—as "Balkanization." Its merger recommendations were aimed at eliminating the competitive handicap imposed by Balkanization.

Strengthening the ability of the railroads to cope with the service advantages of other modes should be a matter of first priority. If we ever reach the day where a significant segment of the railroad industry is making even 1 percent more than the 12.5 percent return on investment they ought to be earning now, there will be time enough to raise a hue and cry as to whether there is enough competition within the railroad industry.

In assessing competition among railroads and other modes of transportation, it is also important to keep in mind the role regulation plays in, and in lieu of, that competition. The railroads, unlike most of the rest of the business world, must seek the approval of the regulatory agencies before they can expand their businesses, curtail service, raise or lower prices, or any number of other activities. And while the Administration, the railroad industry and others support deregulation and look forward to enactment of a bill curtailing regulation, it is perfectly clear that significant regulation of the industry will continue. No one expects, or has reason to hope for, complete deregulation in the near future.

The Administration has proposed granting the railroads freedom from maximum rate regulation in five years, but the Department is not proposing "deregulation" after five years. Minimum rates would be regulated, car compensation and certain aspects of car service would be regulated, abandonments would be regulated, accounting practices would be regulated, labor protective provisions would continue to be imposed, and so on.

The railroad industry, on the other hand, is not seeking—nor do we think it realistic to expect the Congress to grant—maximum ratemaking freedom after five years. We assume that any "deregulation" bill enacted by this Congress will contain a maximum rate regulation provision to protect the so-called "captive" shipper, however that term may ultimately be defined. So, to the extent competition is lacking among railroads and from other modes of carriage, we would expect to see Federal regulation continue—albeit hopefully in a more acceptable form that reflects the realities of today's competitive freight system. And I would fully expect that, if restructuring of the railroad industry is permitted to proceed as it should, the quality of rail competition will increase not only among railroads but also between the railroads and other modes.

Because of our concern with the implications of the Administration's merger proposal, the AAR retained an economic consulting firm, Richard J. Barber Associates, to assess the merger issues raised by S. 796. That assessment deals in much greater detail with the issues which I have touched upon only briefly. I have, therefore, submitted a copy to the Committee for inclusion in the record as a supplement to my testimony.

COORDINATION ACTIONS SHORT OF MERGER

While the Administration would remove mergers from the Commission's jurisdiction, it would leave with the Commission jurisdiction over coordination actions short of mergers and provide a substantive standard to facilitate approval of such actions.

The actions involved include coordination of services, exchange of markets, joint use of facilities, trackage rights, and transfers of substantially less than all of the rail assets of a carrier. The Commission could approve any of these transactions unless it found that the transaction would result in a substantial lessening of competition, the creation of a monopoly, or a restraint of trade and that the anticompetitive effects outweighed the public interest in meeting significant transportation needs. The AAR supports this amendment.

To sum up the matter of mergers and related actions, we believe the facts and the official studies to date all suggest the need for substantial restructuring in the railroad industry. Therefore, the Congress should not, as the Administration would do, create an insurmountable roadblock to accomplishing the task at hand. To the contrary, we would propose that merger proposals be left with the Commission and that the standard for approving mergers be made somewhat more liberal. Under existing law the Commission may approve a merger if it finds the action to be "consistent with the public interest." We would urge that such actions be approved unless they are found to be "inconsistent with the public interest."

To facilitate the consummation of mergers, we would, however, withdraw from the Commission the power to order the inclusion of one railroad in a merger being proposed by others. The parties to a merger will have put together the package that makes the most sense to them as managers of the enterprise involved. That is the merger the Commission should vote up or down. It should not be permitted to put together another package involving other roads and other managements and, in effect, substitute its judgment for management's judgment as to what mergers make operational and financial sense. However, the ICC would retain conditioning powers to protect the traffic of competing carriers and certain shippers through trackage rights, gateway agreements, and other arrangements that stop short of including other railroads in the proposed merger.

Finally, we would propose that the Commission, in evaluating the overall effect of a proposed merger on competition, not be allowed to disapprove the merger solely on the ground that it reduces the number of railroads in a particular market or group of markets.

ENTRY

While on the subject of competition in the railroad industry, I would like to say a word about the Administration's proposal to remove entry restrictions by eliminating regulation of track construction, granting a railroad the right to build a track across the line of another railroad, and requiring reciprocal switching service within all Standard Metropolitan Statistical Areas. Finding means by which competition between railroads can be nincreased is simply not the problem before us today. If, for example, a shipper has available truck, water, and rail transportation, and the rail carrier has only 20 percent of the business, what purpose is served by requiring the rail carrier to grant another rail carrier switching services to that shipper? The Department of Transportation's own studies show that excess capacity and duplication of facilities are the far more real problem. Consequently, to grant unrestricted rights of entry and to require the grant of reciprocal switching services without regard to the state of rail competition strikes us as a common remedy in search of a rare disease.

ABANDONMENTS

A DOT study of railroad abandonments published in 1976 estimated that the railroads were losing $150 million annually in operating "uneconomic light density lines" in the 31-state region outside the Northeast.[8] While in themselves substantial, such losses ignore the opportunity costs associated with the investment in light density lines as well as the potential rehabilitation costs. The DOT study estimated the investment in track facilities alone for these lines to be in excess of $640 million. The simple fact is that the industry can no longer afford to bear these costs and—more importantly—there is no sound public policy reason for continuing to impose them on the railroads.

We have asked some of the railroads with the most active abandonment programs to report their experiences with the Interstate Commerce Commission's administration of existing law. The following were among the most frequently noted complaints:

The Commission refuses to recognize the return on investment in branch line assets as a cost; thus, applying only a 10 percent rate of return, if the rails, ties,

[8] "Railroad Abandonments and Alternatives: A Report on Effects Outside the Northeastern Region," May 1976.

structures, and land used in an uneconomic line have a salvage value of $1 million, a railroad is losing $100,000 annually by continuing to apply those assets to that service. In any other business, this is a cost but not in the railroad business as seen through the Commission's eyes.

The Commission recognizes only historical maintenance costs. The problem with many branch lines is that the low or negative returns from rail service do not allow the investment of maintenance funds actually required for the long-run operation of the line. Any true economic assessment of whether to continue a line in business would take account of these costs. The failure to do so can only rest on the premise that railroads should continue to operate lines until they literally fall apart. In that process, the railroads continue to bear any operating losses and, perhaps more importantly, bear the opportunity costs of the assets being consumed in the deterioration process.

The Commission does not recognize the cost of removing weight restrictions in order to permit heavier cars to use branch lines. Many branch lines cannot, for example, take 100-ton hopper cars, and 70-ton cars are gradually becoming obsolete.

The Commission has not developed any objective standards for determining what constitutes the "serious adverse impact on rural and community development" which, by law, they are required to take into account in finding whether the public convenience and necessity permits abandonment. Thus, in any abandonment case, the field is always wide open for the Commission to rest a decision on an infinitely elastic standard. As I will discuss in a moment, those who have made objective studies of abandonments have been hard-pressed to find any "serious, adverse effects."

Finally, the Commission takes far too long to decide abandonment cases. I would like to develop this point and then examine the results of some of the studies on the effects of abandonments.

One of the railroads we queried as to their experience with abandonments under the 4-R Act (i.e., since February 6, 1976) supplied us with rather detailed data regarding processing time. That railroad's experience can be summed up as follows:

37 applications totalling 1,185 miles filed since February 6, 1976.

17 cases decided, 20 cases pending.

Of the 17 decided, five were denied by the Commission. Of the 20 pending, six have been denied at the administrative law judge level and are on appeal to the Commission level.

Average time required for decided cases, 16.8 months.

Average age of pending applications, 28.4 months.

Longest time for a decided case, 31 months.

Shortest time for a decided case, 2 months (involved 1.13 miles of line).

Oldest pending application of those filed since February 6, 1976, 33 months.

It is to be noted that the consequences of these delays are not insubstantial. The railroad estimates that its net annual avoidable losses for the lines involved in the 20 pending cases are in excess of $2 million and that the salvage value of those lines is in excess of $45 million. It is also of interest that the estimated rehabilitation costs on the lines on which it is losing some $2 million annually are in excess of $35 million.

Having examined the magnitude of the costs which uneconomic lines place upon the railroads, let's examine the effects of abandonments—the "serious, adverse impact on rural and community development" for which the railroads are often being asked to bear these costs. An AAR staff study was undertaken to review the various studies that have been conducted regarding the effects of railroad abandonments. A copy of that study is attached as an appendix to my statement. The principal conclusion of that staff study is this: "In contrast to the traditional concern often expressed regarding the negative economic impacts from railroad line abandonment, the retrospective line abandonment studies have found there is little or no adverse community impact attributable to the loss of rail service. The studies have found many instances, in fact, where the post-abandonment community impacts were positive. The study findings show that branch lines are seldom an important part of community economic activity and that other economic factors are more responsible for shaping the future of a local economy than is railroad branch line service."

That conclusion is based on evidence such as the following:

In a 1975 study, nine "test" counties were selected in which rail abandonments had occurred between 1978 and 1963. Nine "control" counties, each adjacent to one of the "test" counties were than selected. The impacts of abandonments were then measured based on seven economic indicators. The results supported a conclusion that the abandonments did not have measurable adverse economic impacts.

In 1976, the Iowa State Department of Transportation conducted a study on the impact of abandonments in Iowa, examining factors such as population, employment, and other local economic indicators. Some of the findings were:

No significant impact on growth and, in towns larger than 499 persons, population growth was usually higher in the towns that had lost rail service than in towns which still had rail service.

While retail sales were slightly lower in the towns losing rail service, there was no stagnation or collapse of sales.

Banking activity was slightly higher in the rail-abandoned towns.

Grain elevators that lost rail service continued to grow and expand, and their earnings tended to be slightly higher than elevators on rail lines.

In a study published in 1978, 40 Minnesota grain elevators that lost rail service were compared with 64 nearby elevators on active rail line. The results were:

Rail rates at nearby elevators tended to be higher than the truck rates at the rail-abandoned elevators.

There was little diversion of business from the rail-abandoned elevators.

The rail-abandoned elevators expanded their capacity as fast as the other elevators and exceeded the overall rate of expansion.

Between 1969 and 1975 grain volume at the rail-abandoned elevators increased by 68 percent, or 7 percent more than at the rail-served elevators.

I do not mean to suggest that abandonments do not create any problems for the communities and businesses served by a rail line or for the individuals engaged in providing rail service. Some dislocations are inevitable, but the evidence gathered by disinterested observers strongly suggests that the community and business dislocations are not as severe as frequently claimed. With respect to the impact of abandonments on employees, we recognize, of course, the concern of rail employees over the possible adverse consequences. We are, accordingly, engaged in intensive discussions with representatives of rail labor with a view toward accommodating the legitimate interests of our employees with the needs of the railroads.

The Administration's amendments would require the Commission to grant an abandonment application if the revenues attributable to the line did not cover the full cost of providing the service. Even if revenues exceeded the full cost of the service. Even if revenues exceeded the full cost of the service, a railroad might still obtain approval of an abandonment if the Commission found that the benefit to the railroad, taking into account the opportunity cost of the capital invested in the line, exceeded the detriment to others occasioned by the abandonment. The amendments would also establish definite time limits within which applications would have to be processed—approximately five to eight months depending upon whether an offer to subsidize continuation of service is made.

While the Administration's amendments would significantly improve existing law, we do not believe they go as far as the railroads' financial plight suggests they should. We believe it is time to change the focus on our concern and ask why should not the railroads be allowed much greater freedom to manage their assets? The railroads need the flexibility to reduce costs promptly and to redeploy assests to their most profitable transportation uses. If their decisions as to the use of their own assets places burdens on others that the public believes for any reason to be intolerable, then the public should promptly pay the cost. Given the condition of the railroads, they should no longer have to engage in expensive, drawn out litigation just to eliminate marginal or unprofitable business.

CAR SERVICE

In 1978, the railroad industry's net investment in road and equipment was $28 billion. Almost half of that amount was in rolling stock. In recent years, the Commission has injected itself even more deeply into the operation and management of that equipment—and almost invariably with counter-productive results. If railroads are to become viable in the private sector, the judgments of the corporate managers with respect to managment of the business cannot be subject to second guessing, or worse, supplanted by a Federal regulator.

Not only has the Commission shown no reluctance to enter the area of car management, it has frequently done so without adequate factual support. As a consequence it has issued orders which have impaired rather than improved the existing car supply and efficient utilization. The actions, sometimes taken in the guise of an emergency without notice or hearing of any kind, or consultation with the industry to determine what is technologically and economically feasible, have preempted the discretion of railroad management. For example, in the spring of 1978, the Commission issued order suspending car service rules of the AAR which had previously been approved by the Commission and requiring, among other things, compliance with a number of unrealistic time limits, including the forward-

ing of cars within 24 hours. That order, issued in apparent ignorance of rail operations, resulted in the compulsory movement of empty cars and a substantial loss in efficiency.

In September, 1978, the Commission ordered the repair and restoration to service of 40-foot boxcars. The reason these cars have been allowed to go out of service is because there is no longer much demand for them. The carriers were thus being required by Commission edict to put their preciously scarce funds into one of its most uneconomic assets. Worse yet, the brunt of this order would have fallen on several marginal railroads which clearly had insufficient funds for even its most essential projects.

The ICC also ordered 11 western and midwestern railroads to use 70 percent of their jumbo hoppers and half of their 40-foot boxcars in grain service when a jump in world grain prices created an unpredictably large off-season surge of grain orders. In a way, this might have prevented further grain car shortages—because diversion of these cars would have resulted in a shortage of cars for numerous other commodities, including fertilizer. Without fertilizer, farmers presumably would not have had such large crops to ship in the future.

In yet another case, the ICC ordered the break-up of unit trains so that cars could be provided to low volume shippers—even though the ICC itself conceded it would aggravate the very shortage that precipitated the action.

It is well past the time when full control of half of the railroad industry's assets ought to be returned to rail management. This the Administration's proposal would do in part. It would withdraw the emergency car service powers from the Commission and vest them in the DOT to be exercised only in the event of an "emergency" declared by the President. We would go further and simply eliminate the power. In the event of a true "national emergency," the President already has adequate transportation powers.

The Administration would continue to permit car hire and demurrage charges to be set collectively under antitrust immunity. It would, however, withdraw immunity for the setting of mileage allowances for private car owners and require those to be set individually. We disagree with that approach for two reasons. First, uniform rates are essential to uniform treatment of private car owners. Where special circumstances exist, they can be accommodated with special rates. That is the system today. Second, the administration of such a system would be extremely complicated and of doubtful practicality. A car moving cross-country via four railroads could require four different contracts, resulting in possibly four different allowances and some very complicated accounting. For these reasons, we would urge retention of standard mileage allowances.

Finally, the Administration would provide for arbitration of disputes between railroads with respect to all car service and compensation issues, but the arbitration would be under the auspices of the Commission, and two Commissioners would serve on each arbitration panel. We would urge that all car service disputes between railroads, shippers or private car owners be subject to arbitration and that the arbitration process be entirely private. We fail to see any need for Commission involvement in the process.

This completes my prepared statement. I shall be happy to answer any questions the Committee may have.

A Review of Retrospective Railroad Line Abandonment Studies

I. Introduction

The prospect of increased rail line abandonment under relaxed railroad regulation raises the fear that there will be a large amount of economic dislocation in communities that might lose rail service. In many cases these fears have been compounded by prospective abandonment studies which have forecast significant reductions in local employment, retail sales, income, etc., if rail abandonments were to occur.

Since many of the presumptions regarding the impact of branch line abandonments have been drawn from economic conjecture, it is instructive to examine the economic impacts of rail abandonment upon communities where abandonments have already taken place. Rather than projecting potential economic consequences, retrospective line abandonment studies have recorded the actual economic effects upon communities following the loss of rail service. The advantage of retrospective line abandonment studies is that they describe the changes in economic processes that actually took place after abandonments, so that their results are not subject to the bias of assumptions regarding possible economic outcomes.

The next section of the memorandum summarizes the findings of each of nine retrospective rail abandonment studies. These studies cover the post-abandonment impacts on communities throughout the country and are representative of all of the retrospective abandonment studies available. See Attachment I for a list of four additional known studies on this subject which are not summarized in this memorandum. The findings of those four studies are similar to the findings contained herein.

II. STUDY SUMMARIES

Interstate Commerce Commission, Bureau of Transportation Economics and Statistics, "Railroad Abandonment 1920–1943," Washington, D.C., 1945.

In this early study the ICC attempted to examine the extent to which injuries predicted by opponents of abandonments actually materialized. The Commission staff chose to analyze abandonments in Ohio which took place over the period 1920–1936. Ohio was chosen because it had a diverse industrial and agricultural base and also because it led many states in abandoned rail miles over the period. The study compared population, property values, sales, and the number of businesses in communities which lost rail service to those of comparable size which did not lose rail service. From the analysis of the economic and community indicators, a number of general conclusions were drawn.

In the period 1910–1920, before the abandonments which were analyzed had occurred, the areas which were to lose rail service fared significantly worse than did other communities in all respects which were measured. This condition also continued through the period in which most abandonments took place (1920–1930).

In the respective periods after abandonment, the rail-abandoned areas more closely followed the trends for the state, increasing in those respects which the state increased and decreasing in those respects in which the state decreased. There were no indictions that areas which lost rail service were significantly worse-off after abandonment than the state as a whole, and some criteria indicated that their relative positions became better.

The pattern of decline could not be ascribed to the abandonment, since the decline began in some cases more than 10 or 20 years before abandonment. The quality of rail service generally declined prior to abandonment, but no evidence was found which indicated that rail service quality caused the decline in population and other economic factors.

The communities which lost rail service were small. The largest reached a population of 2,500 in 1910. In general, these communities constituted a relatively depressed group prior to and at the time of abandonment, and the relatively depressed conditions (occurring as they did in large measure before abandonment) could not be ascribed to the abandonment nor could the ensuing relative improvement be attributed to the loss of rail service. The general economic pattern indicated that the conditions leading to abandonment were accompanied by a decline in population, sales, etc. The upturn resulted from the communities adjusting to changed circumstances (of which abandonment was only one), and then they progressed afterwards with the rest of the state.

Boston University Bureau of Business, "The Economic Impact of the Discontinuance of the Rutland Railway," in "Studies on the Economic Impact of Railway Abandonment and Service Discontinuance," U.S. Department of Commerce, Transportation Research, Washington, D.C. 1965.

This study consisted primarily of an analysis of the economic variables for the region served; a detailed review of changes in the railway's expenses, revenues and traffic factors since 1946; and an extensive survey of former users of the Rutland's services.

The study concluded that the economy of the region improved during the period in which the railroad was declining and thus was not itself a contributing factor to the carriers' demise. (A gradual erosive shift of traffic to competing modes and rising railroad costs were contributing factors.) The employment data clearly indicated that there was no collapse of employment after the railroad went out of business, excepting of course on the railroad itself. Moreover, employment in the area was generally able to increase. Aggregate data and survey information showed no significant employment loss among former Rutland shippers. The discontinuance of the Rutland apparently had no significant aggregate impact on the payrolls of users or the income of the user's employees residing in the region formerly served by the Rutland Railway. The study concluded that other factors were more important in shaping the destiny of the service area than the presence of the railroad.

In addition to the impact of discontinuance upon the employees of the Rutland, the other major effect was on some of the former users of rail service in terms of

added transportation costs. The extent to which added transportation costs were passed on to consumers was largely controlled by the competitiveness of the specific markets which the users served. The user survey, however, indicated that certain shippers or receivers actually reduced their transportation costs as a result of being forced to change their method of distribution.

Simat, Helliesen and Eichner, Inc., "Retrospective Rail Line Abandonment Study," Boston, submitted to U.S. Department of Transportation, Washington, DC, 1973, and "Additional Retrospective Rail Line Abandonment Studies," Boston, submitted to U.S. Department of Transportation, Washington, D.C., 1975.

Two studies of abandoned rail lines were conducted to determine the impact of rail line abandonment upon shippers. The abandonment cases chosen for detailed analysis in both studies were deliberately biased in an attempt to find severe impacts. The study premise was to examine the impact of abandonments which (1) took place in geographically isolated areas and (2) principally served shippers and receivers of bulk commodities. Detailed telephone and personal interviews were used to compare the actual abandonment impacts with alleged impacts contained in the case dockets.

The first study analyzed 10 abandonment cases. The second study analyzed five cases, but in only two of these cases had the lines actually been abandoned. Study findings varied considerably with respect to the impact actually experienced by the protestants. The abandonment impacts found in the first study ranged from negligible to severe. Of the 42 shippers interviewed in the first study, 62 percent found the impact of abandonment to range from no effect to intermediate effects. Only 38 percent of the protestants were found to have faced "serious" post-abandonment impacts.

The second study listed shipper allegations of abandonment impacts ranging from transportation cost increases to business closures. Most of the impacts affected small and marginal firms; larger firms previously located on the lines had typically relocated before the initation of abandonment proceedings. As with the first study, the results of the 1975 study were mixed. All protestants were still in business after the abandonment. Two saw business decline, two others expanded. Some mining operations moved elsewhere. Overall impacts were not nearly as negative as the protestants had predicted, however. By using local trucking and, in one instance, relocating, several businesses found it profitable to expand without need of the original rail line.

Massachusetts Institute of Technology, "An Analysis and Evaluation of Past Experience in Rationalizing Railroad Networks," Cambridge, submitted to the U.S. Department of Transportation, Washington, D.C., 1975.

In order to judge the effects of rail abandonments on communities, nine "test" counties were selected in which major portions of the railroad route-mileage had been abandoned between 1958 and 1963. Also selected were nine "control" counties, each one adjacent to one of the test counties. Measurements of the impacts of railroad abandonments on counties were based on seven economic indicators drawn from the County and City Data Book. Three hypotheses were tested and for each hypothesis a test statistic was designed and calculated.

The statistical analysis did not produce results justifying the rejection of the three hypotheses. The hypotheses were:

(1) Test and control counties fared equally well economically in the pre-abandonment period;

(2) Test and control counties fared equally well economically in the post-abandonment period; and

(3) The average annual rates of change in economic indicators for the county pairs investigated when comparing pre-abandonment and post-abandonment periods were not significantly different for test and control counties.

The results of the analysis supported a conclusion that railroad abandonments did not seem to have had a measurable adverse economic impact on the nine test counties.

Iowa State Department of Transportation, "An Economic Analysis of Upgrading Rail Branch Lines," Ames, prepared for the Federal Railroad Administration, Washington, D.C., 1976.

As part of a rail branch line upgrading study, the impact of rail losses on communities in Iowa were examined. Population, employment and various local economic indicators were examined in rail-abandoned towns and compared with towns of similar size which had rail service.

Interviews with leaders in rail-abandoned communities indicated that population trends varied, business activity remained relatively unchanged or increased, and elevator storage capacity and employment increased in most of the towns. The interviews revealed that most of the changes occurring in the number of business firms in operation were not related to rail line abandonment.

The population analysis suggested that rail abandonment had no significant effect upon growth of communities larger than 499 persons. In most cases, population growth or retention was greater for communities larger than 499 persons in the towns where rail abandonment had occurred than in the towns of similar population size on the active study branch lines. For towns with less than 500 population, the comparision was not clear. It appeared that rail abandonment was not the major factor in influencing population in the smaller communities and that other factors—such as location or general economic conditions of the area—were more likely to have influenced population changes.

For towns of 500 to 999 population located on abandoned lines, average retail sales were slightly lower than comparably-sized towns on the study branch lines. A similar pattern occurred for towns between 1000 and 4999 population. Average retail sales continued to grow in the towns that had rail abandonment between 1969 and 1973, however. In fact, the rate of growth for towns without railroads was generally higher than those on the study lines. The retail sales data indicated that there was no stagnation or collapse of sales in communities no longer served by rail.

Bank loans and deposits were examined. The rate of growth of loans was higher in the rail-abandoned towns from 1960 to 1970. The rate of growth of average demand deposits between 1970 and 1974 was also slightly higher for communities on abandoned rail lines than those communities on the study lines.

For grain elevators on the abandoned lines, sales volume of both grain and fertilizer were affected. But the elevators that lost rail and fertilizer were affected. But the elevators that lost rail service continued to grow and expand, and their earnings tended to be higher than elevators on rail lines. Examination of a number of elevators that lost rail service suggested that sales and earnings drop shortly after abandonment, but that drop is followed by a recovery period and continued growth. Rail abandonment appeared to threaten the elevator managers, and consequently, they improved the efficiency of their operation in order to continue to compete. The improved earnings of the elevators without railroads over elevators on rail lines was a reflection of the improved management and operation efficiency of the elevators on abandoned lines.

Spraggins, H.B., "Rationalization of Rail Line Abandonment Policy in the Midwest Under the Railroad Revitalization and Regulatory Reform act of 1976," in Transportation Journal, Fall 1978.

This study compared economic and operating data for 40 Minnesota grain elevators that lost rail service with 64 elevators located on active rail lines in Minnesota. The 64 rail elevators were selected on the basis of close proximity to the elevators which lost rail service.

The study found that loss of rail service did not automatically mean that a grain elevator would be placed at a rate disadvantage with nearby competitors served by rail. In fact, the majority of rate differentials showed the rail rate at nearby elevators to be higher than the non-rail elevator truck rate.

Over half of the elevators retaining rail service indicted that they did not realize any increase in volume from the elevators which lost rail service. Thirty-eight percent reported a small increase in diverted volume, but this increase tended to be about 5 percent.

To determine if elevators which lost rail service actually failed to keep pace with rail-served elevators, the grain capacity changes of the two groups were compared over the period 1969 to 1975. The results showed that not only did the non-rail elevators expand their capacity as fast as other Minnesota elevators, but they exceeded the overall rate of expansion.

Probably the most significant comparison between elevators which lost rail service and those which retained service was the comparison of annual grain volume handled by each. While grain volume increased by 61 percent for elevators which retained rail service between 1969 and 1975, grain volume increased by 68 percent for those elevators which lost rail service over that period.

Allen, Benjamin J., "The Economic Effects of Rail Abanonment on Communities: A Case Study," in Transportation Journal, Fall 1975.

This study attempted to (1) estimate the effect of immediate loss of rail service on transportation costs, (2) estimate the effect of increased transportion costs on short-run community activity, and (3) estimate the effect of rail service loss on long-run

community development. The study chose ten communities (with more than 1000 population) that were felt to present a broad range of geographic and economic characteristics which had lost direct rail service during the period 1930 to the early 1970's.

There were several immediate effects of rail abandonment on transportation costs. The most severe increases in transportation costs were felt by shippers and receivers of fuel, fertilizer and coal. The major impact upon shippers losing rail service were the one-time expenses that resulted from having to rearrange the procedure by which they received their goods from the nearest rail transportation point. TOFC rail service was not found to be attractive shipping alternative for the shippers in these communities.

Only two of the ten communities felt any significant adverse short-run effects on employment as a result of abandonment. In those two communities a total of about 40 manufacturing employees lost employment as a result of rail service discontinuation. With the exception of coal dealers, the loss of rail service had little short-run impact on employment and business activity in the other communities.

The study also found that rail abandonment did not cause a decline in long-term community growth and development. With the exception of one town, which had declined as a result of a refinery closure, all of the communities experienced population growth during the period 1930 to 1970. Additionally, it was found that there was little evidence that increased transportation costs forced resident consumers and producers to divert purchases of commodities to other communities following abandonment. Faced with higher prices on certain items, the consumers and producers in towns losing rail service paid the higher prices and continued to buy the products in their own communities. There was a presumed reduction in the ability of the communities to attract new industry after losing rail service, but almost all of the communities added one or more industrial firms after the termination of rail service.

The study concluded that the short-run and long-run adverse economic effects from abandonment were not significant. Although there was apparently an increase in transportation costs on some commodities, the businessmen selling the product and/or the consumer (or producer) purchasing it, made or accepted the pecuniary sacrifices and remained in the community.

New York State Department of Transportation, unpublished staff analysis, Albany, New York, 1978.

The New York DOT surveyed shippers on abandoned rail lines and compared these responses to surveys conducted prior to termination of rail service. A total of 26 shippers on nine formerly-operated branch lines were surveyed before and after service termination. Twenty-three shippers responded to the survey.

While 13 percent of the respondents initially indicated that they would either go out of business or leave New York State if rail service were lost, only 8.6 percent did either. The investigation found that the shippers that went out of business or left the state did so for reasons other than the loss of direct rail service.

Fewer shippers switched to truck than the first survey indicated would switch, and more shippers trucked to the nearest rail point than was indicated by the first survey. Initially, 48 percent indicated they would switch to truck, while 33 percent thought they would truck to the closest rail point. Only 35 percent actually switched to truck and 41 percent trucked to a rail point. While few shippers initially indicated that they would move to another rail line (4 percent), the second survey found that 13 percent of the shippers located on another line after abandonment. TOFC service was used in part by only one of the respondents following direct rail service loss.

The New York investigation found that there was a slight over-reaction to proposed rail abandonments from shippers and receivers. One interesting aspect of the investigation was that more shippers found rail alternatives than alternatives in other modes, and some actually made new rail service arrangements in spite of the abandonment experience. The only substantial detrimental impacts were slightly increased transportation costs reported by eight shippers. On the other hand, some businesses benefited because of better service by alternative shipping modes or better service at other rail points.

III. CONCLUSIONS

In contrast to the traditional concern often expressed regarding the negative economic impacts from railroad line abandonment, the retrospective line abandonment studies have found there is little or no adverse community impact attributable to the loss of rail service. The studies have found many instances, in fact, where the post-abandonment community impacts were positive. The study findings show that

branch lines are seldom an important part of community economic activity and that other economic factors are more responsible for shaping the future of a local economy than is railroad branch line service.

As noted in several of the studies, many branch line abandonments merely marked the end of a series of unfavorable local economic events. The shock of abandonment often forced local communities into the realization that long-standing downward economic trends had to be reversed if the communities were to prosper. Shippers often found that the switch to truck transportation required a reorganization of their distribution patterns and this reorganization resulted in a reduction in their total operating costs. Local trucking also provided additional local employment and local purchases of fuel, meals, supplies, etc., providing more stimulus to the local economy than rail transportation had.

Many railroad branch lines have been rendered obsolete by the highway system. The 1945 ICC study found that to be the case, and it is even more clearly true today. The present-day highway system and the diesel motor truck have largely eliminated any differential geographic advantage that can be conferred by location on a rail line. This pervasive system of highway freight transportation has also made most individual shippers less completely dependent upon the availability of rail service than was historically the case.

The present-day highway system has also reduced rural auto travel times and thus allowed workers to commute longer distances to employment outside of small communities. That has tended to stabilize population in communities which lose some part of their employment base and thus to stabilize economic activity in the retail and service sectors of those communities.

That is, the availability of alternate transport modes, the ability of workers to commute fairly substantial distances, and the relatively minor contribution of rail service to local economies have all worked to minimize the economic consequences of railroad branch line service losses.

ATTACHMENT I—ADDITIONAL RETROSPECTIVE LINE ABANDONMENT STUDIES

Bunker, Arvin R., "Impact of Rail Line Abandonment on Agricultural Production and Associated Grain Marketing and Fertilizer Supply Firms," Department of Agricultural Economics Ph. D. Thesis, University of Illinois at Urbana-Champaign, 1975.

Bunker, A. R., and L. D. Hill, "Impact of Rail Abandonment on Agricultural Production and Associated Grain Marketing and Fertilizer Supply Firms," Illinois Agricultural Economics, Department of Agricultural Economics, University of Illinois at Urbana-Champaign, January 1975.

Due, John F., "A Case Study of the Effects of the Abandonment of a Railway Line—Sherman and Wasco Counties, Oregon," Transportation Research Paper No. 5, College of Commerce and Business Administration, University of Illinois at Urbana-Champaign, September 1974.

Due, John F., "Long Term Impact of Abandonment of Railway Lines," Transportation Research Paper No. 7, College of Commerce and Business Administration, University of Illinois at Urbana-Champaign, June 1965.

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

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You object to the entry provisions of the bill on the grounds that excess capacity and duplication are the main problems in the industry. Although entry would be of little value in areas with adequate rail service, would it not serve as a check on the actions of a railroad serving a captive shipper? Could a provision not be written which would allow some form of entry or trackage rights in the "captive shipper" situation with appropriate regulatory oversight?

Answer. The railroads do not agree that entry should be linked to ratemaking. The issue is one of priorities and approach in solving the basic problem, namely, how to improve rail earnings in order to attract adequate capital.

Insofar as rate regulation is concerned, S. 796 proceeds on the assumption that where a shipper has an alternative available, the rate charged by a rail carrier need not be regulated. Where a shipper does not have an alternative, the Commission would continue to regulate the rate. Therefore, encouraging free entry by construction, reciprocal switching, or other means, is not needed to protect the captive from monopoly pricing of rail services—he will receive that protection directly through continued rate regulation by the Commission.

The real effect of entry as proposed in S. 796 is, then, to promote competition among railroads for a larger share of the existing revenue "pie." It does not enlarge

the "pie" because the revenues involved are from captive traffic which, by definition, has no alternative to rail. Redistributing existing revenues among rail carriers does not strike us as a problem crying for a solution—no major carrier today even approaches an adequate rate of return so the achievement of adequate revenue levels does not lie in taking revenues from one carrier and giving them to another.

Does free entry help solve the restructuring problem? We think clearly not. The problem is too much plant. Until the existing system is rationalized, we fail to see that anything is gained by encouraging the creation of more redundant plant. We would, therefore, defer questions of entry.

Question 2. You provide some data in your statement which indicates that the mergers which occurred over the last 60 years have involved Class I railroads. Could you please explain this phenomenon? Would it be advantageous to encourage consolidation of some of the smaller railroads for more efficiency and less interlining? What effect would mergers and consolidations have on Class III carriers in particular?

Answer. The table which appears on page 2 of my prepared statement compares the number of railroads by class in 1920 and in 1978. During that period the total number of carriers declined from 872 to 505. The reductions all occurred in Classes I and II—Class I declining from 186 to 39 and Class II declining from 303 to 36. As I noted in my statement, comparisons between classes is difficult because the classes are determined by a revenue standard which has changed over the years. Even giving due weight to that factor, however, it is clear that the number of firms in Classes I and II have sharply decreased and that much of that decrease is attributable to mergers and consolidations.

The data suggests that Class III carriers have been less frequent participants in mergers and consolidations, but a more detailed study would be required to bear that out because of the changing definition of the classes over time.

The total track mileage of carriers in Classes II and III is only about 9,000 and 7,000 respectively, and I would doubt that many of them are physically connected. Therefore, I would not expect to see significant advantages through consolidations among those carriers.

While there are undoubtedly some exceptions, Class III carriers are not usually of strategic value to a Class I carrier, and I would not expect them to be affected by mergers of Class I carriers.

Question 3. You indicate in your testimony that rail-rail competition should not really be a factor in approving rail mergers because more consolidation and less competition are necessary to improve the industry. Is it correct that you are advocating a merger policy which would consider rail transportation needs above all? To what extent do you promote a weighing of factors?

Answer. The railroad industry is not advocating a merger policy which would consider rail transportation needs above all. It is correct to say that we are opposed to a merger policy that would ignore rail transportation needs—and that would be the effect of S. 796. The antitrust laws are concerned with the lessening of competition. They are not concerned with weighting trade-offs between a lessening of competition and a strengthening of the rail transport system. Such trade-offs can and are made by the Commission in approving or disapproving mergers and we would therefore, leave this jurisdiction in the Commission.

We would expect the Commission to continue to weigh all factors but would propose legislative standards that "tilted" somewhat more in favor of mergers. Specifically, we would urge that a merger be approved unless found to be inconsistent with the public interest, that a merger not be disapproved solely on the ground that it reduced the number of railroads in a particular market or group of markets, and that the Commission not be permitted to order the inclusion of a railroad in a merger being proposed by others.

Question 4. You state that S. 796 does not go far enough toward responding to the problems which the railroads face in the area of abandonments. Please elaborate. In this regard, you support the consideration of certain elements of cost which are not now reviewed by the Commission. Would such factors be considered under S. 796? How would you propose to ensure that such factors are examined?

Answer. A rail carrier should be able to discontinue promptly an uneconomic line—and we would define "uneconomic" to include all economic costs. We would also urge that once a carrier has decided to abandon a service, but is required to continue to operate it pending public decisions as to subsidy or purchase, the public should pay all costs incurred pending its decision. Thus, we would propose that a carrier be allowed to abandon a line on 120 days notice. The costs of continued operation beyond that date, pending subsidy or purchase decisions by Federal, state or local bodies, would be borne by those bodies. There would be no ligitagion as to

the abandonment decision, and subsidy or purchase arrangements would be negotiated.

S. 796, while improving existing law by setting deadlines, would still require a railroad to litigate itself out of a line and would require the carrier to continue to bear the losses pending a final decision.

With respect to costs, S. 796 meets our principal concern be establishing "full cost" as the standard for abandonment and defining the term to include an adequate return on capital attributable to the line.

Question 5. Some have suggested that abandonment proceedings should take into account future alternative possibilities, such as rate increases, economic development, or Federal assistance, which would discourage abandonments and encourage the search for alternatives. Please comment.

Answer. The question in all such proposals is, "Who bears the losses?" The abandonment process, which can be interminable, has always placed squarely on the railroad's shoulders the losses that continue pending final disposition. That policy has to be changed. If someone wants a railroad to continue a losing service while deliberating whether to take some future action, or awaiting some contingency, that "someone" ought to pay the railroad's losses, including the losses occasioned by the railroad's inability to redeploy to profitable uses the assets being devoted to the unprofitable use.

Question 6. You state that studies generally have shown that abandonments of branch lines do not have grave detrimental impacts on rural communities. To what extent must we have a system which protects the individual case where such impacts are truly felt?

Answer. The railroads have no objection to a system that protects against adverse impacts, and I believe this problem will cure itself if the costs of continuing uneconomic service are promptly placed on those to whom the adverse impacts are of most concern. One must start with the proposition that it is no longer sound public policy to require the railroads to subsidize an uneconomic service. With that proposition accepted, if the furtherance of some national state, or local interest dictates that an uneconomic rail service be continued, the law ought to require some national, state, or local agency to pay the costs from the date the railroad determines the service ought to cease. A proper allocation of the costs of the decision to continue rail service will greatly enhance the likelihood that adverse impacts are correctly assessed.

The CHAIRMAN. Next we will hear from Mr. Thomas Boggs, Jr., representing the Committee of Railroad Shippers.

STATEMENT OF THOMAS H. BOGGS, JR., ON BEHALF OF THE COMMITTEE OF RAILROAD SHIPPERS; ACCOMPANIED BY JOHN CAMP, COCOUNSEL; JAMES T. CURTIS, GEORGIA-PACIFIC CORP.; AND RICHARD HAUPT, FORD MOTOR CO.

Mr. BOGGS. Thank you, Mr. Chairman.

The CHAIRMAN. Good morning.

Mr. BOGGS. My name is Thomas H. Boggs. I am pleased to testify on the subject of railroad regulatory reform on behalf of the Committee of Railroad Shippers. I am accompanied by cocounsel, Mr. John Camp, and by representatives of our member companies: James T. Curtis of the Georgia-Pacific Corp.; and Richard Haupt with the Ford Motor Co.

At the outset, we wish to stress our support for enactment of rail regulatory reform legislation by the 96th Congress. Our members are heavily dependent on an effective and healthy rail system, and firmly believe that regulatory reform could help strengthen these carriers. Legislation is necessary now to improve the competitive and financial position of the railroads. By providing increased reliance on market forces rather than regulation, railroads would be encouraged to increase their productivity and thus enhance opportunities to increase market share and profitability. Also, as a true marketplace is created in railroading, problems of captive users will diminish allowing discontinuance of many regulatory controls.

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On May 22, we presented our views on the ratemaking issues and recommended a specific way to establish rates for captive traffic. Today, we will present our recommendations on the several nonratemaking issues—specifically, those affecting car service and structural issues such as entry, abandonment and mergers.

Our general positions on these issues are as follows:

CAR SERVICES

We support removing ICC jurisdiction for car service orders affecting operations and movements and for railroad-to-railroad agreements concerning compensation for use of each other's cars. The ICC Commissioners should act as arbitrators to resolve stalemates in negotiations between railroads and users for demurrage and compensation for use of shipper-owned cars.

ABANDONMENT

Expedited procedures should be established permitting abandonment of nonprofitable rail lines where there is no objection to such abandonment; where there is objection, we believe abandonment should be permitted only those lines where there are no commercially practicable alternatives to turn a nonprofitable line into a profitable one.

STRUCTURAL CHANGES TO INCREASE COMPETITION

We support enactment of several structural changes to increase competition among railroads, such as allowing the construction of new lines across existing track and mandatory access to rail interchanges. We also believe that there are situations where the ICC should be authorized to allow one railroad or a user to use the tracks of another in order to provide a user with adequate service that otherwise would not be available. Later in my testimony I will discuss one way to achieve this goal. We support increased freedom of mergers and consolidations, and other restructuring arrangements.

CAR SERVICE AND COMPENSATION

The ICC has extensive authority over railroad car service. That authority traditionally has been exercised to remedy specific problems affecting service over particular lines and has had generally beneficial results. However, at times ICC car service orders have required uneconomic movements of both full and empty cars and have adversely affected the supply and allocation of cars generally. In April of this year the Commission proposed the elimination of some areas of its supervision over car service. We applaud the ICC's efforts in this regard.

We support the elimination of ICC authority affecting car operations and movement of cars. Elimination of ICC jurisdiction over car operations and movements, except when the President has declared a national emergency, will enable the railroads to make decisions on how to best use their assets on the basis of economic considerations.

The ICC also regulates the per diem payments railroads charge for the use of each other's cars. Here, too, we favor repeal of all

ICC jurisdiction. The railroads should be permitted to negotiate these per diem rates among themselves without governmental interference.

However, as to the setting of demurrage rates and conditions, we favor the use of ICC Commissioners as arbitrators. We would grant antitrust immunity for users and carriers to meet separately and jointly for the purpose of negotiating fair demurrage rates—the same immunity would apply if an individual user negotiated with a group of carriers, or vice versa—in the event of stalemate, the Commissioner-arbitrator would render a binding decision.

As to the setting of a compensation level for the use by a railroad of privately owned cars, here, too, we support antitrust immunity for separate or joint meetings to permit negotiated rates between users and carriers. Again, the Commissioners would be available to break a stalemate through binding arbitration. The arbitrators would specify a fair allowance rate for users who have provided the cars. Moreover, the arbitrators should base their decision, where appropriate, on previous ICC private car compensation decisions, such as the tank car case, which have been generally accepted by the user community and have been subject to analysis and development by the ICC through the years. The issues in this private car compensation area can be very complex, and hopefully the ICC, acting as an arbitrator, can provide a strong incentive to negotiate a reasonable and fair solution.

STRUCTURAL PROPOSALS

There are three major issues affecting the structure of the railroad industry: (1) Increasing access to rail lines to increase competition; (2) abandonment and discontinuance of existing lines; and (3) mergers and consolidations of existing railroads.

In our testimony before this subcommittee on May 22, we emphasized, as we do again today, that there are many users who have no practical alternative to movement of their goods except by rail. For these users, who are captive to the rail modes, we would like to see a system of rail-to-rail competition encouraged. Market forces among railroads would then be in place to control rates and act as an incentive for improved service and safety. To the extent that such a true competitive rail-to-rail market can be stimulated, government regulations can be reduced. The following three means of providing greater access to competing rail carriers would contribute importantly to the desired competition in railroading.

ENTRY

To promote rail-to-rail competition, railroads, users, and State and local governments should be authorized to construct and operate a new rail line that crosses another railroad's line. This is especially important where construction of just a few miles of track will provide a user captive to one railroad with rail-to-rail competition. Construction of crossovers should be authorized so long as it does not unduly interfere with the operation of the crossed line and a fair price is paid for the easement.

Several States enacted statutes providing such construction entry rights in the 1800's. However, in the Transportation Act of 1920,

Congress established public convenience and necessity standards for the construction of new railroad lines, in part in an effort to stem construction of extension of branch lines. One of the reasons for the establishment of these standards in the 1920 act was concern that competition between carriers was overstimulated. In the intervening decades, however, the situation has changed considerably. Most importantly, numerous railroad mergers during the period have resulted in points which were previously served by more than one railroad now being served by only one.

Therefore, Congress should reinstate on a Federal level what essentially existed on the State level prior to the Transportation Act of 1920 and allow existing rail lines to be crossed.

ACCESS TO INTERCHANGES

In cases where only one railroad serves a shipping point, the railroad often refuses to interchange traffic with nearby connecting railroads except at excessively high charges to the user. Such refusal, justified by the railroads as consistent with its efforts to maximize its own revenues, nonetheless denies the user reasonable access to other railroads. The exercise of this restraint is especially bothersome to users in situations where other railroads, to which connections are physically possible, are denied the opportunity to alleviate car supply problems, speed service or improve safety.

To provide for greater rail-to-rail competition, we support a conditional requirement that railroads, at the request of the user, interchange cars with other railroads at any practical physical connecting point and at a reasonable charge. Such a requirement would promote rail-to-rail competition and eliminate a large number of captive traffic situations by enabling users to reach interchange points without excessive economic penalty.

Section 120 of S. 796 proposes a similar requirement within Standard Metropolitan Statistical Areas as one means of solving this problem. While we support this provision, we note that many captive user points are outside SMSA's.

To be workable, the charges for such switching services should be no more than the fully allocated cost for the service. This is much more than the railroads have customarily received for switching services. The commission should be directed to provide detailed guidelines for the measurement of fully allocated cost. In addition, there should be some assurance that the switching service rates for users will be nondiscriminatory when compared to the rates railroads agree to among themselves for this service.

TRACKAGE RIGHTS

The issue of trackage rights was discussed during the May 22 hearings. While our initial set of recommendations did not address this issue, we believe it deserves serious consideration.

Permitting one railroad, or a user who owns his own cars and locomotive, to use the tracks of another railroad could ameliorate the service and rate problems of users wholly dependent upon a single railroad line which offers deteriorating service at higher and higher rates. Permitting another railroad to bid for the user's business would have two benefits: It would give the user alterna-

tive transportation and it would spur the track-owning railroad to improve its service.

In order to preclude frivolous user demands on railroads, we recommend that these trackage rights be reserved for the most pressing situations and granted only upon a user's initiative. Reasonable limitations on their use could be established by requiring that the shipper seeking to use the line demonstrate to the Interstate Commerce Commission the necessity for that use. For instance, the user could be required to show that the track-owning railroad has not transported the traffic in a manner that properly serves the public and the user has no practical alternative means of transportation. A user must satisfy a similar standard under section 11124 of title 49, United States Code before the ICC may order that that traffic be moved over alternate routes.

Just compensation would have to be paid the owner-carrier for use of its tracks and terminal facilities. There is precedent in the Interstate Commerce Act for establishing a procedure and setting the appropriate level of compensation. Under section 11103 of title 49, United States Code, when the Commission requires one carrier's terminal facilities to be used by another, the carriers are responsible for setting the compensation for use of the facilities. If they cannot agree, the Commission may establish it. Further, section 11103 requires that the compensation be paid or reasonably secured before a carrier may use the facilities of the other.

We believe that this is basically a good system. However, it may be better to resolve compensation disputes by arbitration—that is, using ICC Commissioners as arbitrators—instead of through an ICC regulatory proceeding.

The railroad industry has objected to this type of proposal, most recently before this subcommittee during the May 22 hearings. Its primary argument is that other industries are not required to permit competitors to use their property and neither should the railroad industry. The rail industry also has suggested that such a requirement would violate the due process clause of the constitution.

The railroads' objections are not well based. The railroads have enjoyed valuable privileges and advantages; many received their rights-of-way through Government grants and the exercise of eminent domain. The fixed nature of the rail transportation system makes inappropriate the railroads' analogies to competition and entry potential in other industrial sectors. The ability to cross another carrier's tracks or, in special cases, to use another's tracks is needed to facilitate the kind of marketing competition that exists in other industries, but does not exist in many sectors of the rail industry.

The argument of the Association of American Railroads that this proposal would violate the due process clause is not valid because the owner of the tracks would receive just compensation. And, as we have stated, the tracks could not be used until compensation is paid or adequately secured.

The railroads argue that they should be permitted to abandon a rail line which can be maintained only at a loss. We agree. The railroad industry cannot continue to carry the burdens of main-

taining losing lines or services and, in the long run, remain economically viable.

Thus, we support permitting the railroads to abandon rail lines and services on an expedited basis when there are no objections. Where there are objections, we support expedited procedures providing an opportunity for subsidy or purchase of the losing rail line in order to avoid abandonment.

However, it is imperative that the criteria for establishing whether a rail line or service is in fact operating at a loss be written to permit abandonment only as a last resort. Again, the position of the captive user must be taken into account. Many users have made substantial capital investments in plant and loading facilities in reliance on the availability of railway freight service. Indeed, these plant location decisions may have been made precisely because of the availability of rail service at the plant. While railroads ultimately should have the right to abandon a line which is operating at a loss and which cannot be turned around, the captive user needs some assurance that the railroad has explored all alternatives to making that line profitable before abandoning it.

We believe a railroad should not be permitted to abandon a line or service which is needed by a captive user solely on a showing that the revenues attributable to the line or service do not meet or exceed the full cost of operating the line or service. We urge, instead, that a railroad first be required to show that the revenues cannot—rather than do not—exceed the costs. That is, the railroad should have to demonstrate that it could not increase its revenues by prevailing upon users to accept higher rates, through contracts or otherwise, in order to maintain the line or service. Second, a railroad should be required to demonstrate that there are no other commercially practical alternatives by which management could either reduce costs or increase revenues, or both, in order to provide a fair return on the line for the service.

In any balancing of the net benefits versus detriments of a particular abandonment, the possible detriment to users should also be taken into account.

Because of the complexities of the issues which must be investigated and presented by any challenger to a proposed abandonment, the time limit for the ICC investigation should be up to 270 days if so requested by objectors to the abandonment.

We agree with the Association of American Railroads that there must be a fundamental rationalization of the structure of the railroad industry. This includes consideration of possible mergers and consolidations, as well as new restructuring arrangements, such as coordination of services, exchange of markets, joint use of facilities, voluntary granting of trackage rights or transfer of rail assets form one carrier to another.

These mergers, consolidations, and restructuring arrangements must be judged by those possessing the necessary expertise concerning the complex and often unique circumstances of the railroad industry. Therefore, we support continued ICC jurisdiction over mergers, consolidations, and restructuring arrangements.

Any balancing test weighing the interests of the railroads against competitive effects should include consideration of the

extent to which a restructuring proposal would leave a user without commercial practical transportation alternatives. Also, the views of users—and other directly affected parties—should be accorded equal weight to those of the Department of Transportation.

Mr. Chairman, this concludes my prepared testimony. I would be pleased to answer any questions you and the other members of the subcommittee may have.

The CHAIRMAN. Thank you very much for a fine statement. Let me ask Mr. Curtis and Mr. Haupt if their companies would be willing to support congressional-type legislation to require the interchange use of your equipment, plant, and facilities by some other company, potential competitor, upon payment of a reasonable compensation. Mr. Curtis?

Mr. CURTIS. No, Mr. Chairman, I don't think we would support that type of legislation. We feel in the transportation area that there is a bit of difference and possibly the Government, Department of Transportation, Congress, and others, have tended to view the transportation system from a supply side or carrier side. We come at it slightly differently from the established standpoint of the shipper or demand side which creates the need for transportation. What we are asking in the entire package is a viewpoint toward what the user needs as a system. No, we would not support that type legislation.

The CHAIRMAN. Mr. Haupt, I am sure there are a number of companies that would like to use your facilities; that is, potential competitors, that would use them for a reasonable fee.

Mr. HAUPT. I had a little trouble with that analogy, too, Senator, because he specifically said we want to build our parts in their plants. I am sure we would never do that. But I think there are two problems with the analogy that Mr. Dempsey made. One is that he assumes perhaps that shippers aren't responsible. I think shippers need as much rail service as it takes economically and efficiently to move their products from where they are to where they want to put them.

Shippers, if they receive that kind of rail service from the carriers serving their plants, will have no need to request the services of an additional carrier. I think it's fair to assume that shippers will act responsibly in this case.

You also have to wonder, I think, what the concern of the railroad is. If they are furnishing efficient, economical service to the shipper, I would not think they would have very much to worry about. There would be no need to require additional service at that plant.

The CHAIRMAN. With respect to your proposed trackage right provision, as I understand it, this would permit railroads to cross over on the trackage and perhaps use parts of it. Procedurally how would you see that taking effect? Would they make an application to the Commission for use of trackage rights and for building over another's right-of-way?

Mr. BOGGS. Yes, they would have to demonstrate first of all that it would not in any way interfere with the operations of the railroad whose traffic they were crossing. That is, there would be no safety problem or operational problems from the crossing. You do have many situations where you have an east-west track which is

close to a facility. The facility's main market is in the western direction if they are in the east but the only track running from the plant is a north-south track.

In order for that plant to get its product to its market it has to go either north or south for a great distance, then go west or east. What this would basically facilitate is enabling that shipper to move in the direction he wants to move with very little addition of trackage. There is nothing really unique about trackage rights, as I stated in my statement. Prior to 1920 we had local preemption. Most of the States have allowed crossover.

I brought with me some State examples. I must say I expected the subcommittee chairman here, so I brought some examples from Louisiana with me. I also brought some examples from Tennessee. It is not a new right or not an additional conference on one type of industry over another that did not exist in law before.

The CHAIRMAN. With respect to your comments on rail mergers; that is, leaving jurisdiction under the ICC, you mentioned as part of the balancing test the consideration that the Commission should consider whether a user would be without commercially practical transportation alternatives. Isn't that required now?

Mr. BOGGS. Yes, it is.

The CHAIRMAN. So you are just saying you want to be sure that was maintained.

Mr. BOGGS. We are also suggesting we have the same level of evidence that is given to the Department.

The CHAIRMAN. Do your shippers generally contract for their cars now? Do they have fixed contracts as a rule?

Mr. HAUPT. Generally, no, under today's laws, Mr. Chairman, we couldn't do that. We do have an implied contract, in effect, with the railroads in the sense that we discuss with them the volume of business we anticipate shipping between the points, and the numbers of cars that would be required to accommodate the volume of business and the railroads, wanting to share in that business, will try to assemble sufficient cars to meet our needs. But there is no formal contract.

The CHAIRMAN. How do you feel about the arbitration provision you heard discussed here earlier today?

Mr. CURTIS. Arbitration seems to provide a satisfactory method for arriving at a conclusion. I think you can put constraints on the time frames to see that arbitration is an attractive thing and speeds things up. It would provide a satisfactory answer to those commercial questions.

The CHAIRMAN. Have your companies had particular problems in relation to the peak period where you have had marked car shortages?

Mr. CURTIS. Yes. We find in the forest products industry in general, that includes the entire paper, lumber type of thing, there have been marked car shortages particularly in the boxcar area. That workhorse the railroad industry, we find, has not provided. As a result, shippers have been forced to acquire cars themselves to provide equipment to meet their commercial commitments. In fact, we have asked repeatedly under the present system that the ICC examine that issue if indeed we are providing that equipment, as we have been forced to do, that compensation for providing it be

adequate, the term "adequacy" in this case, a rate that is on parity with what railroads pay for car hire to themselves, and have been repeatedly turned down by the Commission.

The CHAIRMAN. When you have your own cars, and you are not using them, are the railroads permitted to use them for their own purpose during that period of time?

Mr. CURTIS. Under the present circumstances, no. But we would be willing to make those kinds of arrangements. Arrangements of that type can be made.

The CHAIRMAN. Senator Exon.

Senator EXON. I have no questions. I thank the panel very much for the excellent testimony. I think you covered all the questions I had, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen.

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

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You propose a trackage right provision which would allow a shipper to demand that another railroad enter and use the tracks of the carrier already in place. The shipper would have the initial burden of showing necessity. Should this "necessity" be specifically defined by statute, and if so, how? How would you propose to take care of the problems which railroads claim stem from trackage rights agreements, such as in the area of track maintenance and other coordination of service between carriers?

Answer. In an effort to answer one of the most difficult questions raised during the Senate hearings, the Committee of Railroad Shippers suggested that a user could be authorized to seek the use of one railroad's tracks by another railroad. A use would likely seek such trackage right in two circumstances: first, those instances where service is inadequate, and second, where the shipper has no practical alternative means of transportation.

These two cases would define the necessity for ordering such use, and we suggest that it be allowed only upon statutory findings by the Commission. This would preclude frivolous demands on railroads. Inadequate service relates generally to a failure to transport the traffic in a manner that serves the public. This is similar to the standard contained in 49 U.S.C. 11124.

Under this suggestion, a shipper would be able to seek and obtain trackage rights in the above two cases. Such instances can be expected where geography precludes competition from other modes or prevents access by a second set of tracks. Ample precedent exists in both state and federal law defining those conditions in which use of one set of tracks by railroads other than the owner is appropriate.

If such a proposal is implemented, compensation must be paid to the owner railroad for the use of its tracks. While compensation as well as service coordination should be a matter for negotiation between railroads subject to arbitration by the Commission, all issues should be settled prior to actual commencement of service and should be included in the Commission's order of such service.

Question 2. You indicate that railroads often refuse to interchange traffic with nearby connecting railroads except at excessively high charges to the user. In this regard, you suggest a requirement that railroads, at the request of the user, interchange cars with other railroads at a reasonable charge. Does this not create a new area of regulation by the Commission?

Answer. The Committee or Railroad Shippers' proposal for interchanging traffic does not create a new area of Commission regulation with regard to charges for this service. The Commission could determine this cost based on detailed guidelines for the measurement of fully allocated cost. In addition, the cost should be nondiscriminatory when compared to the rates railroads agree to among themselves for this service.

Question 3. You favor adding to the abandonment section in S. 796 a provision which would require the ICC, in determining the profitability of a line, to review specific factors pertaining to the existence of possible alternatives to abandonment, such as possible rate increases to cover costs, which could make the line viable. Is it possible to make a judgment on the future in this way? Would this proposal not build in another tier of considerations which would burden the abandonment procedures?

Answer. The Committee of Railroad Shippers' proposal requires that a railroad justify an abandonement (which has been objected to by some party) by doing more that simply showing that the costs exceed revenues on a particular line or service. By limited the criteria to a cost-revenue test as the DOT bill would do, it would be possible that a railroad could abandon a line even if (i) there was a shipper or group of shippers who were willing to pay rates high enough to convert the line into a profitable one; and (ii) the line or service could become profitable if different management and marketing policies were adopted by the railroad.

The Committee of Railroad Shippers does not believe its proposal creates unreasonable burdens or impediments to abandonment. If a line or service is a truly losing one and there is no feasible way to increase revenues or decrease costs, the railroads should not have any difficulty demonstrating this. But an objector to the abandonment should have the opportunity to demonstrate that the railroad has ignored certain steps which could be taken to make the line or service profitable.

In any event, the Committee's proposal supports expedited abandonment procedures where there is no objection and specific time limits on the abandonment decision-making process.

Question 4. You favor S. 796's provision which removes car service from ICC jurisdiction and allows per diem, demurrage and other compensation to be agreed upon by the parties with recourse to arbitration. Under this proposed system, do you feel that your group of shippers would be able to contract successfully for car service without resorting frequently to arbitration? How do you think smaller shippers would be affected by this provision?

Answer. The Commitee of Railroad Shippers favors increased reliance on contracts and arms-length negotiations as a means of determining a wide range of issues, including rates, service, safety, car availability, etc. We believe there should be incentives to come to an agreement as to demurrage and per diem allowance over the negotiating table rather than to resort to arbitration. Under the Committee's proposal, small shippers can get together for the purpose of negotiating with carriers on demurrage and mileage allowances; or an individual small shipper can negotiate these matters directly with a carrier or group of carriers. The small shipper will also be protected by the railroad's obligation to operate as a common carrier, which requires them to provide cars to all shippers.

The CHAIRMAN. Next we will have Mr. William G. Mahoney, representing RLEA.

STATEMENTS OF WILLIAM G. MAHONEY, ATTORNEY, ON BEHALF OF RAILWAY LABOR EXECUTIVES ASSOCIATION, WASHINGTON, D.C.; AND JOSEPH TRAINOR, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS

Mr. MAHONEY. Thank you. Mr. Chairman, Mr. Snyder could not be here because the Unitied Transportation Union is in convention in Miami and it was rather necessary for him to be there.

The CHAIRMAN. That is a more pleasant place for him to be.

Mr. MAHONEY. He holds an elective office, as you do and you know how important it is to be where you are needed.

Mr. Chairman, I am accompanied this morning by Mr. Joseph Trainor, the national legislative representative of the Brotherhood of Railway and Airline Clerks, who is here for Mr. Kennedy.

Mr. Kennedy is national legislative counsel to the brotherhood.

On my right is Mr. Harold Ritter, UTU legislative director for Maryland, and assistant to Mr. Snyder.

As you know, Mr. Snyder is the chairman of the RLEA legislative committee.

My name is William G. Mahoney. I am a partner in the law firm of Highsaw, Mahoney & Friedman, P.C., with offices in Washington, D.C. I appear before you today on behalf of the Railway Labor Executives Association, an association of chief executive officers of all the standard national and international railway labor unions representing virtually all of the railroad employees in the United

States. The unions whose chief executives belong to the RLEA are as follows:

American Railway Supervisors Association.
American Train Dispatchers Association.
Brotherhood of Locomotive Engineers.
Brotherhood of Maintenance of Way Employes.
Brotherhood of Railroad Signalmen.
Brotherhood of Railway Carmen of the United States and Canada.
Brotherhood of Railway, Airline and Steamship Clerks.
Hotel & Restaurant Employees & Bartenders International Union.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers and Blacksmiths.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen & Oilers.
International Longshoremens Association.
International Organization of Masters, Mates and Pilots of America.
National Marine Engineers Beneficial Association.
Railroad Yardmasters of America.
Railway Employes Department, AFL–CIO.
Sheet Metal Workers International Association.
Seafarers International Union of North America.
Transport Workers Union of America.
United Transportation Union.

RLEA believes that, with modifications, S. 796 could prove an aid to transportation. However, in its present form it would prove contrary to the public interest and RLEA would oppose its enactment.

S. 796 would liberate railroad companies from regulation only to straitjacket rail transport into a noncompetitive, super high-density, bulk commodity main line operation.

The rail companies might—and we emphasize might—make money, but our transportation system would be much the poorer for it.

As an example of the administration's approach to the establishment of a national transportation policy, one need only read section 101 of S. 796. That provision effectively deletes from our national transportation policy the requirement that our railroad transport system meet the needs of the United States.

It would subordinate the existing policy—which does need improvement—to the new policy whenever any action taken in carrying out the old policy would impact on a railroad.

It restricts our policy to a list of six factors that the ICC must consider to be in the public interest in passing upon matters before it and promptly removes ICC authority or discretion to act in matters involving rates, mergers, and abandonments.

Our national transportation policy under S. 796 would at best be thoroughly confused and at worst be nonexistent.

It would seem that the administration would have our national transportation policy become almost a nonpolicy with regard to railroads.

It is now obvious to all that governmental subsidy of competing modes of transportation, particularly since World War II, has resulted in serious and unfair adverse effects to the railroad industry. Legislation is required which will revivify that industry in our national interests.

We believe the solution devised by the administration, if enacted, might result in short-term aid to individual railroad corporations but would so reduce the size of our railroad system and the availability of railroad service generally as to be contrary to our national interests.

In an effort to develop legislation which would tend to eliminate the disadvantageous competitive position in which the railroad industry has been placed, protect the employees of the industry, and develop a healthy system which would adequately serve the future needs of the Nation, representatives of the RLEA and the Association of American Railroads have held a number of meetings in an effort to develop recommendations which would meet with the approval of the Congress. These meetings are continuing.

Agreement has been reached in many areas which involve modifications of the administration's proposal. We are encouraged that most differences can be eliminated in the near future.

Two of the major failings of S. 796 are to be found in its merger and abandonment provisions.

The RLEA and the AAR are in agreement on the need to remove the merger provisions from S. 796, although for different reasons.

It is the RLEA position that the merger provisions of the Interstate Commerce Act should remain unchanged. It has been less than 3 years since they were thoroughly considered and rewritten during the enactment of the 4R Act. They have not as yet had an opportunity to be tested by the railroads or the ICC.

To our knowledge there have been no complaints from the industry, shippers, or anyone else that the newly mended merger provisions of the act have proved unsatisfactory.

The provisions are being utilized—the Burlington Northern-Frisco and the Chessie System-Seaboard Family Lines consolidations are now pending before the Commission.

The administration's merger proposal would strip the ICC of authority over mergers, leaving the only restriction on them to be found in the antitrust laws.

This might result in fewer so-called parallel mergers but, because of the exemption contained in section 7 of the Clayton Act, would have no effect upon end-to-end mergers. As a result, there undoubtedly would be a boom in the consummation of such mergers.

The immediate effect of an end-to-end merger is an anticompetitive effect upon parallel carriers with joint rates for through routes. Such carriers, though presently viable, efficient railroads, might well be driven out of business by their competitors merging end to end.

RLEA understands the administration is aware of this effect and endorses it as the administration desires to reduce the number of railroads as well as the number of rail lines in the United States. We do not think that objective is in the public interest.

The merger procedures were speeded up in the 4R Act and there is no evidence available to support a contention they should be speeded up any further.

If there have been any actual delays under the new amendments to the merger law, and we know of none, they could not have been the fault of the law itself.

Those provisions in S. 796 relating to abandonment of rail lines are most vigorously opposed by the RLEA. We view them as stripping this Nation of all but a few high density main lines in much the same manner the Transportation Act of 1958 stripped the Nation of its passenger trains and ultimately forced the creation of the subsidized Amtrak system.

The law relating to abandonments was amended at the same time as the merger law in the 4R Act. Of all the railroads which have taken advantage of these new provisions, only one has complained about them, the Illinois Central Gulf. That railroad complained that the Commission would not let it abandon lines that were not losing money.

Although the railroads of this Nation are no longer the monopolies they once were, they remain charged with a public interest. They cannot be permitted to treat every line of railroad as if it were a type of merchandise that wasn't making as much profit as the railroad would like.

The administration would compel the ICC to permit an abandonment if it is losing money and no one knows how to determine with precision when a railroad is losing money on a line because no precise formula has yet been developed which indicates how much revenue and expense is to be attributed to any given line.

When a railroad line is abandoned and the tracks are torn out and the right-of-way sold, that line is gone forever.

One can reasonably compare the future rail system in this country under S. 796 to the concrete and smog-choked Los Angeles metropolitan area.

Some years ago the Pacific Electric Railroad had lines throughout that area; lines which could have been developed into a superb rapid rail system serving the entire region in and around Los Angeles. It was abandoned and the rail rights-of-way converted to concrete highways and other uses.

The cost of reclaiming that network or even a small portion of it is so prohibitive no one even seriously considers it, but everyone concerned with Los Angeles' transportation problems admits the public interest was severely injured by the abandonment of Pacific Electric.

Given the fuel crisis this Nation faces—which will continue to worsen as our fossil fuels are depleted—abandonment and destruction of rail lines solely because more money can be made by the corporation investing in other aspects of its business must not be permitted.

The car service provisions of S. 796 deserve most careful scrutiny. The railroads complain that the ICC, in exercising its car service authority, has required the performance of almost impossible or largely wasteful acts by the railroads.

It would seem that some reasonable compromise could be reached between complete government authority and total industry autonomy in this area.

Perhaps greater freedom in pricing will permit more utilization and, therefore, greater availability of cars. It may also provide the incentive to keep the fleets in better condition, again improving car supply.

We do not now know whether more freedom in pricing will have that result. Until the effects of a new, more flexible pricing policy are known, some authority over car supply should be kept within the ICC; certainly the Commission's emergency powers should be retained and not transferred to the President as section 140 of S. 796 seeks to do.

The administration seeks no change in the law as it pertains to the protection of employee interests affected by enactment of S. 796. That means employees would not be protected against the adverse effects of any provisions except those involving abandonments and possibly mergers.

Apparently the administration would not protect employees affected by other provisions of S. 796 such as section 105 which would virtually abolish rate bureaus and their clerical jobs.

The administration's approach to employee protection in S. 796 is unsatisfactory for a number of reasons, including the problems RLEA had encountered with the ICC's application of those provisions.

Moreover, the protection of employee interests in an atmosphere of deregulation must assume a substantive form different from that designed for a regulated industry.

The RLEA must oppose any deregulation bill unless satisfactory employee protection provisions, separate and apart from the other provisions of the deregulation law and applicable to the effects of all provisions of the law, are enacted to cover all employees who might be affected by its provisions.

Much of the savings to be achieved as a result of the provisions of S. 796 or similar legislation, as well as the changes which will be made to enhance the earning power of the railroads, will be made at the expense of the employees of the industry in terms of job abolishments and transfers.

The railroad employee should be the beneficiary along with his employer of the fruits of this legislation. He must not be made its victim. He must be adequately protected against the effects of all provisions of S. 796 or similar legislation.

Thank you for the opportunity to present the views of the RLEA on this vital subject.

In closing I would like to mention that the RLEA would support inclusion of regulatory reform provisions and employment retirement provisions and one omnibus bill has been suggested by some legislators.

The CHAIRMAN. Thank you. It is rather interesting that the railroads oppose the provisions in the DOT bill because they think they will prevent mergers, and you oppose them because you think the provisions will promote mergers. How can you arrive at such two diametrically opposed views?

Mr. MAHONEY. One of the problems in transferring merger authority to the Department of Justice is that the railroads feel they will lose their antitrust exemptions. This worries them more than anything else.

They also agree that there would be fewer mergers, virtually no parallel mergers. But since the Clayton Act exempts end-to-end mergers from its coverage there would be innumerable end-to-end mergers.

The CHAIRMAN. You indicate the immediate outcome of an end-to-end merger is an anticompetitive effect upon parallel carriers with joint rates and through routes.

Mr. MAHONEY. Yes.

The CHAIRMAN. You state that those carriers, those presently viable railroads, might well be driven out of business by their competitors merging end-to-end.

Mr. MAHONEY. Yes, sir.

The CHAIRMAN. Why would a viable railroad be harmed by a merger among its competitors?

Mr. MAHONEY. If there are now two ways to get from point A to point D, and the shipper uses one of two railroads, each of which connects with other railroads, to go to point D, then they have to go through terminals and transfer that traffic, both of them.

If two of the railroads on one of those lines merge and can maintain a single-line through-rate and through-route service which should speed up the service—that is the point and objective of it—then the shippers would take that line, obviously, rather than the line that still has two railroads operating over it. And it would have the effect, then, of transferring the shipments to the single line carrier.

The CHAIRMAN. Would that not be in the best interests of the public?

Mr. MAHONEY. Oh, that would be in the better interest of the shipper, certainly. But the effect upon the other railroad would be to lose considerable business. If it lost considerable business, it might undermine its other lines and other services to other people. That is what we meant when we said it might well drive it out of business.

If there are sufficient mergers that would have that effect on other railroads, on other lines, then it might certainly drive it out of business.

The CHAIRMAN. You would oppose any deregulation bill unless satisfactory employee protection provisions were included. What do you suggest are satisfactory employee protection provisions?

Mr. MAHONEY. First of all, it would have to be protection from all adverse effects of this legislation. Any regulatory reform legislation. As I mentioned in the statement, for example, if S. 796 were enacted it would remove virtually all rate bureaus. There are a number of people who work for those rate bureaus who would be adversely affected.

Under the terms of this bill as it now exists they would not be protected. The entry provisions also might well have an adverse effect upon the employment in the industry.

There is no protection for any adverse effects in that case.

There are other provisions which are similar. So what we say is that the employees who are affected by this legislation should be protected from its effects, not only on mergers and abandonments but on everything.

The CHAIRMAN. How do you want to protect them, though? What are you suggesting, that they ought to be given lifetime employment?

Mr. MAHONEY. No. I am talking about who should be protected. The manner in which they should be protected should be protected at least as good as they are now protected in merger and abandonment cases and as well as Congress intended they be protected.

We believe Congress intended them to be protected in merger and abandonment cases. That is, have the same levels of protection, at least the same levels of protection as they now are protected by in cases involving mergers under the old merger law, and as the Amtrak railroad employees received from Congress when Amtrak was enacted.

Now, that type of protection, substantive protection, that type of protection was enacted, has been enacted in the Interstate Commerce Act. It is in the Urban Mass Transportation Act and other similar acts of Congress that would affect the employees of the railroad industry. It should be at least that here, and clearly so.

The CHAIRMAN. In your testimony you say that you oppose the bill because it is oriented too heavily toward meeting the needs of the railroads and not the needs of the United States. Are you suggesting that the needs of the United States are being met now by the structure and system that we have?

Mr. MAHONEY. Oh, not at all. But under the new transportation policy, it literally eliminates that provision from our national transportation policy if actions under that policy impact on a railroad.

I don't know how any action taken under this law would not impact for good or ill on some railroad somewhere, so you are writing out the national transportation policy in effect and substituting this new paragraph that lists the things the ICC must consider in considering the matters before it.

The CHAIRMAN. Can you suggest some way the rail situation could be improved, if not by rate flexibility and some kind of plant rationalization?

Mr. MAHONEY. We have no objections to a rational rate provision, restructuring flexibility in the rates, that sort of thing. We have reached agreement, as a matter of fact, with the views of the AAR in this area.

What I was talking about here is establishing a transportation policy against which all the remaining provisions in this Act must be viewed; they must be interpreted in relation to that policy as stated.

When we wipe out, literally wipe out a provision of that policy which says it must meet the needs of the United States, it seems to me that that doesn't even have to be considered any more when anybody is interpreting this act, as long as it impacts on the railroad.

The CHAIRMAN. Are you satisfied with the 4R provisions on structure and service?

Mr. MAHONEY. On structure and service?

The CHAIRMAN. Yes.

Mr. MAHONEY. By structure, do you mean the abandonment and merger—yes, sir. We just finished going through that in some detail only 3 years ago and nobody has complained about it, except, as I say, one railroad.

The CHAIRMAN. Senator Pressler?

Senator PRESSLER. Yes. Thank you for your testimony.

Perhaps this has been answered. I apologize for being late in moving from one meeting to another. If there is massive abandonment of railroad track in the Midwest, what becomes of the displaced employees? Would they be absorbed in other parts of the system? If the Milwaukee were to close down large amounts of its track, I suppose there would still be some traffic. I see a lot of abandoned track every time I am in South Dakota and the Midwest—but what becomes of those employees? Are they retired early or given a liberal pension, or what happens?

Mr. MAHONEY. It all depends, of course, on the number of employees involved or if any employees are really involved in one of these abandonments. It often happens that virtually nobody is working on the track that is abandoned anyway. They exercise their seniority rights to secure other jobs. Sometimes that isn't even necessary because they are only working a small part of 1 day or 1 week over a line.

But where you have many abandonments and abandonments, let's say, over lines that are just breaking even or maybe losing a little bit of money but are well served, then you would have these men exercising their seniority rights back into other aspects of their craft and class in their seniority district.

Eventually these would bump down, those men they displace would bump other people. So you would have people put out on the street. People who are disemployed, furloughed, by that action are entitled to certain levels of protection under the protective conditions of the act which have been later—the formulas of those protections have been devised by the ICC. This means they are entitled either to severance pay or monthly allowance subject to recall to service and subject to recalls for other temporary employment, reasonably comparable employment, which does not require a change in their residence.

When you get to something like the Milwaukee, you have an entirely different situation, because what was planned there by the trustee was the furloughing of some 5,000 employees, none of whom, or very few of whom could have retained any employment with the Milwaukee Railroad.

A few of those, upward of maybe 1,800, 2,000, might have been employed for a short time by the railroads who would have been directed to carry on service over parts of the Milwaukee lines. But that would only have been for a short period.

Senator PRESSLER. Then they would probably have bumping rights which means they could bump some junior employee?

Mr. MAHONEY. In all cases they can only bump employees in their seniority district. If their seniority district is entirely wiped out, as would have been the case with Milwaukee and the West, they would have no place to go.

Senator PRESSLER. I recently heard a speaker say that the problem with the railroads is that on the one hand bad management and, on the other hand, excessive featherbedding on the part of the labor unions. Would you comment on that?

Mr. MAHONEY. Well, that is a term that came into use, oh, about 15, 20 years ago, or a little more. It was more than 20 years ago. Time flies; 24 years ago, back in 1955, when the railroads decided to remove the firemen. And they evolved that term and carried on a tremendous ad campaign and ultimately they got rid of the firemen. But that term, I think, is pejorative and doesn't really describe anything.

Today in the railroad industry they have a higher productivity rate than most other industries.

When you narrow it down to make-work jobs or that sort of thing, the only argument you ever find among railroad people, management people, is that they want to change the crew consist and the 100-mile-day. That is what you come down to.

All of the other rules involving all of the nonoperating employees and all the rules involving operating employees have already been removed.

They couldn't be vaguely considered featherbedding. It just doesn't exist.

The only ones they want to change today that I know of are the 100-mile and crew consist, and committees are working on those to make those changes now, at least as far as crew consists are concerned.

Senator PRESSLER. Thank you very much. I have no more questions.

The CHAIRMAN. Thank you very much, gentlemen.

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

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. One of the problems in the rail industry is excess capacity. Do you have any proposals for alleviating this problem?

Answer. You ask whether rail labor has any proposals for alleviating the problem of excess capacity in the railroad industry. The term "excess capacity" like the term "rationalization of rail plant" is a general term which in specific factual contexts varies greatly in meaning.

Usually "excess capacity" means too many miles of rail line and too many rail lines for the business available to the railroads. To the Department of Transportation "excess capacity" means everything beyond two or three super-high density lines east and west and two or three north and south; to the railroad manager it is all lines making less than he feels they should make; to the shipper it may be any lines except those he needs for service. To some, the seemingly simple answer to the problem is to permit the railroads to abandon their excess capacity on the basis of business judgment alone, i.e., without I.C.C. supervision. That is not the answer as a look at a rail density map will reveal. None of the railroads operating in competition between Chicago and the Twin Cities, for example, would voluntarily abandon their respective, very profitable competitive lines between those points, although the Department of Transportation contends there is enormous excess rail capacity between those cities. The railroads owning and using those lines are making money on them and consider them to be essential to the health of their respective systems.

Much, if indeed not most, of the "excess capacity" of railroads in this country is to be found in the category of profitable competitive, parallel lines which railroads will never voluntarily surrender.

Another category is the branch line. Whether a branch line which is breaking even financially and which is considered essential to the financial health of its shippers—as are many thousands of miles of branch lines in the United States—is to be considered "excess capacity" is obviously a matter of one's point of view. It

may be "excess" to the railroad which could get a tax benefit from its abandonment and be able to use the capital realized from its scrap or sale in a more profitable line or other venture; but, from the shipper's viewpoint the line may be absolutely essential to his existence.

The abandonment provisions of the Interstate Commerce Act were very recently amended and abandonments made easier of accomplishment. Under this new law—which has not yet had sufficient time to be judged inadequate—the railroads have filed for and received authority to abandon hundreds of miles of line. No railroad has complained about I.C.C. action under this law except the Illinois Central Gulf Railroad.

I suppose, in the final analysis, the answer to your question depends upon the person asked. The Department of Transportation and the railroads would permit virtual line abandonment at will regardless of the effects upon the public interest. Affected shippers would demand that their needs be considered. Rail labor would have the law remain as it is until some showing can be made that its recent amendments are insufficient.

Railroads will not voluntarily reduce their "excess capacity" except by abandonment of branch lines, therefore the only way to alleviate the problem of "excess capacity" is by devising a means, legislative or otherwise, to utilize that capacity by increasing rail traffic; by using the plant rather than by destroying it. This can be done in numerous ways, particularly in the area of tax incentives. There must be instilled in rail management the desire to develop its business and—like gas or oil price increase incentives encourage exploration—the prospect of reward must be at least equal to the element of risk.

Question 2. In your testimony, you state that an abandonment should not be based solely on the profitability of a line. You further state that as a result S. 796 would create a strictly "main-line rail operation." To what extent do local rail assistance programs protect branch lines which communities want to be maintained?

Answer. You also ask to what extent do local rail assistance programs protect branch lines which communities want to be maintained. The Local Rail Services Act was improved somewhat by the amendment enacted during the 95th Congress, but the Rail Assistance Program, nonetheless, falls short of meeting those needs of the states and local communities, which will be created, in our judgment, as a result of S. 796. The authorization in existing law which is hardly sufficient to cover existing conditions will fall far short of those which will be created if the bill is to pass. The transportation dislocations which will ensue will be compounded, we believe, by the intensified development of shortline and "Mom and Pop" operators of branch lines. As the Committee knows, these shortline operations which tend to be developed as tax shelter opportunities for investors, provide disparate patterns of rail service, and are not suitable for meeting the kind of rail service that the local communities require. We feel that the existing program is hardly sufficient to maintain rail service on these branch lines and that even if the program should be expanded, it still will fall short of the present and future rail transportation needs of the nation.

Then CHAIRMAN. Next we will hear from Mr. Frank Merwin on behalf of Mr. Paul Tierney, president of the Transportation Association of America.

I thought the note said that you were going to testify on behalf of Mr. Tierney, but I see he is with you.

STATEMENTS OF FRANK L. MERWIN, VICE PRESIDENT, ASARCO, INC.; AND PAUL J. TIERNEY, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA

Mr. MERWIN. Thank you. That's right, Mr. Chairman. I'm sure you know Mr. Tierney, he is president of our association.

I have a statement which I would like to submit for the record. I have some remarks summarizing the contents of that statement.

The CHAIRMAN. All right, sir.

Mr. MERWIN. We appreciate your invitation for TAA to speak on the railroad abandonment and merger provisions of S. 796. As requested, I shall submit my statement for the record and summarize it. I am speaking today on behalf of the Transportation Association of America, and I am accompanied by Mr. Paul J. Tierney, president of TAA.

My name is Frank L. Merwin. I am the vice president of ASARCO, a large corporation extensively engaged in the mining, smelting, and refining of nonferrous metals and minerals, as well as the sale of refined materials such as copper, silver, lead, zinc, and so forth.

Our corporation and its affiliated companies have plants and subsidiaries throughout the world. We thus operate both domestically and internationally. We utilize all forms of transportation, but must rely heavily on railroad services. Worldwide, our transportation bill is slightly less than $100 million a year. The responsibilities over the extensive transportation and traffic operations are assigned to my department.

TAA is a national transportation policy organization made up of transport users, investors, and carriers of all modes—air, freight forwarder, motor carrier, pipeline, railroad, and water—who work collectively to develop national policies designed to maintain a strong U.S. transportation system under private enterprise principles.

Policy proposals are reviewed by eight permanent advisory panels to the TAA board, representing top executives in the above-mentioned transport fields. Once agreement, or nonopposition, is reached among all eight of these panels, the proposal is presented to the board for final adoption.

To give you an idea of the caliber and scope of interest of members of this board, a current roster is attached to my statement.

I am a member of the TAA board and also presently serve as the chairman of the TAA User Panel, on which are approximately 90 top traffic executives from major U.S. industrial and commercial corporations. A current roster of this panel is also attached to my statement.

Before getting into the specifics of TAA's views on the rail abandonment and merger provisions of S. 796, I should again like to point out that they are based on two TAA policy positions that have been approved, or not opposed, by all eight of our panels. Also, they are quite current, having been formally adopted by the TAA board at its meeting just 8 days ago—on June 13.

First, let's discuss railroad abandonments and discontinuances. As noted in my statement, TAA has been concerned for many years about the amount of excess plant that is characteristic of the railroad industry. This problem is particularly acute in the Nation's Northeast quadrant and in the Midwest.

Yet, because of strong opposition to proposed abandonments and discontinuances of service, and because of the length and complexities of ICC proceedings on applications for relief, the railroad industry is still burdened with far too many lines that are underutilized and, in many instances, hopelessly unprofitable.

TAA supported changes in the Rail 4R Act of 1976 that sought to give carriers some relief by requiring expedited procedures by the ICC and by providing for subsidies for retention of unprofitable lines determined needed in the public interest.

While these changes were an improvement, compared to previous no-deadline procedures, they still required extensive and costly administrative efforts by the railroads to justify an abandonment,

and they also failed to set absolute deadlines for final action. As a result, the number of rail miles abandoned has, in our judgment, been very small.

The DOT's proposed changes in S. 796 certainly represent an improvement over the present statutes and are a step in the right direction. The setting of a 90-day time limit for ICC action on an abandonment petition, and mandatory approval if the line is unprofitable, are examples. Setting a 10-day time limit for action to subsidize a line cleared for abandonment is another constructive step.

Yet, since the ICC must still make the decisions, on the basis of public convenience and necessity, pressures to delay and reject applications will remain.

To overcome this problem, TAA, after considerable study—particularly by its user panel—has adopted a policy on abandonments and service discontinuances, which is detailed on page 4 of my statement.

In summary, it provides for railroads to give 240-day notice of abandonment of, or service discontinuance on, an unprofitable line, during which time it can be purchased by another railroad, shipper, or Government entity for use in rail service, or subsidized by either the Government or private interests. If neither is accomplished, the line may be used as the carrier wishes.

In brief, this is a private enterprise approach and should help strengthen the overall railroad system by relieving it of huge losses that are preventing this vital industry from providing the type of service needed by this country.

As to S. 796 provisions relating to railroad mergers, we strongly disagree with the proposal that they be made subject to the general antitrust laws, and thus, in effect, become regulated by the Department of Justice. Such a change, we believe, will discourage worthwhile mergers, which should be promoted. Indeed, we believe that had the antitrust laws been in place, already approved mergers would probably not have been accomplished.

Therefore, TAA believes the ICC should continue to regulate this type of activity, and that it should encourage and promote mergers, as well as greater coordination of rail service and facilities.

Procedures should be further expedited—as DOT has proposed for service consolidations—but priority should be given to the elimination of excess plant. Because of the potential benefits in eliminating duplicate operations and in coordinated services, we strongly feel the ICC should retain its authority in this area. While the DOT should continue to play an advisory role, the ICC should give equal weight to the views of the directly affected shippers.

My statement concludes with reference to changes in rail car service regulation. On June 13, the TAA board tentatively approved three specific proposals relating to per diem, demurrage, and privately owned cars. Hopefully, some or all of these will become formal TAA policy within 30 days. If so, we shall advise your subcommittee; but at this time we are not putting forth any definite proposals on those three items.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Merwin.

You suggest removing the ICC from abandonment proceedings. How would this proposal provide adequate protection for those who should have an input into the abandonment process?

Mr. MERWIN. Senator, we have struggled with this for months. The judgment that we have made is not to continue to have the ICC play a part in the abandonment procedure, even though the suggestions made by DOT are commendable. We still feel that there must be other avenues which could be explored, and we are not suggesting a definite procedure.

We believe the committee may look at other areas, such as the DOT. In the absence of the ICC, it could go to the courts. In S. 796, the procedure is that after 190 days or more, the abandonment procedure might still wind up and could be appealed to the district court.

The CHAIRMAN. Would the court process actually not take a much longer time than the ICC process and thus result in lengthening out the period of time it takes to get a structure down to the size that would be manageable, as you see it?

Mr. MERWIN. Well, we hope that some procedure can be arrived at by the committee after taking the testimony of all of the witnesses. Our primary purpose is that whatever procedure is used, it should have a time limit. We believe that should be about 240 days. The 240 days is not far removed from the bill, which is a minimum of 30 to 190 days, and those suggested by others this morning up to 270 days.

The CHAIRMAN. Do your shipper representatives in TAA agree with the removal of the ICC from the abandonment procedures?

Mr. MERWIN. Yes, sir, as did the majority of the other panels.

The CHAIRMAN. Senator Pressler?

Senator PRESSLER. I don't have any questions at this time. Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. Tierney, do you have anything which you want to add?

Mr. TIERNEY. Not a thing. Thank you very much.

The CHAIRMAN. Thank you very much, gentlemen.

[The statement follows:]

STATEMENT OF FRANK L. MERWIN, VICE PRESIDENT, ASARCO INC., ON BEHALF OF THE TRANSPORTATION ASSOCIATION OF AMERICA

My name is Frank L. Merwin. I am Vice President, ASARCO Incorporated, with headquarters in New York, New York. ASARCO is extensively engaged in the mining, smelting, and refining of non-ferrous metals and minerals, as well as the sale of refined materials such as copper, silver, lead, and zinc. Other business segments include recycling and the production and sale of asbestos and coal. With annual sales of well over $1 billion, our corporation and its affiliated companies have plants and subsidiaries throughout the world. We thus operate both domestically and internationally.

While we utilize all forms of transport, we by necessity lean very heavily on railroads, ocean carriers, and barge lines for our transport services. Our total transportation bill, world wide, is slightly less than $100 million a year. These transportation and traffic responsibilities are under my supervision.

I am appearing today on behalf of the Transportation Association of America (TAA) for the purpose of expressing its views on provisions in S. 796 relating to railroad abandonments and discontinuances, and rail mergers and consolidations.

For the record, TAA is a national transportation policy organization made up of transport users, investors, and carriers of all modes (air, freight forwarder, motor carrier, pipeline, railroad, and water) who work collectively to develop national policies designed to maintain a strong U.S. transportation system under private-enterprise principles. Eight permanent advisory Panels, representing each of the

above-mentioned transport interests, review TAA policy proposals and resolve differences before they are submitted to the 115-member TAA Board of Directors for final approval. A current roster of the TAA Board is attached.

I am a member of the TAA Board, and also presently serve as the Chairman of the TAA User Panel, on which are approximately 90 top traffic executives from major U.S. industrial and commercial corporations. To illustrate the wide scope of interests of its members, I am attaching a current roster of the Panel.

It should be emphasized that my views on railroad abandonments and discontinuances, and on railroad mergers and consolidations, are based on two TAA policy positions that have been approved, or not opposed, by all eight of these Panels. They are quite current, having been formally adopted by the TAA Board at its meeting just eight days ago, on June 13.

Railroad abandonments and discontinuances

TAA has long been concerned about the amount of excess plant that is characteristic of the railroad industry—particularly in the northeast quadrant and in the midwest. Yet, because of strong opposition to proposed abandonments and discontinuance of service, and because of the length and complexities of ICC proceedings on applications for relief, this industry is still burdened with far too many lines that are underutilized and, in many instances, hopelessly unprofitable.

Our Association strongly supported changes in the Rail 4-R Act of 1976 that would simplify and expedite ICC procedures for railroad petitions to discontinue rail services or abandon lines. While we did not believe the changes actually made went far enough, we were hopeful that they would help ease this long-time problem. The changes provided for notice, review, and approval of such applications within 60 days unless the ICC orders an investigation; and it precluded the ICC from authorizing an abandonment if responsible persons or government entities agreed to provide financial assistance for the line's continuation, or purchase. Unfortunately, the changes failed to include absolute deadlines.

While these changes were an improvement over the previous no-deadline procedures, they haven't resulted in any significant reduction in route miles. Between 1970 and 1975, the average miles of road operated in rail freight service, according to the Association of American Railroad's "Statistics of Class I Railroads", dropped from 209,401 to 205,732, or a mere 2 percent. Primarily because of a Congressionally authorized shrinkage of a modest amount of miles of lines owned by bankrupt railroads incorporated into Conrail, we saw a further reduction to 197,594 total miles in 1976. Unfortunately, the changes in the 4-R Act apparently failed to stimulate more line abandonments as the total dropped only slightly to 197,485 in 1977. Thus, over a seven-year period, the total reduction has amounted to less than six percent.

The Department of Transportation's bill, S. 796, recognizes the difficulties that railroads still have in trying to obtain ICC authorization to abandon a line. Its proposals are indeed a step in the right direction, especially the requirements that the ICC must act on an abandonment proposal within 90 days and that it must approve it if it finds that the revenues generated on the line do not cover the costs of the service plus an adequate return for the railroad. DOT would also provide for subsidizing a line slated for abandonment, with such action required within 10 days of official notice in the Federal Register of ICC's approval of the abandonment. The ICC also would be given the power to settle, through binding arbitration, any dispute over terms of the subsidy, but must act within 60 days.

These are commendable changes and certainly represent a considerable improvement over existing procedures. However, the major problem that would remain—in TAA's opinion—is the continuation of the requirement that railroads must obtain a certificate from the ICC that "the present or future public convenience and necessity require or permit the abandonment or discontinuance." Regardless of the DOT's effort to "define more precisely the public convenience and necessity standard," the pressures on the ICC to delay and reject applications will remain intense.

To overcome this problem, TAA has taken what we believe to be a bold approach, especially from the standpoint of users of railroad freight services. After very careful and thorough analysis and discussion, we have come to the conclusion that the best way to assure action in this problem area is to remove the ICC from the responsibility to approve abandonment and discontinuance proposals. Accordingly, with the approval or non-opposition of all eight TAA panels—including the approval of our User Panel—the TAA Board, on June 13, 1979, adopted the following policy position:

Abandonments and discontinuances.—"A rail carrier may abandon or discontinue service on any unprofitable branch line or segment of a line following notice of 240 days. During the notice period the carrier must first offer to sell the line to any financially able entity or community which offers to use it to provide rail transpor-

tation; and second, in the absence of such an offer, continue to provide the service if a full governmental or locally-funded subsidy is available. In the absence of either of the above alternatives, and after 240 days, the railroad may discontinue the service, or sell the property for any purpose."

The above policy, which largely speaks for itself, basically falls into four parts. First, the railroad must provide adequate notice of its intention to abandon a line or discontinue service which is clearly unprofitable. Second, it must offer to sell the line to any financially able entity—another railroad, a shipper, or a community—that will continue to use it to provide rail service. Third, the railroad must continue the line if adequate subsidy is provided. Fourth, if neither the second nor third step occurs, the railroad is then free to discontinue the service, abandon the line, or sell the property for whatever use the purchaser desires.

We recognize that this is a sweeping proposal, yet believe it is a necessary one if we truly want to rationalize our nation's railroad network. It puts the pressure on those insisting on the continuation of rail freight services to find ways to retain the line, with ample notice. The purpose, of course, is to stimulate the discontinuance of unprofitable services that create huge losses which must be recovered through the overall freight rate structure.

Railroad freight service is vital to the nation's economy, yet much of the plant to provide it is excessive, duplicative, and in poor condition. We cannot hope to improve service on those lines that provide the bulk of the service if the burden of carrying unprofitable lines is not eliminated. We thus need a hard-hitting policy that will assure action in this area.

Railroad mergers and consolidations

Another way in which the railroad industry can improve its services and its financial viability is through soundly conceived mergers and consolidations. The roadblock to improvements in this area has been the drawn-out procedures required to obtain ICC approval. For many years, TAA strongly urged changes in the statutes to overcome this roadblock, and it supported provisions in the Rail 4-R Act that established new expedited procedures for ICC handling of rail merger cases. These changes included the setting of specific deadlines for notice, comments, evidentiary proceedings, and final decision, with total time of 420 to 900 days depending on the size of the merger. The Act also established expedited procedures and time limits for ICC review and action on agreements for joint use of tracks and coordinated services, with a final decision to be made in 480 days.

These changes in rail merger statutes have proved to be a stimulant to increased activity in this area—where potentially large savings through elimination of duplicate and excess plant and facilities are possible, along with economies in rail operations and administration. Two very large rail merger proposals are now before the ICC. One involves the Burlington Northern and St. Louis-San Francisco roads; and the other the Chessie System and Seaboard Coast Line, including large subsidiaries such as the Baltimore & Ohio, Western Maryland, Louisville & Nashville, and Clinchfield railroads. The ICC did approve the merging of seven rail subsidiaries into the Missouri Pacific Railroads; and it has been asked to approve the sale of the Detroit, Toledo & Ironton Railroad to the Norfolk & Western and Chessie railroads. A number of other major rail mergers and rail line acquisitions are actively under study and could shortly be formally submitted to the Commission.

The DOT proposals in S. 796 would improve the situation with respect to consolidations by setting a 120-day time limit for action in cases not of regional or national transport significance and a 365-day limit for the latter. On the other hand, it would worsen the situation by far with respect to merger applications. We say this because we firmly believe that the placing of regulatory authority over rail mergers in the Department of Justice, through its enforcement of the general antitrust statutes, would have the effect of discouraging railroad mergers.

The solution to many of our railroad problems is to weed out the excessive, underutilized, and hopelessly unprofitable plant—yet retain that portion which is clearly needed to provide service in the public interest. Any efforts to rationalize either railroad plant or service through railroad mergers of any size will automatically be resisted strongly by the Justice Department—as evidenced by its strong opposition to mergers on any large scale.

The ICC, on the other hand, along with the DOT, are far more knowledgeable and are in a far better position to evaluate the potential benefits of a proposed railroad merger or consolidation from both a transportation and national standpoint. Accordingly, the TAA Board—again with approval or non-opposition of all eight TAA Panels—adopted the following policy position at its June 13, 1979, meeting:

Railroad mergers-consolidations.—"Mergers, market swaps, track agreements and consolidations should continue to be reviewed by the ICC under expedited procedures. In exercising its authority as to mergers, the Commission shall consider it to

be in the public interest to encourage and promote the consolidation of the railroads and the coordination of railroad facilities to the extent that such actions will improve the efficiency and the effectiveness of railroad services. In giving priority to the elimination of excess railroad plant, the Commission shall also consider the effect of a proposed action on the adequacy of rail services and the financial stability of the national railroad system." (This policy is adopted with the understanding that the views of the Users and the Secretary of Transportation as to transportation benefits will be given equal weight in the ICC decisions.) "Section 401 of the 4R Act, which allows the Secretary of Transportation to grant anti-trust immunity to railroads who meet with the Secretary to discuss ways to eliminate duplicate or overlapping operations and facilities use, exchange trackage rights, combine track and terminal facilities or other such rationalizations, should be supported by TAA."

The above policy spells out in considerable detail our thinking in this policy area. We want regulatory authority to remain with the ICC, but favor its acting under expedited procedures. We believe the ICC should take a promotional approach in this area, and also give priority to the elimination of excess railroad plant when making its decision. We recognize the proper role of the Secretary of Transportation in seeking "ways to eliminate duplicate or overlapping operations and facilities use" and to promote coordinated service improvements, and we believe this activity should be continued under anti-trust immunity. On the other hand, to the extent that the Secretary presents formal views to the ICC in the latter's consideration of railroad mergers or consolidations, we believe that the views of the users of the affected railroad services should be given equal weight. S. 796 would appear to give greater weight to the Secretary's views.

Rail car service

S. 796 also proposes significant changes in the powers of the ICC over rail car service, and these and other proposed changes in this area have been under active consideration by the TAA Cooperative Project. In fact, on June 13 the TAA Board tentatively approved three specific proposals relating to Per Diem, Demurrage, and Privately Owned Cars. All three will become TAA policy unless rejected by one or more Panels during a 30-day final review period. If any, or all, become formal policy, we shall advise your Subcommittee.

At a latter date, we plan to present views to your Subcommittee on other provisions of S. 796.

We appreciate your invitation to present views on the railroad merger/consolidation and abandonment/discontinuance provisions of S. 796 and request that this statement be placed in the formal record of hearings on this bill.

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

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., July 23, 1979.

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

DEAR CHAIRMAN LONG: As you may recall, at the conclusion of Mr. Frank L. Merwin's testimony on provisions in S.796 to your subcommittee on June 21 on behalf of TAA, he said a follow-up statement would be made if TAA adopted one or more of several rail car service policy proposals under consideration in the Association's Cooperative Project.

We are pleased to advise that we have been successful in clearing through this Project the following policy on Railroad Freight Car Per Diem. This policy thus has the support of, or is not opposed by, all eight of our permanent Panels (users, investors, and air, motor, pipelines, freight forwarder, rail, and water carriers), and it has been formally adopted by the TAA Board of Directors.

Rail Freight Car Per Diem—Per diem payments shall be set by agreement of the railroads. If the carriers cannot agree, the charges shall be determined by binding arbitration, which can be sought by any interested carrier. Establishment of an industry-wide per diem charge shall not prevent individual railroads from making specific per diem arrangements for particular equipment, as long as the arrangements are offered in a non-discriminatory manner. Antitrust immunity shall be granted to the railroads to discuss and set per diem rates.

The Department of Transportation, in S.796, would continue to allow the railroads, under a Commission grant of antitrust immunity, to set standard per diem rates by consensus, with all meetings, agreements and votes of the group setting such rates being open to the public. S.796 would also provide that if agreement

cannot be reached among the railroads, the dispute will be arbitrated by the ICC. While retaining the convenience of system-wide standard per diem charges, the bill would allow any two carriers to agree on different rates and terms.

In most respects, the above TAA policy position is in line with related provisions in S.796. The major difference is in the degree of ICC involvement. The thrust of TAA's policy is to remove, to the maximum extent possible, the ICC from this area of railroad regulation. Since the setting of per diem directly affects both the supply and utilization of rail-owned freight cars, we believe railroad management is in the best position to assume this responsibility. The result should be improved efficiency and operations.

Under the TAA proposal, the railroads would have the full repsonsibility of setting per diem charges, with provision for binding arbitration—preferably by private arbitrators—when any interested carrier so desires. S.796 would basically do the same, although it would make the ICC the arbitrator. As indicated, TAA recognizes the desirability, for uniformity and simplicity purposes, of retaining system-wide standard per diem charges—which is provided for in S.796. This bill also allows carriers to agree on different rates and terms for special conditions, which TAA supports "as long as the arrangements are offered in a non-discriminatory manner". Finally, TAA favors, as a necessity and as provided for in S.796, the retention of antitrust immunity to allow railroads to continue to discuss and set these per diem rates.

It should be made clear that our support of these proposals relating to payments for the use of rail freight cars is confined solely to per diem charges for rail-owned equipment. At the present time, TAA has no position on changes in ICC regulatory authority relating to the charges that railroads pay, or allow, for the use of privately owned freight cars.

We request that this letter be included in the record of hearings on S.796.

Sincerely,

PAUL J. TIERNEY,
President.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., July 30, 1079.

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

DEAR CHAIRMAN LONG: This is in repsonse to your letter of July 19 to Mr. Frank L. Merwin, in which you request TAA's answers to three questions raised by your Subcommittee concerning Mr. Merwin's testimony on certain provisions in S.796, the Railroad Deregulation Act of 1979. After checking with Mr. Merwin, we are responding on TAA's behalf as follows:

Question 1. You oppose the merger provision in S.796. Would you make any improvements in the present law? You refer to the need to consider the "public interest" and in particular "the adequacy of rail service" and the "financial stability of the railroad system" in evaluating mergers. Do you feel that these considerations are taken into account by the Commission now?

Answer. In general, TAA believes the current statutes relating to railroad mergers in the Interstate Commerce Act are a considerable improvement over those prior to passage of the Rail 4-R Act of 1976. This was pointed out in my letter and attached statement, dated February 15, 1979, to you in response to your request for TAA views of the effectiveness to date of the Rail 4-R Act. The following sentence from that statement summarizes TAA's views: "These changes in rail merger statutes have clearly been a stimulant to activity in this area—where potentially large savings through elimination of duplicate and excess plant and facilities are possible, along with economies in rail operations and administration."

As pointed out in both my February 15 statement and Mr. Merwin's testimony of June 21, rail merger activity has picked up appreciably—presumably with encouragement from the changes made in 1976. It is, of course, too early to make a fair evaluation. TAA considers the changes made at that time promotional in nature, mainly by specifying time limits on ICC procedures and giving DOT powers to facilitate mergers and consolidated services.

While we are generally pleased with the present rail merger statutes, we would support additional changes to further expedite and facilitate both mergers and consolidations. This is brought out in Mr. Merwin's testimony, where he quotes the latest policy on this issue, as formally adopted by the TAA Board of Directors on June 13, 1979.

As to ICC's taking into consideration such factors as "the public interest, the adequacy of rail service, and the financial stability of the railroad system", we believe all of them are now taken into account. Whether or not the Commission gives a proper balance to them is obviously a debatable question. Because of the very serious railroad financial situation, TAA feels that the "financial stability" factor should certainly be given greater consideration than in the past.

TAA's primary concern with the removal of ICC's jurisdiction over railroad merger cases, and the placing of them under the Department of Justice, is that this Department, based on past experience, will not give proper recognition to any of these criteria for judging rail mergers. DOJ is primarily concerned with potential anticompetitive actions and will, in our judgment, strongly oppose railroad mergers—when they should be encouraged because of their overall benefits to users, carriers, investors, and thus the general public.

As proposed in the new TAA policy, we do not only want faster ICC decisions, but we want the Commission to give priority to the "elimination of excess railroad plant". As to consideration of the "public interest", we believe that it is in the public interest to encourage rail mergers that promise a stronger system able to provide more efficient service to the vast majority of shippers, as compared to an over-extended system that cannot provide even adequate service to all its shippers. The nation's shippers are demanding better railroad service, which can best be achieved through a decrease in costs and an increase in productivity. They see railroad mergers as one way to accomplish this.

As to the future, the railroads clearly will not be able to meet the expected demand for their services unless their financial condition is improved. Rail mergers offer them an opportunity to improve their earnings and thus their ability to meet this demand.

Question 2. You complain that the need for a certificate of "public convenience and necessity" burdens the abandonment process. Do you not think that the proposal under S. 796 by which abandonments would be automatically granted if a carrier were to show that the line was losing money would help to minimize the present regulatory interference to which you refer?

Answer. Our answer, in brief, is "Yes". The proposed changes in S. 796, as we understand them, would be a definite step in the right direction, in that they would make the "unprofitability test" the governing one. The Commission must find public convenience and necessity and approve the application if the line is unprofitable. In other words, the public's interest, in our opinion, would be best served by allowing the unprofitable line's abandonment, unless some other parties purchase or subsidize it.

TAA believes that the railroads must be permitted to abandon lines that are unprofitable, duplicative, or excessive. A smaller, revitalized rail system should be the objective. Incorporation of the unprofitability test would, in our opinion, be a major step towards accomplishment of this objective.

Question 3. You mention in your statement that between 1970 and 1971 the total reduction in trackage was 6 percent. Do you attribute this figure principally to the difficulties in obtaining an abandonment certificate, or were there other causes for this low percentage? Does this percentage reflect any increase in abandonments after the enactment of the 4R Act in 1976?

Answer. The small percentage, 6 percent, of railroad lines abandoned between 1970 and 1971 referred to in Mr. Merwin's statement on June 21 reflects, in our view, both ante and post Rail 4-R Act conditions. While the statutory changes made in 1976 represent a definite improvement over the previous no-deadline procedures, they have not gone far enough to encourage more railroad action in this area. When coupled with strong political, shipper, and labor union opposition to many abandonment proposals, it is understandable why more hasn't been done.

As noted in Mr. Merwin's statement, the only major decrease in rail mileage was the direct result of creation of Conrail, where authorized line abandonments were treated other than through normal ICC procedures. Also, as shown in my February 15 statement, railroad mileage in freight service for the years 1970 through 1971 was as follows:

1970	209,401	1974	206,597
1971	209,293	1975	205,732
1972	208,012	1976	197,594
1973	207,211	1977	197,485

Source: "Statistics of Class I Railroads", AAR.

The above mileage figures, it should be noted, include only miles of rail trackage, exclusive of parallel tracks, yard tracks, or sidings. Below are shown total miles of

railroad track in the United States, including multiple main tracks, yard tracks, and sidings. As noted, the figure for 1977 is not yet available.

1970	336,332	1974	327,285
1971	334,932	1975	324,156
1972	331,129	1976	312,770
1973	328,625	1977	NA

Source: "Yearbook of Railroad Facts", AAR.

While the amount of total track miles dropped may be higher (i.e., 23,562 miles abandoned between 1970 and 1976 vs. 11,807 miles in the first table), the percentage changes are both quite low (i.e., 7.0 percent versus 5.6 percent). Also, the only significant yearly decline in both instances was between 1975 and 1976—directly the result of abandonment of lines of bankrupt northeast-quadrant railroads incorporated into Conrail.

As can be seen from the first table, the modest drop of 109 miles in 1977 indicates that the roadblock of cumbersome procedures still hasn't been overcome. Hopefully, by adopting an unprofitability test we will see far more activity in this railroad industry problem area.

We hope this satisfactorily answers your questions. If we can be of further assistance, please advise.

Sincerely,

PAUL J. TIERNEY,
President.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., August 16, 1979.

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

DEAR CHAIRMAN LONG: On July 23, I advised that the Transportation Association of America has adopted—following action by all its eight advisory Panels and formal approval of its Board of Directors—a policy position on "Rail Freight Car Per Diem". In brief, this policy urges that railroads, not the ICC, be allowed to set per diem charges for joint use of rail-owned freight cars, including industry-wide charges, under antitrust immunity as now, with disputes being resolved by private binding arbitration.

We are happy to report that TAA has been able to develop policy positions in two additional areas relating to the use of railroad freight cars. One deals with demurrage—the charges made by railroads for the time shippers take for unloading and loading freight cars beyond "free time"—and the other with compensation by railroads to shippers or lessors for the use of the latter's freight cars. Shown below are these two new TAA policies, along with comments on each as to how they relate to similar provisions in S. 796, the Administration's bill to reform the railroad regulatory system.

Rail freight car demurrage

"Standard demurrage payments and 'free time' for loading and unloading should be set by agreement of the railroads. Whenever standard demurrage terms cannot be reached in any other manner, demurrage agreements would be decided by binding arbitration. In any particular circumstance, a railroad and shipper could negotiate free time and demurrage provisions different from the standard provisions, so long as the arrangements are offered in a non-discriminatory manner. Antitrust immunity should be granted to the railroads and shippers to discuss and set standard demurrage rates."

The Department of Transportation, in S. 796, proposes a number of changes very much in line with the new TAA policy. The setting of system-wide standard demurrage payments would continue to be done under antitrust immunity—a necessity because of the sizeable amount of railroad freight car interlining, or joint use, estimated at approximately 70 percent of total rail traffic. S. 796 would also allow railroads and shippers to negotiate special demurrage terms, which TAA supports, provided any such agreements are non-discriminatory.

TAA, on the other hand, disagrees with the demurrage provisions in S. 796 with respect to the handling of disputes between railroads over standard demurrage terms. DOT would provide for arbitration by the ICC, while TAA would prefer this to be done by private arbitrators. We believe the latter is preferable, because private arbitration is faster and will be carried out on the basis of economic considerations.

Private car compensation

"The amount a railroad pays a private car owner for the use of such cars and the form of payment should be set by negotiation between the private car owners/lessors and the railroads, and in the event agreement cannot be reached, the matter shall be decided by binding arbitration. Industry-wide standard terms should be established, however, that shall not prevent individual railroads from making different arrangements in specific situations for particular equipment so long as the arrangements are offered in a non-discriminatory manner. Antitrust immunity shall continue to be granted for this purpose.

The related provisions in S. 796 would withdraw antitrust immunity for the joint setting of mileage allowances for private-car owners and require that all of them be set individually. As shown in the above policy, TAA opposes such changes. First, we believe the vast interlining of railroad freight cars requires the use of system-wide terms to avoid the need for thousands or more individual contracts at very high cost to both carriers and car owners/lessors. This, of course, would require retention of the present antitrust immunity in this area, as favored by TAA, rather than its removal, as would be done under S. 796. Individually negotiated agreements between railroads and private car owner/lessors would be allowed, but only needed to handle special situations.

Conclusion

The basic thrust of all three recently adopted TAA policies relating to rail freight car Per Diem, Demurrage, and Private-Car Compensation is to remove the ICC from this area of rail operations and to let the railroads utilize the freight cars available to them in the most efficient and economical manner. Major changes are thus needed in this area of railroad regulation, with the objective being to seek the benefits of private-enterprise operations in the railroad industry to the maximum extent possible. A good start can be made in these three areas of railroad car service.

We request that this letter be included in the record of hearings on S. 796.

Sincerely,

PAUL J. TIERNEY,
President.

The CHAIRMAN. Mr. James Hayes, Executive Director, Bicycle Manufacturers Association.

STATEMENT OF JAMES HAYES, EXECUTIVE DIRECTOR, BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA; AND GLADYS FREEMAN

Mr. HAYES. Good morning.

The CHAIRMAN. I imagine your organization is a very popular establishment in this day and age.

Mr. HAYES. I hope so.

Thank you, Mr. Chairman, members of the committee. With me this morning is Mrs. Gladys Freeman, my associate with the Bicycle Manufacturers Association.

My name is James Hayes and I am executive director of the Bicycle Manufacturers Association of America, whose members represent about 85 percent of the entire domestic production of bicycles.

I feel something like a vulture this morning after listening to the testimony, because I am going to sit here and ask the committee to think about letting us pick on the, what appears to be the decaying bones of an industry.

I am talking about the abandonments. We sincerely believe that abandonment of railroads rights-of-way are a unique but sadly neglected land resource. For whatever reasons they are abandoned, they are still of some use to the people of this country in some way. We think they should be protected for the use of the people.

In many areas across the country there are valuable linear corridors, which represent decades of development by transportation pioneers, and these irretrievable miles upon miles of trackage are being allowed to slip away into hands of private sources, causing incalculable loss to hundreds of communities and millions of Americans.

We believe the Federal Government has an important stake in helping these communities preserve the valuable corridors for reuse and conversion to other purposes.

There is also a possibility down the line that these rights-of-way may be reclaimed for other transportation purposes. More likely, however, they remain a marvelous resource for recreation.

Obviously I am speaking on behalf of about 105 million American bicyclists who have a stake in the reclamation of these rights-of-way. But not only cyclists, any recreational use, they serve a fine purpose; whether it is hiking trails or jogging, cross-country ski trails, minibikes, snowmobiles, horseback riding, trails of special use for paths and parks.

There is a beautiful one being used right here in Fairfax: the Old Dominion right-of-way has been converted, being used with a cooperative effort between the county, State, and Federal Government in making a 40-some-odd-mile bicycle path which will run out to the Blue Ridge Mountains.

In the transportation scheme of things, the abandoned rights-of-way can be used as freeways, arterial streets, scenic parkways, local streets/roads, busways, truckways and fixed rail routes.

There have been exhaustive studies conducted on all of the ramifications of rights-of-way usage, and the list above is just a part of the variety; but as is always the case, it seems, the bottom line is funding.

Chairman Long had added a $75 million allocation on his bill covering the subject which died in the last Congress. We think it is imperative that be restored.

A continued lack of Federal funds to acquire and preserve abandoned rail and power rights-of-way will inevitably mean the country will lose thousands of miles of these linear corridors.

My prepared statement goes into studies conducted by Harbridge House and DOT where they foresaw some 14,000 miles of abandonments. Probably 6,000 miles of them could be useful for recreational purposes of some kind. It is clear to us that this is a vital resource that should be maintained for the people and entrusted for the people in some way.

I would like to close by quoting from Robert Cantwell of Sports Illustrated, who wrote eloquently:

> The real appeal of railroad hiking and cycling is a subtle matter. There is something sociable about a railroad track. You can never forget that trains passed here. Sometimes the sense of them is so strong that you find yourself looking around half expecting to see one coming along * * *. These smooth and gentle paths wandering through the mountains or along river banks may be the simplest, least expensive, and most practical recreational asset in the country.

We say to Mr. Cantwell, amen. To the Congress we say, please help so these abandonments can be converted to a wondrous variety of uses for millions of Americans.

Thank you for allowing us to speak with you this morning.

The CHAIRMAN. Thank you.

Did the study you referred to come to any conclusion as to what the costs would be of purchasing those rights-of-way at the fair market value?

Mr. HAYES. It may not have been the purpose of the study to discover the price. What I think it was, Harbridge surveyed at the request of DOT what the abandonment is likely to have been over the period 1970, 1976, and which of those miles had some possible use as a recreational resource.

I am not sure they came up with a dollar value. Let me, if I may, consult some of my background materials which my staff has put together for me.

The CHAIRMAN. What procedure would you suggest the Government use in creating these recreational programs, condemnation authority at fair market value, or what?

Mr. HAYES. Mr. Chairman, what I know about the railroads I got from reading Ayn Rand's "Atlas Shrugged," and I am not sure that is a fair basis on which to judge. I am not qualified to say what the procedures should be.

I am sure there are existing avenues that can be approached. The National Bureau of Outdoor Recreation, Department of the Interior, has been acquiring parklands for years and years. Whatever procedures they use, it seems to me, would be applicable here.

I know you have problems with some of these leases going back to the heirs and assigns of the original owners, and so forth. But I think that the people over at the Interior feel that they would be able to administer this program pretty well. We have gotten a lot of support from them in this regard.

The CHAIRMAN. They say that out in my State there are many abandoned rights-of-way which we would be pleased to give you for bicycle trails or any other use you could find for them if people were hardy enough to go out there and try them, you know, through some of those desert areas.

On the other hand, we have some abandoned lines which go through some pretty high value property. I just would not even be able to speculate on what it would cost to try to acquire these properties at the fair market value.

I think this would probably be a rather inappropriate time to suggest that we ought to go out and acquire all the abandoned rights-of-way of railroads for recreational purposes, and let the Federal Government pick up the tab.

Mr. HAYES. Obviously, the situation would change from one line to another. There are some like the Ma & Pa Railroad running out of Baltimore into Pennsylvania which recreation people up there have been for years working on and have gotten most of the money themselves through private resources, have gone through all the legal haggling necessary; and they have a recreational resource.

What we would just like to see is some effort made to stem the breaking up of this until somebody had a chance to look at it and say, is there anything that the people can do with it that makes any sense?

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. I just had one question. Is it possible to convert the abandoned line, for recreational uses, while still preserving the possible option of reconversion for rail purposes?

Mr. HAYES. In the cases that I have seen in Wisconsin, the bikeway in Wisconsin goes across a long stretch of abandoned railroad. What they have done there, Senator, is leave all the trestles up; all the railroad took with them was the track. They left the ties alongside to be used for shoring up purposes and all that extensive bedding, the big stones and everything. All they did there was they used the bike trail alongside of it in the right-of-way that is there, and not disturb the guts of the railroad.

Senator PRESSLER. Who maintains it, or mows the grass?

Mr. HAYES. It is all a large cooperative effort between municipalities, counties, and the State government across the whole width of Wisconsin.

Senator PRESSLER. That sounds like a very utopian situation. There were not any weeds, or anything growing that somebody had to spray?

Mr. HAYES. That may be. But whatever problems were there in the operation of the bikeway, it is there and it works. They consider it a great tourist attraction in Wisconsin.

Senator PRESSLER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much. We appreciate your being here.

[The statement follows:]

STATEMENT OF JAMES J. HAYES, EXECUTIVE DIRECTOR, BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA

Thank you, Mr. Chairman, members of the Committee. I am pleased and honored to testify before this Committee of the United States Senate. My name is James J. Hayes and I am Executive Director of the Bicycle Manufacturers Association of America, whose members represent about 85 percent of the entire domestic production of bicycles.

The American bicycle industry believes the protection of abandoned rights-of-way to be a unique but sadly neglected land resource. These rights-of-way are available and can help greatly in energy conservation.

In many areas across the country there are valuable linear corridors, which represent decades of development by transportation pioneers, and these irretrievable miles upon miles of trackage are being allowed to slip away into hands of private sources causing incalculable loss to hundreds of communities, and millions of Americans.

We believe the Federal government has an important stake in helping these communities preserve the valuable corridors for reuse and conversion. There is also the possibility down the line that these rights-of-way may be reclaimed for their original purpose.

Obviously, in coming before this Committee today, I am speaking for the 105 million American cyclists who have a stake in the reclamation of rights-of-way. But recreational and commuting uses for these corridors are only few of many.

We have cyclists on our minds, but recreational rights-of-way can be used as hiking trails, jogging trails, cross-country ski trails, minibike trails, snowmobile trails, equestrian trails, excursion trails and special use trails as footpaths or parks. The butterfly chasers will be just as happy as all of us with the proper use of these conversions.

In the transportation scheme of things, the abandoned rights-of-way can be used as freeways, arterial streets, scenic parkways, local streets/roads, busways, truckways and fixed rail routes.

There have been exhaustive studies conducted on all of the ramifications of rights-of-way usage and the list above is just a part of the variety; but as is always the case, it seems, the bottom line is funding.

Chairman Long had a $75 million allocation in his bill which died in the last Congress, and we think that it is imperative that it be restored. A continued lack of Federal funds to acquire and preserve abandoned rail and power rights-of-way will inevitably mean that all over the country thousands of miles of precious linear corridors will be chopped up and lost as a major public resource.

In 1977, a nationwide inventory showed there were 6,232 miles of abandonments suitable to transportation and recreational uses. The availability of this unused mileage was documented in a study by Harbridge House for the Department of Transportation.

The study, authorized under Section 809 of the Railroad Revitalization and Regulatory Reform Act (P.L. 94-210) disclosed that 14,764 miles of railroad right-of-way became available between 1970 and 1976, but that only 42 per cent of that 6,232 miles had potential for alternate use.

We've become accustomed to seeing bicycle projects go unfinished because of a lack of funding. Three years ago, Senator Bob Packwood's bikeway demonstration program amendment created a $6 million source, and bids came in which would have cost $141 million.

Similarly Section 809 funds were trimmed from $20 million to $5 million, and when the Department of Interior's Bureau of Outdoor Recreation (now the Heritage Conservation and Recreation Service) announced it was seeking applications, it was overwhelmed by 135 requests for projects which would have cost $70 million. Unhappily the agency could fund only 10 projects totaling about 111 miles and 90% of the applications were for multiple use trails including bikeways, hiking, horseback riding et al.

It's clear to us, Senators, that funding for these conversion is the important ingredient. We don't want to lose these glamourous rights-of-way so steeped in the tradition of our country.

Sports Illustrated's Robert Cantwell wrote eloquently: ". . . the real appeal of railroad hiking and cycling is a subtle matter. There is something sociable about a railroad track. You can never forget that trains passed here. Sometimes the sense of them is so strong that you find yourself looking around half-expecting to see one coming along. . . . These smooth and gentle paths wandering through the mountains or along river banks may be the simplest, least expensive and most practical recreational asset in the country."

We say to Mr. Cantwell, AMEN. To the Congress we say please help so these abandonments can be converted to a wondrous variety of uses for millions of Americans.

Thank you for allowing me to speak here today.

The CHAIRMAN. That concludes the hearings for today. The committee will stand in recess.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

51-918 O - 79 - 6

RAILROAD DEREGULATION ACT OF 1979

THURSDAY, JULY 5, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Sioux Falls, S. Dak.

The subcommittee met at 9 a.m. at the downtown Holiday Inn, Sioux Falls, S. Dak.; Hon. J. James Exon, presiding.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. We will call the meeting of the Surface Transportation Subcommittee of the U.S. Committee on Commerce, Science, and Transportation to order.

I want to join with Senator Pressler in welcoming all of you here. We are particularly pleased with the excellent turnout.

The idea of these meetings, of course, is not for us to talk to you, but for you to tell us the suggestions that you have, pro and con, on the issues that confront Senator Pressler and I as members of the Commerce Committee.

Everything that will be said here today will be entered into the official record of the U.S. Senate. We have our recorder with us today.

And before I go through any of the other preliminaries and the testimony, I would just like to take a moment, if I could, to introduce the people who are assisting us here today. When I introduce them, if they will please stand. I am doing this so that if any of you have any questions which are not fully covered during the hearing by members of the various panels who will be testifying, you can come forth and see any of these individuals and they certainly will be glad to help you.

We are glad to have with us here Ed Hall, who is the general counsel for the committee. Ed is right over there. He and any of these others will be able to help you in any way they can.

Bill Johnson, who has worked very closely with us in setting these hearings up. Linda Morgan is from the professional staff of the Surface Transportation Subcommittee. And Candy Vernetti is here, a special assistant from the subcommittee.

Norb Zucker, legislative assistant to Senator Pressler is here. Nora Ryan is here, also from Senator Pressler's office.

Craig Knowles is our recorder, who will not be standing because he's hard at work over here on my right. Craig is our recorder in Washington, D.C. and happens to be, I found out the day before I came out here, a resident of Omaha, Nebr.

Rich Fitzsimmons is seated to my left. He is from my office and is my staff assistant for this particular committee.

So, with that, we are going to try and move along as quickly as we can. We are going to cut short the period for lunch so that we can receive as much testimony as we can. That is why we are here, to hear from you.

If any of you have time constraints which will not allow you to be here for an extended period of time, we will do everything that we can to accommodate you in receiving your testimony You can inform any of the people whom we have just introduced regarding time problems. They will get the word to us, since the idea is to accommodate as quickly as possible as many of you who are here today to help us out and help out the State of South Dakota on the issues that we will be discussing today.

It is a pleasure certainly for me to come back to South Dakota, the home State of the Exon family, when in the year 1891 my grandfather came to Charles Mix County to homestead.

The reason for our being here, of course, is to hold regional hearings on a matter which is of utmost importance to all segments of this State's economy. The Senate Commerce, Science, and Transportation Committee's Subcommittee on Surface Transportation, on which Senator Pressler and I serve, has been engaged in extensive hearings on the administration's proposed legislation, S. 796, seeking to deregulate the Nation's railroad industry.

These hearings, both here in Sioux Falls, and tomorrow in Omaha, Nebr., are being held to obtain meaningful input from these two States on the potential effects of the passage of the Railroad Deregulation Act of 1979.

The deregulation of this Nation's railroad industry is a step which would change the basic concept of our railroad industry, as we have known and understood it in the past. Opening up the marketplace to railroads with no regulatory constraints, as proposed in S. 796, after the 5-year implementation period, will, for the first time since the very beginning of the railroad industry in the United States, provide a freedom from governmental constraints through regulation. I am sure we are going to hear a great deal about that today, because those of us who serve in Washington hear a great deal from the people back home.

Indeed, there are those of us who have served in other capacities and are seeking to eliminate Government rules, regulations, and redtape. Certainly when we examine a matter such a deregulation, the idea sounds good on the surface. Oftentimes in the United States, however, and I suspect that we will hear some testimony here this morning which would bear this out, we still look to and expect some Government regulations in certain areas.

It is indeed timely then that we have come to South Dakota to elicit testimony from the governmental and private sectors of this State. I am aware of the critical problems of the rail industry and what it is currently facing in South Dakota. We are eagerly awaiting remarks addressing these problems as they relate to S. 796.

Along with this proposed freedom from regulatory control come many pressing problems, both theoretical and practical, which have given us grave concern. These are the concerns not only of this midwestern Senator but also of other Senators on the Surface Transportation Subcommittee and the full Commerce Committee

as well. What effect regulatory freedom may have on our captive shippers is one of our major concerns.

How will the problems of abandonments, as proposed under this legislation, be resolved, if indeed they can be, to protect our small rural communities from overanxious railroads eliminating branch lines at will, thereby virtually isolating these struggling communities from viable rail transportation.

Will this legislation assist rural agricultural States in obtaining the necessary hopper cars, which currently are in short supply, to get grain to the marketplace? Or will the provisions of this act simply aggregate an already critical shortage situation?

These, along with many other questions, must be addressed by our witnesses before this subcommittee today and tomorrow during hearings in Omaha.

Both Senator Pressler and myself appreciate the interest which has been expressed here in holding such hearings in the field to enable those parties not able to travel to Washington, D.C. to present their case directly to a subcommittee of the U.S. Senate. The oral testimony, as well as the written testimony presented for the hearing will be an official part of the hearings of our committee and will be presented in due course to the U.S. Senate.

Before we begin, I would ask that witnesses who have lengthy statements submit them so that the full testimony of each and every one of you will be, without objection, incorporated into the record.

To save time we ask that you try to limit the testimony of each person in any one group to no more than 10 minutes, followed by a question and answer session which will be conducted by Senator Pressler and myself.

Although we are asking you to limit your oral presentation, we are still keenly interested in what you have to say today.

I would also say that some of the questions which will come from us to the members of the panel will not necessarily represent our point of view. But we have an obligation to try to bring out as best we can the pros and cons of the testimony that will be offered. Please keep that in mind when questions are asked by either Senator Pressler or myself.

With those remarks I will call on Senator Pressler for any opening statement that he has to make, and then we will begin calling the witnesses before the committee.

Senator Pressler, thank you for welcoming me to South Dakota, and I congratulate you for the excellent turnout we have here this morning.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Well, thank you, Senator Exon. And thank you especially for being here.

I think everybody in the crowd has known of Senator Exon as Governor of Nebraska, where he was really the first Governor to get gasahol off the ground.

We congratulate him. We are really honored to have him working here today. I shall be listening in Omaha tomorrow.

I did want to say that in South Dakota, we are the only State in the United States that you can not ride out of the State in a train.

South Dakota and Maine are the only two States that do not have Amtrak. I know we had some calls this morning. People were driving in from Pierre, or even west of the river and couldn't be here until toward noon.

However, in Maine, they still have passenger trains. Therefore, we have to especially depend on bus and truck and other means of transportation to interrelate with rail. The Surface Transportation subommittee for the next year is holding hearings on rail and truck deregulation.

Mr. Chairman, I want to express my appreciation to the committee for scheduling this field hearing in Sioux Falls, S. Dak. today. In considering proposals to deregulate our major transportation industries, it is essential that we address the potential impacts of deregulation on small communities as well as in the major markets. This distinction is often overlooked in debates on the merits and dangers of deregulation.

The goals of the deregulation proposals are to encourage greater competition and enhance economic vitality in our transportation industries. These are goals that I heartily support. However, although greater market competition and the future economic vitality of the transportation modes are important considerations, we must not overlook the effects deregulation proposals will have on local economies served by the various carriers.

I should first like to address myself to the railroad deregulation proposal which has been the subject of many hearings before our committee in Washington, D.C. All too often, the health and prosperity of some of our Nation's railroads disguise the fact that a vast portion of our Nation's rail industry is in a very serious situation. In May, our committee heard testimony by the trustee of the Milwaukee Railroad, which is now in section 77 bankruptcy. The tragic story about one of our Nation's largest and once prosperous railroads was not a new one, unfortunately. This committee heard similar statements from trustees from other bankrupt railroads over the past several years whose lines total almost 30,000 miles. In December 1977, the declaration of bankruptcy by the Milwaukee Railroad brought the number of bankrupt lines in the United States to 40,000 miles. As the present form of railroad regulation continues, certainly more railroads will follow. If we allow the present form of regulation to continue, the impact on local economies will be disastrous. The unfortunate situation we are now faced with in the State of South Dakota is a perfect example of how the change in the transportation system can cause very real harm to the local economies who depend on rail service. The State now stands to lose almost 65 percent of all its rail lines when the Milwaukee Railroad is finally reorganized.

Although certain railroads in the country enjoy a return on investment as high as 6½ percent the average return on investment for the rail industry in the United States is 0.024 percent.

Mr. Chairman, this is tragic when so many of the commodities upon which our economy depends, such as grain, coal, bauxite, iron ore, and other similar bulk commodities, must be shipped by rail because there are no other realistic modes of transportation except on the inland waterways in limited situations.

The railroad deregulation proposal, as it stands today, has clearly not been well received by the majority of witnesses before our committee. Specifically, I find that the provisions on abandonments are virtually unacceptable. The bill essentially prohibits the Interstate Commerce Commission from giving any weight to one of the most important considerations in an abandonment proceeding—the impact loss of service will have on the local economy; further, I believe most of my colleagues on the Commerce Committee agree that the provisions of the bill that provide for maximum rate regulation and protection for the captive shipper are unacceptable as drafted. It is my belief, that the concerns of the captive shipper are very real. Those who have no alternative but the rails for their transportation needs must be assured that they will not be treated in any prejudicial manner and that their level of service will be comparable to those markets which enjoy competition. It is my hope that the hearings in Sioux Falls will focus on these particular issues. The needs of the agricultural and rural communities throughout the Midwest must be addressed in this legislation for it to be worthy of consideration by our committee.

I am pleased to notice that representatives from the rail industry are with us today. Our committee is certainly interested to elicit your comments on how the railroad regulatory structure can be revised to enable you to strengthen your carriers and to provide better service to the communities you serve. Since 1887, the Federal Government has set the guidelines for pricing in the railroad industry. In essence, the industry has had its hands tied behind its back and were prevented from innovative marketing practices, responding quickly to shippers' needs, entering into long-term contracts for guaranteed and improved service, and stymied from their efforts to issue expeditious rates during peak demand periods. I am certainly looking forward to the industry's comments on these particular issues and how the provisions of the bill might be revised to be more responsive to your operations.

In addition to railroad deregulation, this hearing today will focus on the regulatory structure of the intercity motor carrier industry. It is most appropriate that we look at the motor carrier framework in addition to the structure of the railroad industry. South Dakota stands to lose approximately 65 percent of its rail service if the Milwaukee Railroad reorganization ultimately resembles the plan recently suggested by the trustee of that railroad. The impact on the local economy that depends on that rail service is a tantamount consideration. Will the intercity motor carrier industry be able to fill the void? Does the present motor carrier regulatory structure provide the flexibility to allow carriers to immediately move into the markets that the Milwaukee Railroad will abandon? Can the local economies which depend on the high density and relatively low rate structure that rail service provides be able to switch to more costly motor carrier operations? These are issues I am most hopeful that today's witnesses will address themselves to. Without the benefit of your insight and your transportation needs, legislative proposals considered by the Congress might completely overlook regulatory elements which you consider essential. This must not happen, and as long as I serve on the Commerce, Science,

and Transportation Committee, Subcommittee on Transportation as its ranking minority member, it will not happen.

This hearing will also focus on legislation pending before our committee—S. 1400—which was filed at the request of the administration and provides for almost total deregulation of the motor carrier industry. If the State of South Dakota should lose all of the rail lines which are now subject to abandonment, trucking concerns become evermore important, for freight shipment will become almost totally dependent on this transportation mode. By allowing trucking firms operating flexibility to enter markets where they can make higher profits, will we precipitate a rush to major markets while small communities are left abandoned under the deregulation proposal? Deregulation proposals also hold out the promise of increased competition by ending the antitrust exemption for setting rates. I am concerned about the effect this stimulus to price cutting will have on the independent competitor. Will the small operator who has traditionally served our rural areas be forced out of business? Further, will the small operator seek opportunities in the more lucrative metropolitan markets and voluntarily abandon his small community market?

The motor carrier deregulation legislation pending before our committee virtually deregulates truckload traffic, abolishes commodity restrictions on operating certificates, abolishes most of the antitrust immunity now enjoyed by the rate bureaus, and substantially opens the door to carriers seeking entry into the market. Many of the existing inefficiencies contained in the present motor carrier regulatory structure must be addressed and corrected. It is clear that our transportation needs have progressed past the point where earlier conditions warranted such a regulation in the early days of the motor carrier industry. Many of the regulations governing transportation could be eliminated, but I question whether total deregulation will improve service in all areas. We are most interested to hear from the witnesses today on the effects that certain deregulation proposals will have on the agricultural and rural areas of our Nation.

Finally, our hearing today will focus on the regulation of the intercity bus industry. In the last Congress, our committee had hearings on the financial condition of the intercity bus industry. The hearing revealed the intercity bus industry was suffering a very serious decline in ridership due to the increased dependence on the private automobile, substantially reduced air fares as a result of airline deregulation, and the continued growth of Amtrak. The industry testified that the charter operations have become the carriers' margin of profit. Regularly scheduled intercity bus operations are just about breaking even. The intercity bus industry is essential to the local and rural areas of America. Although Amtrak serves many cities throughout rural America, the intercity bus industry's 5,500 local communities receiving service dwarfs the Amtrak system. The elderly, the poor, and the young group are the most frequent users of the intercity bus industry. There is no question about the fact that the Congress is dedicated to preserving service to these important elements of our traveling public.

Although no intercity bus deregulation proposals are presently pending before our committee, Trailways, Inc. has been a very

strong advocate of intercity bus deregulation. The Carter administration has indicated that it intends to submit a plan for intercity bus deregulation to the Congress before the end of the first session. Many of the deregulation proposals which have been discussed in Washington include free entry subject to a fitness showing where the carrier merely needs to show that it is fit, willing, and able to provide service to the market it is seeking authority to serve. In addition, carriers would be free to determine the frequency of its operations and the particular communities within its geographical zone it chooses to serve. The most important consideration that we would welcome is the intercity bus carrier's ability to have a freedom of exit. The Trailways legislation would provide for a freedom of exit from a community where the carrier was unable to meet expenses. The effects of this particular provision might have on rural areas could be disastrous to the traveling public in light density areas. Comments from witnesses on this particular proposal would be most enlightening to our committee in future consideration of bus deregultion legislation.

Deregulation is a concept I have always supported, but I may not be able to support railroad, motor carrier, and bus deregulation if it would cut service to South Dakota rural and small town areas. It is vital that we scruntinize any proposal to remove current regulations. Without close examination of the possible results of sweeping deregulation, any action we take could well serve to severely reduce service to small communities and rural areas.

Deregulation may improve economic efficiencies and may not hurt service in our larger cities and towns. But will it improve or maintain service for farmers and small businesses in towns like Wall, Britton, or Wessington Springs? If the answer is "No", we must make sure that any bill Congress considers takes into account the needs of rural and small town areas.

Proponents of deregulation in the railroad, motor carrier, and bus industries have stated that "what deregulation did for the airlines, it can do for the other industries." This, Mr. Chairman, is precisely what concerns me. Under the present deregulation proposals, what will happen to small communities presently protected by common carrier operations? We are still assessing the impact of airline deregulation and it is not at all clear that deregulation has improved service in small towns and rural areas.

I feel confident that the witnesses assembled here today have the expertise to guide our committee in the direction we must move to insure that the needs of rural America are met in any deregulation legislation passed by our committee. I look forward to hearing the testimony of our witnesses and thank all of them for coming here today to help establish a record of the transportation concerns of South Dakota and all the rural States.

I think we are going to start bus deregulation at some point. We had airline deregulation last year before I came to the Senate. But the point is what does all this mean to the small town, to those in Humboldt, S. Dak., who need to get to Sioux Falls who can't drive. Or to the farmer who wants to move grain. I know Senator Young of North Dakota figured out how many trucks it would take to haul the coal from North Dakota to Milbank and the impact that would have on our highways and the damage it would do to them.

We do have, I think, a transportation crisis in this area of the United States. And I think it's very important that you people have taken the time to give some viewpoints from the rural and small town area that we can take back to a Congress that is increasingly dominated by urban interests.

I might also say that we are going to have a very short break at lunch. I am going to be meeting with a small business advisory group just very briefly across the hall.

That is just right across the hall when we do have our break. Now I am going to turn it back to Senator Exon, again thanking him for being here.

I know that Congressman Abdnor is here and I have a report that Governor Janklow will be here today and former Governor Dangler. We thank them all for being with us and I want to thank all of you who have traveled great distances for being here.

Senator EXON. We will lead off with a man well known in South Dakota and well known to all of us who serve as one of his colleagues in the Congress in Washington, D.C.

He is Jim Abdnor. Congressman Abdnor, if you would come forward at this time, we are very much interested in your testimony.

Thank you for being here.

STATEMENT OF HON. JAMES ABDNOR, U.S. REPRESENTATIVE FROM SOUTH DAKOTA

Mr. ABDNOR. Thank you, Senator, and Senator Pressler.

I want to commend you gentlemen for bringing this hearing to Sioux Falls. Senator Exon, I, too, want to welcome you back to South Dakota, your native State.

I remember being in Lincoln, Nebr., 2 years ago. We were both part of that consistory group. I said at that time the greatest export we have in South Dakota is our people.

I noted at that time you as Governor of Nebraska and Congressman at that time and the Attorney General all came from South Dakota.

I thought we were being very generous to Nebraska.

South Dakota is an appropriate place to discuss deregulation of the transportation industry because it represents an area where regulation has played an important part in the State's history.

The Interstate Commerce Act of 1887 first regulated railroads. At that time, 17 railroads operated over 2,400 miles of track in this State. Regulation benefited South Dakota because it placed limits on the economic power of the railroads over rates and routes, and encouraged the settlement of the area by insuring relatively low freight rates.

Prior to regulations, eastern railroads engaged in a rates war due to heavy competition. In order to recoup their costs, they charged much higher rates where little competition existed, namely in rural areas like South Dakota.

Regulation, by tying rates on South Dakota products to those elsewhere allowed the State to develop and to compete in national markets.

Today the administration is proposing to deregulate the railroad industry. According to this bill, rates will be allowed to increase

and railroads will have a much easier time abandoning unprofitable lines.

S. 796 provides for a 7-percent increase annually in constant 1980 dollars over a 5-year period after which rates will be completely decontrolled.

If inflation continues to soar, then rates could increase over 80 percent possibly in 5 years' time.

Moreover, rates could increase above 7 percent unless shippers prove that the increase was unreasonable or that no alternative means of transportation exists.

Every one here today realizes that South Dakota is a State comprised of captive shippers on the long-haul market. Every farmer and grain elevator operator is at the railroad's mercy if this legislation is passed.

The administration also seeks to make it easier to abandon branch lines. This policy represents a continuation of previous Federal actions which have hastened branch line abandonments such as providing Federal loans and subsidies to eastern and midwestern railroads tying together large metropolitan areas while allowing light-density rural branch lines to be abandoned.

Under this bill, railroads indicating their intention to abandon lines will be granted their request within 90 days unless shipper organizations in the State indicate their willingness to either subsidize operators or purchase the tracks.

If this policy is implemented, then nearly all tracks in South Dakota will face the real prospect of immediate abandonment. Last year South Dakota produced approximately 370 million bushels of grain. There is no way that the highway system which is deteriorating rapidly itself will be able to handle this grain flow.

These two points clearly spell out the problems rural areas will face through railroad deregulation at a time when this Nation is struggling to overcome the energy stranglehold of the OPEC nations, railroads represent an energy-efficient method of transportation which should be revitalized.

The only way to insure their continued operation in rural areas is through the present regulatory process.

Now, there are two central questions in the debate over the trucking regulation. First, do we want a trucking transportation system that is dedicated to serving the best interests of the American public as opposed to its own interests, purely economic self-interest.

Second, if we do expect trucking to serve the public interest, what is the best way to accomplish that end?

I think that answer to the first question is easy. In a service that is important to the national economy and the economy of South Dakota as trucking, the public interest is paramount. In our State, for example, 45 percent of the communities depend solely on trucks for freight they ship and receive.

The rest of our communities rely on both trucks and railroads. Now what would happen to these towns if their truck service suddenly stopped, or if trucks cut back on the number of pickups and deliveries or if they jumped their rates without notice?

At best, living in South Dakota would become much more expensive. The businesses that depend on truck service would wither or move someplace where they could get service.

On the whole, the quality of life would be severely threatened. Obviously, trucking is more than just another business. The freight simply has to move, and in that sense, trucking must serve the public.

So what is the best way to enforce a requirement of public service? Well, for the past 44 years, we have relied on a system of economic regulation to assure that the public is served.

Under that system, the Interstate Commerce Commission (ICC), giving trucks and trucking companies a certain amount of protection from excessive competition in return for which the companies are required to serve anyone who needs them, whether they want the business or not.

Many people now consider this system to be outmoded. They argue that it is too cumbersome and that it imposes too many hidden costs on the consumer who eventually pays the freight bill.

President Carter and Senator Edward Kennedy have been convinced by this argument and they have proposed legislation that would eventually do away with the system of regulation.

Their bill would gradually substitute the free-market competition for regulation on the theory that competition will insure that all those who need service will get it if they are willing to pay the price.

But the trucking industry itself, as well as most of the direct users of truck service, feel that this measure is much too extreme.

They think the concept of regulation is basically sound, though it needs some fine-tuning. Now, my feeling is that we have to be extremely careful in enacting reforms.

We could be tinkering with a timebomb because if we go too far too quickly, we could find we have disrupted an essentual national service that has worked pretty well so far.

For that reason, I have cosponsored a bill which is less drastic than the one introduced by President Carter and Senator Kennedy. This bill proposes a number of substantial reforms designed to streamline the system and allow a measurable increase in competition, but still preserves the essential concept of public service.

As I consider this issue, the uppermost question in my mind is that of assured service. On that point, I think the Carter-Kennedy legislation could be flawed. It contains provisions designed to protect service to small communities, I will grant you.

At the same time, it threatens existing carriers by exposing them to levels of competition which could undercut their ability to survive.

I really don't see how we could continue to require trucking companies to handle unprofitable businesses and truck service to small communities is frequently unprofitable as we all know, and at the same time, withdraw protection from excessive competition.

The two go hand in hand. You can't take one away without taking the other. There is another consideration, fuel efficiency. As I understand it, the Carter-Kennedy bill would remove the restrictions on entry into the trucking business that are now enforced by the ICC.

Now that would be very nice for everybody who wants to get into trucking, but it would hardly improve the fuel efficiency of the system.

It would put thousands of new truckers on the road, greatly inflating the supply of trucks without creating a commensurate increase in demand.

Many of these trucks would be riding around empty, squandering precious diesel fuel while they are searching for freight.

A final observation. I think the breakdown in truck service that we have in the agricultural area is instructive. Transportation of fresh vegetables by truck is not now regulated by the ICC. It operates under a free-market competition and prices have gone to pieces, under the pressure of rising fuel costs.

The truckers just could not get their rates up quickly enough to compensate for the expensive fuel because somebody somewhere along the distribution chain decided he wasn't going to raise the price of vegetables right away.

That is how competition works. Somebody always gets squeezed out. This time it was the truckers and farmers who have had to watch their crops rot on the vine.

Would the same thing happen if all trucking was unregulated? I don't know, but I would hate to find out the hard way.

That is why I advocate the slow and easy approach to reform of trucking regulation.

Thank you, Mr. Chairman. I appreciate the time.

Senator EXON. Thank you very much.

I have a question or two that I would like to ask you, which I am sure you have thought about and which may well be addressed in the bill that you have cosponsored.

As part of your testimony, I notice that you say that the only way to insure the railroads' continued operation in rural areas is through the present regulatory process.

In that regard, I would suggest to you that if you look at the map up here, you will see that the railroad industry in South Dakota is all but bankrupt. One of your major roads just went into bankruptcy. We have just passed some emergency legislation in the Senate, with the help of some of us seated at this table, to continue the operation, at least temporarily, of the Chicago, Milwaukee, St. Paul & Pacific Railroad.

Looking at this problem, is it true that the only way to insure continued operation in rural areas is through the present regulatory process?

I am not sure that I agree completely with the statement that the ICC and the regulatory process can be blamed totally for the failure of the railroad just mentioned and others. But the facts are clear, that under the regulatory process, by and large most of the railroads in the United States are in a critical position as far as being able to continue their service under the free enterprise system which all of us want to protect.

I think that you get the point of my question. Are you suggesting possibly that the bill which you have cosponsored might address some of the concerns which I have expressed in this particular area?

Mr. ABDNOR. Mr. Senator, are we talking about railroads or trucking? My bill is mostly in the trucking area.

Senator EXON. Let me say that the hearing was called originally to discuss railroad deregulation. When this hearing was scheduled, trucking deregulation had not even been introduced into the Senate.

We will have some testimony today on the trucking industry, that I hope can be limited to what effect railroad deregulation, as proposed, would have on the trucking industry because many areas in South Dakota are served by both trucks and the railroad industry.

I, for one, have never been able to understand how we could deregulate one of those industries without the other. If we were to deregulate both of those major transportation industries, which are at the heart of our commerce and agriculture sector, what would be the effects, as you have outlined?

I am specifically referring to the part in your testimony as follows: "The only way to insure their continued operation in rural areas is through the present regulatory process." Is that statement which you made with regard to truck deregulation only?

Mr. ABDNOR. Yes.

Senator EXON. That does not apply to railroads?

Mr. ABDNOR. No.

Let me say this: I think all of us in South Dakota realize the day of having a railroad go through every town in South Dakota is not a very practical program. My State has taken the leadership in trying to come up with a plan that would fit into the overall spectrum of the country and with other States.

You will be hearing testimony on that later today, I see, by some of the witnesses on your program.

Now, while railroads can't do this, trucks can and presently are. All our communities, as far as I know, are basically being served by truck service. I am sure if you turn it loose to the cream of the crop and let everybody go where the money is, they are going to look twice at some of these communities.

I know of an instance where a large trucking line didn't want to stop in a little town called Pukwana, S. Dak. They wanted to go to Chamberlain. The community objected and, as far as I know, they still go to that community.

I think transportation fits into a picture like many of our other services that the Government has some responsibilities for. I think of the mail service. As I said a number of times, if we all had to pay the actual cost of getting a letter out of a rural area like South Dakota, I will guarantee you the price would be more than 15 cents a stamp.

If we wanted to make a long-distance telephone call and we paid our share of the cost for all that line in rural America, we would pay a lot more than the guy from New York calling within the State of New York. But you want to prorate it out on the cost in each State.

I think a transportation system to every community in this State is the least we can do for the people and that we must do for the people. They have got to have that service if they want to keep any

kind of an economic base in South Dakota, any kind of population in South Dakota.

The present system is working out. It may not be profitable for every stop, but overall it does work out.

Now, that is why I say let's be cautious, let's take care before we start tinkering with a plan that is working to jump into something that we fully don't understand.

Senator Exon. I thank you very much, Congressman.

Senator Pressler?

Senator Pressler. I first want to thank Jim Abdnor for his fine statement and say that I certainly enjoy working with him, in fact, our entire congressional delegation has worked closely on this. Congressman Abdnor has done a splendid work as has Senator McGovern and Congressman Daschle. It is an issue we are united in trying to resolve.

I think in South Dakota, we have more of an interrelationship maybe because of the fact that in many States, there are optional ways of shipping. You can go by truck or you can go by rail. Here, we are tied into a situation.

We have a lot of so-called captive shippers, I think, in our smaller towns. You mentioned one of them. I don't know if this is generally understood, what happens to a small town if it loses its scheduled truck or scheduled train?

Of course, as you say, we really can't hope to have more than base trunklines throughout South Dakota, probably, with rail. So, therefore, we are going to have to have a trucking industry and a bus industry that feeds into that somehow.

Maybe you can illustrate for the committee some of the problems a captive shipper has.

Mr. Abdnor. Thank you, Senator Pressler. I appreciate your kind comments.

I think the best illustration I could give right now is existing in our little towns with our farmers. Under our grain storage program, Senator, they have a trigger point where they can call up grain. The elevators wouldn't buy grain today, they can't. They have no way to move it, especially with the truckers, who were on strike more or less. The railroad cars are practically impossible to obtain.

Here the backbone of our State is agriculture, along with tourism, of course. Both are feeling the brunt of energy shortages. Right now agriculture has difficulty, unless it is changed this week, in selling a bushel of grain. They don't want to buy it and can't take it. The elevators are full, no way to move it out.

So this is the kind of thing we are up against if you stop our trucking services, our real services. We certainly know rail service could be improved. We are short of cars and need them badly now. There is no way, as I pointed out, that trucks alone could carry all the produce raised in this State.

Senator Exon. Any further questions?

Senator Pressler. Thank you very much.

Mr. Abdnor. I certainly want to thank you, gentlemen.

Senator Exon. Jim, I want to thank you very much for coming. Your statement is excellent and hopefully sets the tone for what we are going to be hearing today.

Incidentally, as a Member of Congress, I am sure Senator Pressler would join me in inviting you to sit with us at the table as part of the panel for as long as you can stay.

Mr. ABDNOR. Thank you.

Senator EXON. Thank you, Jim.

The next witnesses which we will hear from are the independent truckers. I understand that Don Shadweiler is here substituting for Thelma Gravning, the scheduled witness. Also representing the trucking association are Norman Simon, Sandy Gould and Stanley Sowers.

Would you folks please come forward at this time and take your places. We will be very pleased to hear your testimony and suggestions.

STATEMENTS OF DON SHADWEILER; NORMAN SIMON; SANDY GOULD; MARGE STEPP; AND STANLEY SOWERS, ON BEHALF OF THE SOUTH DAKOTA INDEPENDENT TRUCKING ASSOCIATION

Mr. SIMON. Thank you.

I didn't know we were a group. We all asked to testify separately and they put us in a group. There is no group really and we are all independent truckers and asked to testify.

Senator PRESSLER. Maybe I am guilty. I thought we all had 10 minutes. Did the rest of you get the word?

Senator EXON. We are having difficulty hearing. Let's proceed.

Would you start then, sir? Any one of you can be the leadoff witness and identify yourself.

Mr. SIMON. I will speak first then. My name is Norm Simon from Aberdeen, S. Dak. I have been an independent trucker, hauling mostly livestock for 25 years.

I would like to thank this committee for the opportunity to testify on the question of deregulation of the trucking industry.

I firmly believe that deregulation would be good for the consumer and the small truck operator. Those that oppose deregulation are largely the carriers that have hauling authority and want to limit their competition. They now have a near monopoly in a given area and do not wish to be disturbed.

Let us review the arguments that the proponents of the regulation use to justify their position:

One, the large carriers would soon take over the industry; two, small towns would lose service; three, it would not fill any empty trucks.

Reason one, the large carriers cannot compete with a small carrier in such service-oriented business as the trucking industry as opposed to a retail business. The larger they become, the more inefficient they become.

Look at the livestock and produce industry. It is exempt and made up of many thousand small operators. Consolidated Freightways and International Transport at one time hauled livestock. They don't anymore. They either could not make a profit at it or they lost their business because of poor service, yet nearly 100 percent of all livestock is hauled by truck.

A large carrier could probably put any small trucker out of business if they tried, but for every one they did, there would be

another to take their place until the large carriers' resources were exhausted.

Reason two, that small towns would lose service does not hold water either. Virtually every town, no matter how small, has at least one independent trucker who would be anxious to haul into or out of that town if only the regulators would permit it. On small shipments, companies like UPS would be happy to haul them. Now they are limited to the size of shipments that the original carriers did not want.

Incidentally, I understand that their profit picture is better than that of most regulated carriers.

Produce is now exempt and is readily available in any small town.

If there is a need for a service, someone will fill it, if allowed to do so.

Reason three, that it would not fill any empty trucks is also fake.

Much of the exempt freight that small truckers now haul is that which the certified carrier does not want, even for a backhaul, as the rate is too cheap for him to bother with.

It is more profitable for him to return his equipment to the larger cities as quickly as possible and haul another load of high-paying, regulated freight, than to load it with cheaper exempt freight for the return load. This is partially due to the high cost of labor caused by unions.

Many certificated carriers bring regulated freight from the Twin Cities of Minnesota to our area and return empty and many exempt haulers haul livestock or grain to the Twin Cities and must either lease their equipment to a certificated carrier, giving him the cream from the load, or return empty. This is ridiculous in this time of fuel shortage.

Much dry freight can be hauled in livestock trucks, but livestock cannot be hauled in a freight van.

There is no legitimate reason for continued economic regulation of truck transportation. That is not the way our free enterprise system works. It is not what made this country economically strong. Regulations of all industries is one of the major reasons we often lose out to foreign competition.

A person should not be denied the opportunity to engage in the trucking industry, simply because he was born too late to obtain grandfather rights.

Incidentally, the high selling price of these certificates, often in the six figures, is indicative of the high profit potential in this regulated industry. These costs can always be passed on to the consumer.

Those in favor of regulation loudly proclaim the fact that transportation costs have not risen as sharply as have other costs in the past. This is probably true, but if the trucking industry were deregulated, the cost would probably drop as was the case of two separate commodities that were, by court action, declared exempt.

Frozen fish and fresh-cut poultry were these commodities. The transportation costs dropped 30 to 40 percent after deregulation.

Members of the committee, I urge you, deregulate the trucking industry as quickly as possible.

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Senator EXON. Norm, thank you very much. That was a good statement and gives us a good perspective.

Back to the subject of railroad deregulation, do you have anything to say on what effect you feel that deregulation of the railroads would have on the trucking industry in general? Have you considered the issue from that standpoint?

Mr. SIMON. I haven't given it a lot of thought.

One thing I would like to say is I hate to see my tax money going to subsidizing the railroad. I have nothing against them if they compete on an even basis. But this $20 million they are going to give the Milwaukee road to last 3 months, I believe for $20 million, they could move that generating plant at Big Stone City up near the coal fields and save the $20 million.

Senator EXON. We have had our first suggestion on saving money. We are interested in hearing that.

I would say, Norm, that the other half of that picture is that there are those who do depend upon rail shipments.

The thought of closing down a railroad completely in certain areas is generally regarded as having an adverse economic effect on those communities. I pose these issues to you because they represent problems which we in the Congress wrestle with from time to time.

Do you have any questions, Senator Pressler?

Senator PRESSLER. I would like anybody on the panel to talk a little bit about the interrelationship of transportation now. We are mainly talking on the rail deregulation, but what would happen? If we have these regional terminals in South Dakota for rail, then we will probably depend on trucks to haul the grain to these regional elevators.

I don't know what impact this would have on small town elevators.

Are your terminal points usually railroads with your trucks? Where do you unload usually?

Mr. SIMON. Most of the grain from our area goes to the Twin Cities now, whether by rail or by truck.

Senator PRESSLER. Do you have a closer interrelationship with railroads? Do independent truckers?

Mr. SIMON. I would have to say no, not presently.

Senator EXON. Will you yield for just a minute?

Senator PRESSLER. Yes, go ahead.

Senator EXON. Norm, you are from Aberdeen; is that right? Generally what percentage of the grain movement out of the Aberdeen area is by truck, and what percentage of it is by rail now?

Mr. SIMON. I can give you no figures. In the wintertime, probably the major percentage is by rail. In the summertime, the major percentage is by truck, simply because there is a lot more moved in the summertime and the trucks generally get what rails can't haul.

Senator EXON. I see. I assume that it is true that moving grain from Aberdeen to the Twin Cities would cost more per bushel to haul it by truck than by rail?

Mr. SIMON. Traditionally, it has been the other way around. Now we have such a shortage of trucks that it probably went the other way. There is a shortage of transportation.

In the past, say you go back just a couple of years, the truck rate has always been about 5 cents a bushel less than the rail rate.

Senator EXON. Thank you.

Senator PRESSLER. I want to just get a comment.

Mr. SOWERS. I am Stan Sowers from Hayti. I am primarily engaged in grain hauling.

In answer to the question of percentage and rates of renumeration, today our rates via truck are usually lower because the discount of grain prices in the cities on oats, I am told, is 15 cents a bushel less if it is moved by truck than if it is moved by rail.

This, I feel, is very unfair to both the elevator operators and to us as grain haulers because we suffer. There is no way we can recoop our costs.

Percentagewise of grain, I was told in February that it is now about 65 percent truck, 35 percent via rail, because of a boxcar shortage, possibly higher.

The reason I have no prepared statement here, we were informed that there would be one spokesman and the other people would be on the panel.

Senator PRESSLER. That is fine.

Let me just ask this question. If we had deregulation of the rail industry, that would mean that a lot of the local lines would be abandoned. Then let's say we had these regional centers for grain. Let's say that just, for example, in Madison, S. Dak., we had a regional center and someone from Humboldt, 30 miles away, would presumably haul their grain to Madison by local truck. That would probably be an independent trucker, no doubt.

Up in Canada, they have a program where a bushel of wheat, wherever it is grown, costs about the same to ship as long as it is bound for export. Wouldn't this essentially mean that the local elevators, would go out of business to some extent, like the Humboldt elevator and the ones that are dependent on rail?

I am not saying this is an absolute prediction, but what would happen under a situation if we had rail deregulation and we had regional terminals? Would that have a profound impact on trucking?

No. 2, would we then have to regulate the price of hauling grain? Let's say we had an even price for hauling grain from anybody within a zone around one of those regional centers to protect the small elevators, then we would be putting more regulation on trucking wouldn't we? We would be deregulating rail but may be putting more regulations on trucks in order to preserve our small-town elevators and preserve fairness for farmers who might live further from these regional elevators.

Do you agree?

Mr. SOWERS. Yes; Senator Pressler, a case in point that I am familiar with is Walnut Grove, Minn. Continental Grain has a terminal there that they move unit trains from. The elevators at Lake Norden and Badger, sell corn there, and I truck it there—but these people cannot ship their corn there consistently because of the fact that the rail does not give Continental Grain gondolas for their unit trains.

Consequently, when these trains come in, or when the terminal can take corn, their trucklines there are just outrageous. You can sit in line for 6, 8 hours, maybe more.

This is what I am afraid would take place concerning this grain terminal situation you people are talking about. As the impact of the regulations, yes, most definitely, there would be another regulation to contend with.

Senator PRESSLER. I might ask one final question and maybe another member of the panel could respond. I am kind of steeling Jim Abdnor's fine question about Pukwana, S. Dak.

If we have total deregulation, and this panel is for deregulation, generally speaking, little towns like Pukwana will be abandoned by both rail and truck service that is now scheduled there under regulations.

How do we get around that? Maybe somebody who hasn't responded before; it would be good to hear from you. And state your name.

Mr. GOULD. My name is Sandy Gould and I am from Aberdeen, S. Dak.

I believe these regulated carriers are not stating the true fact about the service they are giving to these small towns. Most every small town in South Dakota has a grocery store, they have got a bar, they have got an elevator, they have a hardware, they might have a co-op oil company.

Now, they are all served by private carriers. Very little of their freight is delivered by the regulated carrier, even your small manufacturing companies. They are served by private carriers and a regulated carrier does not really have anything to do with the economy of the community, or very little.

I just don't believe it is really going to hurt these small towns that much, if any.

Mr. ABDNOR. With your permission?

Senator EXON. Certainly, Jim.

Mr. ABDNOR. I have been in Washington now for a number of years. But when I was farming every day, more than once I waited for that truck to arrive with my tractor part. The only way I could get it was waiting until the next morning when the truck was due.

What is going to help the people in these little towns who are waiting for that part to be sent down from Minneapolis because the local implement dealer didn't have it?

An example, I guess, is the best way to put it. How are we going to have the assurance that the towns will have that kind of service?

Mr. SHADWEILER. Don Shadweiler.

This one particular small part at the present time would probably be delivered United Parcel Service with a big freight company, far better, American Freight.

If we deregulate, I think you would probably be assuming these big companies would die. I don't think this would happen.

I think the big companies are still going to be in business and will deliver to the small towns. I can't believe American Freight Systems would only stay in business in the city of Sioux Falls and would discontinue service to all these other towns.

Mr. ABDNOR. If I could follow that up, I hope that would be the case. There is only so much to move here, so many items. I might give an example, and I realize how much correlation there is between the airlines and trucking.

I was told by one of our carriers in South Dakota that if this merger didn't come about that they could well have to move on under deregulation to the more metropolitan areas. They really didn't have that much concern for making sure these towns are covered.

However, if the merger went through under this plan, they more or less assured us they would stay in South Dakota. We could have that assurance.

There is nothing that says they have to stay.

This is not exactly the most profitable business, some of these little towns they stop into. If you left them, they would surely much prefer going to the bigger places where the quantities are and the money is to be made.

That is my biggest concern, I guess.

I don't look at Sioux Falls and Mitchell. I look at Kennebec, and Vivian, and Reliance, and Okaton, and some of these towns up the line where I know they are losing money every time they pull off the highway——

Senator EXON. Would you mention Lake Andes, too?

Mr. ABDNOR. Yes, there, too.

Mr. SHADWEILER. The competitiveness of this is going to take place. You are going to have the big company's price being delivered to the small town is going to take effect. If you have the small town trucker hauling this part, he went into Minneapolis or Sioux Falls. He is coming back with his load of grain or truck of livestock or, say, a small freight van or whatever he delivers in; he will be able to bring this part back because the local community will know he has been into this town and back again. And he will be able to charge for this product which now he could never do.

Mr. ABDNOR. One possibility. If you could make sure that was going to happen every day, as a farmer I wouldn't have to wait for 4 days for that guy coming through Kennebec.

Senator EXON. We have a lady member of the panel down here. Do you wish to testify, ma'am?

I would suggest to you gentlemen that in Washington, D.C., the ladies get to testify first. But the women's lib movement may not be quite as strong in South Dakota as it is in Washington, D.C.

Would you please identify yourself for the record?

Mrs. STEPP. I am Marge Stepp of Sioux Falls. My husband and I own and operate a truck. We are in favor of total deregulation for the one-man/one-truck owner-operator.

We feel the original rate should be posted on the freight bills.

There is a lot of deadheading done all over the country because of having to haul cheap freight. My husband and I deadheaded from Boston. That was a waste of $400 worth of fuel because of hauling cheap freight.

The only ones making money are the brokers because the owner-operators are operating at a loss.

I don't think the country can continue to be wasteful and we won't continue to deadhead because we are losing money anyway.

Senator EXON. You have brought out a good point. Let me ask you a question. I assume that you and other independent truckers, who do such a great job of moving freight which the common carriers do not want to move, are convinced that deregulation, would allow you to pick up any freight that you wanted to carry, without having to come back empty, as on that recent trip to Boston to which you referred, with the obvious waste of fuel.

Mrs. STEPP. Yes. We could have got a load back, but it was just cheap freight.

Senator EXON. Let me ask this question as a followup. You understand, I am sure, because you are in the business, that almost all of the freight handled by the so-called common carriers are presently regulated. What would happen, do you think, if we would totally deregulate? What then would happen to the big operators? Would they not be in a better position to move more trucks?

Have you considered the possibility that they might make it even tougher and more difficult for you independent truckers to compete?

Mrs. STEPP. No, I don't think so.

Senator EXON. OK. I just wanted to get that in the record.

Please understand that some of these questions I ask are for the record because these issues are ones which we have to weigh.

Mrs. STEPP. I believe that the original rate should be posted on the bill so that you know what you are hauling that load for. These guys are taking such a percentage by the time you get down, you are not making anything.

I believe if they are found guilty of it, that they should have their authority lifted for a year, probably, without even a trial.

Senator EXON. Thank you. Any further testimony from the panel?

Mr. SIMON. I would like to comment on the question you presented about the large carrier probably running the small one out of business. It will never happen. It has not happened in livestock and has not happened in produce. These products are already exempt. The large carrier can't compete on an individual basis with one.

Consolidated Freightways, I think probably if not the largest in the country, one of the largest in the country, they hauled livestock at one time. They don't anymore. They couldn't compete with the small carrier. That will never happen.

A small carrier probably couldn't compete in these partial load lots, but in load lots the large carrier wouldn't compete with the small one.

Senator EXON. I appreciate your point. I would say, though, that we have to look at competition in the context of the situation if we had total deregulation. While I recognize and realize that the deregulation of the airline industry does not necessarily parallel the deregulation of railroads or trucks, we certainly know that since the airlines have been deregulated larger airlines are taking over more and more of the large and most profitable routes. While it is true that in many areas we have had smaller airlines come in to fill the gap in places which were abandoned by the large carrier, I am only raising this point as a possible "caution flag."

Generally speaking in the free enterprise system, which I strongly support, the larger the transporter, the more efficient it becomes

from a cost standpoint, although there are some exceptions. Maybe that is totally different in the trucking industry. Is that the point you are making?

Mr. SIMON. I would say yes, they largely become more inefficient because their staff, their overhead, their offices, all of this, the costs get so out of hand. There is nothing more efficient than one man driving his own truck. He deals directly with the shipper and they negotiate the rate right there.

There is no staff, nobody else involved. How can you get cheaper, more efficient than that?

Senator EXON. Thank you.

Mr. SHADWEILER. You have unions to compete with. Like at the present time we run, oh, probably 16, 18 cents a mile as an owner-operator; we have, up until about 4 months ago, until this fuel price squeeze came on us. These union people are guaranteed 24, 25 cents a mile without their benefits. So all this cost is thrown on to the consumer and shipper which is to our benefit.

The only disadvantage the one-man/one-truck would have at this time is high insurance rates because we are not in a group. They single us out and sell us this insurance policy as a one-truck owner person. We don't have this large 50-truck advantage for insurance. So, therefore, we do pay through the nose on that. But that is about the only one I can see at the present time.

Senator EXON. Thank you very much. Your name, is that pronounced Slanswizler?

Mr. SHADWEILER. Shadweiler.

Senator EXON. I was told that you were testifying in place of Thelma Gravning. Is that the case? Are you representing her position?

Mr. SHADWEILER. I am taking her place here, but we have different views.

Senator EXON. Without objection I wish to place into the record at this time testimony which we have received from Ms. Gravning. She says at the conclusion of her statement: "In closing, we would ask you to give careful consideration to this matter and, with all the facts, you will reregulate, but not deregulate." Therefore I assume that she is not in support of the position to which you and others on the panel have testified. Is that accurate?

Mr. SHADWEILER. She is not taking my position. I am in favor of the one-man/one-truck deregulation.

Senator EXON. Thank you. Are there any further comments or questions? If not, thank you all very much, and we appreciate your coming.

[The statements follow:]

STATEMENT OF SANDY GOULD

My name is Sandy Gould. I am an Exempt trucker from Aberdeen, South Dakota. I have been trucking for over ten years, and trucking has been in the family for over twenty-three years. For the last five years, I have been hauling exempt products from Minnesota, North Dakota and South Dakota to California where I haul fresh produce back to the Dakotas and Minnesota areas for a single produce buyer from Minneapolis, Minnesota.

I am sure the main things that our area produce are livestock and grain. I think it is about time the farmer is able to quit subsidizing the regulated carrier. The farmer produces over ninety per cent of the gross product of South Dakota.

Our grain and livestock trucks are running the opposite directions empty. It is about time, in these years of fuel shortages, that these trucks stay loaded since it takes very little extra fuel to run a loaded truck than an empty one. I ran into an instance last winter coming back from the Twin Cities empty when I was talking to a driver for a regulated carrier (Dart Transit) and he was hauling a van load of bathtubs to Aberdeen and was going back to Minneapolis empty. I told him he should haul a load of grain back and he stated he did not want to bother with it. I called Dart Transit earlier that day and they stated there was nothing going that direction. This is one instance where one hundred twenty gallons of fuel was wasted, and this is very common.

When I return from California, I usually come back through western South Dakota and head towards Bismarck, North Dakota which is my first stop. I go through the small town of Reva, South Dakota on South Dakota highway twenty. All Reva has is a small grocery store. The groceries and produce are hauled into the store by a private carrier who is also the grocery wholesaler. If a person looks around at other small towns in South Dakota and other states, he notices a few things they all have in common. They all have an elevator, salebarn or stockyards, a grocery store, farmers union or coop bulk fuel service station and usually a hardware store. The grocery store and restaurant in my area are served by either Nash Finch or Hogg Distributing which have their own fleets of distribution trucks. The farmers union and coop also have their own trucks, also the hardware store which most of the time is affiliated with ones such as Gambles, Our Own Hardware, Sears and other general merchandise companies. The coops even haul their own fuel.

I believe that it would be impossible to start a business in competition with someone in these areas that is served by these private carriers. If a person had to rely on these regulated carriers to haul your freight the cost and service would be terribly high. But if we deregulated, the local exempt trucks would be able to haul in probably as cheap as the private carriers. Private carriers do not want to own trucks, they are in the wholesale and retail business.

Almost every small town in our area has at least one Exempt trucker that has been in the business for a long time. A lot of these Independents are family businesses that have been in the trucking business for over thirty years. They know if they do not give good service they will be out of business. They are hauling unmanufactured farm products into terminals and manufacturing areas daily and I think the farmers and consumers deserve the chance to have their goods hauled back by these carriers if they wish.

In closing I would like to state I think the exempt independent hauler who is not leased to a regulated carrier usually has been in the business quite a while, usually finds his own freight to haul, and has a lot better record of business accomplishments than the "so-called" Independent that leases his equipment to the regulated carrier and hauls more or less what they want him to haul and indirectly deals with the shipper or receiver.

STATEMENT OF THELMA GRAVNING

Thank you for inviting us to present the views my people have on this matter. As you know the people I represent are independent owner-operators who lease their trucks to regulated carriers for a percentage of the gross revenue. The percentage varies because some carriers supply more benefits than others, such as insurance, etc. Most of the carriers my people are leased to will pay a percentage of between 70 and 86 percent of the gross haul. Along with this they will line up all the loads, take care of the paper work, fuel tax reports, license reports, furnish some insurance, and do all the collecting. All we have to do is the hauling of the freight and let them worry about the rest.

We like this arrangement because it relieves us of all the paperwork and allows us more time in which to make a living. Most of our people would not know where to start with all the paper work that is involved with trying to run a truck in this country, let alone find the time to figure out most of the forms that have to be completed each month and quarter.

We do not want deregulation, but we do want reregulation. What is the difference? We feel that the I.C.C. could be streamlined so that it would be more responsive to the owner-operator, but we do not feel that deregulation would be in the best interest of the owner-operator in this country. Nor do we feel that deregulation would be in the best interest of the shipper, or the consumer in the long run in this country.

We feel if total deregulation does come it will be the most roughshod operation in this country that you could imagine. Everyone will want in the trucking business,

rates will be cut so low that no one will be able to make a living. When the small operator has gone broke then rates will be far higher than they are now. Everyone will want to haul the high revenue freight, but no one will want to haul the cheaper freight, leaving the consumer to suffer the most. Many areas of this nation will suffer because of lack of service. Example: Most all owner-operators will haul a load into the Chicago area because you can always get a return load out of there, but who will haul a load into Bison, South Dakota, and if you do what could you haul out of there? With a truck you make no money coming back empty, so everyone would avoid this load, and how will this small town out in the middle of nowhere get any service. As it is not almost all towns are guaranteed service by some carrier, as these carriers have a permit that says they must haul freight from one point to all points in their permit area. This protects the consumer and shipper.

In this argument we always hear people say that it has helped with airlines so why wouldn't it with trucks? I think we have to figure out how many airlines there are compared to how many trucks there are. How many towns do airlines service? How many towns do trucks service?

On the cost side of the argument some say it will reduce costs of shipping. I can only ask how this will come about? The cost of shipping a load to Bison, South Dakota will in all probability be higher since no one will want to haul it. The load to Chicago could possibly be reduced some, but one would not find a significant reduction. Some say that since the trucker would not have to give a carrier a percentage he could haul for a cheaper rate. This would not be so since I'm sure you will have to go through a broker to get a load and will in all probability give the broker almost as much as you now give the carrier, and the difference you will spend on an accountant to do your paper work and trying to collect for the load.

In closing we would ask you to give careful consideration to this matter . . . and with all the facts you will reregulate, but not deregulate.

The West Chapter, Independent Truckers Association of South Dakota thanks you for your time and consideration.

Statement of Donald Shadweiler

I wish to convey to you a message that seemed to be overlooked at our independent truckers testimony that is, If we were to be deregulated to the extent of the one man one truck. It would let the good efficient and intelligent trucker emerge as a person on a higher plane. He would be able to transport a product on a even keel with company's that were issued authority to perform a service. I would welcome the chance to do the job I've been doing for 23 years on this higher plane. I have been subjected to undo controls by gov't & large companys. I very much would entertain the priviledge to compete as an individual with equal rights & priviledges that trucking company's do at the present time. I could try to satisfy a shipper directly as an individual and could be in demand as an individual on my merits or demerits. If I did a superior job as a trucker I could be in demand and be rewarded financially by my merits because of direct association with my shipper and receiver. If I did a poor job I wouldn't be used and probably not succeed as a trucker thus following the Pattern of Survival of the fittest which is very Basic American principle. The way it is now I am not rewarded financially but subjected to Company misuse and abuse along with whatever misfit that comes along and hires on with the same company.

One man one truck will perpetuate competiveness small towns will continue to have service grain truckers serve small communities. Larger communities do not have more access grain trucks than smaller towns.

I am in the opinion that if the one man one truck were to be deregulated it would be to the small truckers advantage. Their still would be trucking companys for small truck owners to lease to so those truckers who feel they need the security of a companys shelter who wish to have loads lined up for them and benefits such as insurance proration upkeeping and fuel bond updating. Enforcing log book violations these people may still go on the same railroads have the disadvantage of having availability of cars and do not have loading facilities to switch from trucks to RR cars when a RR car leaves SD with a load of grain it may stay on that car all the way to New Orleans, Dallas, West Coast etc the flexibility of destination is greater with rail and long distance shipments be of an option to receivers.

I want you to know that many of us independent truckers have and carry union cards so we may backhaul regulated commodities. Large companies have unions that require independents to belong to them so that we may backhaul their freight. So when them teamsters say they are 235,000 members strong you must take into account that a portion of those 100,000 independents are included so their strength is misleading as far as numerical is concerned.

Senator EXON. The next group we will hear from is composed of trucking firms, including Jerry Wheeler of Sioux Falls, South Dakota Trucking Association, Leonard Gidlow, Rapid City, Barber Transportation Company, Robert Appelwick, Madison, Apple Lines, Inc., Lyle Clemetson, Sioux Falls, Quasar Express, and Ron Koehn, Sioux Falls, United Parcel Service.

Thank you very much for coming. As with the previous panel, we will allow any one of you to start out. Since Jerry Wheeler from Sioux Falls is first on the list, if there is no objection, the Chair will recognize Mr. Wheeler first.

STATEMENTS OF JERRY WHEELER, SIOUX FALLS, SOUTH DAKOTA TRUCKING ASSOCIATION; ROBERT APPELWICK, MADISON, APPLE LINES, INC.; LYLE CLEMETSON, SIOUX FALLS, QUASAR EXPRESS; AND RON KOEHN, SIOUX FALLS, UNITED PARCEL SERVICE

Mr. WHEELER. My name is Jerry Wheeler. I am the executive director of the South Dakota Trucking Association. The association I represent is made up of 250 trucking companies and 90 suppliers and shippers. We represent every type of trucking company operating in South Dakota from the one-man, one-truck, owner-operator to the seventh largest common carrier in the United States.

By and large, the trucking people we represent are very independent people that seldom agree on many issues, but when it comes to President Carter's move toward total deregulation of the trucking industry, it provides us with an issue in which we all have reached a common agreement. We are wholly and unalterably opposed to total deregulation of the trucking industry. I would like to outline for you the points in which we are in complete disagreement with the Carter administration.

In our opinion:

Deregulation will not save U.S. consumers $5 billion; we think this is a fictitious amount and would like to know how this savings was arrived at.

Deregulation would result in less competition within the trucking industry, not more. Small companies will be driven out by the larger, more powerful ones. We have a lot of small trucking companies in South Dakota, and there is no way they could compete with the large companies without some type of regulation.

Without regulation, the collective rate making system would be dismantled. It is widely agreed that the overall effect would be marked increases in shipping rates.

Without regulation, the ICC would lose its "Economic Muscle" to enforce safety regulations. These safety regulations make regulated truck drivers among the safest on the road.

Deregulation would have no effect on empty backhauls. Empty mileage—of which only 3 percent is avoidable—is not a factor of regulation or deregulation.

Deregulation would increase the number of trucks on the road, leading to increased fuel consumption and empty mileage.

Whereas airline deregulation has lowered passenger fares, it has caused air freight rates to increase 21 percent to date. Passenger demand is elastic; freight demand is inelastic. Trucking deregula-

tion will not increase the amount of goods shipped; rather, it will increase the cost of shipping those goods.

Deregulation would force trucking firms to abandon less profitable routes and increase rates substantially to others. The result would be a dramatically negative economic effect on small towns in South Dakota. Let's face it, it makes better economic sense to operate trucks between Rapid City and Sioux Falls than it does to deliver freight to Pukwana and Fort Thompson.

Deregulation is inflationary. Costs for moving freight by regulated motor carrier have increased less over the last 10 years than the average cost of general consumer products.

The issue of regulation versus deregulation should be resolved not on the basis of rhetoric or economic theory, but rather on how well the system is or is not working. The trucking industry is regulated because that regulation serves the public and serves it well.

We think the recent strike by the independent truckers provides a frightening preview of what could happen if the trucking industry were totally deregulated. Much of the Nation's fruit and vegetables have not been moved to market because of the absence of any reliable and responsible transportation system with an obligation to serve the American public.

We were in complete sympathy with the independent truckers strike, but we felt that many of their problems resulted because they were unregulated and had no mechanism to recover the high cost of their fuel.

I think it is also important to note that most of the push for deregulation is not coming form the shipper or the consumer, but rather than the academic communities. These same people are responsible for many of the problems our Nation is involved with today.

In conclusion, the American Trucking Association has introduced into Congress "The Motor Carrier Regulatory Improvement Act of 1979," and we urge your cosponsorship of that legislation. The proposed legislation would streamline transportation regulations and correct many of the problem areas, but it would not completely destroy the present system as President Carter advocates. It proposes regulation reforms in the areas of entry control, rate regulation, and the collective rate making process. Support from Senators such as yourselves is vitally needed.

I have brought representatives with me today from several South Dakota trucking companies, and we stand ready to answer any questions you may have. Thank you for allowing me to testify before your committee.

Senator EXON. Thank you very much, Mr. Wheeler.

My first question relates to S. 796, which is really the subject of our hearing this morning, although I said that we would get into other matters.

As one that obviously understands the trucking situation, or at least you have a definite point of view on the matter, how do you feel about and what would be your recommendation on S. 796? Should it or should it not be enacted as presented. What effect would it have on the trucking industry, if it were passed in its present form?

Mr. WHEELER. Senator, I have not studied the rail deregulation legislation, but I guess we probably feel somewhat different than the independent truckers in the area that we feel that continued rail service in South Dakota is vitally important. We must have it. Although I can't speak intelligently about that particular bill, because I don't understand it, I haven't read it, I would very much be in favor of Senators such as yourself doing everything that you can to preserve rail transportation.

There are certain things that rail can transport more efficiently than truck and there are certain things that we can transport more efficiently than rail. There is a vital need for both modes of transportation in South Dakota.

Senator EXON. Thank you.

Senator Pressler?

Senator PRESSLER. Yes. In this regard, do the regulated truckers unload at railroads or do you have an interline relationship with railroads more than the independent truckers? What I am trying to get at is again this regional terminal issue, if we were to have that for grain. Regulated truckers really wouldn't be hauling that short-term grain to railroads, would you? You don't unload at railroad docks, and so forth, do you? The regulated trucks for the most part haul their produce all the way. When grain moves out of South Dakota in particular, or when produce moves out or in, do you depend on getting a rail interline? What I am trying to get at is the impact it would have if we deregulated one and not the other, or if we deregulated both.

Mr. WHEELER. I am going to have Bob Appelwick from Madison answer that question for me.

Mr. APPELWICK. I thank you gentlemen for allowing us to appear this morning. I guess as an operating carrier that I might be able to answer that question a little more succinctly. As an irregular route carrier, there is not a great deal of interplay directly between carriers such as ourselves and the railroad. However, there will be some impact due to the fact that if deregulation of the rail industry does occur, I feel strongly that there is going to be an abandonment move on their part. That will impact rather dramatically on the trucking industry, because it will force them to throw a great deal of traffic onto the motor carrier transportation industry to fill the void which will occur as a result of the move by the rail industry into the more dense traffic lines between the urban areas.

Now we have talked about the issue of the Big Stone Power-plant up in Northeast South Dakota and the impact that the rail problems up there are having on our economy in this State. We are confronted with the potential loss of $1 billion as far as economic monetary loss due to loss of power that—the problem with buying power to replace that, and loss of the energy in North Dakota.

South Dakota is probably going to have to spend $100 million in order to replace that rail line in order to keep the railroad interested in serving that powerplant. We cannot replace it without a tremendous loss of economic resources. So we are concerned about the continued regulation of the railroad, as well as the motor carrier industry, because my personal feeling is that we are going to see a swell of the transportation industry move toward the urban areas and abandon the rural areas.

Senator PRESSLER. Still that doesn't quite answer my question. If we deregulate the rails, let's just assume we did that under this bill, if we just have a few regional terminals in South Dakota, who is going to take up the slack of hauling the grain from the little towns into those regional terminals? Will it be the regulated truckers, or the independent truckers?

Mr. APPELWICK. I think that your movement of that grain is going to take the same form as it has in the past. It's going to remain in the historic modes of transportation that have been there. The farmer who owns a 2-ton truck, he's going to haul it that 30 or 40 miles.

Senator PRESSLER. Do you have any comments?

VOICE. I have nothing to address to that point.

Senator PRESSLER. Those are about the only questions that I have. I guess the point on farm replacement parts has been made and farm—getting the small machinery out to the small towns, and insecticides. Someone has handed me a note, in a State if we deregulate rail and trucks, there is concern. I know UPS is here too.

Ron Koehn, you haul a lot of small items around the State. I don't know if you would have any final comment. That is my final comment, which you can take in the form of a question.

Mr. KOEHN. Senator, I do have a brief statement I would like to make. My name is Ron Koehn. I am with UPS as an operation manager, and I have been employed with UPS for 15 years. I am happy to be here today. We have a statement for you for the record. I would like to summarize a few of the high points of my statement for you without taking a lot of the committee's time.

We are carefully examining deregulation proposals pending before the Congress in our home office in Greenwich and our Washington office. The company hasn't yet reached a firm position on this but expects to do so, at which time we will present this position to the Congress and the administration.

I am really not an expert on this issue and am not prepared to answer any in-depth questions about it. I would like to tell you some of the things we do in South Dakota and some of our concerns. We pick up approximately 10,000 packages per day and deliver approximately 21,000 per day to people located all over South Dakota in both rural and metropolitan areas. We know that you and others are concerned about how regulatory reform will affect service to small towns in rural areas of the country. UPS now provides complete territorial coverage. It is probably the only service in America that provides pick up and delivery service in small towns, rural areas and crossroads. We plan to continue such service no matter what happens to the legislation. Our service is dependent on adequate supplies of fuel.

In South Dakota we serve approximately six customers for every gallon of gas we consume. UPS delivers more packages to more people in more places with less fuel than any other carrier, not only in South Dakota but across the country.

Finally, I have three points. One, hopefully, whatever adjustments are made to the laws about trucking will be such that we can continue to provide all service to the public we do today.

Two, we believe the efficient use to which we put the Nation's energy resources serving so many of its citizens everywhere justifies sufficient fuel to continue to provide these services.

Three, we believe we can continue to provide this kind of service to the public nationally in a climate of fair competition whether that competition is with the U.S. Postal Service or with other carriers.

Thank you, and I would be happy to answer any questions that I can.

[The statement follows:]

STATEMENT OF RON KOEHN, OPERATIONS MANAGER, UNITED PARCEL SERVICE, SIOUX FALLS, S. DAK.

My name is Ron Koehn and I am an operations manager for United Parcel Service in South Dakota and have been employed by UPS for 15 years.

First of all, I want to thank Senator Pressler for inviting us to be here today. I am pleased to have the opportunity to tell you about UPS and particularly about what it does in South Dakota and Nebraska.

I realize that your committee is interested in my company's views on truck regulation, and, in that regard, we are engaged in a very careful analysis of the regulatory reform proposals currently before the Congress. We have not yet come to any firm conclusions on this legislation but we do expect to testify before the proper committees of the Congress in Washington, D.C. when that analysis is complete. Until then I cannot speak as to the legislation.

It is nonetheless still appropriate, I believe, for you to know what UPS is and does because as the largest carrier of small packages in the nation, it can and probably will be affected by any reform legislation. In addition, we share with you, in a unique way, your concern about service to rural and small town areas and small business transportation needs.

I have taken the liberty of distributing to the committee for its information and not as part of the record, a copy of a booklet entitled "This Is United Parcel Service". This will give you a brief history of UPS as well as a good idea of the service it performs. Perhaps of greater importance to this committee is the status of our present operations—in South Dakota, Nebraska and throughout the country.

Today UPS serves all points in the continental United States and portions of Alaska and Hawaii. We employ over 100,000 people and operate over 50,000 vehicles. Last year we picked up and delivered over 1.2 billion parcels.

Complete territorial coverage is one of the features of our service that is crucial to the shipping and receiving public. We provide service to all points within our authorized service areas—not just big cities but small towns, villages and thousands of crossroads.

Our service to out-of-the-way points is appreciated and needed for a very practical reason. We are probably the only service in America that both picks up and delivers to such places. And we do so at rates that offer the same economies no matter where the shipper is located.

We serve wherever there is a road accessible to a motor vehicle. This complete door to door service is a feature of our service we are proud to offer voluntarily and we want to and plan to continue such service no matter what happens to the legislation. We believe it is in the public interest that this service continue to be available.

Here are some examples of the places and people we serve in South Dakota who are located in rural areas, small towns and sometimes no town at all—just a place on a map.

Each work day we make a daily pickup at the Diamond Ring Ranch of Midland, SD. This ranch is located 20 miles north of Midland, SD. Pine Ridge Products of Pine Ridge, S.D. is another regular pickup. This shipper is located over 100 miles south of Rapid City.

We also make deliveries on a regular basis to the Bill Parson's Ranch of Milesville, SD, located 50 miles north of Phillip, SD, and the Timothy Tibb's Ranch located on Mission Ridge Road which is 50 miles north of Pierre.

The growing need and acceptance of UPS in South Dakota is best illustrated by the following statistics: We started operations here on July 6, 1971—tomorrow will be our 8th anniversary—with 118 people operating 65 vehicles. On that day we delivered a handful of packages in South Dakota.

Today in South Dakota we employ 437 people and operate 133 vehicles delivering 20,700 packages on an average day.

We make daily pickups from approximately 1,640 regular customers who give us an average of 9,874 packages per day. In addition, other customers bring packages to us at our various locations over the state and still others call us for occasional pickups.

There are of course many ingredients needed to make the continuance of this service possible. But there is one which is absolutely indispensable—fuel, both gasoline and diesel.

Today energy is a major concern to all Americans. I would like to tell you a little about our energy consumption in South Dakota and then give you an idea of the service we provide with that energy. You then can make a judgment as to the efficiency of our energy use. You should also know that our quest for more energy efficiency goes back many years. I have distributed a reprint entitled "UPS Wars On Wasted Fuel" which highlights our long standing efforts. This reprint too is for the committee's general information and is not submitted as part of the record.

Every day, in South Dakota, we consume 2,313 gallons of gasoline in 133 vehicles. Those same vehicles operate an average of 164 miles per day getting an average miles per gallon of 9.4. Each one of those vehicles picks up and delivers approximately 230 packages weighing an average of 11 pounds each or a total of 2,530 pounds per day per vehicle. On a per gallon basis, we transport approximately 146 pounds from, and to, South Dakota points for every gallon of gas we consume. Looking at this another way, for every gallon of gas we consume, we serve 5.4 customers in South Dakota. If UPS was not providing this kind of service to all points in South Dakota, both rural and metropolitan, the alternative would be increased use of fuel by individuals to go to places to pick up necessary articles.

The fact is that UPS delivers more packages to more people in more places with less fuel than any other carrier.

Senator Exon, we also provide to Nebraskans the same high level of service that we do to the citizens of South Dakota. Our energy efficiency is similar, too.

In conclusion, we believe that the efficient use to which we put the nation's energy resources, serving so many of its citizens everywhere, justifies an assured supply of fuel so that we can continue to fulfill the public's needs. We hope that whatever adjustments are made to the law of the land they are such that we can continue to provide the kind of service that we do now. We believe that we can continue to provide this kind of service in a climate of fair competition whether that competition is with the US Postal Service or with other carriers. Both of you gentlemen know that our main legislative concern over the years has been to assure fair competition by continuing the principles of cost recovery in rates for parcel post that have governed that service since it started. Fair competition for UPS should be fair competition for anyone else who wants to compete with the USPS.

Thank you for this opportunity to tell you a little about UPS.

Senator EXON. Thank you. That was an excellent statement. I have one question. To see how closely the ICC currently monitors regulated truckers and carriers to insure that they are serving small communities, I would like to know if the ICC monitors you on a regular basis? You are all regulated, I presume, and you are advocates of maintaining regulation. Do you have to show reports which indicate that you are serving small communities, and are your routes approved by the ICC?

Mr. KOEHN. We have to apply for our areas and we are regularly checked by the ICC.

Senator PRESSLER. What form do those checks take, do they come see you or write you, or do you have to give them reports or what?

Mr. KOEHN. No, I think our service, our reputation for one tells the ICC that we do serve the entire country but we do submit reports to the ICC.

Senator PRESSLER. Thank you. Those are the only questions that I have.

Senator EXON. Mr. Koehn, I have a question for you that possibly gets into the whole matter of deregulation and what the end cost is going to be.

I think that all of us are acquainted with United Parcel Service and the excellent service which it provides. I think that it is generally true, though, and correct me if I am wrong, that a given package at a given poundage costs more to ship through United Parcel Service than most other forms because you give faster service and better delivery?

Mr. KOEHN. We do meet the competition and our rates are very similar to what parcel post would charge for the same package.

The shipper in a small town or rural area enjoys the same advantages as a major shipper does. We don't differentiate rates.

Senator EXON. Here we have government service, our mail parcel post service, and you people have been able to compete in a free enterprise system with a Government-subsidized program and give much better service than parcel post. Do your rates remain, by and large, higher than parcel post?

Mr. KOEHN. By and large, we are pretty equal with parcel post rates. We are higher in some weights and zones than they are and vice versa.

At the present time, our rates are somewhat higher than theirs in the first 10 pounds, yes.

Senator EXON. But you are able to do that, I suppose, basically because you give better service, is that true?

Mr. KOEHN. We give better service and through consolidation of packages. We will deliver a package to any area of the country and parts of Hawaii and Alaska.

Senator EXON. If I want to make a shipment of a parcel from Washington, D.C., to Lake Andes, S. Dak., would it not be cheaper to ship that parcel of a given poundage by parcel post than your service?

Mr. KOEHN. It would be very similar. It would depend on the pounds really, what the package weighed.

In some cases, it may be a few cents cheaper to send it through us or it may cost you a few cents more.

Senator EXON. Thank you.

Congressman, do you have any questions?

Senator PRESSLER. Jim has had to depart. If the gentleman would yield, I have one brief question.

One of the reasons Senator Exon refers to Lake Andes so much is that he grew up there, in case any of you were wondering.

A question I have been pounding away at all morning is that we are told by the Transportation Policy Study Commission that in the less populated areas, you are going to have to depend on other modes of transportation, you are going to have to work together.

If you move grain, how does it move out, by truck part of the way, by rail part of the way, or maybe by barge. Do you use air or rail part of the way or are you strictly trucking?

Mr. KOEHN. UPS, the railroads do have an effect on us as we use a TOC movement. Each day, we receive in Sioux Falls five trailerloads from the TOC movement.

Senator PRESSLER. From what movement?

Mr. KOEHN. The railroad movement.

Senator PRESSLER. So you are vitally concerned about what happens on the rail deregulation side, too. Has your group taken a position on the national rail deregulation?

Mr. KOEHN. I am sure we have, Senator, but I am not familiar with our position.

Senator EXON. Thank you.

I have no further questions. Thank you very much, gentlemen, for your testimony.

[The statements follow:]

STATEMENT OF ROBERT APPELWICK, APPLE LINES, INC.

My name is Robert Appelwick. I am the president and general manager of Apple Lines, Inc., a common irregular route carrier located at 212 S.W. 2nd Street, Madison, South Dakota. I am a life-long resident of Madison and Apple Lines has enjoyed 25 years of operations and growth in South Dakota. Apple Lines transports a diverse list of commodities, primarily refrigerated, to nearly every State in the Union. I wish to make my concerns over this nation's transportation system known with these remarks.

Deregulation: Is the public interest really served by deregulating the motor carrier industry? To attempt to state in 10 minutes the litany of effects of deregulation on the public, for that is who we must be really concerned about, is like trying to relate your activities for the past week in one minute. Is deregulation really what the American Public wants? I can find no public outcry for the complete deregulation of the motor carrier industry. I have traveled extensively and find the shipping public very supportive of the continuation of Motor Carrier Regulation. When I discuss the issue with persons outside the transportation fraternity, they literally know nothing about the diversity of transportation services and how any segment impacts upon them as individuals. As a result, they have no informed position in regard to the issue, only vague leanings gleaned from condensed media interpretations of the issues.

Why, then, is Congress concerned enough to deregulate the motor carrier industry? I ask, is the Congress willing to take the gamble that deregulation can bring a 5 billion dollar savings in the scenario proposed by the economic fadists? As an alternative, is Congress willing to accept a 5 billion or even a 10 billion dollar increase in transportation costs and a devastation of services to rural areas of the nation? Services between urban areas might improve at higher costs while the rural regions will find motor carriage service absent except at mercenary rate levels. I think the better, more pragmatic course is to allow the industry, whose services are so vital to every person's life, to operate in the same fashion it has in the past. That ivory tower portion of the academic community which theoretically expounds the virtues of motor carrier deregulation, while ignoring the basic tenets of logic normally employed in reaching reasonable conclusions, has given no substantial evidence that the public interests can be served by motor carrier deregulation.

I am concerned with the fact that too much has been made of the deregulation of the airline industries, and the subsequent pricing of a limited number of passenger seats. It is well recognized that nearly 40 percent of the passenger capacity of the airlines was normally empty prior to deregulation. Since then, in order to attract more passengers, air carriers have touted broadly their "Super Saver" and "Economy Fares," which were made available on a limited basis, usually no more than 20 percent of their seats. In spite of the wide impression of an overall reduction in air fares, the true business traveller still must rely for air service on a day-to-day basis and is unable to take advantage of the various requirements of economy fares. In reality, the business man has paid more for his transportation since deregulation, not less.

It is unfair to discuss passenger service, whose demand is rather elastic, so let us explore freight service, which is actually the meat of the discussion here. We find the demand for freight service to be inelastic. Airfreight, which was deregulated prior to airline passenger service, actually experienced increased rates in excess of 30 percent the first 18 months. How has that increase been in the public interest?

The railroads have battled to increase rates for many, many years while the regulation of the ICC has effectively clamped those rates down to substantially lower levels than that which the railroads desire. A recent example is the attempt of the Burlington-Northern to raise their charges by 9 percent on unit-coal trains from the Wyoming coal fields to Omaha. The ICC disallowed the rate increase on the basis of the Burlington's market dominance. A 9 percent increase will be nominal in comparison to what the market dominant carrier will price his services following the adminstration's proposed railroad deregulation. Again, I fail to see how this form of cost increase is in the public interest.

I recently learned from an acquaintance in Seattle about the deregulation of the taxicab services in that city. Immediately fares rose 40 percent. The lack of regulation there certainly did not cause a substantial decrease in the cost of these services to the public. The concern for increasing competition through deregulation had only one effect for the citizens of Seattle; that was a tremendous cost increase for taxi services. These examples, along with others, of the aftermath of transportation deregulation offer substantial evidence of the benefits of regulation.

A great number of our politicians are losing the perspective that transportation is, in reality, a public utility. One which requires regulation in the same sense as does the communication and the public power industries. Transportation services, as with power and communication services, are required either directly or indirectly by all people on a daily basis. The public interest in all cases is to have an adequate supply at a fair price.

Meat and vegetables you buy at the grocery store are transported to that store from distant areas. The gasoline you burn in your automobile was transported from a refinery to your local filling station. Practically every commodity at our disposal and available in our daily lives has been transported. We are directly dependant daily on transportation to sustain our existence. For these reasons, I firmly believe that transportation is a public utility and must continue to be regulated.

One then asks, "Why must transportation services be regulated?" You would have to understand the nature of the beast in order to appreciate how the performance capacity of this industry responds to demand. Every industrial complex in this country has the capability of producing something, but it must direct all of its activity to the production of that one item. A cheese producing plant produces cheese and does not freeze vegetables. A clothing manufacturer's output is suits and dresses and not dairy products. A steel mill produces steel and cannot refine gasoline.

Not so in the transportation industry. Today your vehicle may be transporting frozen vegetables and tomorrow ladies dresses. It may even transport bulk chemicals through the easy acquisition of a tank trailer, or tomorrow carry logs out of the forest to the mills. Therefore, it is obvious that the motor carrier industry is diversive in its capability to be responsive to whatever type of commodity it must move.

You must recognize the fact that transportation is a very mobile industry. The U.S. Steel mill in Chicago, Ill., cannot pull up its foundation and plant itself in Los Angeles tomorrow, or even next week, in order to meet a demand that might exist there. That is not the case with the motor carrier industry. Motor carrier services are available to those individuals who establish a need for those services and are willing to pay the price, which is established and on file with the ICC in the form of published rates. In the alternative, that price would be negotiated on a day-to-day individual basis, creating financial risks that the prudent investor would avoid.

Those companies who control and command large volumes of freight and are willing to pay rates which return the equipment owner a small profit after expenses, will receive the majority of available transportation service. If an area's transportation demands drop, the cost of transportation will drop accordingly. However, when those demands increase, costs likewise will increase, probably disproportionate to the demand for service. Lacking regulation there will be no stability in costs or service.

The theorist contends that competition will prevail and that more operators will enter the industry. I fail to recognize how. Under the so-called extremely profitable conditions now prevailing in the motor carrier industry, an investment of $70,000 returns a profit of $5,000 per year from revenues of $80,000 to $100,000. It is difficult to understand how many individual entrepreneurs will be attracted to this type of "heady" business venture. The ICC's own figures detail dramatic losses in the numbers of such individuals exiting in the industry as owner-operators. The pipe-dreaming theorists certainly have no contact with the realities of the individual investor or firm in today's trucking and have failed to consider all the alternatives open to investment capital. Occasionally, these theorists are debated into a corner from which they speak briefly about a shakedown following deregulation, but they fail to admit that the public interest is adversely affected by fewer operators and by higher costs.

The immediate results of motor carrier deregulation would be an increase in the cost of transportation and a reduction in the stability of services available to the shipping public. Areas such as South Dakota will see equipment disappear at the first occasion that an equipment owner finds demand for his services dropping. That operator will gravitate to the larger urban areas where traffic lanes carry a much higher density of freight, just as the railroads are leaving South Dakota, seeking to utilize their rolling stock in the denser traffic lanes between urban areas. As surely

as auctioneers sell to the higher bidder, rural America will suffer drastically as trucks go to the higher bidders, and there will be no significant decline in the cost of transportation.

The ramifications are numerous. I could sit here all day and recite situation after situation which would dramatically change the service nature of our industry as it relates to the needs of the general public in the movement of goods and services. This will all occur with no appreciable savings in the cost of transportation services.

At this point I must add my feelings and reactions to the theme of deregulation as it has been played. I cannot understand Senator Kennedy's attempts to deregulate one industry, trucking, and regulate another, the case of the Health Care Industry. Certainly, a great deal of inconsistency exists when his trumpet song of equal access to quality health care is played at the same time that equal access to transportation services is drummed away through academic experiments. Now we have two great industries, each serving well the citizens of this nation with unequaled excellence, both used by an expedient politician to build a political platform of misconceptions and glossy overstatements, highly reported by an enchanted news media. It becomes further disheartening, to say the least, when the President joins these forces with an obvious lack of understanding of the industry.

In spite of such acts of political behavior, America is entitled to the best opposition to this unwise legislation that I can offer. I personally no longer have any concern with regard to the future of my company should deregulation become a reality. The past two years have demonstrated very clearly that deregulation will, in fact, create many opportunities for my company to operate at an even greater level of profit. I do not fear competition under the veil of deregulation for I perceive the level of equipment and services to be dropping rapidly in the face of the extremely high costs of the equipment and operations required today in the motor carrier industry.

The "Ma and Pa" corner grocery stores have disappeared from our business retail communities and likewise, so are the one and two truck operators disappearing from the motor carrier industry. This is unfortunate but the demands on the individual operator have stressed him to the point where he is no longer capable of handling all the business management decisions and dictates from all levels of government which daily face him.

Regulation of the motor carrier industry by the ICC will assure realistic levels of rates and service to all individuals. Deregulation will fragment the transportation system of our nation as the service capabilities of the motor carrier industry will direct their greatest energies towards the higher concentrations of demand. Deregulation jeopardizes carrier viability in rural areas such as South Dakota, and it is my personal view that, in order to assure the continued availability of motor carrier services to such areas, we must have the stability of service which regulation of the motor carrier industry assures.

STATEMENT OF LYLE A. CLEMETSON, PRESIDENT OF QUASAR EXPRESS, INC.

I feel it would be well to note that the pressure to force economic deregulation of trucking is not coming from within the industry. Neither the regulated segment of the trucking industry nor the shippers and receivers it serves are clamoring for change.

The pressure for change, in fact, is coming from opportunist politicians, self-serving consumer activists and think-tank economists. It has been my experience that few of these individuals truly understand the industry they are striving to force their changes upon.

Much has been made of the savings in freight charges that may be passed on to the consumer under the deregulation format. How much can that saving amount to? My firm transports beef to Chicago, Illinois from Sioux Falls, South Dakota at a cost of 1.8 cents per pound. If, as a result of deregulation and the anticipated rate war, I am forced to reduce that rate by 10%, to 1.62 cents per pound, do you honestly feel that when a housewife in Chicago picks up a pound of hamburger it will reflect the reduction in price of 18/100 of a cent? On the other hand, at 1.8 cents per pound, a 40,000 pound truckload of meat from here to Chicago pays our company $720.00 and a 10 percent reduction would lower our company's revenue by $72.00. Our margin on the load doesn't even amount to that $72.00.

While myself and other small carriers could survive such a rate-cutting environment for only a short period of time before being forced out of business, I feel that the giants of the industry would survive until after we are gone. The long term result, then, would be the destruction of competition as it now exists as opposed to the fostering of new competition that the deregulators call for. When the giants alone survive, let those same opportunist politicians, consumer activists and econo-

mists explain the new, even higher rates and the lack of service to our smaller communities. Let them explain to the shipping public that they just may have been wrong and let them explain to me why I'm no longer in the trucking business.

At a time when so many things in our government and our country don't work, why should we be attacking a system that does work? Under economic regulation for the past 44 years, the trucking industry has provided stable, reliable, safe and energy-efficient transportation to the American public.

We would all be better served if the administration sought realistic solutions to such acute problems as energy and inflation rather than uncertain and unknown solutions to problems that don't exist.

Senator EXON. We will take a group of farmers now: Paul Sybrant from Belle Fourche; James Graff, Irene; Bob Frieberg, Tabor; Lawrence Patnoe, Raymond; James Rasmusson, Clark; and Robert Weber, Strandburg.

Welcome and thank you for coming.

We are very much interested in hearing from farmers in the agricultural sector of the area. I have no way of knowing who your spokesman is, and so I will leave it up to you.

Anyone who gives testimony should please state his name for the record.

STATEMENTS OF PAUL SYBRANT; JAMES GRAFF; BOB FRIEBERG, ATTORNEY; LAWRENCE PATNOE; JAMES RASMUSSON; AND ROBERT WEBER

Mr. SYBRANT. Paul Sybrant from Rapid City.

South Dakota farmers and ranchers are intensely interested in our efforts as our purpose is not only to manufacture energy from a renewable resource, but to create a local market for farm products.

Mr. SYBRANT. Solar Fuels, Inc., is in the process of constructing a wheat alcohol plant in Rapid City, S. Dak. Needless to say, western South Dakota farmers and ranchers are intensely interested in our efforts, as our purpose is not only to manufacture energy from a renewable resource but to create a local market for farm products.

In deliberation of the feasibility of this plant, transportation was an extremely important consideration. If transportation, both truck and rail, is not allowed to function with some freedom, it would have a very adverse effect on our future efforts, not an insurmountable problem, but certainly the same impact that it has on all other businesses in South Dakota.

The White House release concerning transportation deregulation, signed by one Jimmy Carter, brings to light the idiocy of the restrictive policy that has effected our Nation for the last 44 years.

It is most timely that action must be taken immediately with the advent of petroleum deregulation activity. Trucking companies and especially independent truckers must be given freedom in order to sustain their existence.

The American agricultural community has been its own worst enemy. Farmers and ranchers, by their efficiency and ingenuity, have almost made themselves an endangered species. Unlike the Tennessee snail darter, no one protects them from extinction.

One farmer feeds 57 people, while he, himself is starving to death. Bumper stickers such as "Crime doesn't pay—neither does farming" can be seen throughout the agricultural communities.

These foregoing remarks may not seem pertinent to transportation deregulation, but they are problems that could be partially

alleviated if farm people, among others, were allowed such things as freedom of back hauls, reasonable load limits, and consistency in regulations from State to State. Why should a trucker not be allowed to transport as much weight through Iowa as he can through Nebraska or South Dakota, et cetera? How can truckers have fuel costs double and not be able to increase their rates, raise their weights, increase their speed or hours, or make any adjustments in routes, scheduling or backhauling?

Most farmers and ranchers have their own trucks to move products to their local markets. The White House letter spells out the ridiculous controls and restrictions on their ability to move products to market and return equipment and supplies back to their farms and ranches. All of these extra and unwarranted expenses must be added to the costs of production and therefore must be passed on to the consumer.

For these reasons and others, Solar Fuels in the western South Dakota agricultural community supports sensible deregulation of transportation.

We wish to thank Senators Pressler and Exon and others on the committee for our opportunity to express our views.

Thank you very much.

Senator EXON. Thank you very much, Paul. We appreciate your statement. If I understood your testimony, you are in support generally of S. 796, the Railroad Deregulation Act of 1979?

Mr. SYBRANT. Yes, sir.

Senator EXON. And if I understand your testimony, you also feel that if it were passed, we should follow with something quite similar as far as the trucking industry is concerned?

Mr. SYBRANT. Have to give everybody a fighting chance.

Senator EXON. Thank you very much.

Senator Pressler.

Senator PRESSLER. I would like to address this to anybody on the panel.

I know that a lot of the people are here from smaller towns, I see Jim Graff who runs a small elevator and I see Bob Weber who has a farm up in Strandburg. What impacts is deregulation going to have on the small town elevator and farmer who traditionally has shipped 5 or 6 miles into his small elevator, if we deregulate rail and set up regional terminals?

This means you are going to have to haul 50 miles maybe. How can we preserve the storage capability we need in those small town elevators? In certain years, we are going to need that capability.

Also, they provide a real service. I go into a lot of small towns and the only viable business, the only place to drop in where I meet some people is the elevator.

If we do pass this bill, this deregulation of rail or also truck, what is that going to do?

Will that be further damage to the small town elevator, or can we do something, like have a zone shipping rate for trucks so that the cost of shipping would be the same within 40 miles, let's say, per bushel, how do we get out of that sticky wicket?

Mr. GRAFF. Senator, I have a statement to make, I think, that will cover some of your questions.

Senator EXON. I believe for the record that you are Jim Graff, is that right, Mr. Graff?

Mr. GRAFF. Yes, sir.

Senator EXON. Welcome.

Please proceed.

Mr. GRAFF. This is my longhand yesterday so if I stumble a little, you are going to have to bear with me.

Senator EXON. It is only in Washington that the secretaries cannot type.

Mr. GRAFF. In South Dakota, we think there are a few other things they can't do in Washington.

Senator Exon, Senator Pressler, members of the subcommittee and whoever this may pertain to, like we did of our Congressman here.

I am James Graff, manager and partner of the Riley Co., an independent grain firm located in Irene, S. Dak.

I would indicate our firm has been in business since 1920 and I have been manager for the last 33 years.

I am also vice president of Farmers Elevator Association of South Dakota. Our president, Mr. Carl Winckler, of Fort Pierre, S. Dak., had previous commitments today and he called me and asked me to speak for our board.

In reading the Senator's invitation to be here, the hearing as I understand it is on rail, truck, and bus deregulation. Although we do a lot of business with trucks, I would like my statement to be in regards to the railroads.

The figures I give you will pertain to our own operation. In order to background to some extent our operation, I would say that in 1977 we handled 1,076,455 bushels of grain of which 369,408 bushels were shipped by rail.

This amounts to 34 percent. This was shipped in 150 carloads, most of which were boxcars. In 1978, we handled 1,298,618 bushels of grain of which 373,126 bushels were shipped by rail.

This figures out to 28.73 percent. This was shipped in 182 carloads which were both hoppers and boxcars.

In 1979, to date, we have handled about 500,000 bushels of which 149,402 bushels have been shipped by rail.

This has been shipped in 60 cars that have been made up as follows. There have been 29 C–2 and C–4 hoppers. This is normally what is termed the small hopper. Sixteen boxcars. Fifteen open top ballast cars. These cars have averaged 139,440 pounds per car and have generated railroad revenue of, average, $1,352.58.

I am not giving you these figures looking for an argument with the railroads, but I would like to have you keep them in mind when I give you the next figures.

Every car we have shipped this year has either been corn or milo. Using the first of the month figures between carload prices and trucking prices, I find that on January 1, for instance, the differences on just corn, this was the easiest one to pick, the difference on corn between truck and rail, f.o.b. our plant, was 24 cents a bushel.

On February 1, the difference was 29 cents a bushel.

March 1, it was 38.5 cents a bushel.

April 1, it was 38 cents.

May 1, 33.5 cents. And on the end of June, or first of June, it was 31 cents and first of July, it was 36 cents.

This averages out to just under 33 cents a bushel difference between rail and terminal market less trucking to the terminal market.

This is part of what you were getting at, Senator. This is the average difference in our operation.

Senator EXON. Jim, may I interrupt you there. You said the average difference. More by truck, or less by truck?

Mr. GRAFF. Less by truck.

Senator EXON. Less by truck.

Mr. GRAFF. Right.

Senator EXON. In the past, say, 5 years ago, was the opposite true? Five years ago was it more expensive to haul by truck? Has there been a turnaround?

Mr. GRAFF. To some degree, Senator, because the turnaround is the next thing I will be getting at.

The grain is going to different areas. We are going to the coast, now, long haul. Everyone this year has been to the west coast. Ten years ago, at least 95 percent would have been billed to Sioux City, Omaha, Cedar Rapids, or in that particular area.

Senator EXON. Thank you.

Mr. GRAFF. This brings us to the point of what kind of statement I can make which will not only keep our farmers in a healthy economic status but also keep our plant in operation.

I would be less than honest with you if I didn't say I am 100 percent for private enterprise and should formally advocate deregulation.

However, in looking at the past 10 years of rail operation, we are gradually being deregulated out of business although we supposedly are under regulations now.

Grainmen call this abandonment by neglect. It's an old term and it's a very true term with regard to South Dakota rail. We went from daily service to three times a week service the past 10 years. Our biggest problem is that all new rail equipment being built is being built for terminal operations.

Unless our tracks are upgraded so that we will be able to load this type of stuff, we are gradually going to be phased out under present railroad operations. I might say we are on the Burlington Northern. There is a little story among the C. & N.W. and Milwaukee that the Burlington Northern can walk on water.

If you are with the Burlington Northern, you sometimes—it's not all that perfect either although I think it's the best in the area.

That is a personal thought, again. The ICC through regulations are requiring larger loading stations and are furnishing its people with a favorable rate and in all practical purposes, are trying to wipe out the small operators around them.

It's my opinion that the ICC supposedly was set up to represent small shippers. They are, in effect, either through coercion or political pressure doing exactly the opposite of the purpose of their origination.

In conclusion, I would like to say that somebody, whether it is Congress or the ICC comes to the point of realizing there are small operators.

We under no conditions intend to let the railroads abandon us at their own discretion. While I say we are not necessarily fighting the railroads, I believe the powers that be in the Government have no realization of the importance of the railroads.

I have indicated our shipments today are for foreign exports. We are going to end up being the breadbasket of the world, not just this Nation.

This can only be accomplished if we are furnished competitive transportation. That is going to be necessary to accomplish this.

I want to thank you gentlemen for the opportunity to appear here.

Senator EXON. Thank you.

We feel that you essentially are one of those captive shippers. Although you have testified to the fact that you are not captive in your particular business from the standpoint that you could and do ship by truck or rail, I assume that you would like to continue that competition between the two modes in order to keep the rates as low as possible.

You also testified that essentially because of the change in the types of orders which you are receiving, you are now shipping to the coast basically by carload lots. This change is probably one of the reasons that there has been a turnaround.

But is the fact that you now can ship less expensively by trucks, as you said in your testimony, because trucks can haul raw agricultural products which are not controlled by the ICC at the present time is that possibly one of the reasons that the trucks are hauling this grain cheaper now than the railroads which are regulated?

Mr. GRAFF. You are asking me this question?

Senator EXON. Yes.

Mr. GRAFF. Senator, until you have been in it, there is nothing like the grain business. While you ship things one direction in one year, while they may be most to Iowa, we have shipped many to Nebraska, where they grow probably 10 times more than we do, but they take a lot of corn down there.

You never know where your market is going to be. They have been regulated. As they come down the line they jump an eighth here, a quarter there and every other station, based on how long it was hauled and things.

Many times the trucker—for instance—a trucker can haul a load of beans from Irene to Sioux City and make it from my plant to that plant in 72 or 73 miles.

If we put the same beans on a car, they have got to come all the way up to Garrison and I have never checked the mileage but I know it's over twice as far.

It all depends on your logistics. The thing—I am trying to drive home a point—I was in Minneapolis 4 weeks ago because I continued to hear that our little branch line down here is going to be going out in August.

I thought you might just as well go to the horse's mouth and have them tell you that.

I had a meeting with the executive vice president of the Burlington Northern Railroad and I have got reason to believe we are going to maintain that track down there.

Even though it's been limited to 220,000 pounds, unless they upgrade it, as the cars get older and they don't replace them, replace them with the big Cadillacs, you know, they won't let them on the line.

So you are, in effect, being wiped out. I don't know if I answered your question or not. I kind of went around in a circle.

Senator EXON. No, I think that I understand. That is what I was trying to get at.

Basically, what is the condition of the track which serves your area? We have track in certain States, and I am sure that there is some in South Dakota, which has deteriorated to the point where it is not safe to run a modern hopper car over it.

The track in your area is somewhat better than that, I presume.

Mr. GRAFF. We are allowed to load No. 2 and No. 4, C-2's and C-4's. C-2, in terminology that you could understand, would be about like a cement car, it's about the smallest hopper there is. C-4, a lot of time, is used for feed and stuff. That is an in-between car; C-2 will hold 85,000 to 88,000 pounds of corn, not even as much as a boxcar. C-4, again, will hold, well, they have, 140,000 to 150,000 to 152,000. Then when you get into the big ones, you have got to load 190,000 in them, you are going to pay freight on them regardless.

We have even shipped corn to Sioux Falls here, didn't hold up the train, cost you $109 to top off a car in Sioux Falls because you are paying freight all the way to the coast regardless.

These 15 cars, I told you, are ballast cars, they are open-top cars. We went to Montevideo, Minn. It cost about $212 a car to just outfit it with a top because it's going to the west coast where it's going to rain and it's no damn good, rain on the grain, you know that, rain in Maine probably, but not on the grain.

Senator EXON. I assume it would blow out.

Mr. GRAFF. That's right. I don't know what happens to them but it's a one-shot deal and they are going to be gone.

Senator PRESSLER. Just a brief final question for one of the two farmers from the smaller communities who might be able to reflect upon what would happen in those grain elevators. I haven't quite gotten to that question yet, if we had this total deregulation we are talking about.

Bob, up in your area near Strandburg, do you have a reaction there? Do you ship to a small grain elevator?

Mr. WEBER. I would like to give some testimony. My testimony might refer to some of this.

Senator PRESSLER. I don't know how our time is coming. We can put them in the record.

Senator EXON. It looks like fairly short testimony. Why don't we go ahead and hear it?

Mr. WEBER. I am Robert Weber. I own and operate a family farm near Strandburg, S. Dak. I am president of the Grant County Farmers Union. Senator Pressler and Senator Exon should be commended for holding these series of hearings.

Increasing fuel costs, trucking strikes, and agriculture movement emphasizes the fact that this Nation is facing a farm income crisis of major proportion. The family farm operators, particularly young farmers struggling to get established are threatened with financial

ruin unless energy, transportation, and some of our inflation problems are corrected.

The railroad situation in South Dakota is probably the poorest in the Nation, as far as we are concerned in northeast South Dakota. Today the average income per mile per year for railroads in South Dakota is $30,000. The national average is $140,000 per mile. In my opinion, two main line railroads east and west across South Dakota with a national hookup would help solve some of our transportation problems and bring up their income to the national average. Branch lines will be taken over by the trucking industry. It's been proven that the railroad is more economical on long hauls while trucks are more economical on shorter hauls and can deliver products to a point.

Loss of the Milwaukee Railroad to the Big Stone powerplant could triple the cost of electricity, if coal had to be hauled by truck. Also it's estimated that the closing of the Milwaukee would cause a $200 million loss to the granite quarries and agricultural industry in this area.

Since 1921, the United States has spent in round figures $500 million on highway construction, $42 million on airports and airlines, $21 million to develop and maintain highways, but only a small fraction of this on railroads.

We need to refocus our transportation expenditures on areas where the public will benefit the most for the funds appropriated.

I commend Senator Pressler and Exon for supporting regulation to reduce regulation on trucking, but I believe it would be a mistake for South Dakota to totally deregulate trucking in South Dakota. On the energy problem I have a little I would like to talk on which refers also to transportation. Our large oil companies last year reaped the greatest margin of profit on record. Still they say they need more profit for research.

It seems though most of the research they have done has not been used for research but has been mostly purchases of other industries like the recent purchase of Montgomery Ward by a major oil company. The Energy Department in Washington, D.C. says oil companies must have the cost of production. But last spring the American agriculture movement, when asking the cost of production, was told to go home, that they had a good year last year.

If the Department of Energy wants to allow excess profits for research, then Congress should require a percentage of this profit for the use of building ethanol plants throughout the Nation. Three plants the size of the one being built in Rapid City would use 50 percent of the wheat produced in South Dakota. The wheat byproduct to ethanol can still be used with 60 percent for animal feed and 40 percent for human consumption.

So the food shortage that the consumer is led to believe does not exist with the production of the ethanol plants using wheat for the production of gasohol.

Whatever portion of our own gas we can produce within our own State will not have to be hauled over highways. Whatever portion of our wheat that can be used here will not have to be hauled over our highways. This I think will somewhat relieve the transportation problems in South Dakota. I do not believe there was a gas

shortage in 1973, and I don't believe there is a gas shortage now. Maybe if all profits over a fixed amount had to be turned over for production of ethanol to produce gasohol we would find gas overflowing in our tanks.

On a quarterly basis America imported 40 billion barrels more of oil during the first quarter of 1979 than was imported during the same period a year ago. At the same time American motorists were not using any more gasoline than they had a year earlier. In April 1978 they used 2-percent less.

In my opinion, oil companies are deliberately withholding gasoline from the dealers to create a shortage and bring up the price of gasoline.

I thank you.

Senator EXON. Representative Weber, thank you very much. Specifically with regard to S. 796, the Railroad Deregulation Act of 1979, are you in favor of or do you oppose it?

Mr. WEBER. I oppose S. 796 and I think deregulation of the trucking industry would hurt the State. I am more concerned with keeping the railroads, at least two lines across South Dakota.

I think it's very vital that we have railroads in the State of South Dakota, because we can haul our commodities on long hauls cheaper with railroads. But I do believe trucking is needed in the State for short hauls.

Senator EXON. Thank you very much.

Do you have any questions, Senator Pressler?

Senator PRESSLER. I don't think I have any further, unless we have overlooked some point. Let me say to all of you that if you have some great ideas, put them on paper and I'll get them inserted into the record or submit them at least.

Unless we overlooked something, I think I have asked all the questions that I have.

Senator EXON. Are there further statements from other members of the panel who have not had a chance to testify.

VOICE. I have got something on a somewhat different tack than anyone's talked about this morning.

Mr. GRAFF. Before you get started, a note was handed to me that I presume that your question you asked me was that the trucking was cheaper than rail. On this 6-month average.

Senator EXON. Yes.

Mr. GRAFF. The rail was cheaper than the trucking.

Senator EXON. OK. In other words in your testimony you stated that it cost more to ship by trucks than by rail. Is that right?

Mr. GRAFF. That's right.

Senator EXON. That was my question. When you answered, I assumed, that I didn't hear you correctly. The point that you made, which was an actual example from your company, showed that trucking costs are continuing to go up.

Thank you.

Mr. FRIEBERG. My name is Bob Frieberg. I came at the request of Len Cimple. I am here to represent the Napa Platte rail users, a group of farmers and shippers interested in trying to retain the Napa Platte branch line. My testimony is very specific and is directed at S. 796, particularly section 121, because that is the area

that I have had some experience in as an area of abandonment and discontinuance of service.

I have a statement which I hope will be included in the record.

Senator EXON. Without objection we will accept the full statement.

Mr. FRIEBERG. I think there is at least one very good provision in the proposed amendments which would permit abandonment within 30 days if no one objects. I think all of us who have been involved at all with this recognize there are some rail lines that are not viable, that no one is concerned about retaining.

Under those circumstances, I think it has been unfair to require the railroad to go through a rather prolonged and expensive procedure.

Beyond that, however, I think these changes create a very unrealistic time frame for local people trying to retain service, particularly on branch lines.

A 10-day period, for example, to offer to purchase or subsidize the line is meaningless in a State like South Dakota. To expect sale or purchase negotiations to take place in 100 days is not fair to the purchaser.

By any arbitration before the ICC, I believe it is going to insure that no negotiated sales are going to be made except on the railroad's terms.

Prohibition of sale within 5 years to anyone except a selling carrier once a purchase has been made is going to severely handicap, if not eliminate, the possibility for local groups to secure financing in order to assist them to carry out the purchase.

Requirements that the offeror be financially responsible at the outset may mean that only the States are going to be able to maintain service.

The requirement that the purchase be at "fair market value when used to provide rail service" I think adds an unknown burden to local efforts to acquire rail facilities that I can't assess other than to say I think it is going to make it even more difficult.

I recognize the problem with too much regulation. But I think we are losing sight of the fact that rail regulation was necessary to protect local shippers and local people from giant and remote companies.

Under the proposal, I think only the most lucrative lines are going to remain. There is nothing to prohibit the abandonment by neglect that Jim Graff was talking about.

This legislation, it seems to me, as proposed, increases the rewards from a decision to defer maintenance, decrease sales efforts, and minimize services to any areas which the railroads decide they want to eliminate from their systems.

Perhaps the current methods of abandonment need some refinement, but much of this proposal, it seems to me, is a capitulation to the interests of the railroads and is going to be against the public interest.

Finally, I think it is important to consider the impact this proposal has upon the 4-R Act in aiding the States in maintaining services the railroads don't want to continue.

The 4-R Act, as you know, established a program for assistance under a set of rather strict standards. Under the present law and

regulations governing that assistance, a State probably could not qualify for branch line assistance under the proposed legislation.

The one experience we have had in South Dakota demonstrated pretty clearly that it took us 22 months to get to the point where we could make a firm offer for purchase of an abandoned branch line. To now put on limitations of 10 days to make the offer, 100 days to complete proceedings, is absolutely unrealistic.

We may need to shorten the time and reduce the expense, but it seems to me we have to find a happy medium somewhere between impossibility for local people and unfair burdens on the railroads.

I have a very difficult time finding correlation between the kinds of public assistance provided in the 4–R Act and the sort of abandonment discontinuance system we would have under the proposed legislation.

I fear we are paying lipservice to subsidy as options and the act puts us back to the good old days where railroads called the shots on abandonment.

Finally I would like to remind the committee that abandonment, it seems to me, is irreversible. If right-of-way is abandoned and the ties and rail are torn out, at present costs I don't see any possibility that those lines are ever going to be replaced.

It seems to me that too little attention is being given to finding ways of making branch lines profitable and too much effort is being made to hasten their demise.

Thank you very much for letting me be here.

[The statement follows:]

STATEMENT OF ROBERT B. FRIEBERG

My name is Bob Frieberg. I am a lawyer and practice in Beresford, South Dakota. I am here today on behalf of the Napa-Platte Rail Users Association, which is a group of farmers and shippers attempting to retain rail service on the Napa-Platte branch line owned by the Milwaukee road. I am also involved in other rail cases in South Dakota. My brief remarks today will be principally in the area of abandonment.

Section 121 of SB 796 makes some very drastic changes in the procedure for abandonment. Some changes appear to be good, but in the majority of instances I believe they favor the management decisions of railroads and cripple the efforts of the states and shippers to retain service.

SB 796 requires approval of abandonment by the Interstate Commerce Commission if no objection to an application is filed within 30 days. This is a good idea. We all recognize that some rail lines are economically viable and there is no good reason for their existence. If the local people have notice and a 30 day period in which to object, I believe they are adequately protected. The railroad is permitted to discontinue an unnecessary service, and should be satisfied.

Beyond this, however, the changes create a time frame in which it is almost impossible to do anything but abandon branch lines as quickly as the railroads decide they want to abandon them. The numerous limitation periods in the legislation are not realistic. A ten day period to offer to purchase or to subsidize is meaningless in a state like South Dakota. To expect sale and purchase negotiations to be completed within 100 days is not a fair rule insofar as a prospective purchaser is concerned. I believe that binding arbitration before the Interstate Commerce Commission assures that no negotiated sales will occur, except on the railroad's own terms and conditions. Prohibition of sale within five years to anyone except a selling carrier severely handicaps the local effort to finance purchase of all or a portion of a line. Requirements that an offeror be "financially responsible" may mean that only a state or political subdivision can use this means of preserving rail service, since efforts by local groups to raise significant financial resources will take more than ten days. The requirement that purchase be at "fair market value when used to provide rail services" adds an unknown burden to local efforts to acquire rail facilities.

I do recognize the concern with too much regulation that prompted the sponsorship of this legislation. It must not be forgotten, however, that regulation of the rail industry was prompted by the need to protect a public dependent upon this mode of transportation from remote and giant companies. Quite clearly only the most lucrative lines will remain. There is nothing to prohibit abandonment by neglect. This legislation increases the rewards from a decision to defer maintenance, decrease sales efforts and minimize service to any area which a railroad desires to eliminate from its system. Perhaps current abandonment and the related subsidy or purchase options need refinement, but much of the current proposal is tantamount to capitulation to the demands of the railroads and against the public interest.

It is also important to consider the impact this proposed legislation has upon current federal law providing assistance to the states to lessen the impact of rail abandonments. The 4R Act established a program of aid to the states under certain conditions and subject to rather strict standards. Under the present law and regulations governing such assistance, a state probably cannot qualify for federal branch line assistance within the strict time limitations contained in SB 796. Our own experience in South Dakota demonstrated that it took 22 months to reach the point where a firm offer to purchase an abandoned line could be made. I believe that a 10 day limit to offer and a 100 days limit to complete proceedings will emasculate the federal assistance program for retention of branch lines. We do need to shorten the time and reduce the expense involved in the program, but there must be a happy medium somewhere between impossibility for local people and unfair burdens on the railroads. I cannot find a correlation between the two federal objectives in the proposed legislation. The proposals in SB 796 really seem to be relieving the railroads of the responsibility of dealing with the states and local groups. While paying lip service to subsidy or purchase, the act puts us back to the good days where the railroads called the shots in matters of abandonment and discontinuance of service.

Abandonment is an irreversible decision. Once abandonment is authorized and a line removed, it is quite clear that replacement will not occur. The expense and time involved in acquisition of right-of-way and construction of new track preclude the probability of replacement. In days of short energy and overburdened highways it makes little sense to scuttle the most efficient mode of bulk transport. Too little attention is given to finding ways of making branch lines profitable, and too much effort is being made to hasten their demise.

Senator EXON. Mr. Frieberg, thank you very much for your excellent testimony. I have a question or two.

Do you live in Tabor?

Mr. FRIEBERG. No. I live in Belle Fourchet.

Senator EXON. I was interested because last time I spent any time in Tabor was 40 years ago, in 1939. I got my first hit in 4 years, and then I dropped a fly ball in the outfield and allowed Tabor to win. That was the first, and last, time that Tabor has beaten Lake Andes in baseball that I remember.

Mr. FRIEBERG. Tabor still sponsors the biggest celebration in South Dakota.

Senator EXON. I am familiar with that. Had there been a Frieberg on the baseball team in Tabor, we would have had a ringer.

Toward the end of your testimony you said that you thought that there was not enough time and attention being paid to making the branch lines more profitable and too much time and effort given to tearing up the tracks and abandoning the lines. That was a good point. And, of course, that has come up from time to time in our hearings in Washington.

Do you have any specific suggestion as to what could be done? Sometimes we think just passing a law pro or con is going to solve a problem, and history has shown that sometimes that does not work very well.

On the branch lines in South Dakota I know that the State has come in and provided some money for some of the railroads in trouble in order to improve tracks and buy equipment. In your opinion, has there been enough done by the shippers on the branch

line in trying to band together? Do you suppose there is a manufacturer who is located on a branch line and could come up with partial payment or something similar to what captive shippers provide in the trucking industry by buying rigs or trailers and then leasing them out?

Has much of that been done, to your knowledge, in transportation? I ask you this because you are obviously knowledgeable in this area and have done some studying.

Mr. FRIEBERG. I know of one substantial effort made in that regard which appears is not going to succeed, but not for that reason.

In South Dakota right now the effort has been principally the Federal money and what local shippers and farmers have been able to provide. There has been essentially no State money directly into the problem of trying to maintain rail service.

I personally think in States like South Dakota this is probably the way things are going to have to go. I think you have to appreciate how long it takes in a bunch of small towns to raise several hundred thousand dollars to even match what the Congress may be appropriating for this term.

My concern is that to cut this time frame down so drastically is just going to make it impossible. We are just not going to have that option.

Senator EXON. I think that your point is well taken. Unless we assume reasonable time limits, however well intentioned a program might be, it is not going to work out.

Mr. FRIEBERG. That's correct.

Senator EXON. Thank you.

Senator Pressler?

Senator PRESSLER. You strongly oppose rail deregulation. Would that be correct? For what Congress is talking about?

Mr. FRIEBERG. If I have got to pick pro or con, I am opposed to it, that's right.

Senator PRESSLER. I know that you have done a lot of work in our State on this issue of railroads and abandonments. When a railroad is abandoned, what happens to the local transportation? Is it replaced by local trucks? Are they local people that spring up? Do they haul the grain to the next town and unload it? What is the relationship?

Mr. FRIEBERG. Basically that is how it moves. Someone mentioned today that the farmer will tend to move a lot of it himself. Some of the studies that have been done indicate that in the small towns where they lose their rail service, there is a definite severe economic impact. Somebody said you know if you are going to put your beans or your corn on your truck, you might just as well go to Sioux City or Omaha with it as go back to your local elevator.

So I think that is the first place we are going to see impact. The place to which the farmer goes to sell is going to change.

Senator PRESSLER. Do you have a comment on that?

Mr. RASMUSSON. Yes, sir. I am Jim Rasmusson. I have an elevator in Billen, S. Dak., that 2 years ago had our branch line abandoned.

In regards to that particular question, the impact in our community was, I would say, most damaging to the local producer, agricultural producer, the farmer.

For example, Spink County, where Doland is located, has the reputation for being the largest producer of rye in the State of South Dakota. South Dakota is the largest producer of rye in the world. This past week, for example, the difference in market price on rye in Minneapolis between truck and rail was as high as 52 cents a bushel, being worth more by rail.

This is caused by the desires of the buyers in Minneapolis. They would rather receive this particular commodity by rail. As to why, I can't comment.

We lost our railroad in Doland about 3 years ago. The track is being torn up at this time. It hasn't hurt my business as such as to how many bushels I can handle, I can ship by truck, but it has cut the margins I can take on rye and has drastically cut the money the farmer receives for this product.

This is not only in the area of rye; it is all grains.

Many of our buyers in the terminal markets prefer to receive their commodities by rail. One reason: They sometimes reconsign the cars to other locations. For example, I will ship a carload of wheat out of Clark, sell it on the Minneapolis market. I will pay freight on the Minneapolis market, but the car will go to Topeka or Atchison, Kans., or Dallas, Tex.

This is one advantage of going by rail, whereas by truck it is not done this way. Your truck, you have to generally sell the grain before it is shipped. It goes to a specific location. Because there is a driver involved, it has got to get there as soon as possible. But the effect of the loss of railroad was severe.

We have a railroad in Clark. We don't have rail service in Clark, averaging two to three cars a month.

The principle of having many terminals scattered around the State I conceive as being a very viable principle. I think that is where we are headed.

Senator PRESSLER. I have no more questions unless someone has some general comments.

Senator EXON. I have a question in regards to what you were testifying about, Jim. You did not say specifically whether or not you are for or against the legislation we are considering on deregulation of railroads.

I would assume from your testimony that you think it would not be a good thing?

Mr. RASMUSSON. No, sir. I personally, in regards to my business, I would be in favor of deregulation. Now, I have received criticism about this. I have talked to several other elevator men, people in the grain industry in Minneapolis, trying to form an opinion.

The general consensus I get is in favor of deregulation to a certain point. Get rid of the majority of the ridiculous regulations that are saddling our transportation systems.

For example, you were talking to a previous witness about shipping a package from Washington to Lake Andes. The fellow from UPS, he stated there would be very little difference in the cost of shipping that package. I think he probably should have mentioned

that UPS is going to ship that package at a profit and parcel post is not. That is the free enterprise system.

I think it would work along the same lines as our agricultural commodities in southeast South Dakota.

Senator EXON. To follow up on what you are saying, I would guess that if the proposed railroad deregulation bill were passed, it probably would not make it possible to build a rail line back to Doland?

Mr. RASMUSSON. Right. I think we are going to lose our railroad whether it is deregulated or not.

Senator EXON. I think that this concern was shared by another witness. Once a track is torn up, no one seems to believe it is ever going to be put back.

You have addressed a concern which we have heard in some of the other testimony we have received, which is that most of the railroads in the United States, as I said earlier, are in serious financial condition. We have to try to do something to keep them in business because they play an important part in America's transportation network.

There are those of us, of course, who are concerned about the fact that if we do go ahead with this bill as presently written, and I might suggest that this bill as presently written is never going to get reported out of the Commerce Committee, let alone passed by the U.S. Senate or the House of Representatives. We certainly need the suggestions of all of you as to how we can we try to work together with the railroads, who are in great difficulty.

And there is no question that many of us oppose the elimination of 1 mile of track anywhere because we do not like to see that service stopped, especially with regard to agricultural products.

What has happened in your particular area, if I understand correctly, is that a farmer is able to move the product to market but must take much less for it.

Mr. RASMUSSON. Definitely.

Senator EXON. Now we are to the crux of the situation, which has not been addressed yet. Who is responsible for making sure that we have the kind of transportation which most of us think we need to move those products?

I think at least one member of the panel has said that we have to face up to the problem of injury to the agricultural community. We must insist on a higher price for the products which the farmers produce out on the farm. Are you saying that we are entitled to a higher price when it goes into the marketplace? Would you generally agree with that?

Mr. RASMUSSON. No, I wouldn't, if I understand it right. I would say the price we are receiving for our commodities today are as a result of our free enterprise system. We are the largest producer of agricultural commodities in the world.

As the gentleman said, 1 farmer produces enough food to feed 57 mouths in the world. That figure is going to increase.

As to whose responsibility it is going to be to see that these prices are raised, it could be put anywhere. It could be put on the farmer to produce less. Lower the supply, increase the demand. It could be put on the Government, as has been suggested, the Com-

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modity Credit Corporation, to control all export in the United States. Take it away from the independent grain companies.

It could be put on, really, our transportation system. The badness of our transportation system now has increased the cost of our commodity to the final buyers, but it has not increased the cost or the price received by the producer.

Our transportation system, I think, is a problem that started 30 years ago. I admire people like you that are going to take many, many hours of your time to try and solve that problem that almost looks unsolvable.

Senator EXON. I am not sure we totally disagree. My point was that obviously it is going to cost more money to haul the products of the American farmer to market if he uses rails because the railroad industry is going bankrupt in the United States today. We are pouring millions and millions of dollars into the rail transportation system through Government subsidy today, and we have not cured anything.

Mr. RASMUSSON. Right.

Senator EXON. You are certainly familiar with the situation of the Milwaukee Road right here in South Dakota. My point was that it seems that we are going to have to raise our sites somewhere along the line on the cost.

It costs so much to produce a bushel of wheat. It costs so much to transport that bushel of wheat to where it is consumed, either in America or overseas.

I would like to say one thing, though, that we keep throwing around the free enterprise system and I think we are all for the free enterprise system. But I do not believe that there are many people in this room today who believe that the free enterprise system is working as far as agricultural products are concerned today. Because for many years we have had a philosophy in the United States of America, which I think it totally wrong, that has allowed for the continuance of an international cheap food policy.

It does not make any difference how many bushels of any product we ship to market, whether it is here or whether it is overseas someplace. But, more importantly, if we are selling 60 to 70 percent of the wheat produced in the United States in the international marketplace at below the cost of production to the American farmer and his transportation costs in shipping the wheat to market and even overseas, then we are not getting anywhere. This means that the free enterprise system is not working as far as the American farmer is concerned.

I hope you agree with that.

Mr. RASMUSSON. No, sir, I do not. Our international cheap food policy is not set up by the farmer or by the producer. It is set up by our Government. And the Government is into the free enterprise system.

Senator EXON. My point is that the free enterprise system is not working today because a farmer in South Dakota who sells a bushel of wheat is not able to get the price to which he is entitled for that wheat with the present structure. There is no way that he is going to be able to sell it in Switzerland today at a profit when the Swiss Government is subsidizing its domestic wheat producer at $11 a bushel. There is no way he is going to sell it in the

Common Market countries where they are subsidizing their domestic wheat producers to the tune of $6.50 to $7.50 a bushel.

My point is that the free enterprise system we talk about so much is not working today to the benefit of the basic food producers. Don't you think that is true?

Mr. RASMUSSON. No, sir, I don't, because I don't think it is a free enterprise system with the food producer. The Government has tried to establish policies and procedures of an international cheap food.

Senator EXON. I am trying to agree with you, but you say no.

Mr. RASMUSSON. OK, I am sorry.

Senator EXON. I don't think we disagree, but maybe we do. Any more questions?

Senator PRESSLER. I see a hand over here.

Mr. GARRINER. I am Jerry Garriner, a wheat farmer. I wanted to comment on the freight prices. Quite often, the price of freight will equal the price of grain. Equipment, I have in mind.

Of course, I am for deregulation, period. I don't care what it is. Because, as you said, free enterprise isn't working too well, but it would work much better if it didn't have to work mixed and mingled with regulations. I can't—we have one over-the-road truck. I can't haul a load of cubes back to my neighbors. I can haul his grain in and have it cubed, but I can't take the cubes back because I don't have a permit.

That is utterly ridiculous. I feel that railroads should be deregulated, but it is imperative the trucking industry be deregulated along with it. Otherwise, we will have no competition for them.

Now, if these fellows haul machinery that unload, say, $1,400 from Des Moines, if they had some fair competition, they would be willing to load these gentlemen's wheat off the elevator or load my wheat off the farm.

As it is, we have to hire an independent trucker because they are the only ones that are interested in the kind of freight we can afford. All right. They get over here. If they can't haul corn or something back, they cannot haul a processed commodity. Therefore, we have empty and half-loaded trucks running up and down the highway doing absolutely nobody any good.

I am for strong free enterprise. But we cannot be free enterprise and then regulate, pick one industry and regulate it so tightly as the transportation industry is. You can regulate railroads and eventually these spurs are going to go.

No matter how much you regulate, you cannot regulate a profit into a business. That is what they have to have to run, is a profit.

I thank you very much.

Senator EXON. Larry, go ahead.

Senator PRESSLER. I do have a question, a real brief one to illustrate a point. That rye, we have learned that South Dakota is the leading rye producer in the United States. When that rye leaves Doland, S. Dak., presumably it goes by truck now. Where does it go to?

Mr. RASMUSSON. Generally Minneapolis-St. Paul, or along the river south of Minneapolis.

Senator PRESSLER. From Minneapolis where does the rye go, or is it processed there?

Mr. RASMUSSON. This, I can't answer. I assume it is processed there. There are a couple of flour mills that I have shipped rye to right there in Minnesota.

Senator PRESSLER. If it is exported, does it go to Dubuque to get on the barge, or get on the barge in Minneapolis? Does it tie in with rail in any way?

Mr. RASMUSSON. What experience I have had with it, I have seen it where it has been tied in with rail in Minneapolis, and taken down river to a barge terminal to be loaded out to the Gulf or tied in with rail to be loaded at Duluth on ship.

Senator PRESSLER. Before it reaches its destination, we are going through truck, rail, and barge?

Mr. RASMUSSON. Very possibly, going through all three.

Senator PRESSLER. The relationship between the three in this whole deregulation scenario is critical, I suppose, if we are going to deregulate one, maybe we would have to deregulate all.

Do you have any feeling about that?

Mr. RASMUSSON. That, I couldn't comment on.

Senator EXON. Gentlemen, thank you very much. I am sorry, sir, I guess that we have not heard from you.

Mr. PATNOE. I am Lawrence Patnoe, producer-shipper from——

Senator EXON. Lawrence, I apologize. I thought that we had heard from everyone.

Mr. PATNOE. Being as I got up at 4:30 this morning, I should say something.

Senator EXON. You should.

Mr. PATNOE. I am Lawrence Patnoe. I am a producer and shipper on the elevator board at Clark. To start off with, I would say no to deregulation of truck or rail, either one, at this time.

I think Congress and the President have got to solve this energy thing. It is more important and crucial at this time. But they are both tied together so closely that they have to be worked on somewhat together.

A truck can haul only one-fourth as much as a hopper. A hopper can haul only about one-eighth as much as a barge. So they have to be worked on together.

This is what I would direct Congress and the President to do.

I see in the report the President sent to Congress on March 23 or 21, something like that, on rail deregulation, he donated three pages to the trucks. They must have been squeaking real loud. He donated 10 on June 21.

But there are a couple facts that haven't been brought up this morning.

The President said in his report that they would take care of small towns for truck transportation. Who is going to build the roads that will move these trucks? They are rapidly tearing the roads up. It is a 10-inch surface on interstates and that will not hold up, they tell us.

How are we going to get the roads built up to the small towns to carry this load?

As a producer, I am paying twice on transportation. I am losing money by shipping by rail on a truck, and I am also paying higher taxes to try to keep the roads up, so I am paying double.

In 1973 I sent a letter to the Congress. It was in turn sent to the Department of Transportation and ICC.

At this time, somehow, I thought something should be done for our rail. I am a strong believer in rails. I said at this time it should be a joint effort with the shippers, the revenue sharing moneys, and the States should also put in some moneys because they voided themselves of this problem at that time.

They said we can't railroad abandonment with the railroads' own tax money. So they wouldn't do anything.

But at that time in 1973 I thought it should be a joint effort.

Is the highway plan similar to this, a joint effort between three different revenue outfits?

How about the Iowa plan?

Senator EXON. Iowa has not necessarily been part of a joint effort. Traditionally Iowa has been the barrier to the entry of trucks. From Nebraska we bring trucks across Interstate 80. They get to the border and can not move unless they go through Missouri or go north through Minnesota.

But I think generally speaking that the answer to your question would be yes.

Mr. PATNOE. Apparently nobody was very excited at that time because all three of these—I got my letter to Congress and ICC and Department of Transportation (DOT). It took this long for them to wake up.

I have been talking this railroad thing up since this time, and I tell you: I don't think the Congress is getting a true picture from the railroads. I talked to them several hours trying to determine—I was in on the abandonment from Clark to Watertown, Doland, Jim's area.

Senator EXON. What road is that?

Mr. PATNOE. Chicago Northwestern.

I tried to find out what it would cost to upgrade this track per mile, tried to get an estimate from him. He wouldn't tell me or couldn't tell me. But he could tell me every bushel that was generated along that line from Spink County clear over to Codington County, how much was used for domestic use, how much was fed to livestock and how much was exported out or shipped out. But he couldn't tell me what it would cost to upgrade a mile of railroad track.

So I firmly believe that you people aren't getting the true picture. With all due respect, I do believe that.

I have several other things, but those were the most important things and I thank you.

Senator EXON. Do you have written testimony which you have not fully given and which you would like to submit for the record, or were your remarks all that should be included in the record?

Mr. PATNOE. I had a statement, but time ran out and this is just fine.

Senator EXON. Your statement, without objection, is accepted as part of the record.

Thank you very much for your testimony. It has been helpful.

[The statement follows:]

STATEMENT OF LAWRENCE PATNOE

In reference to your request of a statement from me on rail and truck deregulation, I submit the following:

In a word I would say "No" to deregulation of rail or trucking at this time. The President and Congress have got to get their act together on a National Energy and transportation policy because the two are so closely tied together setting the nation's priorities first. Let's solve our energy problem now or there won't be any trucking or rail service to worry about.

When making the decision of what mode of transportation is most efficient, there is no contest. A hopper rail car can haul about four times what a truck can, a grain barge can haul eight times as much as a rail car.

It would seem because the truckers are making the biggest complaint right now, the President donated ten pages in his proposal to Congress while in March he only gave three to deregulation of the railroad. I am not sure that the trucking industry wants to be deregulated when they can make 29 percent on money invested.

Rail service to our rural and grain producing areas are essential we cannot survive with trucks hauling our produce to market and overseas shipment. Deregulation will not make for cheaper hauling, but for the small shippers it may mean no transportation at all. The truckers will want only the long hauls, fully loaded, eventually eliminating small truckers.

Maybe railroads need more supervision rather than less. When a son inherits a farm and equipment from his dad and loses it, he is labeled a bum, our railroads have done the same.

The railroad doesn't have the financial backing or credit to fix their ailing lines so Uncle Sam will have to underwrite their needs so there will have to be regulation of some kind.

Senator EXON. One of the reasons for our being here is to receive the input from you and others. This testimony is going to be helpful to Senator Pressler and myself and other members of the committee who have to assess the merits of S. 796. Many of you have come, as I know, long distances. We appreciate your being here very much.

We are going to proceed and delay lunch. We hope that you can rearrange your schedules, if you need to. We plan to hear next from transportation labor. Before we break for a short lunch, we will also hear if possible from a panel of railroad people.

At this time I will call on transportation labor, including Leon Fenhaus from Rapid City; Jack Jackson, Huron; and Clem Weber from Sioux Falls.

Senator PRESSLER. I would just like to take this opportunity to say that if any of you have some written ideas that you would like to submit to my office upon thinking about this for a day or two, I will be glad to submit it for the record.

I know we had more requests for witnesses than we had time. This is of great concern to South Dakota. If you do have testimony, just bring it here and I will do my best to get it into the record.

Senator EXON. Thank you for coming. Would you please identify yourself and proceed with your testimony.

STATEMENTS OF LEON FENHAUS, BROTHERHOOD OF M/W EMPLOYEES; JACK JACKSON, UNITED TRANSPORTATION UNION; AND BARTLEY O'HARA, ATTORNEY, TEAMSTERS

Mr. O'HARA. I am Bartley O'Hara, legislative attorney for the Teamsters Union. Mr. Weber was unavoidably detained this morning and was unable to make it. I spoke with him shortly ago and he cannot break away from a commitment he has had. I would like to submit his statement if I might.

Senator EXON. Without objection, we accept that statement for the record.

[The statement follows:]

STATEMENT OF CLEM WEBER, SECRETARY-TREASURER OF TEAMSTERS LOCAL 749

Good Morning. My name is Clem Weber, Secretary-Treasurer of Teamsters Local 749 in Sioux Falls, South Dakota.

We appreciate the opportunity to appear here today to address ourselves to the problems of deregulating surface transportation, particularly railroads.

When concerns are raised about the condition of our existing transportation law, it is our view the reasons for these laws should be assessed.

That is, if some particular interest group advocates deregulation, we ask what are the reasons for regulation.

The major reason for regulation is one of certainty: certainty of price; certainty of shipping and certainty of delivery.

1. *Certainty of price.*—As to price, a regulated system permits those who operate a mode the opportunity to present their costs to a government agency in order to establish a fair and reasonable rate.

In addition, such a system allows members of the public a chance to scrutinize these costs and bring overstatements to the attention of an agency.

2. *Certainty of shipping.*—In an area like South Dakota rail service is extremely important to those who wish to ship their goods to markets outside the state.

If a rail carrier refuses to take these goods, a shipper has recourse, through a system of regulation, to require carrier acceptance of these goods.

3. *Certainty of delivery.*—In our State, with a large number of small towns, this is perhaps the most important of the factors noted here, because the facts are that delivery to some small communities is unprofitable for carriers; and if there were not a system in place to require delivery, these merchants in these communities would either go without or pay astronomical prices for their goods.

Having described, in our view, the reasons for regulated rail service, we would then ask, why deregulate.

The answer, as always, is that we need more competition.

However, we believe deregulation would have the following effects:

1. *Price.*—Without adequate supervision, users of transportation would be at the mercy of a market where History has shown that today's bargain for shipping a product will be tomorrow's unconscionable rate.

2. *Shipping.*—Again, if a carrier is unable to make a profit the shippers product will not be picked up.

3. *Delivery.*—Likewise, goods will not be delivered unless the rate will make a profit.

If there is diversion to trucking, highway conditions, particularly state highways would also be affected.

Are there new ways to improve the system? Certainly, but they do not include dismantling the Interstate Commerce Act.

For example, there could be rate zones which are properly administered. Today a rate zone does exist in the law; but it has gone unused.

Beyond that, we have a selfish interest in maintaining a healthy transportation system: jobs.

Under deregulation, we believe many small and medium sized carriers will be forced out of business; and the people who work for these companies, some of whom are our members, will be without jobs.

In summary, deregulation will not be a benefit to South Dakota for the reasons noted above; and it will put many of our members out of work.

Again, we thank the committee for having us here today.

Mr. O'HARA. To summarize it briefly, the concerns we have are with those who are calling for deregulation, we should go back and examine the regulated system we have right now.

If there are areas there where matters can be cleared up, yes, there should be constructive steps taken by yourselves and agencies who administer these laws.

On the other hand, wholesale deregulation without having given thought to the consequences of it, we believe would be to the detriment not only of the public in general, but our members in particular.

Senator EXON. Thank you very much. I just have a question or two.

Are you then against S. 796 as it has been presented to the Congress?

Mr. O'HARA. Yes, Senator. I myself am not entirely familiar with all the terms of that proposed regulation, but I would note that probably the most talked about subject here this morning is abandonment of rail service.

The criteria set forth in here from just my own reading of it would pretty much carry the day for abandonment. If a carrier wished to abandon a service, the incentives are there for him to do so.

Yes, there are some matters in there that if a government or substantial user comes forward and objects, the carrier has the right to abandon the line, unless these people's objections are overcome.

However, the—when you get down into the fine print in the abandonment provision of it, in the analysis that was presented presumably by the administration, it says, however, if the Commission finds that the revenues generated by the service do not cover the costs of service plus an adequate return for the railroad, then abandonment must be approved.

That certainly removes the burden from the railroad and it puts it on the Commission.

I don't know. You can talk about the regulatory paperwork that we have in Washington today. I dare say a proceeding like this would fill this room with paper. And it would be over, as you mentioned earlier, a mile of track.

Senator EXON. We should all understand that if S. 796 is passed in the form presented to the Congress, most witnesses whom we have heard so far, including those who wrote the bill, agree, that the bill is going to give, rights to the railroads to abandon branch lines or any other lines as they see fit with very limited protection.

I think I that addressed this somewhat in my opening statement. And that is a concern, of course, which we all have, especially with regard to captive shippers.

Senator Pressler.

Senator PRESSLER. I just have a brief question here.

I saw the other two gentlemen in the room earlier this morning. I guess we have lost them. This question might be directed at the Brotherhood of Northwestern Employees and United Transportation Union, who are mainly railroads.

As I understand it, the Teamsters in South Dakota are mainly the United Parcel Service drivers and regulated truckers are usually Teamsters.

What other Teamsters are there in South Dakota?

Mr. O'HARA. In South Dakota, ironically, we have two members who are employees of the Milwaukee Road.

Senator PRESSLER. I see.

Mr. O'HARA. Some of the railroads, going back, were grandfathered when the Interstate Commerce Act was passed in 1935 and have trucking operations. And they will vary accordingly. We, I would say, in round numbers probably represent something on the order of 2,000 members in rail freight. Two of whom are residents of South Dakota and members of local 749.

Senator PRESSLER. Good. As you know, the questions we ask do not necessarily reflect our positions.

Mr. O'HARA. No, sir.

Senator PRESSLER. Maybe you can't respond to this, not representing the other unions, but it has been brought forward that some efficiencies and maybe the union's opposition to deregulation leaves us locked in.

Usually when there is a rail abandonment or if they sell a branch line as was pointed out at breakfast this morning, the company is obligated to find jobs.

Of course, people need job protection also. But we have also got to consider the union's position in this and we have to consider the employees' rights.

But the opposition or apparent opposition by the unions to deregulation, it seems as though we are locked into a situation where we have so many employees. If they want to change something, they have got to pay salaries to people who may not be working or they have to relocate them and so forth.

What is your response to that?

Mr. O'HARA. Our response to that and I may get some different points of view on that, but our response is that the worker-protective provisions, the so-called worker-protective provisions in your transportation industries, particularly in connection with deregulation, we think that you are just robbing Peter to pay Paul, because if that is put in there to salve the interests of the people presently employed, why take them out of their job?

Our view, on the other hand, and we have recommended legislation, now, it's in the trucking area, there are no requests for worker-protective provisions in there because we believe that if the recommendations that we have set forth, there will be plenty of job opportunities in the truck transportation industry under a responsible regulated situation and, therefore, there is no real need for worker-protective provisions if the people can get organized and get decent wages, hours, and working conditions.

Senator PRESSLER. Thank you. That covers my questions.

Senator EXON. Thank you very much.

Mr. O'HARA. Senator, if I might volunteer one more.

Senator EXON. Yes, certainly.

Mr. O'HARA. We wanted to stick pretty much to the rail side this morning because we were instructed by the chairman of the committee.

I think that we are riding on the crest of a wave here with respect to fuel costs. And I think that what we have seen with the price increase of diesel fuel just since January 1 of this year, that it's really in my opinion, or our opinion, it's going to have to be assessed very, very studiously in that the whole regulatory system is going to have to be looked at from that perspective, particularly in light of the increases we can expect from OPEC over the next 6 months.

Senator EXON. Thank you very much.

Senator PRESSLER. Thank you very much.

Senator EXON. We appreciate your coming. We are going to move ahead now with one more panel before we break for lunch.

We have Mr. Leonard Peterson, from the Waterway Association, who must leave. We would ask Mr. Leonard Peterson to come up at this time with the panel of railroads: Mr. Ray Merrill, Chicago, Ill.

STATEMENTS OF RAY MERRILL, VICE PRESIDENT, MILWAUKEE ROAD; AND LEONARD PETERSON, UPPER MISSISSIPPI WATERWAY ASSOCIATION

Mr. PETERSON. Thank you.

Senator EXON. Then immediately after lunch we will call the next panel, which was scheduled for 1:45, the farm and rail user organizations.

Mr. PETERSON. I am happy to be here, Senators, to express our concerns and our interest.

My name is Leonard E. Peterson. My appearance here today is on behalf of the Upper Mississippi Waterway Association by authorization of its executive committee with principal offices at 305 Osborne Building, St. Paul, Minn.

The association is a nonprofit organization formed in 1932 and dedicated to the furtherance of navigation and sound water resource management.

My business career, spanning the past 46 years, has been largely in transportation. In 1974, I retired from 42 years of service with Northern States Power Co., an electric and gas utility company, who's service area includes the States of Minnesota, South Dakota, North Dakota, and Wisconsin.

I was traffic manager of the utility at the time of my retirement, with responsibility for the transportation of coal to the generating plants as well as generating and electrical equipment for power plan generation and distribution.

During this time, I have seen a complete cycle in the transportation of a very important commodity, that of coal. I think a little history will illustrate intermodal characteristics of this bulk product.

In the early 1930's, coal was received from Ohio and Pennsylvania, shipped by rail to lower Great Lakes ports for water movement to Superior and thence by rail to Twin Cities powerplants.

The next major change was an all-rail delivery of coal from the States of Illinois, Kentucky, Indiana, Kansas, and Oklahoma.

That was a rather broad base of supply. During those years when the name of John L. Lewis was quite prominent, you needed a broad base. However, the next most significant change came about with a pattern that is still a very viable mode of transportation today.

The coal was purchased from companies with mines, mainly Illinois and Kentucky, moved by rail on short mileage to Mississippi River docks and then loaded for delivery to the upper Mississippi River.

The ability of the railroad to keep control of their cars and high utilization of equipment, plus the volume ability of the barges to handle the coal made for a very efficient intermodal transportation system.

In the early 1970's, due to both economic and the Clean Air Act, the utility went to the Western coal because of the low sulfur, and

made arrangements for the unit train movements to the Twin Cities plants.

These were 100-ton cars used in units of 100 cars. In addition to having this coal delivered to powerplants, there were also docks equipped in the Twin Cities to handle the transloading of this Western coal into barges for delivery to plants, not only in the adjacent area of the Twin Cities, but also south of Minnesota to utilities in other States.

In retrospect, I can only conclude that there has been a tremendous interdependence on rail-water movement of coal. This latest transition to unit train movement has also been a factor in powerplant siting, with the latest generating unit being located just north of the Twin Cities.

During the past 4 years, I was employed as a Twin Cities representative of one of the principal common carrier barge lines operating on the Mississippi, Illinois, and Ohio River system.

I retired from that position this past April. During my career in transportation, I have been active in numerous shipper, carrier, and professional organizations.

I am a registered Interstate Commerce Commission practitioner, having been admitted to practice in 1950.

We are very appreciative of the opportunity to present our views and especially our concerns at these special hearings on S. 796, the Railroad Deregulation Act of 1979.

At this juncture, I should probably give you a little background of our association. The association is an organization whose members are users of all modes of transportation, barge, rail, truck, and deep water.

Among our shipper members are the coal, fertilizer, grain, salt, steel and petroleum firms who rely heavily on bulk movement via water.

Yet, they may also be counted among the largest shippers by both truck and rail. The interest of the shipper members in our organization are largely river oriented, as there is a substantial movement of water-borne commerce.

In 1978, there was a total of 4,800 south-bound bargeloads of grain originated at the Minneapolis-St. Paul and adjacent ports that represented approximately one-quarter billion bushels of corn, soybeans, wheat, and other agricultural product grown on the upper Midwest farms.

This was an increase of 30 percent over 1977. Export farm products has estimated value of $684 million. In addition, barges moved substantial quantities of coal, petroleum products, fertilizer, steel, and sale upbound to the Twin Cities.

We are submitting with our testimony a statement marked exhibit A showing tonnages by specific commodities both inbound and outbound in the St. Paul district for the year 1978 as prepared and published by the Corps of Engineers.

Barge lines, trucks, and railroads are both competitors and are yet interdependent for the movement of bulk commodities which certainly holds true for grain.

Shippers and receivers of these commodities, however, evaluate their respective services in terms of availability, cost, and transit time.

The seasonal character of navigation on the upper Mississippi River makes reliance on one mode of transportation utterly impossible. There can be no truck-barge movement of grain when the river is frozen nor can there be transloading of Western coal into barges for delivery beyond the Twin Cities.

Incidentally, in 1978, there were 2 million tons of Western coal transloaded in the Twin Cities for transport by barge beyond the ports.

The upper Mississippi River can only be utilized for approximately 8 months of the year, being closed to navigation the remainder of the year. Floods and high water can bring barge transportation to a standstill. And deciding which mode of transportation is available or most economical to use is the very essence of traffic management.

Perhaps many would be familiar with the—another example of a coordinated grain movement, the Iowa Department of Transportation have a rail movement via the Milwaukee in multiple cars to a loading dock on the Mississippi where it is then transloaded into barges for destination at the gulf.

With the various industries represented among our membership, and their interests in transportation by all modes of carriage, it is impossible to take a completely uniform stand on the question of deregulation of the railroads.

In fact, many of our companies may already have poll positions supporting deregulation. However, one of the important issues is to define regulation. Should it be relieved of onerous regulation or returned fare, if that State ever existed?

The stated goal in 1976 is openness in the marketplace, or regulation of competition. Does the bill do that or does it insulate one mode of transportation from competition from other modes?

If intermodal competitiveness is diminished, how do shippers fair in that climate.

Referring to sections 102, 104, and 106, does this make it possible for railroads to refuse to enter into joint rail-water rates even if they are at a lower cost? Would it restrict shippers originating movements via rail to only an all rail movement?

If statutory protection on reasonableness of rates is eliminated, where does that leave shippers who are interested in the transportation of bulk commodities at the lowest possible cost to domestic or international destinations? Or for that matter, what does it do to the wheat farmers in the Dakotas? What is the judicial test for relief from an unduly discriminatory rate structure for the purpose of suppressing competition?

Up to this point, I have only expressed concerns from our members in the form of questions? What about recommendations? At the risk of getting into a complex subject of which I have little expertise, I can only urge that the antitrust laws governing competition among industries, including the modes of transportation, be carefully analyzed so as to preclude a return to the largely unregulated status of the Nation's early history of railroads.

Any regulatory review that does not address itself to the question of undue regulation and prejudice only creates problems for the industry. It is not the competition between modes of transportation that is at stake in S. 796, but the potential for gouging

shippers through a wide range of alternatives that become possible under restrictive competitive warfare.

We would hope to retain the present statutory language of sections 2, 3, and 4 of the act for shipper protection.

Let's not be lulled into a hoped-for reduction in transportation costs emanating from the deregulation which could eliminate intermodal competition and result on long-range higher transportation costs. There has been too much regulation of the transportation industry.

However, we should have also learned something in 92 years of regulation of interstate commerce. Just as the present state of older regulation was gradual, so should the corrective measures come about.

Senator EXON. Mr. Peterson, thank you very much. We have accepted your full testimony into the record.

If I understand, basically what you are saying then is that deregulation over a longer period of time possibly might be helpful to the overall transportation needs of America. But the mechanism and the time provided under the bill would, in your opinion, not be good for the overall industry.

Mr. PETERSON. I would be concerned about the protection features contained in the present bill.

Senator EXON. Thank you.

I have no further questions.

Senator PRESSLER. I have one brief question you may wish to answer for the record later. It has been argued that the rail deregulation bill gives the railroads a wide amount of operating flexibility that could actually result in undercutting or sharpshooting a water carrier's operation.

What are your observations on this issue of possible sharpshooting?

I have a little map here that shows me how if, under total deregulation, it would be basically offering a cheaper route. I suppose maybe water carriers might better do it against railroads if they were strong enough.

If you have a brief answer, you can give it now, or you may want to submit something.

Mr. PETERSON. I think the example that might be quoted would be where a carrier would publish a rate to a point. I could pick a point like Memphis, which is a water point, where that rate could be lower than a rate to some equal distance, or even further, that was not reached by a water carrier. That would be what they are referring to as undercutting.

Senator PRESSLER. Thank you very much.

Senator EXON. Thank you for coming. We appreciate your testimony.

We will move on then. I believe Mr. Ray Merrill is here, vice president of the Milwaukee Road. Is that right?

Mr. MERRILL. Yes, sir.

Senator Exon, Senator Pressler, members of the staff, my name is Raymond K. Merrill. Until June 30, 1979, I was vice president-law for the trustee of the Milwaukee Road. I am now retired from that position and am a legal consultant for the trustee.

I might add that my father was a Nebraska farmer and that I was born and raised on an Illinois farm. In addition then to my interest in the railroads, I have a strong interest in the agricultural business.

My service with the railroad covers 42 years, much of it spent before the Interstate Commerce Commission and other regulatory bodies. During this period, which began in the depression year of 1937 when the Milwaukee, along with many other railroads, was in reorganization under the Bankruptcy Act and continued through World War II days of unprecedented passenger and freight traffic, and the decades of the 1950's, 1960's, and 1970's, the Milwaukee has come full cycle and is now again in reorganization.

An industrywide rate of return of 0.83 percent, a continuing decline in the market share of all railroads, lack of capital for investments, mounting deferred maintenance, and runaway prices and short supplies of diesel fuel bode no good for any railroad whether in reorganization or struggling to remain solvent.

The stated intent of the proposed legislation which is under consideration today, S. 796, is to find a solution of the railroad industry crisis from the private sector, rather than by Federal funding or nationalization. The bill is premised on the assumption that this happy solution will occur, or be substantially enhanced, by "diminishing significantly the powers of the Interstate Commerce Commission—and in some cases, to phase out such powers." (Congressional Record, March 27, 1979.)

Speaking for a 9,800-mile railroad serving 16 States with annual revenues of $400 million, employing 10,000 people, serving thousands of shippers, transporting millions of riders annually in the Chicago metropolitan area and hundreds of thousands of riders on intercity trains in Illinois, Wisconsin, and Minnesota, and utilizing fixed plant and equipment valued at approximately a billion dollars, all at a loss of nearly $75 million in 1978, I applaud the objectives of the bill but seriously doubt that it alone will accomplish the stated objectives.

In keeping with the objectives of the bill of finding a solution in a private sector to the railroad crisis, the trustee of the Milwaukee has proposed to reduce its operations to a core system extending from Louisville via Chicago, Milwaukee, Twin Cities, and Aberdeen to Miles City, Mont. This would include the Milwaukee's mainline across South Dakota.

With Federal funding for rehabilitation of plant and possibly acquisition of new equipment, it is expected that the more compact system would operate at a profit, eliminating any need for continued infusion of Federal funds or nationalization. Although it is obvious that reconstruction and rehabilitation are the first order of business if the Milwaukee's essential rail services are to continue, it must operate in a competitive and regulatory climate permitting it to remain healthy and viable.

Some of the provisions of the proposed legislation would be helpful; others would be of no value or even harmful to the reorganized railroad. The provisions of most concern are the following:

SECTION 102—RATE DEREGULATION

The authorization of railroads to enter into contracts with shippers for rates and services, which rates are not subject to challenge under either the minimum or maximum rate regulation sections, is most desirable. By entering into such contracts, shippers and carriers can make long-range plans, with the shipper being guaranteed a fixed rate level during the period of the contract.

Railroads would also be permitted to raise rates not in excess of 7 percent a year between January 1, 1980, and December 31, 1984. The 7 percent restriction, however, does not permit increases sufficient to match current rates of inflation. Increases of 12 percent per year or more are required to afford adequate relief from harm occasioned by costs which increase faster than rates.

The requirements that a shipper to contest a rate must show that it will be competitively damaged, is likely to prevail on the merits, and has no reasonable transportation alternative, are sound and should be made effective to eliminate unfounded investigations.

The concept of demand-sensitive rates is likewise sound. Such a provision would permit fluctuation according to peak and seasonal demands and allow railroads to compete effectively with unregulated trucks and charges which can make changes in rates instantaneously.

SECTION 104—JOINT LINE RATES AND THROUGH ROUTES

It is proposed that the Interstate Commerce Commission retain the power to establish through routes involving rail carriers but its power to set joint rates be eliminated. Railroads would be given the power to change its portion of rates for shipments from points on one line to points on other lines without concurrence of the other carriers. Joint rates could be replaced by separate combination rates at the whim of any railroad party to the joint rates. The shipping public would be adversely affected because price negotiation would have to be done separately with each individual railroad. Pricing, routing, rate quotations, et cetera, would be delayed.

Likewise, the ICC would be deprived of power to set divisions with respect to joint rates involving rail carriers. The big railroads such as the Santa Fe, Southern Pacific, Union Pacific, and Burlington Northern could virtually destroy smaller railroads such as the Milwaukee, Rock Island, North Western, and Illinois Central Gulf by withdrawing from competitive rates which could result in the smaller railroads being noncompetitive as compared with the single line route of the larger railroad. Smaller railroads depend on the larger railroads for much of their business and it is therefore necessary that a stabilized rate and division structure be maintained with controls. Section 104 should not be enacted.

SECTION 105—RATE BUREAUS

The proposed legislation would further reduce the antitrust immunity for rate bureau activities which would be extremely detrimental to an orderly ratemaking process. The present law contains all the restrictions on antitrust immunity needed. Almost two-thirds of the traffic handled by the Milwaukee is interlined with

other railroads. The present rate bureau process makes possible the input and cooperation of such railroads.

The proposed requirement that all bureau meetings be open and transcripts made available to the public would stifle open and free discussion by the railroads for fear of retribution by the large shippers who monitor such meetings. If monitoring is necessary it should be done by ICC personnel.

SECTION 121—ABANDONMENT AND DISCONTINUANCE OF SERVICE

With respect to abandonment and discontinuance of service. Expedition of line abandonments posed on S. 796 is a decided improvement over existing law. Despite the efforts of Congress to speed up abandonment procedures by enactment of the 4-R Act, the ICC sometimes frustrates the congressional will by not assigning an application for hearing and thereby not triggering the time limitations laid down by Congress. The proposed legislation will close this loophole and prevent such delays.

The railroads have proposed legislation which would be even more effective by permitting a railroad to abandon a line without ICC approval on 120 days' notice.

If a public body desired to continue this service, an additional delay of 3 months would be permitted for the negotiation of a subsidy for the railroad. That makes a 7-month total period.

The railroad, however, would be reimbursed for all losses incurred on such line after the initial 120 days' notice. The railroads' legislation would provide a much simpler and faster form of relief to railroads whose cash is depleted by the forced continuation of unprofitable operations.

Section 140, related to transportation emergencies, proposes the powers vested in the ICC to take immediate action in certain transportation emergencies be transferred to the Secretary of Transportation, including the direction of the handling, movement, and routing of traffic that cannot be transported by the rail carrier to which it is offered in a manner that serves the public, over one or more other railroad lines on terms of compensation the carriers establish between themselves. A railroad complying with such order shall be compensated by the Secretary of Transportation if its costs are not otherwise recovered.

When a railroad is unable to continue a portion of its operations, the Secretary should also be given the power to direct that railroad, rather than another one, to continue the operations with funds advanced by the Secretary where the cost would be lower or the service better than if another railroad were directed to perform the service.

When the Milwaukee's trustee recently sought to embargo a large portion of its rail lines, the ICC found no other carrier willing to accept an order to operate over all or most of the lines sought to be embargoed.

A trustee, or an insolvent railroad, would normally be willing to continue operations on a temporary basis pending a restructuring of the railroad if compensated for the cost of such service during the interim period. This would preserve the continuity of service wherever needed and avoid the multitude of problems which the

disabled railroad, the directed railroads, shippers, and employees would encounter.

I thank you for this opportunity to present the Milwaukee's position with respect to S. 796.

Senator EXON. Mr. Merrill, thank you very much.

The Milwaukee Road presents a rather interesting case. The Milwaukee as you said, at one time had grave difficulties and came out of it. Now they are having problems again.

With your knowledge of the railroad industry, for the record, what percentage of railroads in the United States are operating at a profit? I do not know how many railroads we have. But there is a good number. What percentage of the existing roads today are operating at a profit?

Mr. MERRILL. None of them are operating at an acceptable profit that I know of in the Midwest or South Dakota, the territory served by the Milwaukee.

The only railroads that operated at a loss sufficiently to prevent them from continuing without going into reorganization—let me put it another way. The only railroads that have gone into reorganization are the Milwaukee, Rock Island, and Boston and Maine, other than the large group that went into reorganization in the eastern part of the country.

This would mean that with the exception of the Illinois Central Gulf, which is sort of a break even operation, that most of the other railroads are able to keep their heads above water, if not all of the other railroads.

Senator EXON. In your opinion, what would be a reasonable return on investment for a railroad in our modern-day society?

Mr. MERRILL. Senator, the minimum return on investment would have to be sufficient to cover the cost of capital to the railroad. If the railroad goes out to borrow money to improve its plant, the cost of the money is 10, 11, 12 and upward percent; 15 percent is not out of line for what the railroad pays.

Senator EXON. So what you are saying is that somewhere between 10 and 12 percent would be the minimum today?

Mr. MERRILL. If the railroad is to acquire capital to maintain and improve its plant.

Senator EXON. What percentage of the railroads in the United States today are operating between that 10 and 12 percent?

Mr. MERRILL. Very few.

Senator EXON. Union Pacific is one I presume?

Mr. MERRILL. Not for the railroad alone. Perhaps in their overall operation which has far more than just the railroad they accomplish that.

Senator EXON. Of course, here we have hit on a major factor in this overall picture. It has been brought out in testimony that some of the railroads are going into other businesses. While people do not think that it is good for railroads to go into other businesses, if you are managing a large corporate structure and trying to keep your head above water, you must do something. I suppose under the free enterprise system, of which we are all so proud, that we have a tendency to look around and invest some of the assets of our railroad line into something which might make a little money

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so we can keep our head above water in our primary structure, the railroad.

The reason for my question was to bring out the fact that generally speaking, from a financial standpoint, most, if not all, of the railroad industry, has a very sick return on their investment.

Therefore, they are having great difficulty in attracting the capital necessary to improve their equipment, to improve their tracks, to handle the transportation of all these commodities the way all of us would like to see them handled.

Mr. MERRILL. I believe that accounts in large part for the Milwaukee situation.

Senator EXON. As a side issue, the Milwaukee Road, if I am correct, is looking at some offers from employee groups who might be willing to come in under some kind of a reorganization plan?

Mr. MERRILL. Our trustee has said that he will entertain offers from any group, but he would appreciate it if they would show their ability to acquire the property and operate it.

Up until this point, there has been no such offer made to the railroad to acquire it intact or even the western part of the railroad intact.

Senator EXON. You then are not very optimistic about any possible solution to the Milwaukee problem at least in the next 6 months?

Mr. MERRILL. I am optimistic, Senator.

Senator EXON. You are what?

Mr. MERRILL. I am optimistic about the survival of the Milwaukee Road. For the last 65 years, the railroad has attempted to operate a 10,000-mile system with inadequate density. At one time over the western half of the railroad we were running only one pair of trains a day, which doesn't produce enough revenue now to support thousands of miles of track.

If the line is compacted to a size whereby it can be maintained and the equipment furnished and the service rendered, which is the goal of the trustee of the railroad, then the railroad can and will survive.

It needs rehabilitation also. But to rehabilitate the whole line would cost up to $1 billion. To rehabilitate the core part of the railroad would perhaps be $100 million, one-tenth.

And it would be a profitmaking operation, according to our specialist advisers, Booz, Allen & Hamilton.

Senator EXON. If this could be done and the railroad would continue to operate, it would not operate as it has in the past, would it?

Mr. MERRILL. It would not be a transcontinental line. It would not serve the west coast. It would be confined to the area west of the—as far west as Miles City, Mont. It would be basically a midwestern railroad and not a transcontinental railroad.

Senator EXON. Would the road envision reduction of more and more branch lines in South Dakota if the proposed deregulation bill before us were to go through, in your opinion?

Mr. MERRILL. It would envision the abandonment of a number of lines, yes, sir. It would continue its main lines, branch lines up to New England, possibly a line or two from our main line. It would involve the sale of other lines to other railroads who would be able

to take them into their operation and profitably operate them. And there is some interest which has been shown by other interests in doing that.

Senator EXON. Thank you. I have no further questions at this time. Senator Pressler?

Senator PRESSLER. Yes, I have just a couple. Those were excellent questions. They covered some ground I wanted to cover.

One aspect of this rail deregulation bill is that it would mean if that were passed that a railroad would not have the responsibility, as I understand it, to provide services in what I would say are less profitable areas.

We have had in the last 20 or 30 years in our regulatory law a so-called common carrier responsibility. In our ICC cases and in a law passed by Congress, the assumption is that if an airline or railroad takes some rich routes, it then agrees to take some poor routes out here.

The whole deregulation movement which, in theory, I think we would all support, says in part that the common carrier doctrine that has permeated American law regarding transportation for probably 40 years is being abandoned. There is a belief that some railroad companies have investments in other things.

I remember when I was in the House of Representatives, the Penn Central, would receive a subsidy every year. The Penn Central is in hotels and all sorts of other things.

There is a belief, or maybe it is a folklore, that maybe we are just being told that the Milwaukee and other railroads have to leave us. Maybe they could make money hauling that coal or in hauling grain, but there are just other routes that are more lucrative and the common carrier responsibility is being abandoned.

Would you respond to that?

Mr. MERRILL. Yes, sir. I think the passenger service is indicative of that. At the time the railroads had a monopoly on freight, they could afford passenger service, take the money out of the freight drawer and use it to run passenger trains and they fulfilled their common carrier obligation.

However, as they met competition from other forms of transportation and rates were more competitive, there wasn't that money, and passenger service passed out largely from the picture.

The same thing is true with regard to freight. If there are less lucrative routes or if you have to operate at a loss, you must obtain the money from somewhere else. The railroad doesn't wave the wand and produce the money. It has to be earned.

But if there is no money in the other drawers, as it turned out in the case of the Milwaukee, you can't reach over there and take the money to pay here. It isn't there. So the whole procedure ground down to a halt.

It makes much more sense then to permit the common carrier to operate in the areas where it can profitably operate than to say you are all done, you are wiped out, there is no more service for anyone.

Senator PRESSLER. A followup question to some extent. We have been struggling with boxcars, I guess, since I was young, really.

Senator EXON. You are still young, Larry.

Senator PRESSLER. When I was a child growing up on the farm, I used to read about how Senator Mundt and Senator Case were going to get us boxcars. Now I am joining in promising to get boxcars.

The point is, there is Rail Box which I understand is an association where all railroads jointly own the equipment and it runs freely amongst member railroads. Is this going to help us get hoppers and boxcars? Is this a solution; Rail Box?

Mr. MERRILL. Rail Box, Senator, has been in effect for some time now and has been useful. Those cars can go anywhere in any direction regardless of ICC regulations which would require cars that are owned by an individual railroad to be loaded back to that railroad or returned empty.

So, Rail Box is a very useful and helpful means of meeting the car supply.

The other problem that is possible, and I think I heard it today with respect to trucking rigs and trailers, and that is that the Government might give consideration to acquiring a fleet of cars and lease them to carriers where they are needed to serve the grain areas or other areas, coal and so forth. This could be a solution to the problem also.

Senator PRESSLER. Thank you very much. I have no further questions.

Mr. MERRILL. Thank you.

Senator EXON. Let me return, if I could, to one of the questions which I thought of when you mentioned something about passenger service.

There is a widespread belief, although I am not sure that it is totally accurate, that sometimes the railroads do not do as much as they should do in the promotion of their services.

Most of us feel that, and maybe we are wrong, that the railroads could have done much more to preserve their rail transportation. But I think it is fairly well-established that because rail service was more lucrative during those years to which you referred and that while it may be true from a financial standpoint that passenger service was not making as much money as the freight service, there still remains the question as to how good a job railroad management did in maintaining all passenger service?

In fact, I for one did not go to airline service until I was literally kicked off of the railroads, who obviously did not want me riding on their trains anymore as a passenger.

Now, do you think that the statement I just made is legitimate or not?

Mr. MERRILL. I can speak for the Milwaukee, Senator. Following World War II, the Milwaukee spent millions of dollars acquiring equipment to operate streamlined trains. They operated a streamlined train from Chicago through South Dakota to Seattle.

They had three braces, you might say, of complete equipment. Dome cars, club cars, lounge cars, observation cars, pullman cars, tourist pullman cars for the economy travelers, and so forth.

Nevertheless, the business went down. The time schedule was about 50 percent less than it had been all during the World War II years when there was a huge flow of traffic. Despite that, and the Burlington, I should say the Great Northern and Northern Pacific

did the same thing with the Empire Builder and North Coast Limited.

Despite all efforts to attract the business, by equipment, by advertising, by time improvements, the patronage on the trains began their descent. The interstate expressways, the airlines took them out of the business. Without that revenue to support it, it was only natural they had to discontinue the train service.

In Chicago, likewise, the Milwaukee has spent millions of dollars for new equipment prior to the, what they call the Regional Transit Authority, to haul commuters, double-decker air-conditioned cars that never vary in temperature between 68 and 71, comfortable, well-lighted, clean, and they hauled many people.

As I said in my statement, 10 million riders a year. Yet there is a shortfall of the revenue to the costs. It is made up by the Regional Transit Authority in that territory which may give rise to more thoughts if the service is required.

Senator PRESSLER. I understand Amtrak is in much better shape now. I am looking forward to hearing something about that tomorrow in Omaha. But I understand passengers are returning to Amtrak now since the gas increase. I don't know if that is true or not, but that is what I have been told.

Mr. MERRILL. Union Station in Chicago begins to look like the old days again. There are a lot of people there.

Senator EXON. Mr. Merrill, thank you very much. We appreciate your testimony.

We will recess for lunch now. We will reconvene at 1:15 at which time we will hear from the panel which I mentioned earlier, the farm and rail user organizations.

We stand in recess until 1:15.

[Recess.]

Senator EXON. It looks like the group is not going to be quite as large this afternoon. We certainly invite any of you who would like to come down in front a little further so that you might be able to hear better.

We have a request from those who were here this morning and thought that they would be testifying this afternoon. We are going to be moving along as quickly as we can. Those who have indicated that they were here and were not present when we called their name, will be called to testify with the understanding that their testimony will be kept as short as possible.

But, for now, we will go to the panel which I indicated we would call immediately after lunch. That is the farm and rail user organizations: Richard Ekstrum from Kimball, Farm Bureau Federation; Mike Held; Ben Radcliffe from Huron; Jack Soulek, Lake Andes; Leon Martin, Wagner; Leroy D. Schecher from Bison; Kent Brick, Pierre; Dale Fields, Sioux Falls.

If you gentlemen will come up, please, we will be glad to hear from you at this time.

Unless there is someone who wishes to testify first, we will start with the first name on the list, Richard Ekstrum, Kimball, Farm Bureau Federation.

STATEMENTS OF MIKE HELD, EXECUTIVE DIRECTOR; BEN RADCLIFFE, SOUTH DAKOTA FARMERS UNION; ALTON HANSON; MR. STEDRONSKY; JACK SOULEK, LAKE ANDES FARMERS CO-OP; LEON MARTIN, WAGNER FARMERS CO-OP ASSOCIATION; LEROY D. SCHECHER, GRAND ELECTRIC CO-OP; KENT BRICK, PIERRE RURAL ELECTRIC ASSOCIATION; AND TOM EVEREST, SIOUX FALLS, SOUTH DAKOTA RAIL USERS ASSOCIATION

Mr. HELD. Mr. Ekstrum isn't here, but I am going to present his testimony. I do have copies here for the record of what I am going to be presenting.

I thank you for the opportunity to speak now.

Senator EXON. Without objection, Mr. Held, we will accept your written testimony, you can now proceed to summarize, if you would.

Mr. HELD. Farm Bureau is the largest voluntary farm and ranch organization in South Dakota with almost 5,800 families belonging to the 48 counties having an organized Farm Bureau unit. Virtually every agricultural commodity produced in this State is represented by membership in Farm Bureau.

Farmers and ranchers are dependent on a reliable and cost-efficient transportation system which causes Farm Bureau to constantly monitor transportation problems and issues. The availability and efficiency of rail and truck transportation has a direct impact on net farm income, and also influences a farmers ability to manage his operation efficiently.

MOTOR CARRIERS

While all modes of transportation are used in acquiring necessary agricultural production supplies and in shipping farm products to market, motor carriage has become an increasingly important mode. Nationally, farmer-owned and commerical for-hire trucks now haul 73 percent of all fresh fruits and vegetables, 99 percent of the cattle and calves, 100 percent of the hogs, and 98 percent of the sheep and lambs that go to market.

Since the beginning of economic regulation of motor carriers, Farm Bureau has worked to obtain and preserve agricultural exemptions. Agriculture has enjoyed less regulation because of agricultural exemptions; and we say, without reservation, that we would not want to depend on a regulated system.

Shippers do occasionally experience shortages of available trucks. These shortages are probably caused to a large extent by regulatory restraints on backhauls. That problem is compounded by the maze of laws and regulations in the various States which, in our opinion, constitutes an unconstitutional interference with interstate commerce.

It is becoming increasingly apparent that the extent of intervention can be substantially reduced without creating the chaos that some predict. The net result would be a motor carrier system that is more efficient in terms of energy, labor, and investment; more competitive to the wide range of services needed; and a lower cost source of service to shippers and consumers.

Those who favor retention of the present outmoded system of regulation often argue that sparsely populated areas would find it

difficult to get truck transportation at a reasonable cost if regulation were ended or substantially reduced.

We are not convinced by these arguments. We do not believe that any carrier provides satisfactory service to anyone at a loss over any extended period of time. We have seen no credible studies which indicate that substantial regulatory reform would cause any loss of service. Owner-operators would quickly discover the demands for service in those areas and would provide the kind of service that is needed at a reasonable cost.

Let us look at what has been happening over the past 20 years under our present regulatory system nationwide:

One, we have witnessed an unprecedented growth in private carriage outside the regulatory system. Some of this expansion has resulted from an unresponsiveness on the part of regulated carriers.

Two, we have seen a major shift in the transportation of agricultural commodities from rail to truck and barge. This has been due, in part, to weak competition from poorly managed, over-regulated railroads and the development of the interstate highway system; but it is also due to the fact that farmers and ranchers had the option of turning to transporters who were willing to respond to the needs of their industry.

If agriculture had been saddled with a totally regulated system, the cost of transportation for food and fiber movement would be significantly higher and U.S. agriculture would be experiencing far more difficulty in obtaining necessary services. The fact that the regulated U.S. motor carrier industry receives a 20-percent return on shareholder equity indicates there is room for additional competition.

We support rate flexibility not subject to suspension and authority to deregulate any traffic when deregulation is in the public interest.

One of the most logical ways to proceed with deregulation of motor carriers is to expand agricultural exemptions over a period of several years. We favor exempting more raw agricultural products and major agricultural production input items purchased by farmers and ranchers.

We also favor permitting unregulated trucking firms to backhaul regulated commodities at any rate they can negotiate, provided that no more than half of their annual tonnage consists of regulated commodities and that such carriers file an annual notice indicating they intend to engage in such backhaul business.

We are confident that the market system will operate in transportation as it does in agricultural production. These reforms will produce a number of desirable results:

One, increased competition will develop in the motor carrier industry as a whole, which will bring about reductions in rates in some instances or, at least, will moderate future increases.

Two, there will be an increase in the number of trucking firms specializing in service to rural communities, since they will have greater flexibility and will be able to provide a wide range of service offerings.

Three, while private carriers will have more freedom to operate, particularly on backhauls, increased competition in the for-hire

segment will likely result in overall reduction in private carriage, and this will lead to increased efficiencies and a new source of business in the for-hire segment.

Four, owner-operators will have a greater opportunity to compete as independent businesses, with less reliance on the regulated carriers for backhaul leases, and we can expect a more equitable sharing of the overall cost of round trips between agricultural and nonagricultural shippers.

Five, there will be fuel savings, due to less circuitry and fewer empty or partially loaded backhauls.

Six, motor carriage will become more innovative and cost and quality conscious, with a more rational and less complicated rate structure based on costs.

We believe that less economic regulations and more reliance on the competitive market will result in better service.

RAILROADS

In the railroad area, for the past 30 years, the rail industry has been in the process of physical and financial decline. Agriculture has many times experienced rail service that is slow, undependable, and unresponsive to changing conditions.

Earning less than 2 percent on investment, most rail carriers cannot attract the necessary capital to modernize their facilities or equipment. In many places we see a railroad plant that is outmoded, in disrepair and inefficient.

It is thus evident that the present system of regulating rail service in the public interest is not working. Many rail shippers had hoped the 4-R Act of 1976 would provide the needed changes, but it now appears more drastic measures will be required.

Farm Bureau rejects the concept of nationalization as the answer to the railroad problem. Nationalization would result in a lower quality of service at a greater cost in charges and/or taxes.

Agriculture and the rest of the economy must have rail service, and we are committed to providing the atmosphere where private rail carriers can be financially able and willing to respond to increased traffic in agriculture and the rest of a growing economy.

It is clear that the present rail situation does not result from a single cause, such as overregulation. Thus, we need to remember that regulatory reform alone will not cure the problem.

Regulatory reform will do little or nothing about the monopolistic practices of railroad labor unions. Labor accounts for about half of the operating costs of railroading. Definite steps are needed to improve the productivity of rail labor.

Some rail management seems to think that the industry's problems can be solved by extracting a lot more money from the rail users. Rail management must be willing to compete with other modes of transport in service and cost.

We feel that far-reaching regulatory reform is needed, but we do not believe that an end to all economic regulation is feasible or desirable in the foreseeable future. Congress should approach rail regulatory reform with a goal of maintaining only enough authority to restrain monopolistic practices.

Rail management does not appear ready or willing to live with or respond to the competitive forces for the market. Therefore, we

favor a gradual reduction of economic regulation over a period of several years, with safeguards and checkpoints to give the industry a chance to increase productivity and become more responsive to shippers.

Farm Bureau is concerned about the captive shipper, and Congress should clearly define a captive shipper so ICC can identify particular commodities and locations that meet such a definition.

Rail carriers should not be permitted to increase rates to captive traffic more in any year than the average increase of all other rates charged by such carrier. ICC should review captive shipper situations and be allowed to remove the captive classification as new competitive developments take place.

ICC presently has the authority to issue a uniform cost accounting system. We encourage this be accomplished as soon as possible so shippers can evaluate proposed abandonments. With a uniform cost accounting system, rail carriers could be allowed greater freedom of action in abandoning unprofitable, low-density lines.

In closing, we have two notes of caution:

One, deregulation should not be considered a panacea. It is only one of the steps that need to be taken to improve our transportation system.

Two, regulatory reform must be accompanied by comparable steps at the Federal level and in other States to improve a national comprehensive system.

Senator EXON. Mr. Held, thank you very much.

I think that we might be able to expedite this since some of our questions could be answered by all on the panel. Larry, with your agreement, I think that we will just move ahead now and listen to the testimony of the others.

Then I have a question or two which I may want to ask. Who wishes to speak next?

Mr. RADCLIFFE. I will go next.

Mr. Chairman, and Senator Pressler, I, too, have copies of my statement that can be used for the record and I will proceed to read it.

I am Ben Radcliffe, president of the South Dakota Farmers Union with a membership totaling more than 15,000 rural families in South Dakota which makes us the largest farm and rancher organization in the State.

I would like to thank you, Senator Pressler and Senator Exon, for scheduling this important hearing here today. Field hearings of this kind are useful because they give an opportunity for broader grassroots input that is not always possible at the Washington, D.C. level.

I suppose we here in South Dakota should be pleased with the attention transportation issues are now receiving on the national front. For a decade or more we have watched as our rail transportation system slowly disintegrated and we often got the feeling that the rest of the country didn't care. Didn't care much one way or another what happened to us out here in the wilds of South Dakota.

Unfortunately, not all the current attention and action in Washington is pointing us in the right direction. I refer, of course, to the

deregulation hysteria which seems to have swept this country. It is a feeling that I can understand.

Citizens frustrated by the failure of certain regulations become convinced that all regulations should be discarded. These feelings are also fueled by most Americans' perception of the results of airline deregulation. The widespread impression is that airline travel costs have gone down. That may be true in some cases.

But we in rural America have seen the other side of the airline deregulation coin. We have seen smaller rural communities across the country lose their air service. In South Dakota, almost half of the communities who now receive air passenger service are faced with a potential loss of that service.

Incidentally, Bismark, N. Dak. was one of the more recent communities, a town about the size of Huron, lost their scheduled airline, as you may know. They are now served by a commuter plane company from Wisconsin, a small plane without restroom facilities or those kind of conveniences. I think many of us face that in our small communities as a result of airline deregulation.

I do not for a minute defend all regulations now affecting transportation. Many rules and regulations, especially in the trucking industry, have become outmoded, are costly to the public and appear to be just plain unrealistic.

But we must resist temptation to throw the baby out with the water. Instead of casting aside all regulations, we should be looking at the task of making regulations more effective so that the public interest is protected. There may be no need for some regulations and they should be eliminated.

In other cases, what we may require is a revamping of regulations. That seems to be the case in the trucking industry. Independent truckers who have been on strike have a valid point when they urge Congress to enact nationwide standards in length and load limits, when they seek reciprocity among the States on collection of fuel taxes.

Deregulation of rates is another matter. It is an act of pure irresponsibility to suggest that standard rates should be discarded and that each individual shipper should be forced to negotiate the best deal he can get.

Farmers know all too well how that system works. It is the very same system the railroads operated under prior to the establishment of the Interstate Commerce Commission.

Major shippers would be able to negotiate lower rates while smaller shippers would be left at a competitive disadvantage, if not at the complete mercy of the carrier. In fact, as you know, trucking rates for raw agricultural commodities are not now regulated. The result is a wide variance in rates charged individual shippers.

A recent survey which we conducted found cooperative elevators in South Dakota paying anywhere from 2 to 25 cents per bushel more to ship grain by truck than by rail. Part of that variance is due to the destination, but part of it is also due to the ability of larger shippers to negotiate better deals.

Obviously our great concern is in the area of railroad abandonment. There is not a doubt in my mind that passage of the administration's deregulation bill would lead to the almost immediate abandonment of all branch lines in rural States like South Dakota.

We could also be virtually assured that elimination or reduction of the Interstate Commerce Commission's rule over the railroad freight rates would be followed by a rapid escalation in shipping costs facing farmers.

I would like to remind you that farmers have no means to pass that increased cost and so what we are talking about here is reduction in farm income.

According to the administration's proposal, the ICC would not have the power to suspend an unfair rate. They could not even investigate until a formal complaint was received from the shipper. In effect, the administration's bill would allow the railroads to discriminate against individual shippers in the same manner that they did decades ago.

In this case, we would be talking against—we would be taking a giant step backwards. If the administration's deregulation bill is passed, States like South Dakota will become virtually defenseless against wholesale branch line abandonments. Shippers would have just 90 days to fight an abandonment request before the railroad would be allowed to shut down service.

Shippers would have to prove that the railroad was making a reasonable profit and that they, the shippers, would be hurt more by the loss of the service than the carrier would gain by reducing his trackage.

It is inconceivable to me that the administration would be proposing deregulation of the railroads at the very same time that long gas lines and skyrocketing fuel costs are spreading across the country. It has been proven time and again that railroads properly loaded are at least four times more fuel efficient than trucks.

Yet we are talking about a proposal which would lead to the certain abandonment of thousands of miles of rail line all across the United States.

Mr. Chairman, this is not the time to deregulate. This is the time for Government to become more involved in the rail crisis by renewing the track beds, creating an ample supply of boxcars and hopper cars, by stimulating new technology and enabling shippers to take over branch lines if necessary.

This is a time for action, not retreat. We need a public commitment to build a national rail system to match our Interstate Highway System. That job can be done. All we need is the will to do it.

Thank you for this opportunity to make this statement.

Senator EXON. Thank you, Mr. Radcliffe.

Let's move on now. Jack Soulek from Lake Andes, Leon Martin from Wagner, and Mr. Stedronsky.

Mr. HANSON. Yes, Al Hanson here.

The military services serves the branch line from Napa to Brandt. There are 11 users on this line. Shipment on the line consists of grain, fertilizer, lumber, and machinery.

Service in this line the last few years has been very poor which means tonnage on this line is down. For instance, fertilizer shipped on this line to the elevator, cars would sit for 3 or 4 weeks before it would be sent back and loaded and shipped to some other area.

Government grain alone in 1977 in tons were shipped to Fremont, Nebr., 7,874 tons; Omaha, 312 tons; Sioux City, Iowa, 2,727

tons, Schuyler, Nebr., 3,200 tons; St. Joe, Mo., 212 tons; Hastings, 1,186 tons.

This was to be shipped by rail. But because of the service and shortage of boxcars, it had to be shipped by truck. Elevators had to ship grain by truck because of no boxcars and poor service.

Much of this grain that comes from the elevator would have been shipped to the west coast for a better market. Many times cars were in too bad a shape to ship grain in them. Milwaukee Railroad has left the rail and bed in bad shape.

The rail is 65-pound rail which is the same as in many other areas in the State. Irrigation along the line has tripled in the last 3 years in acres.

The elevators in the area from Wagner to Platte get grain from Nebraska because they have lost the line from Norfolk to Winter. We do not operate in the area of an interstate or super highway. Our roads in this area are in poor condition.

The State said, in the next couple of decades, it will cost millions of dollars to keep the road up. The State, right now, cannot afford to keep the roads in shape.

The answer is to keep our railroads intact because they are needed more now then ever. Representative Abdnor has sponsored a bill to build a plant on the Missouri River on the Gregory side. This line could serve the shipment to this area.

Senator EXON. Thank you very much.

Mr. HANSON. My name is Alton Hanson. We operate a terminal elevator, barge, receiving and shipping elevator in Sioux City and six elevators in the State of South Dakota, most of them located on the Milwaukee Road.

We hold memberships to Sioux City Grain Exchange and have been buyers and sellers and transporters of grain throughout the United States for more than 50 years.

We wish to state our opposition to the S. 796 deregulating rail and truck service and to urge all those interested in the State of South Dakota to do likewise. There is little deregulation can do for South Dakota. Certainly it will neither lower rate structures nor assure more or better rail service.

The bill will allow wholesale abandonment on any line with 90 days notice without justification or demonstrating noncompensatory availability.

Railroads have enjoyed semimonopolies for many years. They were favorably treated at their inception. After they acquired an obligation to provide service for the public, the favorable treatment continued. They should not be allowed to abandon tracks and service because of greater financial returns elsewhere or because of losses due to their own inefficiencies and unwillingness to provide service.

Rail deregulation, as proposed in S. 796, would have a disastrous effect on South Dakota. The provision for rate increases in a very short timeframe would cause havoc for a country elevator. They would never know what rail rate they would be using in any future period. They would have to protect themselves by paying less and/or charging more to the consumer.

Contract rates would allow large users of grain service to obtain more favorable treatment, service, rates, or both, than smaller

users could obtain. Large users so favored would control equipment, enabling them to sell the use of equipment to small users by substantially reducing prices to them.

The small user would be forced to accept the reduced price to secure equipment necessary to move his product. This will reduce competitive capability of the small user and eventually he will be forced out of business.

Some equitable arrangement for both big and small users is necessary.

Over the years, there have been many changes in styles and methods of marketing grain. The largest changes have occurred in the last 15 years, brought about by better highways, changing rate policies, larger crops, and the emergence in South Dakota of the large export market.

From both the national view and the South Dakota one, the growing export market is a vital item. Agricultural exports are the largest, best, and most necessary of all exports from the United States. This export market allows the South Dakota grain producer a fair price for his grain.

Without this export potential and only the domestic requirements for South Dakota corn, wheat, and beans, we would have much lower prices within the State.

To receive benefits of the export market, North Dakota, South Dakota, Nebraska, Montana, western Iowa, and Minnesota must have an adequate rail system, one that provides service at fair rates. The distance from these interior markets to port locations is too far to move large volumes of grain by truck. Railroads are the only way this volume can be handled.

From an energy consideration alone, national policy demands the continued existence of rail transportation. The recent change in stature of the Panama Canal combined with the energy crunch has made it more practical than ever to service Japan, Korea, Taiwan, and others in this part of the world from our North Pacific coast.

Ocean freight, though negotiable, is from $6 to $15 a ton less costly from the Pacific Northwest to these export buyers than the present rate from the gulf area.

There are predictable increases in shipments from the Pacific Northwest market to 1½ billion bushels by 1983.

In summation, deregulation will cause economic loss through reduced markets and prices, and environmental problems with the increased truck traffic, and energy problems as trains are far more efficient than trucks, and the loss of many services and businesses to the people of South Dakota.

We feel that modification and enforcement of present regulations would be best. We recommend that you would, one, provide for an investigator for rate increases, and insure prompt action.

Two, place the burden of proof on the transportation organization. They have most of the information.

Three, provide 90-day notice of rate changes. This will give the shipper and buyer time to project his costs and make deferred sales with certainty that his rate will be constant.

Four, seasonal rates are impractical. The railroads cannot take care of the business they refer to as the off-season business today, particularly in our State.

Five, oppose contract rates as they will eliminate competition and shippers.

Six, there is no reason to relieve the railroads of their common carrier obligation.

Seven, the ICC should retain authority over car service rules. They should retain authority over rates and over abandonments. They should retain authority and control reciprocal switching, and protection for the shippers should be retained.

We believe bill S. 796 in its present form is not in the best interests of the people of South Dakota and should be opposed by every agency with the opportunity to do so.

Thank you kindly.

Senator EXON. Thank you very much, Mr. Hanson.

Mr. Stedronsky, did you have anything to say?

Mr. STEDRONSKY. I am in the hardware business. We also have several trucks on the road. They are run by the Teamsters which the man here told about this morning. I talked to my trucker and he said he's not for deregulation. He's against it, because it would cause a lot of problems.

They also haul grain back to south St. Paul to offset the cost of their fuel cost, of course. They have cribbage boards in there and load it up with grain going back. I am against deregulation.

On the railroad situation, it is better to have reregulation; of course that goes for the trucker too. I think what the panel here wanted to know, what is the answer to it? Well, the answer to it on the branch lines or on lines that they want to get rid of would be, one method, for the U.S. Government to purchase these lines and upgrade them and charge the railroad line that uses the line to service it per diem mile for the use of it. This would be one answer to it.

Also, there would be an answer to it if you—I have sent this to Washington two or three times, too, and that is, there is a place for the trucks on the railroads. Now, the railroad companies have these trucks on their own lines.

I think they are now coming—however, I heard about it, didn't see it—where they mount the truck from Chicago to Los Angeles, put it on the rail, the truck driver goes down the rail 80 miles an hour. He has no obstructions. They can run them in groups, too.

I think they are now doing that. This is one way we would get them off the highways and save the highways for the cars, see. So, I wanted to throw that in there, because I have sent that to Washington several times. And it's no big deal because railroads also have their own trucks on their own rail line. I think that is all.

Thanks a lot for letting me talk. I think these gentlemen here have told most of what I was going to say anyway.

Senator EXON. Thank you, Mr. Stedronsky. Let's move on now to the next man I have on the list, Leroy Schecher, if he's ready.

Mr. SCHECHER. Senator, my name is Leroy Schecher. I am general manager of the Grand Electric Cooperative Telephone Co. in Bison, S. Dak. I should mention I am also in a farm partnership with my son. I appreciate the opportunity to appear before your subcommittee today.

Our electric cooperative is located in the very northwestern corner of South Dakota. We cover an area of about 9,500 square miles or somewhere between a seventh and an eighth of the land area of South Dakota. The telephone service area is about half that size. It's a sparsely settled area with one user per mile of line on the electric and 0.73 users per mile on the telephone.

Most of our members are involved in agricultural production in one way or another. Bison is a town of 500 people. We also serve Buffalo, which is about the same size, and several smaller communities.

My purpose here today is not to argue the merits of regulation versus deregulation, but to express a concern for the unknowns of deregulation. In the area I just described, towns and villages included, most all freight—be it groceries, gas, and other goods—is hauled in by truck.

There are no trains or buses in our service area. Literally everything we consume is brought in by truck. Most of what we raise, mostly grain and livestock, is hauled out by truck. Every time the freight truck comes to Bison, they have items for our electric cooperative and telephone cooperative, as well as other businesses. Regular deliveries are important to us so we can in turn provide service to our members.

The point I want to emphasize in the strongest possible way is that we do depend on trucks, and without them, towns like Bison, and there are a lot of them across the State, would be in big trouble.

What happens if the trucking industry is deregulated? Does that mean the trucking companies can make up their own mind about whether to serve communities like the Bisons and smaller ones that may have only a grocery store or gas pump and post office, or will they continue to serve them?

We believe we need to maintain the kind of system that will assure communities of the truck service that they need. In other words, take the bad with the good. This is the way it works in the rural telephone electric program.

We serve broad coverage which means we serve the person 5 miles from the lines just as readily as the one we do right next to the line, and all at the same rate. I can tell you from experience that this is a sound principle; it works and allows everyone to have the service they need, and as a whole is economically sound.

Our concern in a nutshell is, can we continue to receive service by truck if the industry is deregulated? If so, will we be—will we receive it on a regular basis and will the cost be a price we can afford?

These ingredients are essential if rural America, and especially the sparsely settled areas are to receive a fair shake. We urge that these questions not be left in limbo. If regulation is required to assure the proper answers, then that is the system we must support.

If it can be accomplished by deregulation, then that approach would be acceptable. I might add that on this business of regulatiom the system certainly is not perfect. There are some improvements that can be made.

One of the ones I hear the most about from our trucking people is this business of backhaul. They just feel this is something they ought to be entitled to do, and I certainly agree with that. We depend to a lesser degree on rail transportation which is available along the northern edge of our service area.

It is not as essential in day-to-day living as the truck, but still very important to us. For example, this summer we are building 22,000 miles of 69,000-volt transmission line.

The 300 plus poles required for this job are coming from the State of Washington. Because of size, the only way they can be delivered to us is by rail. We are also beginning construction of a new substation which will include two transformers weighing about 80 tons each. The only practical way they can be delivered is by rail. Rail service is also essential for delivering coal from the coal mines to the power plants.

Finally, rail service is essential in transporting grain from our area to points both east and west. Our view of continued rail service is, we need it and at a reasonable price. Regulation of rail service appears to be the only course since competition for the most part is nonexistent.

That completes my statement. I have copies here for the record. I thank you for this opportunity to testify.

Senator EXON. Thank you very much, Mr. Schecher. We appreciate your coming to testify.

Mr. SCHECHER. Sir, I do have a statement from Francis Veal, president of the Meat Promotors of South Dakota. I would like to submit that for the record.[1]

Senator EXON. Without objection.

Is Kent Brick here? Kent, whatever you care to add to that and whatever statement you have, we will be glad to accept for the record.

Mr. BRICK. Thank you.

I am here on behalf of Tom Fennell, and I would like to submit his remarks for the record.

The South Dakota Rural Electric Association is a member-owned and controlled federation of 36 rural electric cooperatives. These cooperatives serve approximately 75,000 members with electric power.

A massive transportation problem faces South Dakota. The deterioration and abandonment of rail lines coupled with the dwindling trucking service to rural areas threatens nearly every form of South Dakota's commercial prosperity.

Is the deregulation of rails and trucks the appropriate response to our problems in these areas? We don't think so.

South Dakota's small towns and farms are dependent on an intelligently regulated system of rail and truck transportation. Deregulation of rails and trucks could afflict captive shippers and receivers in the State beyond their ability to acquire the alternative forms of transportation which deregulation fails to provide.

From the standpoint of energy development, or, if you will—energy independence—the deregulation of railroads will have nothing but an adverse impact. The shipment of heavy electrical trans-

[1] The statement is in part 4.

mission equipment is done, of necessity, by rail. Deregulation of the rails would pose the threat of either the outright loss of this form of transportation or the much higher cost for its use.

It would be folly to think that an already undermaintained, deteriorating highway system could bear the weight of trucks which would presumably have to make these shipments if rail service is discontinued.

There is talk in our Nation these days of the need for making maximum use of coal as a way of bailing us out of our imported oil dilemma. Coal accounts for 60 percent of the electricity which is generated by rural electric cooperatives in this country. Rail deregulation would greatly increase freight rates—where freight can be adequately acquired—for coal. These increases would then be reflected in the higher bills members will pay for their electricity.

Any coal-fired generating facility constructed in South Dakota for rural electric cooperatives would require the transport of coal by rail from North Dakota, Montana, and Wyoming. The siting of coal-fired generating facilities in South Dakota is a distinctly possible response to the growing energy requirements of the State's and region's rural electric cooperatives. Deregulation of rail service would greatly hinder the siting of plants in South Dakota and would seriously jeopardize this region's future electric power supply and ultimate energy independence.

Deregulation of rail and truck service can only mean that the quality of transportation to the farms and small towns in the State will deteriorate. With deregulation, the public interest in an effective truck and rail system is denied.

Sensible regulation of truck and rails can and should work toward solutions to the real problems which these modes of transportation face: The unprofitability of service to some areas and the deteriorating conditions of passage—by track or highway—to areas which can provide for profitable shipping. The public's right to a role in the solution to these problems should not be abridged.

We thank you for this opportunity to express our views on this subject.

Senator EXON. Thank you very much. I believe that we have one more, Dale Fields from the South Dakota Rail Users Association.

Mr. EVEREST. I am Tom Everest speaking on behalf of Dale Fields. We wish to thank you for this opportunity to express our thoughts and feelings for the South Dakota Rail Users Association group on behalf of the proposed bill S. 796 for deregulation of rail rates and other major changes pertaining to the control of the railroads by the Interstate Commerce Commission.

In a telephone survey of some of our branch line chairmen, I find the majority of our users feel that restructuring of the ICC control is necessary, but the complete deregulation of the rates would not be in the best interest of the transportation needs of the shippers of this State. One of the major concerns would be the additional detail work of coordinating the various rates for various railroads involved in two or more line haul. Also the uncertainty of the rates that would be dictated by the rail companies from time to time as supply and demand dictates.

As it stands now the shipper and railroad company negotiate the rates and are presented to the ICC for their approval or disapprov-

al. The ICC is merely a protection tool against unfair pricing competition and is a necessity especially of rural South Dakota where competition is at a minimum. It would also give larger shippers a definite advantage where they are set up with a traffic department or people to do the detailed work in working out the transportation needs of their company.

The proposed abandonment procedure as laid out in S. 796 is much too fast and drastic for our rural State of South Dakota. The 60-day notice could leave South Dakota with a big portion of our railroad abandoned within a very short time. I do feel the abandonment procedure can be improved and simplified but to turn the entire control to the transportation companies would be a drastic mistake.

I would hope that a streamlining of our present ICC regulations could be accomplished without the complete disruption of our present working entity. This concludes my remarks and I wish to thank you for the opportunity of presenting them to you.

Senator EXON. Thank you very much. We appreciate it. I believe that everyone has testified now. We undoubtedly have some questions.

Mr. Held, you testified to the fact that you felt that it was up to the Congress to define a captive shipper. We have been wrestling with that problem for a long time in Washington, D.C., during hearings on S. 796. Could you help us? What is your definition of a captive shipper?

Mr. HELD. We have been wrestling with that problem also. Depending upon who you talk to, Mr. Senator, you get varying degrees of what a captive shipper really is. Maybe some of the people who are shippers here would have a better opportunity to define when they believe they are captive than I would, because they are actually in the business.

Senator EXON. Well, you represent the Farm Bureau here, do you not?

Mr. HELD. Yes, sir.

Senator EXON. Members of the Farm Bureau haul their products into elevators on branch lines. Is it safe to assume that the definition with which the Farm Bureau would agree is one under which almost any elevator on a branch line would either be a captive shipper or a partial captive shipper?

Mr. HELD. Yes, I would feel most of our members feel that way.

Senator EXON. Those are some of the things we want to get at. We are out here to explore these issues. We sincerely want your input to help define some of these terms because if decisions are made in Washington, D.C., without input from the rural communities where the captive shippers are, the resulting definition is probably going to be incorrect.

Maybe some others on the panel could help clarify this issue because it is a very critical point as far as this legislation is concerned.

Mr. HELD. Right. I would just add that no alternative or very limited alternatives of shipping, you know, has to come into play as far as captive shippers, but I will pass to anyone here who wants to tackle that one.

Senator EXON. I am asking questions to try and bring out some discussion. The point has been made time and again in our hearings that you might have a captive shipper today, but tomorrow somebody might go in there, say, if you go to truck deregulation, and you might have trucks in that town. So, therefore, you would not have a captive shipper anymore. It is a difficult question. Does anyone else care to tackle it and help us out?

Mr. RADCLIFFE. I think to define what a captive shipper is, you may also need to take into account the cost he will have to pay to ship. We have heard today the cost can be as high as 30 cents a bushel more to go by truck than train. Obviously, if—when a shipper loses his railroad, and he has to pay 30 or 40 cents more to move his product, I would say this qualifies that shipper as a captive shipper, captive to the railroad, subject to exploitation by other carriers.

Senator EXON. Thank you. Mr. Hanson.

Mr. HANSON. I think the question has been answered pretty well. There is no such thing as a captive shipper. We could all get a bushel basket and take our product to the market. But basically, in my opinion, a captive shipper is a producer who has no alternative but to delivering grain at a discount of 25 or 35 cents per bushel because he does not have adequate rail service and must rely upon some other means of transportation.

Senator EXON. I have been interested in the several suggestions which have been made, and I want to congratulate you all for coming up with some alternative suggestions.

It is very easy to come before a committee of Congress and say that this is wrong and that is wrong. But you have come up with some suggestions. You have even suggested that the U.S. Government buy the railroad. I would suggest that most of the people in South Dakota would not want the U.S. Government to buy the railroads. But the fact of the matter is that the U.S. Government is so heavily subsidizing some railroads today that it might as well own them. We might as well face that fact. I am not sure that nationalization is the answer, but at least that is a suggestion as to what might be done.

In order to bring out more comment which might be helpful in this regard, I would just say that I think that you are probably familiar with the fact that shippers may purchase branch lines under the Local Railroad Assistance Act, which was passed last year.

Do you believe that with any of these lines, you members of the panel, could work out something to purchase the lines and possibly make them solvent, when the railroads say they cannot?

Mr. HANSON. Are you addressing me, sir?

Senator EXON. I am addressing anybody on the panel.

Mr. HANSON. Senator, what you are suggesting or proposing is largely what the department of transportation in Iowa is doing. The elevators of Iowa are closer to market. They have had many, many years of large-volume production in that area. They have been able to build up a financial structure.

In South Dakota we are at the tailend of all the railroads in the United States. We are as far from the market as you can get. The people ahead of us peel off the empty cars before they get here.

Our freight differential to market has been extreme. The volume in the State of South Dakota has been slight. So our businesses, our agricultural businesses in this State have not at this time had a chance or opportunity to build up financial stability to the extent that they can go ahead with something like that. It is very difficult.

With the export market we now have, and with adequate rail service 10 years from now, we will have elevators like that in the State of South Dakota as you have in Nebraska.

Senator EXON. We have great difficulty in many places in Nebraska. I would not assume for a moment that just because you live in South Dakota across the line that you have all the problems and that we have none in Nebraska. We do have areas with some very difficult problems, not unlike yours.

But there is no question about the fact that those of us who are out here toward the end of railroad lines, are in a most difficult position in pricing the product as it moves to market. Some of that is made up, of course.

It is compounded by the fact that you have not had the escalation of land sales in South Dakota that you have had in some other States. There is not very much land in South Dakota that sells for $2,000 an acre. I have never been able to figure out how farmers can pay $2,000 for an acre and ever make it pay, especially under the prices we have today and those which we probably will have in the foreseeable future.

But there are all these inequities with which we have to deal, and I assure you, they are a very legitimate concern to those of us from agricultural States, particularly in the area of the captive shipper, insuring that he is adequately protected if and when any piece of legislation as the one before us is passed.

For clarification of the record, Mr. Hanson, and maybe I did not hear you right, I thought that you said something about S. 796 as if it proposes to deregulate railroads and trucks. S. 796, of course, is for railroads only. We have other legislation coming along which proposes to do the same thing for trucks. But for the record, I wanted to clarify that.

I do not believe that I have any further questions right at this time, Senator Pressler.

Senator PRESSLER. Those are excellent questions along the lines that I am already interested in.

But to follow up on the captive shipper, I would like to ask, especially the representatives of the Farmers Union and Farm Bureau, that a suggested alternative to the captive shipper provision in the rail bill is to allow a shipper to declare himself captive. In turn, the shipper must promise to ship all his commodity as is practical by rail.

Would your organization find this solution to the captive shipper problem acceptable? You have covered that in part, but would that be helpful?

Mr. HELD. That would be a step in the right direction, I think, Senator, to get something down in formal defined terms of how you go about being defined a captive shipper. Maybe we can be accused of passing the buck on to Congress, but I would much rather see

that definition and authority come from the Congress than the ICC as to the determination.

That is why we made the encouragement that it be in the legislation, the definition, rather than just saying ICC create the definition.

Mr. RADCLIFFE. I think I would agree with that proposition. Up to a point at least. At some level you have to determine when a shipper is being discriminated against to give him fair and just treatment. I think that may be approaching that. If I might, I would like to make reference to the regional rail subterminals that Senator McGovern proposed in a piece of legislation that he has now pending. And several hearings have been held regarding that.

Time and time again we discover that shippers believe that subterminals might be all right if they were assured performance by the railroad. In other words, we have subterminals in South Dakota. At Pierre, S. Dak., we have a very fine new loading facility with multicar unit loading capabilities. He is having as much trouble getting cars as anyone else.

What we might need is some kind of a contractual agreement between the railroads and shippers, terminal shipper, subterminal shipper, contract for performance.

A given number of cars in a given number of days or weeks. Then the farmer would have some confidence and the shipper would have some confidence that he could go ahead and expand his facilities, spend the money, put in the loading docks that he needs and proceed to move out the grain.

But we can find little enthusiasm for subterminal stations unless we are assured that the railroads will provide the cars to move the product. I am told it's not legal for the railroads to contract that type of agreement with shippers. Maybe we ought to take a look at that.

Senator PRESSLER. Yes, we were going to ask a question on the contract rates, but I think you have answered it in the sense that that may be something in this whole deregulation legislation we need to look into, contract rate for services, and also, as you say, even if we have regional terminals. I support Senator McGovern's bill very much, but we may have the same problems with it. I want to ask a question of the people from the farmers co-op associations in Lake Andes and Wagner, or to anybody. At present, agricultural cooperative associations are allowed to haul regulated commodities, providing that the regulated tonnage does not exceed 15 percent of the gross tonnage.

The administration bill, as I understand it, includes the American Farm Bureau proposal to increase the regulated tonnage level 50 percent. Do any of you participate in agricultural cooperative shipping organizations? And possibly in the Lake Andes or Wagner area there would be such an organization, I don't know.

Mr. SOULEK. No.

Senator PRESSLER. There is not.

Mr. SOULEK. I would like to say something. This is my own personal opinion, for myself. I am in the farming business. Milwaukee Railroad is in the business to ship grain. That is their business. That is where they are to make money. In our area, if the Milwaukee Railroad would run in a businesslike manner, there could be

money made down in that area. The State has put in a million-dollar bridge at Platte to bring the grain in from across the river from Gregory County. They have Fort Randall Dam Bridge to bring the grain in from Nebraska like they have been doing. If they would just run it in a businesslike manner, it could be made. They could do this. Talk about 90-pound rail for hopper cars. Every town has a terminal, one or two terminals. They could take 10 years to upgrade their tracks, or 1 year at a time, going 10 miles in a year. In 8 to 10 years they would have 90-pound rail or they could put it all in at once.

Money is there to be made. I would say if there weren't any money to be made, I would say you bet. Milwaukee has a right to leave; but it's there. There's going to be more in a decade. It's going to be great.

Senator EXON. Thank you very much.

Further comments, questions?

Senator PRESSLER. No further questions.

Mr. Stedronsky, I would like to clarify on that purchasing of a line. Example, now, Yankton to Platte line was going to be abandoned by the Milwaukee Road. If the Federal Government would purchase this line, make it a pilot project, put it up to snuff shape, then charge the rail line that does service it per diem mile, I don't know whether you understood that or not. I think it would be a good test pilot project rather than having a lot of foreign projects. But that is my opinion anyway.

Senator EXON. Jack, I agree with you. We have had some experimentation with people purchasing lines in Nebraska. We have not been very successful so far, but that is one of the options. In this regard, the staff passed along a note to me which says: "Shippers may purchase branch lines under the Local Rail Assistance Act." I wrote on the bottom "You have got to be kidding." We are not going to penalize Charles County.

Is there any other comment?

Mr. HANSON. We have been talking a little bit about contract rights and Mr. McGovern's bill in building subterminal elevators. From my point of view I can't see how anyone in government could possibly consider investing tax dollars in subterminal facilities when there are stand-ready private finances to build those facilities that are readily available in the State. We would like to build an elevator.

I know that most of the co-ops around us would like to build an elevator. All that we ask from you people is that somehow, some way you can assure us that that railroad will run.

We wouldn't even ask that they furnish cars. The car problem is a solvable problem. We can build cars. And we operate our own hoppers. If there could just be some assurance from some direction that that rail would be there, so that we could run on it, that is what we want.

Senator EXON. Mr. Hanson, this comment has given me an opportunity to broaden the scope of this discussion to give you the broad picture which sometimes is not looked at.

S. 796 does provide for the contracting of cars. But again, if S. 796 becomes law, your contract will be whatever the railroad wants to charge you. It is like a dog chasing his tail.

You can take the Milwaukee branch line which runs up to Platte from Sioux City. You can look at that and say: "Why in the world is the railroad not able to get hopper cars out there?" You just said that maybe you could provide more hopper cars and run them.

The problem which we have today is the deteriorating railroad situation all across the States, because the railroads do not have a return on their investment and, therefore, they cannot keep up with the tracks. The free enterprise system is not working, they say, in the railroad industry. I would suspect that somewhere along the line there has not been proper management. We think there should be.

Nevertheless, one of the problems we have with turning around the railroad cars is the fact that even after you move that car off of the branch line which runs from Lake Andes and Wagner and Platte to Sioux City, that car runs on some other railroad line and hopefully eventually gets down to one of the gulf ports. We have a hard time getting it down there. After we get it down there, we certainly do not have the loading and unloading facilities where the cars are tied up. So the problem is much more than just how we are going to get a car there. If you had 1,000 hopper cars on that railroad, and you loaded them all in Platte and took them all the way down to Sioux City, it does not mean that they are going to turn around and come back.

One of the problems at which we have looking in the big picture, and it is a very serious problem, is how are we going to upgrade the entire railroad communications network? It is not going to be feasible unless we have a generally healthy railroad industry in this Nation. How are we going to do that?

I would emphasize as Senator Pressler and I have said time and again, that as we look at these things we are certainly going to look out for the interest of the people out here in the rural areas which are generally on the short end of the stick up and down the line.

But those are some of the problems you deal with when you talk about the national railway system, which unfortunately is in sad disrepair today. This deterioration contributes to the problem, even if you had all the cars you wanted to on that Milwaukee line.

Mr. HANSEN. Yes, sir, I understand that. However, we have been bemoaning the fact of the poor railroads here today. The truth of the fact is that there are some very strong railroads in the United States; Union Pacific for one, Burlington Northern for another. These are railroads which are well managed and who want to operate. From our standpoint it would have perhaps been better if the judge said, "OK, abandon South Dakota and let someone run who really wants to run."

Now the Burlington Northern is giving you car-for-car at the present time to go to the northern Pacific coast. This is a rate that the Milwaukee Railroad says is uncompensatory. Burlington Northern had the best fourth quarter profit they have had in history. Of course, the Milwaukee is going broke. So maybe part of the problem all right is like you say, on management.

As to turnaround time, we are running cars to the north Pacific coast at the present time. There were periods last winter it took 90 days to get a car to the coast and back on the Milwaukee Road. But

in 52 car trains, we are running to Seattle and back right now in 15 days. That is excellent turnaround time. We are running domestically into the Pacific Northwest in 21 days. That will justify a good return on our investment in rail equipment. That rail line from Nappa to Platte that you were expressly commenting about, while it wouldn't carry hoppers today, there is no reason that with some kind of management ingenuity, we couldn't acquire a bunch of boxcars and reconstruct them.

The railroad really doesn't want to. That track could be used used for many years on that basis.

Senator EXON. What kind of service do you have on that line now?

Mr. HANSON. It is horrible. Right now we have the best service we have had for a good long time.

Service on that line is usually once a week. In the wintertime, once a month, sometimes once every 3 months. That is because of snow and cold weather. The Milwaukee has not had crews to run, but I suggest that this is a management problem and that there are good strong railroads that will run on those lines. We need to find a way to get them to do so.

Senator EXON. The Union Pacific is a strong railroad, there is no question about that. It is a well-managed railroad, there is no question about that. But the complaints which I am hearing here from farmers and shippers are not unlike what I hear in Nebraska which lends some credence to the view that if the Union Pacific were a perfect railroad with all the cars it wanted it still would not necessarily mean that just because you are a shipper on the Union Pacific Railroad, you are going to get your grain delivered to a port the way you think that it should be.

Mr. HANSON. That's correct, sir. However, there is—well, COPEL at the present time is building an elevator at Enola. You probably knew where that is. They are putting this kind of investment into that area, because there are strong railroads down there. These people have operated on the train principles for a long time. When you load a 52-car train for Pacific Northwest the freight bill on that train is $99,000. They turn that in 10 days. If those people aren't profitable, I would kind of like to know how they do their accounting.

Senator EXON. Really you are talking about unit trains now, are you not?

Mr. HANSON. Yes, sir.

Senator EXON. Did I understand from your testimony that you were not very enthusiastic about Senator McGovern's bill, which seems to promote the idea of unit trains. Is it your position that if we had the service, private industry would put the unit trains together with the facilities like the ones being built in Nebraska, which you mentioned?

Mr. HANSON. Yes, sir, it certainly is. I think within the State of South Dakota, there are many independents and many cooperatives who would finance and build their own elevators. But it's impossible to put that kind of investment into facilities and have the Milwaukee pull out tomorrow. We were unfortunate enough to have a program like that planned in southeastern South Dakota. Projections and all the work had been done and, of course, the

condition of the Milwaukee Road today, you can't invest money in South Dakota right now.

Senator EXON. Thank you, Mr. Hanson.

Any further comments? If not, I want to thank you very much for a very interesting panel.

Mr. STEDRONSKY. Yes, one thing. The Northwestern from Beresford and Parker, S. Dak., to Haywarden, Iowa, even wanted to purchase the line but the railroads wouldn't put a price on it. The only way they could force them to put a price was take them to condemnation proceedings, although the thing fell through. Just like you go down to buy a car. If you can't get the price, you can't buy it. It looks to me like somebody could do something about that, if it's available for sale.

Senator EXON. Well, there——

Mr. STEDRONSKY. That just happened at Beresford, on the Beresford line.

Senator EXON. Bob, I am not familiar with that exact situation, but there are Government programs which are supposed to assist in that regard. When things like that come up, maybe some of us in Washington can be of some help to you in specific cases.

Thank you all very much. We appreciate your coming.

Mr. HANSON. Thank you, fellows.

Senator EXON. We are going to have to move along to the next panel, which includes Lt. Gov. Lowell Hansen, representing Jack Rabbit Lines, and Winnie Jo Jons from Bonesteel, representing the Randall Bus Line. Following that two-member panel, we will have a very short discussion with three individuals who were supposed to have testified this morning. They will be allowed 5 minutes each. After that we will go to the fourth and last scheduled panel of the day, local, State and Federal officials.

STATEMENTS OF HON. LOWELL HANSEN, LIEUTENANT GOVERNOR OF SOUTH DAKOTA, REPRESENTING JACK RABBIT LINES; AND WINNIE JO JONS, REPRESENTING RANDALL BUS LINE

Mr. HANSEN. Thank you very much, Senator. It's nice to see you again. We are very pleased to have this hearing in South Dakota. You are going to see that in South Dakota the Lieutenant Governor on one hand wears one hat and on the other hand wears another hat, because later on when the State representatives are here, our secretary of agriculture, secretary of the department of transportation, and our director of our rail division, I will come back at that time and introduce those individuals on behalf of our Governor, Bill Janklow who, by the way, sends his regrets and said he could not be here. He has a hearing in Rapid City this afternoon.

I would like to give my testimony to your recorder, because it's rather repetitious, and I will only pick out bits and pieces of it, if I could, Senator, for the file.

Senator EXON. Without objection.

Mr. HANSEN. I am the president and chief operating officer of Jack Rabbit Lines here in South Dakota, founded about in 1924. We operate some 26 coaches in South Dakota on about 2,000 miles of franchises. We are issued certificates to operate by the public

utility commission here in South Dakota by the ICC. We have approximately 50 full-time employees which include over-the-road professional drivers and mechanics, as well as ticket agents. We have been faced during the past several years with declining revenues, as a result of competition from, not here in South Dakota, but as an industry, competition from Amtrak which, as you know, is subsidized by Congress. We face ever-increasing competition from airlines, both in first, second, and third echelon service.

But our largest single competition has come from private passenger automobile. That trend, I am sure, with the energy problems that Congress and this country are facing will see a change as we have already noted in the first 5 months of this year.

Without regulation, Senators, our company could not provide bus service to well over 50 percent of the present communities we now provide bus service to.

For example, we would not run between the cities of Aberdeen and Mobridge in South Dakota. We would not run between Redfield and Gettysburg nor would we run between Redfield and Watertown.

As a matter of fact, presently Jack Rabbit Lines operates two services a day between Rapid City and Sioux Falls, Rapid City being on the west end of the State, Sioux Falls on the east. We operate two schedules a day between Fargo and Sioux Falls and operate two schedules a day between Aberdeen and Sioux Falls.

Without the protection of the regulations that are provided by the two commissions that I mentioned, we would have to reduce those services to one. It is possible that without regulation, other small carriers might wish to operate between the towns that I mentioned. But I think that they will soon find that high capital costs which, by the way, are in the area of $100,000 for a bus, coupled with the rapidly escalating fuel costs, would force those carriers to reduce and eventually leave the field.

I think what you would see, if we deregulate, is a company the size of Jack Rabbit pulling out of South Dakota and moving into an area, and I would even be so specific as to say we have looked at the market in the Omaha, Denver, and Chicago area as a possible alternative, if deregulation of the bus industry does, in fact, prevail in Congress.

Companies of our size, where it would take approximately $3.5 million worth of capital assets, capital investment, it is inconceivable that we could operate those types of equipment on the present routes and would have to move to more densely populated areas.

With that, Senator Pressler, Senator Exon, I would be happy to try to answer any questions you have on our industry,

I do appear here in behalf of the small business carriers in South Dakota. I would also say that the two largest carriers in the United States, Greyhound Lines and Continental Trailways, have both publicly called for deregulation of the bus industry and, frankly, if I was their chief operating officer, I would also be calling for deregulation. I speak only for small bus operators in South Dakota, and I think small bus operators all across the Nation, when I say that deregulation in rural areas of the bus industry will eventually eliminate service to nearly all, if not all, the small communities we presently serve.

We presently serve over 15,000 small communities in the Nation. [The statement follows:]

STATEMENT OF LOWELL HANSEN, II, PRESIDENT AND CHIEF OPERATING OFFICER, JACK RABBIT LINES, INC.

My name is Lowell Hansen, II. I am President and chief operating officer of Jack Rabbit Lines, Inc. My company was founded in 1924 as one of the first inter-city bus operations in the United States. We are a wholly-owned South Dakota business, and almost all of our regular route authority operates within the state of South Dakota. We operate over 2,000 miles of regular route passenger service, as well as charter service to 49 of our 50 States, as well as Canada. Jack Rabbit Lines has 36 coaches in service, operated by a full time corps of 28 professional drivers. We maintain our inter-city buses at our garage in Sioux Falls. The 9 full time employees at our maintenance facility are all highly qualified diesel mechanics.

In 1978 our company operated daily bus service into almost every major city and town in South Dakota. We generated $1.154 million from passenger service. The total passenger revenue was up only 2.26 percent from the previous year, that was in spite of a 10 percent increase in our ticket rates, which indicates a continuation of the declining trend in ridership experienced in our inter-city bus industry during recent years.

We also provide daily express package service, in conjunction with our passenger schedules. We handle small packages primarily, but we are authorized to take express of up to 100 pounds in weight. Our express revenue was up 17.29 percent last year, at a figure of $681,835. We could not operate at our present level of service without our package express revenue, and the 17.29 percent increase in express revenue was the only bright spot in a rather gloomy financial report for our company last year.

In addition to our passenger and express service we operate half of our fleet in charter service. The charter service is incidental to our regular route authority, and it is designed to provide a special service to customers who have large groups of persons needing specialized transportation. In 1978 we generated $614,835 in charter service, which was up 8.06 percent from the previous year, but since our rates had increased over 10 percent during that same period we actually hauled less in our charter service than the year before.

In spite of an increase in our revenue of 7.43 percent, our profit on 2.6 million in revenue was only $69,830. We paid $703,747 in driver's wages and mechanics salaries, and I wish it could have been higher. We figure fringes at 22 percent of our wages, which include group health, retirement, and social security.

The largest single rise in cost during 1978 was fuel, but I'd be happy to settle for last year's raise if I could have had just that percent increase the first 5 months of this year. We have no control over our fuel costs—we're just lucky to get it.

The long and short of this review of our 1978 operating statistics is simply this—given our low population to service, and ever increasing costs, we cannot provide the current level of service without the protection of our regular route authority by virtue of inter and intra state commissions.

I'd like to take just a moment to project into the future, a future without regulation. In a rural state, like South Dakota, our $100,000 buses operate daily to cities that cannot economically justify that level of service. In a real sense, we rob Peter to pay Paul. We make money on one route, to subsidize losses on others.

Without regulation, our company would not provide bus service to well over 50 percent of the cities and towns we now serve. We would not run between Aberdeen and Mobridge, we would not run between Redfield and Gettysburg, we would not run between Redfield and Watertown, or between Sioux Falls and Yankton. We would reduce our level of service from 2 schedules a day between Sioux Falls and Rapid City to once a day service, and the same fate would befall our Aberdeen to Sioux Falls, and Fargo to Sioux Falls schedules, which now operate twice daily.

It is possible that, without regulation, other smaller carriers may wish to operate between these towns; but they will soon find that high equipment costs, coupled with rapidly escalating fuel costs, will force them to reduce and eventually leave the field.

What I see happening is this, if we deregulate, the strong carriers will "pull back" to those routes that are presenting profitable. We will cut rates, and "pirate" one another until only one strong carrier survives. In the meantime, those routes that were never profitable will have operations try and fail, and eventually these routes will be abandoned and without any form of ground transportation service.

Gentlemen, I apologize if I've painted a gloomy picture. I hope you believe me to be sincere when I day, I wish it could be otherwise.

Deregulation is not the panacea some politicians and textbook economists would have you believe. I believe rural states, like South Dakota, will suffer dramatic reduction in service as a result of deregulation. It is a typical case of the large urban states, versus the more sparsely populated rural states. We are all our brothers keeper, and in the case for regulation vs. deregulation, I come down on the side of regulation. South Dakota will suffer, as will our people, if deregulation of surface transportation is allowed by either Congress or our state legislature.

Senator EXON. Governor Hansen, thank you very much.

I think it would be well if we go ahead and hear from the other witness representing the buslines. Then we undoubtedly have some questions for both of you.

Winnie Jo Jons from Bonesteel.

Ms. JONS. Yes, I am here for Randall Bus Line and also my job with the community action program. I am responsible for transportation of senior citizens and handicapped people. And I think it's very important that the bus lines stay intact in South Dakota. We don't have very many more.

In our area alone, three bus lines have closed down, which doesn't help Jack Rabbit's bus service either in getting people to the major areas like Mitchell or Sioux Falls to catch buses. So out in the rural area people just don't have a way to get anyplace, unless they have cars. The busline that my husband runs right now, the equipment is very poor. It's just a little old wreck of a bus. It's got over 1 million miles on it. He does his own work on the buses. The overhauling. It comes down to the fact that if it wasn't—it used to be—the only reason it stayed in existence as long as it had, it had a mail contract on it. That was dropped.

Now we are hauling newspapers and giving it just a year's try. And I think the Daily Republic is going to cancel that because they found out that sending it through the mail when they quit that, they lost about 1,100 customers. They told my husband the other day. So this busline might not be intact either.

It's going to, of course, affect transportation for Jack Rabbit and all of our people in our area. With the high cost of gas, we are going to have more people needing cheaper transportation. It's going to affect especially the elderly. Not only low income, but middle-income people.

That is just about all I have to say, and to reinforce Mr. Hansen's concerns.

Senator EXON. Thank you very much for the statement. Certainly S. 796, the Rail Deregulation Act, has nothing to do with buses. I do not believe that buses are included under the trucking deregulation proposal.

Are you fearful that something is about to come up in this area? Either one of you can answer that question. Or is there something specific we should know about?

Mr. HANSON. As we understand it, the American Bus Association, which is our representative in Washington, President Carter is in the process now of drafting bus deregulation legislation which will probably come in the next Congress.

Senator EXON. I see. Well, You have brought up some good points.

You have expressed a concern that many of us have had throughout our hearings in Washington, D.C. Will deregulation

will it have a serious effect on rural areas? Will we be depriving them of service?

That goes back to something which was mentioned and on which I wanted to comment. I believe that it was Ben Radcliffe of the Farmers Union who mentioned the fact that with the airline deregulation South Dakota no longer has full service. He mentioned a Wisconsin service, it may be Air Wisconsin. Air Wisconsin also serves Lincoln, Nebr., and I have used that line on several occasions from Lincoln, Nebr., to Minneapolis Airport.

It is true that they do not have restroom facilities. They do not even have a stewardess. But they do a very good job of transporting people from Lincoln, Nebr. to Minneapolis. And they also have transported me in great safety, and they are the only airline that I know of which has not torn up my bags enroute.

So I would just say that all is not lost because of the fact that we do not have a DC–10 going to Huron, S. Dak. Maybe we can get some DC–10's into Huron, S. Dak., today.

But the fact of the matter is that we have to be realistic. We have to, somewhere along the line, say that if Huron, S. Dak., does not have enough boardings to justify a larger airplane, then the commuter airline service out of Huron, if it is Air Wisconsin or whatever, will be satisfactory to provide a very necessary service to get people around.

In Nebraska, we have had Frontier Airlines cancel out in some major locations, including McCook and other cities. But we have found in working with the commuter airlines that they give us more reliable service than we had before

It is not as big an airplane, but, generally speaking, the service being provided adequately fills the needs of those communities.

So we come back to the necessity of providing some type of acceptable transportation. Since I am a native of a small community, I have ridden on buses of the type you say are presently in service. That bus service is very critical to those towns.

Certainly I do not think that many of us on this committee are in favor of doing anything, to harm our small communities. We have had testimony on every side of that issue before us here today. That is why it is difficult for us to make the eventual decision which we have to make. We are here to get input and figure out as best as we can what is in the best interests of the people in rural America of which South Dakota and Nebraska are a very important part.

That was simply a statement for clarification. I am glad to know that there is nothing before the Congress now on bus deregulation.

Do you have any further statements?

Mr. HANSEN. Well, Senator, you bring up a good point.

First of all, this table at one time would have been full of bus operators here in South Dakota, even with regulation, they have not been able to survive.

Randall Bus Line, I am sure, as Winnie has already said, is facing the possibility they may have to shut down, which would leave only one or two other small bus operators in South Dakota, myself being one of them.

But I think one of the concerns I have as a bus operator is that I hear this statement made. We deregulated the airline industry

and, therefore, since it has "worked out so well," we ought to do the same with transportation in other areas.

My concern is this: First of all, that we are not comparing when we talk about airlines and trucks and airlines and buses and airlines and railroads, apples and apples, because, as an example and, as a matter of fact, under regulation, airlines already did compete. They are operating American and United and Continental Airlines. all were operating in the same basic routes.

So what they got into was competition as to how many stewardesses they had, or first class service or free champagne. That is how they competed even though they were regulated.

Now they have deregulated the airline industry. And what I see is going on today is not the panacea I think some of the economists would have us believe. I think the airline industry is going through a tremendous revolution. I think the United Airline strike just culminated recently was only one battle in that war because that management team said we would go no further because we cannot give raises without knowing what revenues we can generate in the future.

At least in my industry, I know I am going to be able to anticipate certain revenues because we have, believe it or not, a very fixed volume of passengers. Unfortunately, most of the people who use our service are in the middle to low income or mom and dad are shipping the kids up to see grandma and that situation, and those are rather predictable situations.

In the airline industry, that wasn't the case. When they deregulated, they got into what I would call price piracy. I think what you are seeing in the airline industry is a state of revolution.

I think, for example, Western Airlines, which operates across South Dakota today, is going to, under deregulation, take off that service across South Dakota and it is true that second or third echelon air carriers may come in to take up the slack. But that can't happen in the bus business because there is only one bus that is manufactured. It costs $100,000 to buy it at today's prices. By the time we deregulate, that could be $200,000. I know of no small operator who can afford to pay $100,000, $200,000 for a bus and operate it with 10 or 15 passengers and make a profit. It is an impossibility.

Senator EXON. I certainly agree with you, Governor, that airline deregulation is different from the other modes of transportation and that it cannot and should not be used as an example of the success of deregulation, even assuming that it has been successful.

Senator Pressler.

Senator PRESSLER. Thank you for your testimony. As this relates to rail deregulation, our State is the only one that doesn't have a train ride somewhere that you can get in and out of the State and one of the two States in the Union that doesn't have Amtrak.

I don't anticipate fully what the Carter administration is going to do on bus deregulation. We have had one panel of witnesses from the bus industry that anticipated bus deregulation. I know Trailways Co. has a deregulation proposal.

But let me ask you, as it relates to this whole rail thing, if we had deregulation of bus in the pure sense, you would probably

move your business essentially out of South Dakota to richer routes? Your stockholders and so forth would probably ——

Mr. HANSEN. Senator, I would have to move at least part of the fleet out. I would probably move half of our 36 buses approximately into the Chicago-Omaha-Denver route.

Greyhound today is operating four and five sections a day on one schedule. We would set up and try to rent property close to their depot and pirate as many of their passengers away as we could offering cheaper rates. We have basically the same bus.

For a short period of time, I am sure we would probably be able to capture some of their passengers until we got into a rate war, at which time, being a larger company, they could undercut us and eventually we would be hauling people for nothing which means it wouldn't be too long and we would be back out of the market again.

My point in a nutshell, I guess, it this: Under deregulation of our industry, and I don't speak for trucks or rail, but I do speak for the bus industry, deregulation of the bus industry in rural States like South Dakota and Nebraska, in my opinion, will curtail service dramatically to those small rural communities.

There is just no other way, no other operator that I know of that can make himself—can have access to the types of equipment we have today and operate the same level of service to the communities that we do.

Senator PRESSLER. Maybe I could ask Winnie, if she thinks this occurred, if we lost what little transportation is available for the elderly and others, would there be anything else that would spring up to replace it?

Ms. JONS. No. I think if it could be done, it would have been done. With all the little companies going out, it has proven you can't make it.

It is not only the passenger things we were concerned about in the small towns, but it is also some freight.

Senator PRESSLER. Yes, the freight part of it might be. Where do you get your freight from, other buses, or do you tie in with railroads or UPS? Do you do work for UPS?

Ms. JONS. No.

Senator PRESSLER. Do you do work for the Post Office?

Ms. JONS. No, not after the mail contract was lost.

We have calls all the time to pick up tractor parts and things of this kind that they need immediately, and maybe UPS can't haul, and things like that.

Senator PRESSLER. Thank you very much. I have no other questions.

Senator EXON. Thank you very much for your testimony. The good news we have for you folks is that we will not even be taking up bus deregulation until we dispose of railroad and truck deregulation. So if that is good news, there it is.

Did you have anything else, Governor?

Mr. HANSEN. No, we just thank you very much for bringing your subcommittee hearings here to South Dakota. We think that is good government, when you bring Washington to the rural States. Thank you very much.

Senator EXON. Thanks to both of you. Before we go into the last panel, the local and State officials, I am going to call three people to whom I referred earlier: Mr. Len Gidlow, Rapid City, S. Dak., Barber Transportation Co.; Mr. Jack Jackson, United Transportation Union; Jerry Conlon, vice president for public relations, from the Chicago and Northwestern Railroad.

To show you what power and influence the U.S. Senate has, notice the broad view we have on this panel.

Mr. Gidlow, you told me that you have a statement which you would like to submit for the record. If you would do so at this time, we would be glad to accept it without objection. Then you may summarize it.

STATEMENT OF LEONARD GIDLOW, BARBER TRANSPORTATION CO.

Mr. GIDLOW. Thank you Senator Exon and Senator Pressler. I thank you for taking me out of order, but I feel I am one of those deregulated airlines this morning. I have this prepared, and also some maps showing the area which Barber Transportation Co. serves. I will try to skip around the statement because there are facts and figures.

I think it's very important for you people in Washington—you hear the economists and academics say what is going on. Our company has been in business for over 30 years. In the year 1978 Barber Transportation's close revenue was $15,802,943.

We have 289 employees in South Dakota, and our payroll for these employees in 1978 was $5,325,415. We operate primarily in the West River. If you wanted to have rural America, that is the West River part of our particular State. And it outlines the authority.

I would like to draw special attention on this particular map that I have included, that Barber Transportation serves every major Indian reservation located in the State of South Dakota and various small communities located within the major communities with this area. I might also note that the population of the service territory of Barber is approximately 1.1 person per square mile.

It is expected that the 1980 census would show this to be reduced. I have also pulled out the information and history of our company, as far as the number of shipments handled, total weight, revenue, and average size shipment.

I think with the figures contained in the statement it shows that Barber Transportation basically is an LTL carrier to small communities. I have in particular also taken off the information—I appeared before sunset committee of the public utilities commission and I had two members of that committee—and I have picked off information from their hometowns.

One happens to be Wall, S. Dak., and the other, New Underwood—two small communities located along I-90. It is interesting to note in those figures that the tonnage into those particular towns are diminishing year by year. I think the size of shipment is also diminishing accordingly.

I think that is the true case of all the small communities our company serves in western South Dakota. To further support service to small communities, Barber Transportation and it's computer

program have made up special run codes for various small towns, not large enough to put actual figures into our computer. Attached is a copy of the special run codes. Some of these include as many as 18 communities located within computer code number 95, compared with the smallest group of 7 which would be computer code 93.

In this regard, I have taken out for the first 5 months of 1979 the interstate and intrastate shipments destined to these various coded towns. I have also shown New Underwood and Wall, again updating this to 1979. Western South Dakota has developed and grown and we at Barber like to feel we have been a very integral part of this growth. As the area has grown, so has our company.

Only through good motor carrier regulated service has this been accomplished. We have appeared before the ICC as an applicant, as a protestant, as a proponent and as an opponent, and have found through the years that this has given a very stable tranportation at most fair to the development of our area. We have won some cases and we have lost some cases.

Even though we have lost some we still believe the continued regulation by the ICC is a necessity in order to maintain a good transportation system within our area. What has the ICC given to the public and business community?

It's provided a stable structure so that the public as well as the businessman knows what their transporation charges are going to be for moving their products into and out of their territory. We have faithfully served our designated area and have done so at the most economical cost. What if the ICC were abolished and or trucking industry totally deregulated?

First, I would like to comment about the rate structure. If we were deregulated, what we know today as the rate structure will be completely dismantled and destroyed. As a carrier I would only publish single-line rates and they would apply only to Barber Transportation Co.

I would also not accept freight from an interline carrier on a collect basis, which is done approximately 50 to 60 percent of the time today. This would in effect produce combination rates. There is a misconception that the motor carriers only maintain one level of freight rates which is entirely erroneous, as there are three different kind of rates: Class rates, which apply usually on truck load traffic; commodity rates, applying to specific commodities between usually specific points; and exception rating, usually on less than truck-load or truck-load basis within a truck-load region.

The last two rates are basically set by what-the-market-will-bear-type rates. These particular rates are highly competitive and established because of particular circumstances involving the movement of any type of traffic.

For instance, the commodity rate Barber maintains at the market level, below the proper class rates, would be on bentonite clay, from the producing areas of South Dakota and Wyoming into the Midwest area, not restricted just to points that Barber serves, but to all points the shipper has movements.

Therefore, the trucking industry has taken care of the market situation. With no regulation, I would not know what the competitors were charging for a similar service. Therefore, we would go

back to the dark ages of ratemaking wherein if the truck were full the quoted rate would be very high; if it were empty the quoted rate would be very low.

It would be my opinion that if we were deregulated today the class rates that my company maintains would be increased 10 to 20 percent—not reductions on this traffic. This traffic which makes up the preponderance of Barber Transportation Co. business would not be reduced, but instead increased.

If deregulated, our company would look very closely at the number of communities as shown under codes 90 through 95 and would be able to either eliminate or construct one delivery point from all those communities, and isolate them from any trucking service.

With the volumes as shown in the statement, it would certainly not be attractive to any other trucking company to come in and serve these communities. We would have to look at the services we are giving to other small communities that we did not eliminate and probably limit service to two or three times a week whatever other economic adjustments were needed.

If the above measure is enacted, it certainly won't benefit the public and certainly won't benefit the businessman as he will find himself in a new atmosphere of trying to do business and will find with the many services he requires to makes his business successful—have been eliminated or curtailed.

I have recently heard three different experts in the deregulation field making various comparisons with other countries, as well as deregulated States. I would like to point out that current deregulation of diesel fuel is a prime example of what would happen if the motor carrier industry was deregulated.

We have never had such difficulty in obtaining fuel for our vehicles to maintain service as we have since deregulation of diesel fuel. The cost has almost doubled. This deregulation has caused utter chaos in our company in our scramble to try to obtain diesel fuel. Even with the allocation from the major oil companies, they are under no obligation to furnish us any fuel whatsoever.

And our allocations have been cut 20 to 40 percent. There is no way we could operate if this were to continue as it's greatly added to our cost, not alone on the price of fuel but having to make multiple stops to receive 50 gallons of fuel at each.

I would also point out the current situation we are in with the independent truckers. They have been ordered to go back to work with no control or regulation. They are under no obligation to pay any attention to the needs of the country, State, or business community.

Therefore, I would point out there needs to be a regulated motor carrier industry. Barber Transportation Co. has also felt we have performed to the best of our ability to give the shippers and receivers of traffic in South Dakota the best service possible.

We are continuing to do and will continue to do that so long as we can. You should check with the South Dakota Department of Transportation and look into economies affected under our twin 45 operation between Sioux Falls and Rapid City, which proves we have the ability to save fuel, increase productivity, and use our

management ability in cooperation with State and Federal agencies to give economical transportation service.

Under the federal system we find ourselves in constant conflict with the Department of Energy, Department of Agriculture, Department of Transportation, and other ruling or governing agencies. Efforts to coordinate the various rules and regulations so they are not all in conflict with each other would help our industry more than anything else that could be done.

We therefore request that your committee in its conclusion will realize that the Interstate Commerce Commission and motor carrier regulation are necessary to maintain and control a good stable trucking industry. This is doubly important at this time with the demise of the Milwaukee Railroad and other railroad problems, so commerce may freely flow from east to west, and north to south in the State of South Dakota.

It is possible that some of the rules and regulations should be updated, possibly changed and modified to help the carrier as well as businessman and public. We cannot see the total elimination of this Commission as a solution to stability in a motor carrier industry.

We have found that working with the present rules and regulations these changes have been accepted and probably will continue to be accepted, changed, and updated within its present framework. We again request that your committee find that the motor carrier regulations as administered by the ICC are necessary and will remain intact. I thank both of you.

[The statement follows:]

STATEMENT OF LEONARD D. GIDLOW, BARBER TRANSPORTATION CO.

My name is Leonard D. Gidlow, and I am Vice President—Traffic of Barber Transportation Co., P.O. Drawer 1970, Rapid City, South Dakota. I have been employed as Vice President—Traffic for approximately six years and have been in the Traffic Department of Barber Transportation Co. for approximately 20 years. I have appeared before the Interstate Commerce Commission as well as the South Dakota Public Utilities Commission representing Barber Transportation Co. in its dealings with these Commissions.

Barber Transportation Co. is a Class I Common Carrier over regular routes, authorized by the Interstate Commerce Commission, No. MC 97699, and its General Offices are located at Rapid City, South Dakota. Barber Transportation Co. is a South Dakota corporation and has served in the trucking business since 1948. On June 21st we started our 32nd year of operating in this territory. In the year of 1978 Barber Transportation Co.'s total gross revenue was $15,802,943; in 1977 its gross revenue was $13,172.040. We have 289 employees in South Dakota and our payroll for these employees in 1978 was $5,325,415.

Barber Transportation Co. is also a Class A interstate carrier holding various certificates authorized by the South Dakota Public Utilities Commission, transporting general commodities over regular routes on regular schedules. The area that Barber Transportation Co. serves in South Dakota in both intrastate and interstate traffic is bordered on the east by the Missouri River, on the south the Nebraska state line, on the west the Wyoming state line, and on the north the North Dakota state line. Into this area we serve between our major terminals of Billings, Montana; Chicago, Illinois; Denver, Colorado; Dickinson, North Dakota; Minneapolis-St. Paul, Minnesota; Omaha, Nebraska; Sioux City, Iowa and Sioux Falls, South Dakota.

I have also prepared and attached a 1979–1980 Highway Map outlining the various routes and communities that Barber Transportation Co. serves. I would like to draw special attention on this particular map that Barber Transportation Co. serves every major Indian Reservation located in the state of South Dakota and various small communities that are located between the major communities within this area. It might also be noted that the population of the service territory of

Barber Transportation Co. is approximately 1.1 persons per square mile. It is expected that the 1980 census show this to be reduced.

Barber Transportation Co. co-mingles out interstate traffic in order that we may serve the small communities located with our area. Each is dependent on the other to provide the necessary revenues to sustain our motor carrier operation. For the purpose of this statement I have prepared from the Company records the following information:

SHIPMENTS; INTERSTATE AND INTRASTATE WEIGHT AND REVENUE

	Number of shipments	Weight (lbs)	Revenue	Average size shipments (lbs)
Year:				
1975	264,344	198,974,673	$8,889,412	753
1976	289,396	220,365,931	10,946,571	762
1977	302,951	259,764,086	13,172.040	857
1978	322,367	298,061,617	15,802,943	925

With the above information, it is my belief that Barber Transportation Co. is one of the largest carriers located within the state. As you can see by the above yearly comparison, the traffic handled by our company has increased from 198,974,673 pounds in 1975 up to 298,061,617 handled in 1978. This is approximately a 100 million-pound increase of traffic.

Barber Transportation Co. handles traffic, not alone to the major communities located within western South Dakota, but also the small communities along the way. I have prepared for this Committee a comparison of interstate and intrastate shipments handled to Wall, South Dakota and New Underwood, South Dakota.

INTERSTATE AND INTRASTATE SHIPMENTS HANDLED TO WALL, AND NEW UNDERWOOD, S. DAK.

	New Underwood			Wall		
	Number of shipments	Weight	Average weight	Number of shipments	Weight	Average weight
Year:						
1975	313	119,797	383	1,722	1,449,009	841
1976	283	136,035	481	1,632	1,076,131	659
1977	287	107,538	375	1,499	969,468	647
1978	280	98,860	353	1,405	956,002	680

This comparison shows that in 1975 Barber Transportation Co. handled a total of intrastate and interstate shipments to New Underwood, South Dakota of 313 shipments weighing 119,797, which averaged 383 pounds. You will note the trend in the weight column that in the year 1978 this traffice had reduced to 98,860 pounds with the weight average of 353 pounds. The same holds true with the traffic handled into Wall, South Dakota. In the year 1975 we handled 1,722 shipments weighing 1,449,009 pounds; in the year 1978 this had diminished to 1,405 shipments weighing 956,002 pounds with an average weight of our shipments into Wall dropping from 841 to 680 pounds. You will note in this comparison Barber Transportation Co. is a small shipment carrier, with the average size shipments of approximately 825 pounds.

To further support service to small communities, Barber Transportation Co., in its computer program, has made up special run codes for various small towns not large enough to put actual figures into our computer. Attached is a copy of these Special Run Codes. Some of these codes include as many as 18 communities located within Computer Codes No. 95, compared to the smallest group of seven, which would be Computer Code No. 93. In this regard, for this proceeding I have taken off, for the first five months of 1979, the interstate and intrastate shipments destined to these various coded towns. I have also shown New Underwood and Wall.

	Number of shipments	Monthly average	Total weight	Total average weight per month	Average weight per shipment
Code Number:					
90	316	63	144,597	28,919	458
91	386	77	244,377	48,875	633
93	266	53	147,301	29,460	554
94	368	74	191,147	38,229	519
95	395	79	229,172	45,834	580
New Underwood	125	25	39,676	7,935	317
Wall	550	110	331,442	66,288	602

The western South Dakota area has developed and grown, and we at Barber Transportation Co. like to feel that we have been a very integral part of this growth. As the area has grown, so has our company; and only through good motor carrier regulated service has this been accomplished. We have appeared before the Interstate Commerce Commission as an Applicant, as a Protestant, as a Proponent and as an Opponent, and have found through the years that this has given a very stable transportation atmosphere to the development of our area. We have won some cases and we have lost some cases; and even though we have lost some, we still believe that the continued regulation by the Interstate Commerce Commission is a necessity in order to maintain a good transportation system within our area.

What has the Interstate Commerce Commission given to the public and business community? It has provided a stable rate structure so that the public as well as the business man knows what their transportation charges are going to be for moving their products into and out of their trade territory. We have faithfully served our designated area and have done it at the most economical cost available.

What if the Interstate Commerce Commission were abolished and/or the trucking industry were totally deregulated? First I would like to comment about the rate structure: If we were totally deregulated, what we know today as the rate structure will be completely dismantled and destroyed. As a carrier I would only publish single line rates and they would apply only via Barber Transportation Co. I would also not accept freight from an interline carrier on a collect basis, which is done approximately 50–60 percent of the time today. This would, in effect, produce combination rates. There is some misconception that the motor carriers only maintain one level of freight rates, which is entirely erroneous, as there are three different kinds of freight rates:

(1) Class Rates, which usually applies on less than truckload traffic between all points and places in the United States.

(2) Commodity Rates, which apply on specific commodities between usually specific points.

(3) Exception Rating, which is usually on less than truckload or truckload basis with a particular region.

The last two categories of rates are basically set by "what the market will bear" type of rates. These particular rates are highly competitive and established because of particular circumstances involved in moving the type of traffic. For instance, a commodity rate that Barber Transportation Co. maintains at the market level below the present class rates would be on bentonite clay from the producing areas of South Dakota and Wyoming into the Midwest area, not restricted just to points that Barber serves, but to all points the shipper has movements. Therefore, the trucking industry has taken care of the market situation.

With no regulation I would not know what competitors were charging for similar service. Therefore, we would go back to the dark ages of rate making wherein if the truck were full the quoted rate would be very high; if the truck were empty the quoted rate would be very low. It would be my opinion that if we were deregulated today the class rates that the company maintains would increase between 10—20 percent, not reductions on this traffic. This traffic, which makes up the preponderance of Barber Transportation Co.'s business, would not be reduced but instead would be increased.

If deregulated, our company would look very closely at the number of communities, as shown under Codes 90 through 95, and would be able either to eliminate or to centrally construct one delivery point for all those communities and isolate them from having any trucking service. With the volumes as shown above, it would certainly not be attractive to any other trucking company to come in and serve these communities. We would have to look at the service that we are giving to other

small communities that we did not eliminate, and probably limit service to two or three times a week and make whatever other economic adjustments needed.

If the above measure is enacted, it certainly will not benefit the public and certainly not benefit the business man, as he would find himself in a new atmosphere of trying to do business, and would find that the many services that he requires to make his business successful have been eliminated or curtailed.

I have recently heard three different experts in the deregulation field making various comparisons with other countries as well as deregulated states. I would like to point out the current deregulation of diesel fuel as a prime example of what would happen if the motor carrier industry were deregulated. We have never had such difficulty in obtaining fuel for our vehicles to maintain service as we have had since deregulation of diesel fuel, and the cost has almost doubled. This deregulation has caused utter chaos in our company in our scramble to try to obtain diesel fuel. Even with allocation from the major oil companies, they are under no obligation to furnish us any fuel whatsoever, and our allocations have been cut 20–40 percent. There is no way we could operate if this is to continue, as it has greatly added to our increased cost, not alone in the price of fuel but having to make multiple stops to receive 50 gallons of fuel maximum at each.

I would also like to point out the current situation we are in with the Independent Truckers. They have been ordered to go back to work with no control or regulation. They are under no obligation to pay any attention to the needs of the country or state of business communities. Therefore, it would certainly point out that there needs to be a regulated motor carrier industry.

Barber Transportation Co. has always felt that we have performed to the best of our ability to give the shippers and receivers of traffic in western South Dakota the best service possibly. We think with out more than 30 years of experience that we are doing that, and we will continue to do it for as long as we possible can under the present regulations.

I also believe that you should check with the South Dakota Department of Transportation and look into the economies effected under our Twin-45 operation between Sioux Falls and Rapid City, which prove that we have the ability to save fuel, increase productivity and use our management ability in cooperation with state and federal agencies to give economical transportation service. Under the federal system, we find ourselves in constant conflict with the Department of Energy, Department of Agriculture, Department of Transportation and other ruling or governing agencies. Efforts to coordinate the various rules and regulations so they are not all in conflict with each other would help our industry more than anything else that can be done.

We therefore request that your Committee in its conclusion will realize that the Interstate Commerce Commission and motor carrier regulation are necessary to maintain and control a good stable trucking industry. This is doubly important at this time with the demise of the Milwaukee Railroad, and other railroad problems, so that commerce may freely flow from east to west and north to south in the state of South Dakota. It is possible that some of the rules and regulations should be updated, possibly changed and modified, to help the carrier as well as the business man and the public. But we cannot see the total elimination of this Commission as a solution to stability in the motor carrier industry. We have found that, working with the present rules and regulations, these changes have been accepted and probably will continue to be accepted, changed and updated within its present framework.

We therefore again request that your Committee find that the motor carrier regulations, as administered by the Interstate Commerce Commission, are necessary and will remain intact.

Senator EXON. Thank you for your testimony, Mr. Gidlow.

You did not address a key issue here at this hearing. If S.796 as proposed becomes law, what effect do you think it will have on the trucking industry?

Mr. GIDLOW. I would assume total deregulation would be handled for the trucking industry. We would probably at the beginning go and see some type of competition come into our area. I think we would be very concerned with the stability of the industry; that is why we made the statement about combination rates.

Senator EXON. Let me repeat the question.

My question, Mr. Gidlow, was whether or not you feel that S. 796, which has nothing to do with trucks, were to become law,

what effect if any do you think it would have on the trucking industry?

Mr. GIDLOW. It would put a tremendous burden on the trucking industry. I firmly believe there are not enough trucks in the State of South Dakota to handle the products presently being handled by the railroad.

Senator EXON. Thank you. Senator Pressler?

Senator PRESSLER. I was intrigued with your comments on diesel fuel because I remember as a Member of Congress I was called to the Oval Office of the President once and briefed and told by all the companies that if we deregulated diesel fuel it would solve all the problems. Diesel fuel was deregulated without a vote in Congress and it is the one we have the most problems with now.

I was interested in your comments there. Now, how often do you tie-in with railroads? How often do your trucks pick up something from the railroad station? Are you part of the total system?

Mr. GIDLOW. Only on occasions. There is a piggyback plan, three or four units that would come into our area. They contact us and we would pick it up from the railroad, but that happens once every 4 or 5 months.

Senator PRESSLER. Do you participate in that piggyback program?

Mr. GIDLOW. Yes, sir.

Senator PRESSLER. I suppose Rapid City is big enough that even if there were deregulation it wouldn't affect that much, would it? I have seen some piggybacks in Sioux Falls and Rapid City. Those are the only two South Dakota towns I have seen them in. It is hard to speculate but I don't know what impact that would have.

I would guess that probably wouldn't make much difference if rails were deregulated or not. They would probably still come in a little bit to South Dakota.

Mr. GIDLOW. Yes, sir.

Senator PRESSLER. But it is a part of your business?

Mr. GIDLOW. A very small part, and the reason they come in is probably because of the deramp situation. Maybe the railroad people can answer that a lot better than I can.

Senator PRESSLER. Thank you very much.

Senator EXON. Just for clarification of the record before we go to the next witness, I want to say that the President did take the action of deregulating diesel fuel. Of course, that authority was given to him by the Congress under the Energy Act of last year.

While it is true that diesel fuel prices have gone up, and supplies have gone down unfortunately since that time, let's all remember that diesel fuel is made from crude oil, and crude oil was not deregulated. In other words, let's not blame the deregulation of diesel fuel alone.

I am not sure that deregulation was the right step. At the same time, we were obviously not going to have any more diesel fuel because we were and have been continuing to date to regulate the amount of crude oil which comes into our overall economy.

With that comment, I wish to thank you very much for appearing and for your testimony, Mr. Gidlow.

The next man whom I have on the list in order of recognition is Jack Jackson of Huron, United Transporation Union.

Mr. Jackson.

STATEMENT OF JACK JACKSON, UNITED TRANSPORTATION UNION

Mr. JACKSON. Mr. Chairman, Senator Exon, Senator Pressler. You have my letter under date of July 1, for a matter of record.

Senator EXON. Without objection the letter will be entered into the record.

[The letter follows:]

UNITED TRANSPORTATION UNION,
Huron, S. Dak., July 1, 1979.

Hon. LARRY PRESSLER,
U.S. Senator,
Senate Surface Transportation Subcommittee, Washington, D.C.

DEAR SENATOR PRESSLER: I appreciate Chairman of Committee on Commerce, Science and Transportation Senator H. W. Cannon's and your invitation to attend and testify at the scheduled hearing on July 5, 1979 which is being held at Sioux Falls, South Dakota.

The subject of deregulation is not a unique concept in government, industry or even the moral standards of our society as we know it today, however, in essence the decision on the subject of deregulation of government or of any industry including railroads must be based on the actuarial cost to those you represent—The Citizens of South Dakota and the Nation. We also must not lose sight of the energy crisis, as we know it today, which will have continuing economic impact on our State and Nation in subsequent years. With the deregulation of our Oil Industry and further complication in the Middle East, we are reminded daily of this in our future.

I served two terms in the South Dakota Senate. During one term as Chairman of the Senate Transportation Committee, was appointed to represent South Dakota at the Midwest Council of State Governments and at a meeting in Chicago a Representative of Secretary Colman of US, DOT, presented us the subject of airline deregulation. We challenged the original proposal as it would have a disastrous economic impact on small communities that have invested millions of dollars in run-ways and terminal buildings necessary to meet airline and government requirements to receive airline service. I would contend that few are aware that the full impact of airline deregulation will not be felt until after 1982 when airline service to many small communities will be curtailed.

I have read S. 796, the Congressional Record, Volume 125, No. 38 under date of Tuesday, March 27, 1979, a letter from the Chicago North Western Transportation Company and a statement provided by J. R. Snyder, National Legislative Director of the United Transportation Union. I would submit to you that the allotted time of ten (10) minutes would not provide an intelligent discussion of S. 796 which to say is one of the most comprehensive bills this Committee will have under consideration this term.

I will be most happy to answer any questions on the subject of deregulation or our concern with the future of the Milwaukee Railroad or the Employee's purchase of the Milwaukee Railroad.

I thank you, Mr. Chairman and Members of the Senate Surface Transportation Subcommittee for allowing me to testify as a Representative of the South Dakota Members of the United Transportation Union.

Sincerely,

JACK JACKSON,
South Dakota State Legislative Director.

Mr. JACKSON. Senator and members of the committee, I think we often lose sight—and that is that under regulation years ago the railroads as well as the trucking industry were granted a franchise to operate, protected by territorial boundries from competition. They made certain commitments to that on receiving their franchise. We must not lose sight of this. Furthermore, all rules and regulations now in effect pertaining to the ICC with the exception of a few that are not a significant factor, have all had hearings, both proponents and opponents—were permitted to testify before those rules or regulations were adopted.

I think for the most part that due consideration has been given to provide to the shippers and consumers as well, necessary protection provided by law, rules, and regulation. I find that in S. 796 that you have deregulation that will eventually be regressive in my opinion, we haven't felt the full crux of the air deregulation as yet; you will not feel that full impact until 1982.

The deregulation of oil has been, on your fuels, your heating oil, tripled in cost and yet we have a shortage that we have felt; you can rest assured. South Dakota is an exporting State. We are not an importing State. We are solely dependent upon a choice of transporation. Under ICC rules and regulations we have the opportunity to maintain the choice of transportation through their hearing process.

That is, that if the railroads can justify the abandonment of a line, it is granted. Senator Exon and I are familiar with the abandonment process having attended many hearings on railroad abandonment. We know they are experts in their field and if you don't have your facts together, the line is gone.

It is comparable to those that are represented on the local branch lines, normally dependent upon the attorney general, which I have a lot of respect for but they are not professional.

As I go through S. 796, I find that if it would pass as printed, that those—the major grain companies—would have an advantage whereas the protection under the law today is provided, the small businessman.

Go down on page 4 in B, the 7-percent increase. Does that include the energy cost? Is that a comparable competitive cost? Does that 7 percent apply to all branches or is that the main line?

This morning the lady from the Independent Truckers Association, Thelma Gravning, said they had to haul to the east coast. There was a commodity to move to the West on return, but it was a light item, did not pay the amount of revenue that they felt was necessary.

Under this legislation you will have, for instance, cereal products that are a low-class revenue item, will not be moved.

On page 7-C, the consumers are the ones that will absorb the increased costs of transportation in this legislation. In page 7, 6, the independent shipper—he cannot afford an attorney.

One independent shipper cannot afford to hire an attorney. The carriers can perpetuate the conditions for the abandonment.

On page 8, here again for example, administrative—cost of administrative rates alone will far exceed the status quo under the Interstate Commerce Commissions rules and regulations. This bill is, in my opinion, discriminatory against the small independent shipper almost all the way through.

As I reviewed this legislation, I thought what has happened to the free enterprise system, because we are not representing all equally in this legislation.

The ICC has provided unit train rates today that provides special consideration for the large shipper; including five-car limits. Today we have 160,000 bushels of grain to move out of Onida that is a captive shipper. You have a harvest coming, we don't have adequate truck or rail service. We have minimal rail service but few

grain boxcars and this is it. We have had a standing order for over 1,000 boxcars a day for the last 8 months.

You talk about deregulation. Will this provide boxcars? Will it provide covered hoppers? I would submit to you that manufacturers, the Car Builders Association has made a statement that they cannot meet their demand, in the manufacture of freight cars.

To review the abandonment process in S. 796 and it takes 7 days to receive a letter from Senator Pressler's office to my house. Is that part of the 30 days, time limitation? So I would submit to you that if this legislation should pass, it should be amended; to 120 days minimum. All the 10 days should be amended, increased to 120 days and some sections should be considered a year.

After years of our efforts and input from the shippers and all participants, have finally got the Interstate Commerce Commission where it—we have made some headway in regulation. And to take this authority from that Commission that is appointed by the President with staggered terms, so that in most cases they are not under one administration, and to put this authority with the Secretary of Transportation is, in my opinion, not in the best interests of the citizens of this Nation.

If I was not familiar with deregulation of air transportation by being the former legislator in the State of South Dakota and being appointed to the Midwest Council of State Governments, I would say it was written by the American Association of Railroads, by the Secretary of Transportation, and by Cargill's and Continental Grain Companies, the large corporations, and not the small business that have made this country what it is today. That is the competitive independent businessman.

If you wish to address into any questions in regard to the Milwaukee employee ownership legislation you have in Washington on Milwaukee ownership or purchase of the railroad, I would appreciate questions.

I thank you, Mr. Chairman and Senator Pressler, for bringing the hearings to South Dakota.

Senator EXON. Thank you very much, Mr. Jackson. You and, I think, Mr. Gidlow had indicated that we have been together before at proposed abandonment proceedings. The railroads are there; they are experts at that kind of testimony. Did we ever win one of those?

Mr. JACKSON. Yes, sir.

Senator EXON. Which one?

Mr. JACKSON. We won one from Watertown to Clarke.

Senator EXON. We won that one?

Mr. JACKSON. The record to date I think is 97 percent in favor of the industry.

Senator EXON. We are still a little bit behind.

Mr. JACKSON. Yes, sir, but we are gaining.

Senator EXON. Thank you. I have no further questions. Senator Pressler?

Senator PRESSLER. This would be a question concerning the proposed employee stock ownership plan. If this were initiated on the Milwaukee Road as has been advocated by Save Our Railroad employees, do you think this is a realistic thing? I know it's been talked about and Senator Baucus has made some fine proposals

and others that have been brought forward that perhaps the unions and employees could make a contribution to saving the Milwaukee, so to speak. Do you have a response to that?

Mr. JACKSON. Yes I have, Senator Pressler. It is necesary to go back a bit. And that is that the employees purchased the Chicago North Western Railroad Co., from Northwest Industries. B. Heinman had control prior to that time. He purchased a liquor company, a shoe company, a steel company, two underwear companies, two fertilizer companies and other industries from deferred maintenance funds that should have gone, in my opinion, to maintenance.

All the land for the most part was sold, all the scrap was sold, whereas this North Western is primarily a branch-line railroad, more so than that of the Milwaukee. The Milwaukee in my personal evaluation today is in far better condition than when the employees took over the Chicago North Western Railroad. Furthermore, you have a transcontinental movement where the Northwest does not have. We are solely dependent upon Union Pacific Railroad.

You take the Soo Line Railroad, a small branch-line railroad. Mr. Murray, quote, has made the statement, that is, if you want to railroad, there is money to be made. They made 7.9 percent on investment last year, a small railroad. Here you have a transcontinental line Chicago to the west coast. Their potential is unlimited.

What is necessary from Congress, that is, if you can provide the same opportunity for this Milwaukee employees' group as you have the rural electrification, provide low interest loans, they will be self-supporting in a short period of time. I bought North Western stock as a North Western employee. That stock was purchased at $50 a share. Within 3 years time it split 60 to 1. The stock is worth on the market the other day, $14.50. We had—the company does not pay any dividends but I have the opportunity to liquidate at a profit if I choose to. That is my prerogative. Thank you.

Senator PRESSLER. Thank you very much, Mr. Jackson. I appreciate your testimony.

Senator EXON. Mr. Jerry Conlon is next and the last one on this panel. He is from the Chicago North Western Railroad. Mr. Conlon, I see that you have a statement in front of you, which I assume is for the record. Without objection, we will certainly include it in the record and call upon you at this time to summarize it or to make any comments which you wish. I assume that you might not agree with some of the statements which have been made here this afternoon.

STATEMENT OF JERRY CONLON, VICE PRESIDENT, PUBLIC AFFAIRS, CHICAGO & NORTH WESTERN

Mr. CONLON. Thank you, Mr. Chairman. Senator Pressler. I would like to say to start off, that I have one basic area of agreement with my friend, Mr. Jackson. Because I too have often wondered what happened to the free enterprise system in this country. That is the essence of my company's and I think, the railroad industry's position on S. 796. I would like to say that the American Association of Railroads, who I don't represent here, still has basic, and I think, substantive problems with that bill.

Chicago North Western has basic and specific problems with the bill the administration has brought forth. However, we commend the administration and we commend the Secretary of Transportation for beginning what we think is a very necessary process. We are very hopeful that the problems that are embodied in this legislation can be worked out and that Congress can today come forth with a deregulation proposal, not as a cure, not as a panacea, but as a beginning step to help the railroads be what they should be.

We have a problem with subsidized competition. We have a problem, many, many problems in this industry. One element is regulation that was put in place to address a monolithic, monopolistic enterprise in the late part of the last century, which in fact held monopolistic and predatory powers and in many instances, used them.

That legislation at that time was a good idea and the whole concept of transportation policy, I believe for this century has been to try to take an industry which at that time had a destructive power, to weaken it, put it into perspective and to make it not a superior to the people of this country, but a server. I think that has been accomplished too well.

We have managed to weaken the railroad industry by depriving it of the ability to make money. Factually that is what we want to do. That is why I welcomed Mr. Jackson's statement about private enterprise. We think private enterprise is the answer to the railroad problem. We think the administration has recognized that and is beginning to put the dialog before us. It is healthy.

What you are going to hear today, I believe, and what I have heard at the hearings on deregulation that I have gone to, has essentially been that the railroad industry in many areas of this country is not fulfilling the purpose for which it should be dedicated. That is, to provide quality service. There was a saying several years ago that has probably fallen to disrespect that, if it ain't broke, don't fix it. But I want to say to you that it is apparent to me in this country, if it is broke, let's try to fix it.

Part of trying to fix it is to recognize that the regulatory apparatus in place today no longer bears the necessity it had when it was put in place. The barges have taken most, a lot of, our business, the trucks have taken our business. There is competition in the marketplace.

To the extent that there is competition in the marketplace, I think our country will be better served by letting that competition dictate how the transportation modes respond and how the consumer would like to spend his money.

One element, then I am going to shut up, is the captive shipper issue. I think that is pivotal because it goes to the essence of regulation. If there is a person who is in place, captive, has no choice, it is the function of Government to protect that party from the unilateral private decisions of other private interests, which in this place could be the railroad industry. I am afraid that people coming forward, most people will say they are captive.

It is a fact—situation that is very, very difficult and I sympathize with the difficulty. I think it is obvious the old rules don't work.

However, on the captive shipper question there are a few considerations that will have to be dealt with, I do believe. I don't have an easy answer but it is apparent to me an incorrect answer of a broadened concept that will leave inappropriate regulation in place will not help, and will mess up what we have to have in this country, which is a modern responsive transportation system.

However, it seems to me it has to contain two elements. One is, what is the captive shipper? He is a party, a shipper or consignee who has no reasonable physical ability to use another mode.

Two, the shipper or consignee has no reasonable economic alternative to rail transportation. In other words, it would be ruinous for him to reach the other modes, and economic costs would be some burdensome as to price him out of the market.

However, regulation has a twofold purpose. One is to protect the consumer the public. The other is to protect service. That is going to have to be addressed in determining the economic detriment to the shipper.

In other words, the shipper is either physically tied to the railroad because his product or commodity cannot physically be shipped in any other way or is economically tied. I say to qualify as being economically tied the shipper would have to satisfy two conditions.

First, to go by some other mode that would be ruinously costly to him. Second, that he's already paying the railroad enough to cover the carriers fully distributed cost plus a reasonable rate of return.

I think a reasonable rate of return in a monopolistic market which this would probably be by definition, has got to be a return that would be high enough to attract outside capital but not so high as to be arbitrary or unjustified. The idea that units subsidize captive shippers or to take unfair advantage of their captivity—in short, somebody's got to pay the price.

You have to establish market conditions that will attract private capital in the market. That is the lynchpin to the private enterprise system and to the rail problem I believe in the Midwest and other parts of the country.

The rest of my statement essentially says that, with some major problems, we support the administration's deregulation bill. I want to thank you for having me here today.

[The statement follows:]

STATEMENT OF JEROME W. CONLON, VICE PRESIDENT, PUBLIC AFFAIRS, CHICAGO & NORTH WESTERN TRANSPORTATION CO.

My name is Jerome W. Conlon. I am vice president, public affairs for the Chicago and North Western Transportation Company which has its corporate headquarters at 400 West Madison Street, Chicago, Illinois. I am appearing here for Mr. J. R. Wolfe, president of the C&NW.

Before I begin this statement I want to commend the Administration for its attention to the need for reform of this Nation's railroad regulatory system. Although we in the railroad industry generally and at the North Western in particular have serious concerns with respect to certain provisions of the Administration's regulatory reform bill, we fully support its general objectives and are hopeful that what problems do exist can be worked out.

We feel there can be no doubt about the real need for regulatory change. The sad truth is that the existing Federal regulatory system has lost its purpose. Economic regulation of the railroad industry was premised on the need to control the powers possessed by the railroads at the turn of the century. Such regulation no longer bears even a remote connection to present reality. It is an acknowledged fact that competition within the transportation industry is strong and pervasive. Truck and

barge carriers are not merely strong competitors of the railroads but, in fact, now dominate many markets and the railroad's ability to exert market influence is clearly the exception rather than the norm.

I suppose it's a truism . . . but a truism in this case that is, indeed quite true, that historical impressions are difficult to change. We in the railroad industry are the victim of very deep historial impressions that have refused to die. One of these impressions is that the railroads are somehow 'different' from other types of private businesses and that they can survive and thrive on grossly inadequate returns indefinitely. Another is that railroads somehow have a special obligation, verging on the governmental, to subsidize other businesses, compensate for regional disadvantages and serve as the instrument for advancing other national objectives . . . all somehow at their own private expense. Still another is that the railroads are monopolies with unbridled power over the markets they serve . . . that other multi-billion dollar industries, indeed, some individual companies, who could buy and sell the entire railroad industry tomorrow, somehow need protection from predatory and malignant railroad rate gouging. None of these impressions have any relation to the real world.

Let's take a look at the facts:

In this decade alone, the railroad industry has experienced the biggest corporate bankruptcy in history. In its wake we have Conrail, which has already consumed many billions of dollars of public funds, with the end nowhere in sight. Other railroads have collapsed into insolvency . . . most recently two large Midwestern railroads, the Rock Island and the Milwaukee.

Compared with the average 10.6 percent return on net investment which the interstate commerce commission says is necessary to sustain adequate rail service, the railroad industry earned a return of 1.6 percent in 1978 . . . the fourth consecutive year its rate of return has not exceeded 2 percent. A large segment of the industry actually operated at a deficit and even the strongest regional group of railroads achieved only about half the necessary 10.6 percent. A mere three railroads managed to achieve a 7 percent return and not a single railroad exceeded 9 percent.

Anemic earnings are not just a recent phenomenon. The railroad industry's rate of return on investment has been below 4 percent in 39 of the last 48 years. In not a single year in the last 25 years has the industry's rate of return been as high as the cost of its debt capital.

While this was happening, public policy in the United States has mandated and continues to mandate massive injections or public monies that have helped our competitors, the trucks and barges, take our business. The same public policy demanded that railroads be kept in a regulatory straightjacket while for the most important, high-volume traffic the railroad carried, these same competitors had their rates regulated by absolutely no one.

The results was predictable. Consider the following:

Between 1947 and 1977 intercity freight tonnage almost doubled, but railroad tonnage decreased by 9 percent.

In terms of ton-miles . . . which reflects the distance freight tonnage is moved . . . truck traffic increased by 450 percent, pipelines by 433 percent, barge traffic by more than 700 percent, while railroad ton-miles increased by only 25 percent.

During the same period, railroad revenues dropped from 70 percent of the total for regulated carriers to 30 percent.

In every region of the nation, more than half of all industrial goods are, today, transported by non-rail modes. Nationwide, for only four of the 23 classifications of manufactured goods does the railraod share of the total amount to 50 percent.

The railroads are no longer even the dominant carrier of agricultural products, carrying only 43 percent of the total in 1977. And this is now true, of many other bulk commodities where trucks, barges and pipelines have captured much of the railraod share of the market.

It's obvious the old rules don't work. They don't work because they were enacted to solve a problem that no longer exists. The rules must be changed. Regulation must be reformed to meet the facts not the memories. Congress has the chance and the charge to make significant changes. It must act now.

It is time that we establish the right priorities about rail transportation. Your committee will be asked to protect communities and regions, to protect small shippers, to protect "captive" shippers, to protect consumers of electricity, to protect against the evils of rail mergers and rail abandonments, to protect against intermodal competition, and so on. These are real concerns and I am sure they will be dealt with, but what is our real worry? The only sick man in the room is our privately-owned railroad industry, and he doesn's have any more blood to give.

It is this background that makes analysis of the captive shipper question a pivital consideration in deregulation. For it is entirely appropriate for government regulation to protect private interests from unilateral private economic decisions that can mean economic life or death. However, where the shipper is not captive such regulation has no real purpose and can only frustrate the carrier's ability to serve its other markets. Thus the question that must be resolved is what is a true captive shipper?

I have no easy answer to this question, but it is apparent to me that an incorrect answer could really mess things up. Before the deregulation hearings are over I am sure we will be told that a great majority of our shippers are "captive". It seems to me that this committee should derive a test that would contain two elements. These elements are:

(1) The shipper or consignee has no reasonable physical ability to use another mode of transportation.

(2) The shipper or consignee has no reasonable economic alternative to rail transportation.

In other words, the shipper is either physically tied to the railroad, because his product or commodity cannot, physically, be shipped any other way or he is economically tied.

To qualify as being economically tied, the shipper would have to satisfy two conditions. First, to go by some other mode would be ruinously costly for him. Second, he is already paying the railroad enough to cover the carrier's fully distributed costs plus a reasonable rate of return.

The accepted test for a reasonable rate of return in a monopolistic market is that the return must be high enough to attract outside capital but not so high as to be arbitrary or unjustified. The idea is neither to subsidize captive shippers nor to take unfair advantage of their captivity.

The commitee has a tough job, but it is obvious that any answer to the captive shipper question must contain the two elements mentioned above.

At the same time, the railroads are in a tough spot. If massive transfusions are not forthcoming soon in the form of increased revenues and decreased costs, many or our privately-owned railroads may not be around to celebrate their 100th anniversary under federal regulation.

The Chicago and North Western Endorses the AAR's position on deregulation. this position is one of advocacy of the concept with reservations about some of the administration's specific proposals.

The AAR's 14 points on deregulation are as follows:

RATE REGULATION

1. Permitting the publication of rates without notice, removing the power of suspension on shipper protest, limiting the shipper's remedy to a complaint action in which he bears the burden of proof, and removing the ICC's jurisdiction to hear a complaint unless the complainant shows both a lack of effective competition and rate increase or decrease exceeding 20 percent.

2. Permitting the establishment of rates by contract without review by the ICC but with a requirement that the contract be filed with an appropriate governmental agency.

3. Eliminating ICC authority to prescribe reasonable classification, rules and practices.

4. Eliminating requirements for port equalization and preferences to recyclables.

5. Eliminating the requirement for establishing joint rates and connections with water carriers.

6. Repealing the long- and short-haul provision and limiting the application of the discrimination sections to cases in which there is a lack of effective competition for the movement at issue.

7. Extending rate bureau immunity to intrastate ratemaking which affects interstate commerce.

RESTRUCTURING

8. Liberalizing the merger criteria and speeding up the merger process in ICC proceedings.

9. Eliminating the requirement for ICC approval of abandonments and discontinuances of service on 120 days' notice

10. Permitting unrestricted intermodal ownership.

STATE REGULATION

11. Preempting state law in all areas affecting rail carriers.

CAR SERVICE AND COMPENSATION

12. Eliminating ICC jurisdiction over car service and compensation matters.

FINANCIAL AND ADMINISTRATIVE CONSTRAINTS

13. Removing ICC jurisdiction over the issuance of securities (already covered by SEC regulation), the prescription of cost accounting systems, and railroad-holding companies that are not carriers, and repealing section 10 of the Clayton Act dealing with interlocking officers and directors.

SUNSET

14. Eliminating existing regulatory structure by 1985, replacing it with a new, limited regulatory regime.

The administration's proposed bill addresses most of these points. In many respects it is clear that the administration and the railroad industry have the same perception of the issues. The industry does, however, have some problems with the specific approaches taken in the bill and with some of its omissions.

If there's a single thought I'd like to leave, it is this: Unless something is done to redress the gross regulatory imbalance that exists between the various transportation modes in this nation today, then I have no hesitation in predicting that the railroads will not be able to fulfill their potential in the provision of first class railroad freight transportation service that this nation has a right to expect and will urgently need throughout the balance of this century and well into the next.

Again, thank you for the opportunity to appear before you today and to present these comments.

Senator EXON. Thank you, Mr. Conlon. Would you give me your idea on what a rate of return should be for a railroad? It would be something above the prime rate, I would presume, as a rule of thumb, 3 percent, 5 percent. If the prime rate is 10, should the return be 13, 15, 18, 20?

Mr. CONLON. I can give you an answer. The essence of the rate of return element is that it has to be an amount that will attract people to make the investment. Last week the Santa Fe Railroad put out an equipment trust.

Santa Fe is a AAA equipment trust. That is the best paper you can get. This was effectively rated I think about 9.44 percent. Now, on equipment trust paper there has never been a default in this century. Every one has been paid off regardless of bankruptcy.

You put 20 percent down. It is like being in church. You are safe—9.44 AAA and it sold very slowly. That would be the bottom of what I consider to be attracting capital in the market.

In other words, a terrific credit with terrific security slowly attracted outside money into our markets, about 9.44. I think it is apparent that it would have to far exceed that for railroads until deregulation works and allows us to utilize our assets productively, to earn better rates of return. At this time I think it would exceed 13, 14 percent benchmark.

Senator EXON. I have one other question. You have been listening to this afternoon's testimony. We have gone back and forth on a whole series of problems. Without being specific, and recognizing you come from the railroad industry, do you agree that there is legitimate criticism of the rail management, because of their failure on some of the branch lines and main line operations? It is commonly argued that the success of a railroad has something to do with management. Also, it is argued, and I am not saying that I agree, that the success has more to do with the geography in which the railroads operate. Do you agree?

Mr. CONLON. Senator, I am very chauvanistic toward myself and my own railroad. I think that all managements can be legitimately criticized in one way or another. My criticism of railroad branch problems has been when they did not address the fact that they had surplus nonproductive lines on time.

I think the problems in the railroad industry are very highly dependent on geography and regional problems. In the Northeast it can't be that everybody out there was dumb. In the Midwest we seem to have it spreading out this way. It is not in the air. A lot of it is the fact that you are structurally in place and have to deal with a structure that can not be changed, to spread your fixed costs and to take normal private enterprise business decisions.

One thing you want to do is spread your fixed costs when you can. It is very hard to do when you structurally do not have that flexibility. The average haul of the UP is over 650 miles. With the Chicago, Northwestern, Milwaukee it would be closer to 350 miles. That would mean they could spread terminal, overhead cost over twice the movement and twice the revenue follows. It doesn't really follow, but I would say it anyway. But then the Midwest or Eastern roads could follow. It is a structural regional problem in the main, I believe.

Senator EXON. We are also concerned with the shipment of grain. I am sure that you have addressed it at some point, but what is your explanation for the great difficulties which we have in moving grain? We used to have the problem every summer when we harvested grain. Now it is with us throughout the year.

Mr. CONLON. That is a very hard thing to give a short explanation, but I will give you some of the thoughts I have on the matter. One is, I think that in the past, when you had seasonal harvests, there really was no way to justify the expenditure for equipment for a short duration move. But today I believe with the harvest and movement of grain flattening out, what we are faced with is the problem of the industry not making that rate of return to attract the capital they need.

This has caused, I believe, a deterioration of the interdependent plant. The Chicago Northwestern has to take it's product, it's shipping, give it to somebody else. This deterioration—not only on my own plant, with capital shortfall, but others—causes not only the plant to deteriorate, but utilization of boxcars.

If you buy a covered hopper for $40,000 and get to use it twice a month, but it in fact is only used once a month, you are going to have to buy twice as many covered hoppers. So I think it is symptomatic of the capital shortfall of the industry on the whole, which has not allowed us to really use productively the investments we have made, and thereby not make a rate of return allowing us to make further investments to achieve this productivity.

Senator EXON. Senator Pressler.

Senator PRESSLER. Yes. As I understand it, the rail deregulation bill would change the Interstate Commerce Commission's authority to require and set joint rates. Irrespective of whether the bill ultimately would provide that or not, why is the industry so strongly opposed to the abolition of the ICC authority to set joint rates?

I think part of the answer to the question is that the railroads don't trust each other very much. If railroads can't agree on a joint

rate now, a rail carrier capable of single-line competitive movement could steal all the traffic. But what is the reason from your point of view that the industry is so strongly opposed to the abolition of the ICC's authority in this area?

Mr. CONLON. Senator, you have touched right off the bat with one of the things I have experienced is, we don't trust each other very much. I also believe that this is really the tip of an iceberg. There are two things in the rail industry which for the last 70 years will always guarantee a fight. One of them is division and the other is per diem. This happens to be the division point.

A division is nothing more than when you use a—use two railroads, how you cut up the pie. There is great concern of the smaller, less fortunate railroads who have to depend on delivery from many, many sources that they are going to get shortcircuited, are going to get priced out of markets that are not necessarily beneficial to their eastern or western connections. We don't feel that that should be unilaterally put in place because of the interdependency of the market. It really gets back to the question on regulation about unilateral private decisions that can harm you very much.

I think in this place regulation has a function to try to stop unilateral private decisions that could undermine our ability to make a dollar. They could unilaterally harm us greatly. We think that can be addressed and should be addressed. But it's got to be addressed with strong standards to recognize the need in this country for those smaller connecting railroads.

Senator PRESSLER. Thank you very much, Mr. Conlon and the rest of the members of the panel. We appreciated so much your coming and testifying. We will now move on to our last panel for the day, the local, State, and Federal officials. We are only 6 minutes behind schedule and that is thanks primarily to the cooperation of the witnesses, the good testimony that we have received from all, and your self-limitation on time.

I don't think we have had to ring the bell on anybody today, which is a new record for a subcommittee hearing in the U.S. Senate. I am hopeful that local, State, and Federal officials will follow through.

We have then Dennis Potter from Pierre, Clint Roberts, Secretary of Agriculture, Gene Rowan, Secretary of Transportation, Jim Myers, Director of Rail Division, Ron Reimann from Washington, D.C., FRA spokesman for rail deregulation.

I have a note that Jim Myers would like to be recognized first, followed by Clint Roberts. If there is no objection, that is fine with me. So, at this time we will recognize the Lieutenant Governor.

STATEMENT OF HON. LOWELL HANSEN, LIEUTENANT GOVERNOR OF SOUTH DAKOTA

Mr. HANSEN. I have my other hat on now. We are pleased to appear before your subcommittee. I express the regrets of our Governor, Bill Janklow, who had to "put out some fires" in Rapid City and was not able to be here this afternoon, but he did want me particularly to express to Senator Pressler regrets that he could not be here.

Senator EXON. Let's proceed at this time. Do you have any further statements, Governor?

Mr. HANSEN. No, thank you very much, Senator. We will start first of all with the director of our division of railroads, Jim Myers. Jim has prepared testimony. I don't know whether he wants to read that or enter it into the record.

Senator EXON. Jim, thank you for coming.

STATEMENT OF JIM MYERS, DIRECTOR, SOUTH DAKOTA DIVISION OF RAILROADS

Mr. MYERS. Thank you. Mr. Chairman, I am also representing today Mr. Rowen, secretary of transportation for the State of South Dakota. I have made my statement intentionally brief.

Senator EXON. Let's proceed, then, if it is brief.

Mr. MYERS. I appear before you today as a strong advocate of the need for railroad deregulation. I also appear, though, to make it very clear that the Railroad Deregulation Act of 1979 is not unto itself the answer to the railroad industry's problems.

Additionally, I would like to discuss three sections of the act that require some careful examination and some great caution. The deregulation proposals that are now being enumerated appear to be a direct result of the recognition at the Federal level that without extensive deregulation, the Federal Government is going to have to address a $13 to $16 billion capital shortfall projected for the industry over the next decade.

In our rush to deregulation, to avoid subsidies of this magnitude, we often forget the single reason the industry is in its present poor health, is that during the past half century we have provided some $200 billion in subsidies to other modes of transportation while through our regulation we have literally extracted capital from the rail industry.

We need rail deregulation, but if we do not first correct the policy imbalance that allows us to continue to subsidize competing modes while undertaking deregulation to avoid subsidy of the rail industry, the results are going to be far from satisfactory and the rail system that will continue to be operated in this country will be far smaller than that which would truly serve our national interest, our energy conservation needs, and our future economy.

I would like to suggest that the shortest path toward optimizing a positive transportation impact on our national economy and avoiding an impending national highway crisis of substantially greater magnitude than that which we now face with our railroads, would be a program that provided about half of the shortfall, $7 or $8 billion, to the rail industry, while phasing in railroad deregulation and phasing out the effective subsidies to other modes.

With regard to the act proper, I would like to point out three sections that I think need careful action. Section 104 addressed joint-line rates and through-routes. I would like to strongly suggest that this passage of the act in its present form would promulgate artificially high rates for the inter-lining of freight, because of problems that now exist within ConRail. And in effect, would place the balance of the Nation in the position of subsidizing ConRail.

Section 121 addresses abandonment and discontinuance of service. This is a section that I do not conceptually disagree with.

However, I wish to remake the point that unless we restore some of the capital that we have extracted from this industry during 92 years of regulation, and correct the policy imbalance that I just referred to, that the amount of abandonment that we will see will greatly exceed the amount truly in the national interest and our national transportation system will be far less than optimum.

Finally, section 122, which addresses mergers and consolidations. Not unlike our rush to deregulation, to avoid subsidy, we have also rushed in this country to jump on the merger bandwagon as another possible panacea solution to the rail industry's problems.

The trend has been well established in the recent 3-R—and 4-R—Acts. But once again, we seem to forget that it is 92 years of regulation and 50 to 60 years of policy imbalance between modes that is substantially responsible for the trend toward merger. If we are going to deregulate and make our railroads competitors in a free enterprise system, then it is absolutely mandatory that we halt this rush to merger. This is not a fault of S. 796 proper, but it is not addressed in S. 796 in sufficient detail to de-emphasize the things that are addressed in the 4-R Act.

In conclusion, Mr. Chairman, the Nation does need railroad deregulation. South Dakota does need railroad deregulation. But not as a hastily-placed band-aid, but instead, as part of a balanced program to treat not only an ailing railroad industry, but the transportation industry at large, and our national economy. Thank you.

Senator EXON. Jim, thank you very much. I have no questions at this time.

Shall we move on down through the panel, Larry?

Senator PRESSLER. Why don't we hear all of them. I might say at this time that Jim Myers prepared several of these fine maps. He's been really an outstanding spokesman in our State on this whole problem of rails.

He's been a great help to me and my staff.

Mr. HANSEN. By way of introduction of our next witness, the secretary of agriculture prior to coming into our cabinet, was served with me in the South Dakota Legislature for 6 years where he represented a large rural district and was a State senator.

He then ran in the Republican primary against the man who is now our Governor in South Dakota, Bill Janklow, then graciously accepted the opportunity to become our secretary of agriculture. He may be more familiar to you, however, being one of the few politicians that I ever knew that admitted he was an actor, something we politicians all know.

He's a member of the Actors' Guild and is also one of the men on the Marlboro ads. Unlike Pat Boone, he actually uses the product he advertises. Clint Roberts, our secretary of agriculture.

STATEMENT OF CLINT ROBERTS, SOUTH DAKOTA SECRETARY OF AGRICULTURE

Mr. ROBERTS. My name is Clint Roberts, I am secretary of agriculture and besides the other attributes South Dakota's Lt. Gov. Lowell Hansen has mentioned, I do own and operate a 4,000-acre ranch in Lyman County.

I would like to thank you for giving me this opportunity to testify concerning the serious problems South Dakota agriculture is facing with transportation.

With your permission, Mr. Chairman, I would like to read my prepared testimony.

My testimony does not answer regulation or deregulation but attempts to point out as briefly as possible the financial impact of transportation on South Dakota's No. 1 industry, agriculture, and also tie in the eventual impact to all people, which points out the question, Who is a rail user?

I suggest, gentlemen, if you eat, you are a user. Therefore, our transportation problems here in South Dakota are shared nationwide.

I have wanted to sell my wheat for the last 3 weeks, gentlemen. The price was right and the market was there. But I couldn't sell because there wasn't any way to get it delivered. I wasn't alone then and I am not alone today.

There are 57 million bushels of wheat stored in South Dakota. When the wheat market took a drop, the South Dakota economy took a $34 million loss because the wheat couldn't be delivered and, therefore, couldn't be sold.

That was one commodity of which we have many. Granted I am here on behalf of agriculture, South Dakota's No. 1 industry.

And, yes, we are small in number, approximately 40,000 farmers. But, gentlemen, each farmer provides the necessary food for 55 consumers. Multiply that times the farmers in South Dakota alone and you have 2.2 million consumers dependent on receiving our commodities.

Then let us ponder the future for a moment. We must recognize that progress in urban areas in the form of industry, highways, and people has taken millions of acres of land out of agriculture production, and in turn, has increased the demand for food and fiber.

This will continue, so that as availability of land decreases, the Great Plains, with their vast acres of productive land, place a more and more vital role to our friend, the consumer.

Yes, we in South Dakota have the land and water necessary to answer these demands. What we are lacking is a delivery system for the product.

Today as I present this testimony, harvest has just begun and 10 days from now, I can assure you there will be thousands of tons of harvested grain piled on the ground in South Dakota.

Why? Our storage bins are full, our elevators are full from last year's harvest. We have not been able to deliver the grain. I do not believe our current problem can be blamed on any one entity.

We must recognize we have all been a part of the demise of our railroads. Government, both State and Federal, with its many regulations, railroads with their deferred maintenance, and finally, the user himself because of the changing times and the improvement of truck transportation.

Regulation or deregulation is a matter of legislative action, one which I do not feel my authority or knowledge allows me to make a recommendation.

Our problem here in South Dakota is today, but one that reaches every consumer in the Nation tomorrow.

The problem is bigger than South Dakota.

I thank you gentlemen for the opportunity of presenting this testimony.

Senator EXON. Thank you very much, Mr. Secretary.

We appreciate your comments.

Mr. HANSEN. Thank you very much, Senators. That concludes our prepared presentation from the standpoint of State government.

I would only say as I said before very quickly that we think this is a trend that Congress ought to continue in that you have moved your subcommittee hearings here to South Dakota and rural States.

We hope you will continue to do that in the future. Unless you go by bus, it's a lot cheaper to bring you out there than it is for us to come there.

Senator EXON. Thank you.

If I might, let me ask one question of Mr. Roberts, which is not directly related to railroad deregulation, although it fits in.

The reason we are out here in the rural area is that we think the rural areas have a special problem in transportation.

I am familiar with the loss farmers took in South Dakota as a result of the inability to move grain to market.

You multipy that by the loss in Nebraska and other States, and it becomes even more frustrating than if you just isolate one State like South Dakota.

You know that it gets us back, Mr. Secretary, to the situation which we discussed this morning.

As secretary of ariculture, how well do you think the free enterprise system is working in protecting the family-size farmer?

Mr. ROBERTS. Well, I happen to be a believer in the free enterprise system and hope that I never have to change my thinking.

I am at a loss for what you are asking. We are operating under the free enterprise system in agriculture as far as I am concerned.

Yes, we are subsidized to some degree. But probably for reasons beyond our control.

I guess it's hard to find an industry that isn't subsidized in some way, shape, or form.

Senator EXON. Maybe you were not here this morning when we were talking about the fact that we are supposedly under the free enterprise system.

It seems to me that the free enterprise system all too often is defined as a great thing. But when it comes down to it, it seems to me that the family-size farmer is out there on the end of the delivery system, and the free enterprise system is not structured very well to protect his interest because he is only one farmer in one area and does not have the bargaining power, collective-bargaining or otherwise, to protect himself.

Mr. ROBERTS. That is true.

Senator EXON. I do not know whose fault it is, but it is certainly partly the fault of the free enterprise system, that the farmer to whom you just alluded had to suffer a loss of how many millions of dollars in 4 or 5 days?

Mr. ROBERTS. Actually, I will have to get back to my figures but $34 million in 3 days.

Senator EXON. $34 million. Again, when we look at that, we have to recognize we are doing a pretty poor job of transporting farmers' products to market because it seems to me, and I think that you would agree, that the farmer is always on the short end of the stick.

He can not even get cars to move his grain to market when the prices are low.

Mr. ROBERTS. That's true.

Senator EXON. He even has worse trouble, you will notice, when prices are high.

Mr. ROBERTS. That is true. We are one of the few people who go to market and say what will you give us for our product. That is kind of sad and partly our fault, I guess, in agriculture.

I guess it's one of my goals in South Dakota to, No. 1, get the people across this great Nation to recognize the importance of agriculture.

But then even beyond that, to get agriculture itself to recognize its importance. We read about the heros of the Old West, but they are always cowboys or someone like that.

We never read about the farmer.

Senator EXON. Thank you.

Senator Pressler.

Senator PRESSLER. Good. First of all, I might say that I am aware that all three of you are working very hard on developing a plan for an intermodal transport system in South Dakota.

I know Secretary Roberts, the Governor, and Jim Myers have played a real key role in starting that up.

Now, do you have a position on rail deregulation? That is, I guess everybody wants to deregulate. But first of all, would you be opposed to the bill that is before Congress presently?

Mr. MYERS. Senator, without—if we take the bill itself at this time without addressing some of the other problems, I guess I do tend to be opposed to it.

Senator PRESSLER. You would be opposed to it.

Mr. MYERS. I probably fall borderline into the camp that says, you know, we should look at deregulation cold turkey as opposed to none at all.

At the same time, we have literally disassembled an industry. We better do some repairs before we deregulate it because if we don't, the industry we bring back to health is going to be much smaller than the industry we really need in this country.

Senator PRESSLER. Do any of you have any further comments?

I do have one more question. That is that the rail bill would abolish the ICC's authority to issue car service orders. This would go to Jim, I guess, mainly.

What effect, if any, do you feel this provision will have during the peak season movement of grain? I am now taking a survey of South Dakota's elevators every 3 weeks so I can go bug the ICC because they issue car service orders.

But I don't know if it does any good and maybe we wouldn't suffer any under this rail deregulation if the bill abolished that authority.

Do you have any general reaction?

Mr. MYERS. I think, Senator, I would like to see us take our chances on letting the car service be handled by the railroads and by free enterprise and not by the Federal Government dictating who should get cars when.

Senator PRESSLER. Fine.

Thank you very much.

Senator EXON. I have no further questions. Governor and members of the cabinet, thank you for coming. We appreciate your testimony. Let's move on now to Dennis Potter, from South Dakota's Fifth Planning and Development District.

STATEMENT OF DENNIS POTTER, SOUTH DAKOTA'S FIFTH PLANNING DEVELOPMENT DISTRICT

Mr. POTTER. Thank you. I have submitted detailed information concerning the impact if railroad service were lost in our planning district and I would ask that that information be included as part of the hearing record.

Senator EXON. Without objection it will be included by reference.

Mr. POTTER. I have not had an opportunity to do an in-depth review of the truck deregulation bill and have not had an opportunity to present that to the district commission. I would ask permission to submit information on that particular component of today's hearing at a later date.

Senator EXON. Certainly.

Mr. POTTER. Under current ICC regulation South Dakota will lose substantial parts of its rail service. I would urge the following points be carefully considered.

One, before any railroad is allowed to cease its current operations a thorough study of alternative methods to provide rail service be conducted. The ICC should conduct this study in conjunction with the affected railroad, State officials, local government officials, and shippers.

I do not believe the proposed rail deregulation bill addresses this point adequately. Alternative methods of railroad service could include in South Dakota a regional rail authority organized under current statutes. Shippers, commodities—short line railroads, or some other alternatives which may be developed during the appropriate studies.

Railroad service would be provided by an entity on a basis which would allow recovery of depreciation, operation, maintenance, administrative, and capital costs. Funds could be provided by the Federal Government through a transportation authority patterned after the Rural Electric Administration. The highly successful REA program has tapped local people to operate their own electrical system.

This was necessary after existing electrical companies refused to supply electricity to rural America. There is no reason to believe the same concept could not be applied to rural transportation needs.

I would note that a strong interest does exist in South Dakota at this time to develop a rail system from the eastern South Dakota border to Rapid City, along the lines of a regional railroad authority. There has been a qualified rail operator review in this particular area of South Dakota.

Again, with the appropriate commitment of public resources which would require the acquisition and rehabilitation of these lines that a rail system could be operated along the lines of one of these alternative methods.

Two, the proposed deregulation bill must prohibit existing companies from permitting the following activities: A, price discrimination whereby high prices are charged to short line roads for the handling of their rail traffic; B, a sales price for a railroad line proposed for abandonment which is inflated to prevent its acquisition by a short line railroad; three, a strong requirement that rail service continue while the studies are conducted must be included in the proposed railroad deregulation bill; four, loss of railroad service will leave rural communities dependent upon truck services.

Eliminating alternative means of shipping could establish a capital monopoly based on trucking. In South Dakota a worse fate may await rural communities when the proposed truck deregulation bill passes Congress. Rural communities may be left with no railroad or trucking service as trucking operations concentrate on the major metropolitan areas. It is essential that the proposed railroad deregulation and trucking deregulation bills be carefully coordinated to protect rural South Dakota and rural America.

I would like to summarize very briefly, Mr. Chairman and Senator Pressler, the impact—potential impact—if we were to lose our rail service. The University of South Dakota has conducted an extensive study of this impact and the district commission staff has summarized this impact as it applies to all the railroads which pass through our planning district.

Highlights are loss of employment, 338 jobs; loss of annual direct farm income, $10,700,000; loss of total annual income, both direct and indirect, $25,800,000; annual per capital income loss computes out to $197. In addition, the university study analyzed the impacts that would occur to our existing highway system.

The cost for our planning district in one-time highway improvement construction costs would be $108,800,000. The additional highway maintenance costs per year, $4,600,000. I would note these cost figures are mid-1977 prices and have not been adjusted for inflation.

On a statewide basis, the highway improvement construction costs are estimated to be $570 million and highway maintenance costs are estimated to be in excess of $10 million per year.

I would like to thank you, Senator Exon and Senator Pressler, for the opportunity to present these concerns.

Senator EXON. I thank you very much for your interesting testimony, Mr. Potter. You have provided good constructive suggestions, and we appreciate it. You have been helpful in this area.

As usual we find that planners are people who look not only to the past to see what we have done wrong but who try to come up with some constructive suggestion on what we might do to correct it. Yours, with the other testimony we have received here today, has been very good, and I thank you for it. I have no questions. Your full statement has been accepted as part of the record.

Senator Pressler?

Senator PRESSLER. Well, I want to thank you very much, Dennis. You mentioned the Sioux Falls to Rapid City concept. Would this be something that eventually might, if we lose our other railroads, be run by the State? What would that concept be?

Mr. POTTER. It's basically open at this time. Shippers many times here in South Dakota are the local governmental officials. One possibility is to establish a legal entity under our State regional rail authority. The possibility of some specific State enabling legislation to make this happen could very well occur. At this point it is wide open as to what type of a legal entity would need to be established to make this happen.

Senator PRESSLER. Thank you very much for being here.

Senator EXON. Thank you, Mr. Potter.

[The material referred to follows:]

SUPPLEMENTAL INFORMATION OF DENNIS POTTER

The following comments concern specific sections of S. 796.

On pages 29 and 30 of the printed bill: Section 121(a)(3) should include a requirement that notice of abandonment be served on the appropriate state railroad authority, state public utilities commission and county government through which the railroad line proposed for abandonment passes.

On page 31 of the printed bill: Section 121(b)(1) should include a requirement that the statement in new subparagraph (B) be sent to the appropriate state railroad authority, state public utilities commission and county government through which the railroad line proposed for abandonment passes.

On pages 33 and 34 of the printed bill: Section 12(c) should no delete the reference to thirty (30) days throughout this section.

On page 29 of the printed bill: Section 120(c) should be extended to include switching in non-metropolitan areas.

The University of South Dakota, Business Research Bureau conducted a Railroad Impact Study on 63 rail line segments in South Dakota. The report was released in December, 1977 as Bulletin Number One Hundred Twenty-Four.

The District Commission staff has summarized the data from this study as it applies to the railroad segments passing through District Five. These railroad segments are the following.

Wishek, North Dakota-Pollock, South Dakota, SOO Line Railroad

Tracy, Minnesota-Pierre, South Dakota, Chicago and Northwestern Railroad

Pierre-Rapid City, South Dakota, Chicago and Northwestern Railroad

Blunt-Gettysburg, South Dakota, Chicago, Northwestern Railroad

Aberdeen-Mobridge, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Mobridge, South Dakota-Marmarth, North Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Moreau Jct.-Trail City, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Trail City-Isabel, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Trail City-Faith, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

McLaughlin, South Dakota-New England, North Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Mitchell-Murdo, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Murdo-Rapid City, South Dakota, Chicago, Milwaukee, St. Paul and Pacific Railroad

Appendix A is the summary of the data for the railroad segments passing through District Five. Appendices B–K contain the data for each specific railroad segment. Appendix L is Chapter 4 of the USD, Bureau of Research Study relating to highway construction and maintenance impacts caused by railroad abandonment. Appendix M is the application of the USD study format to District Five. Appendix N is a county-by-county listing of rail trackage in District Five. Appendix O summarizes rail trackage in District Five by railroad company.

SUMMARY
APPENDIX A

1088.9 Miles Long

Area Served

Total population 523,081
118 Communities in Trade Area (TA)
130,918 Estimate population in T.A.
108 Grain elevators in T.A.
143 Licensed fertilizer dealers in T.A.
98 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

44,397,511 Bu. of grain transported annually from T.A.
48,754 Tons of fertilizer in average year
36,163 Tons of fertilizer potential for Railroad
12,728 Tons of farm machinery in average year
5,456 Tons of farm machinery potential for Railroad
3,997,960 Tons of miscellaneous products in average year
417,471 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	21,113	Railroad Cars
Fertilizer	488	Railroad Cars
Machinery	362	Railroad Cars
Miscellaneous	7,137	Railroad Cars
	29,100	Railroad Cars
26.72	Cars per mile	

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$8,128,092
Additional fertilizer costs	198,455
Additional machinery costs	62,940
Miscellaneous commodities	2,357,070
Total loss of income annually	$10,746,557

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	46	92
Railroad employees	83	166
Other	40	80
Total	169	338

Concentration Of Population

338 Jobs lost
269 Families move
861 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$ 202,892	x	2.3	=	$ 466,652
Fertilizer Dealers	13,220	x	2.3	=	30,406
Implement Dealers	33,247	x	2.3	=	76,468
Others	794,480	x	2.3	=	1,827,304
Totals	$1,043,839	x	2.3	=	$2,400,830

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss		
grains to alternate elevators		$ 8,352,594
less increased trucker income		1,667,237
		$ 6,685,357
grains to old elevators		6,665,945
	Total	$13,351,302
Average of two options		$ 6,675,651
fertilizer costs		198,455
machinery costs		151,680
miscellaneous commodities costs		2,357,430
Total farm income loss		$ 9,383,216
(b) Income to elevator & fertilizer employees		$ 84,000
(c) Income to other employees		126,000
(d) Income to railroad employees		888,165
(e) Loss of expenditures of goods & services		$ 1,043,839
Total direct income loss		$10,637,055

Total Income Lost	
(a) + (b) + (c) + (e) x 2.3 =	$24,465,226
Railroad income lost	1,386,165
Total income loss	$25,851,391

$197 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$189,890.02
Indirect (10% devaluation of commerical property)	$422,569.48
Total tax loss	$612,459.50

Additional Fuels Consumed

Between 656,524 and 5,529,913 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	6,477,031	
Additional trips @ 27.3 miles	237,254	
Line of trucks at 40 m.p.h.	4,776	miles long
Trips per work day	1,146	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	38,107,132	
Additional 424 mile trips	79,889	
Line of trucks at 55 m.p.h.	6,245	miles long
Trips per work day	381	

Wildlife Preservation

1088.9 Miles of right of way
1061.35 Miles suitable for wildlife
12,864 Acres
10,097 Cock pheasants produced/year
5,049 Man days of hunting

APPENDIX B

Chapter 21
Wishek, N.D.-Pollock, S.D. (SL02)
(Line) (RR)
32.8 Miles Long

Area Served

Parts of 1 counties northeast South Dakota
Total population 2
4 Communities in Trade Area (TA)
1,901 Estimate population in T.A.
3 Grain elevators in T.A.
3 Licensed fertilizer dealers in T.A.
0 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

1,092,456 Bu. of grain transported annually from T.A.
1,384 Tons of fertilizer in average year
1,378 Tons of fertilizer potential for Railroad
56 Tons of farm machinery in average year
8 Tons of farm machinery potential for Railroad
128 Tons of miscellaneous products in average year
0 Tons of miscellaneous products potential for Railroad

Summary:		
	Grain	520 Railroad Cars
	Fertilizer	18 Railroad Cars
	Machinery	1 Railroad Cars
	Miscellaneous	0 Railroad Cars
		539 Railroad Cars

16 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$ 332,525
Additional fertilizer costs	6,890
Additional machinery costs	150
Miscellaneous commodities	0
Total loss of income annually	$ 339,565

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	2	4
Railroad employees	2	4
Other	0	0
Total	4	8

Concentration Of Population

8	Jobs lost
6	Families move
19	Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$ 5,100	x	2.3	=	$ 11,730
Fertilizer Dealers	0	x	2.3	=	0
Implement Dealers	570	x	2.3	=	1,311
Others	0	x	2.3	=	0
Totals	$ 5,670	x	2.3	=	$ 13,041

Income Lost Annually In Trade Area

Direct Income Lost

(a)	Farm income loss		
	grains to alternate elevators	$ 332,525	
	less increased trucker income	66,505	
		266,020	
	grains to old elevators	163,867	
	Total	$ 429,887	
	Average of two options	$ 214,944	
	fertilizer costs	6,890	
	machinery costs	150	
	miscellaneous commodities costs	0	
	Total farm income loss		$ 221,984
(b)	Income to elevator & fertilizer employees		12,000
(c)	Income to other employees		0
(d)	Income to railroad employees		24,300
(e)	Loss of expenditures of goods & services		5,670
	Total direct income loss		$ 239,654

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$ 551,204
Railroad income lost	36,300
Total income loss	$ 587,504

$309 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 1,034.[illegible]
Indirect (10% devaluation of commerical property)	4,[illegible]
Total tax loss	$ [illegible]

Additional Fuels Consumed

Between 10,698 and 138,453 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)	
Total miles traveled	105,982
Additional trips @ 12 miles	9,102
Line of trucks at 40 m.p.h.	146
Trips per work day	36

Present elevators to terminal market

(48,000 pound net weight trucks)	
Total miles traveled	923,020
Additional 384 mile trips	2,404
Line of trucks at 55 m.p.h.	163
Trips per work day	10

Wildlife Preservation

32.8	Miles of right of way
31.8	Miles suitable for wildlife
385	Acres
302	Cock pheasants produced/year
151	Man days of hunting

APPENDIX C

Chapter 23
Tracy, Minnesota-Pierre (CNOI - CNO2)
(Line) (RR)
207.9 Miles Long

Area Served

Parts of 13 counties Central South Dakota
Total population 105,567
22 Communities in Trade Area (TA)
44,006 Estimate population in T.A.
28 Grain elevators in T.A.
61 Licensed fertilizer dealers in T.A.
52 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

10,509,038 Bu. of grain transported annually from T.A.
25,541 Tons of fertilizer in average year
18,952 Tons of fertilizer potential for Railroad
6,121 Tons of farm machinery in average year
2,308 Tons of farm machinery potential for Railroad
3,871,786 Tons of miscellaneous products in average year
335,898 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	5,004	Railroad Cars
Fertilizer	247	Railroad Cars
Machinery	153	Railroad Cars
Miscellaneous	5,560	Railroad Cars
	10,964	Railroad Cars

52.7 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$1,556,872
Additional fertilizer costs	112,400
Additional machinery costs	0
Miscellaneous commodities	1,949,565
Total loss of income annually	$3,618,837

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	22	44
Railroad employees	16	32
Other	19	38
Total	57	114

Concentration Of Population

114	Jobs lost
91	Families move
292	Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$74,038	x	2.3	=	$170,287
Fertilizer Dealers	10,583	x	2.3	=	24,341
Implement Dealers	14,650	x	2.3	=	33,695
Others	782,860	x	2.3	=	$1,800,578
Totals	$882,131	x	2.3	=	$2,028,901

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss			
grains to alternate elevators		$1,556,872	
less increased trucker income		311,374	
		$1,245,498	
grains to old elevators		1,576,360	
	Total	$2,821,858	
Average of two options		$1,410,929	
fertilizer costs		112,400	
machinery costs		88,740	
miscellaneous commodities costs		1,949,565	
Total farm income loss			$3,561,634
(b) Income to elevator & fertilizer employees			0
(c) Income to other employees			0
(d) Income to railroad employees			194,400
(e) Loss of expenditures of goods & services			882,131
Total direct income loss			$4,443,765

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$10,220,660
Railroad income lost	290,400
Total income loss	$10,511,060

$239 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 41,745.95
Indirect (10% devaluation of commerical property)	304,655.00
Total tax loss	$346,400.95

Additional Fuels Consumed

Between 130,147 and 992,641 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	1,801,485
Additional trips @ 14.9 miles	87,570
Line of trucks at 40 m.p.h.	2,190 miles
Trips per work day	350

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	6,617,604
Additional 307 mile trips	21,534
Line of trucks at 55 m.p.h.	1,458 miles
Trips per work day	86

Wildlife Preservation

207.9	Miles of right of way
202.1	Miles suitable for wildlife
2,450	Acres
1,923	Cock pheasants produced/year
962	Man days of hunting

APPENDIX D

Chapter 24
Pierre-Rapid City (CNO3)
(Line) (RR)
170.8 Miles Long

Area Served

Parts of 8 counties Southwest South Dakota
Total population 93,799
11 Communities in Trade Area (TA)
18,944 Estimate population in T.A.
10 Grain elevators in T.A.
15 Licensed fertilizer dealers in T.A.
3 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

4,735,826 Bu. of grain transported annually from T.A.
890 Tons of fertilizer in average year
890 Tons of fertilizer potential for Railroad
451 Tons of farm machinery in average year
332 Tons of farm machinery potential for Railroad
4,390 Tons of miscellaneous products in average year
2,400 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	2,255	Railroad Cars
Fertilizer	16	Railroad Cars
Machinery	22	Railroad Cars
Miscellaneous	45	Railroad Cars
	2,338	Railroad Cars

14 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$813,478
Additional fertilizer costs	4,450
Additional machinery costs	6,640
Miscellaneous commodities	12,000
Total loss of income annually	$836,568

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	1	2
Railroad employees	13	26
Other	0	0
Total	14	28

Concentration Of Population

28	Jobs lost
22	Families move
70	Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$2,613	x	2.3	=	$ 6,010
Fertilizer Dealers	0	x	2.3	=	0
Implement Dealers	4,700	x	2.3	=	10,810
Others	0	x	2.3	=	0
Totals	$7,313	x	2.3	=	$16,820

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss		
grains to alternate elevators	$ 813,478	
less increased trucker income	162,696	
	$ 650,782	
grains to old elevators	710,374	
Total	$1,361,156	
Average of two options	$ 680,578	
fertilizer costs	4,450	
machinery costs	6,640	
miscellaneous commodities costs	12,000	
Total farm income loss		$703,668
(b) Income to elevator & fertilizer employees		6,00[illegible]
(c) Income to other employees		
(d) Income to railroad employees		157,9[illegible]
(e) Loss of expenditures of goods & services		7,31[illegible]
Total direct income loss		$716,98[illegible]

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$1,649,05[illegible]
Railroad income lost	235,95[illegible]
Total income loss	$1,885,00[illegible]

$100 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 16,[illegible]
Indirect (10% devaluation of commerical property)	112,[illegible]
Total tax loss	$129,[illegible]

Additional Fuels Consumed

Between 60,609 and 800,380 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	605,101
Additional trips @ 31 miles	19,732
Line of trucks at 40 m.p.h.	328 miles long
Trips per work day	79

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	5,335,866
Additional 952 mile trips	11,206
Line of trucks at 55 m.p.h.	759
Trips per work day	45

Wildlife Preservation

170.8	Miles of right of way
167.8	Miles suitable for wildlife
2,034	Acres
1,596	Cock pheasants produced/year
798	Man days of hunting

APPENDIX E

Chapter 37
Blunt-Gettysburg (CN16)
(Line) (RR)
40.3 Miles Long

Area Served

Parts of 7 counties Central South Dakota
Total population 37,863
4 Communities in Trade Area (TA)
6,565 Estimate population in T.A.
11 Grain elevators in T.A.
13 Licensed fertilizer dealers in T.A.
5 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

5,794,142 Bu. of grain transported annually from T.A.
8,202 Tons of fertilizer in average year
5,712 Tons of fertilizer potential for Railroad
1,081 Tons of farm machinery in average year
742 Tons of farm machinery potential for Railroad
81,120 Tons of miscellaneous products in average year
72,000 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	2,757	Railroad Cars
Fertilizer	81	Railroad Cars
Machinery	49	Railroad Cars
Miscellaneous	1,335	Railroad Cars
	4,222	Railroad Cars

104.8 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$1,594,979
Additional fertilizer costs	28,560
Additional machinery costs	14,830
Miscellaneous commodities	360,000
Total loss of income annually	$1,998,369

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	6	12
Railroad employees	3	6
Other	-4	-8
Total	5	10

Concentration Of Population

10	Jobs lost
8	Families move
26	Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$22,941	x	2.3	=	$52,764
Fertilizer Dealers	540	x	2.3	=	1,242
Implement Dealers	2,755	x	2.3	=	6,336
Others	9,600	x	2.3	=	22,080
Totals	$35,836	x	2.3	=	$82,422

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss			
grains to alternate elevators		$1,594,979	
less increased trucker income		318,996	
		$1,275,983	
grains to old elevators		869,121	
	Total	$2,145,104	
Average of two options		$1,072,552	
fertilizer costs		28,560	
machinery costs		14,830	
miscellaneous commodities costs		360,000	
Total farm income loss			$1,475,942
(b) Income to elevator & fertilizer employees			36,000
(c) Income to other employees			-24,000
(d) Income to railroad employees			36,450
(e) Loss of expenditures of goods & services			35,836
Total direct income loss			$1,523,778

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$3,504,689
Railroad income lost	54,450
Total income loss	$3,559,139

$534 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 3,208.11
Indirect (10% devaluation of commerical property)	19,054.00
Total tax loss	$22,262.11

Additional Fuels Consumed

Between 69,998 and 827,503 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	699,985	
Additional trips @ 14.5 miles	48,286	
Line of trucks at 40 m.p.h.	777	miles long
Trips per work day	193	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	5,516,692	
Additional 424 mile trips	13,016	
Line of trucks at 55 m.p.h.	881	miles long
Trips per work day	52	

Wildlife Preservation

40.3	Miles of right of way
39.3	Miles suitable for wildlife
476	Acres
374	Cock pheasants produced/year
187	Man days of hunting

APPENDIX F

Chapter 43
Aberdeen-Mobridge (MW02)
(Line) (RR)
97.8 Miles Long

Area Served

Parts of 6 counties Northern South Dakota
Total population 62,647
12 Communities in Trade Area (TA)
13,143 Estimate population in T.A.
12 Grain elevators in T.A.
17 Licensed fertilizer dealers in T.A.
19 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

5,803,165 Bu. of grain transported annually from T.A.
6,775 Tons of fertilizer in average year
5,550 Tons of fertilizer potential for Railroad
1,638 Tons of farm machinery in average year
561 Tons of farm machinery potential for Railroad
20,229 Tons of miscellaneous products in average year
4,498 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	2,763	Railroad Cars
Fertilizer	75	Railroad Cars
Machinery	37	Railroad Cars
Miscellaneous	96	Railroad Cars
	2,975	Railroad Cars

30.4 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$974,480
Additional fertilizer costs	27,750
Additional machinery costs	11,220
Miscellaneous commodities	22,130
Total loss of income annually	$1,035,580

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	2	4
Railroad employees	8	16
Other	5	10
Total	15	30

Concentration Of Population

30 Jobs lost
24 Families move
77 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$14,547	x	2.3	=	$33,458
Fertilizer Dealers	937	x	2.3	=	2,155
Implement Dealers	8,193	x	2.3	=	18,844
Others	2,020	x	2.3	=	4,646
Totals	$25,697	x	2.3	=	$59,103

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss		
grains to alternate elevators	$1,072,166	
less increased trucker income	214,433	
	$ 857,733	
grains to old elevators	876,794	
Total	$1,734,527	
Average of two options	$867,264	
fertilizer costs	27,750	
machinery costs	11,220	
miscellaneous commodities costs	22,490	
Total farm income loss		$928,724
(b) Income to elevator & fertilizer employees		12,000
(c) Income to other employees		30,000
(d) Income to railroad employees		97,200
(e) Loss of expenditures of goods & services		25,697
Total direct income loss		$996,421

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$2,291,768
Railroad income lost	145,200
Total income loss	$2,436,968

$185 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$39,151.08
Indirect (10% devaluation of commerical property)	82,840.00
Total tax loss	$121,991.08

Additional Fuels Consumed

Between 65,638 and 718,625 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	656,886	
Additional trips @ 13.49 miles	48,706	
Line of trucks at 40 m.p.h.	784	miles long
Trips per work day	195	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	4,790,834	
Additional 331 mile trips	14,456	
Line of trucks at 55 m.p.h.	979	miles long
Trips per work day	59	

Wildlife Preservation

97.8	Miles of right of way
94.8	Miles suitable for wildlife
1149	Acres
902	Cock pheasants produced/year
451	Man days of hunting

APPENDIX G

Chapter 44
Mobridge-Marmarth, N.D. (MWO3)
(Line) (RR)
92 Miles Long

Area Served

Parts of 2 counties Northeast South Dakota
Total population 9,763
10 Communities in Trade Area (TA)
6,618 Estimate population in T.A.
8 Grain elevators in T.A.
4 Licensed fertilizer dealers in T.A.
5 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

2,442,562 Bu. of grain transported annually from T.A.
2,650 Tons of fertilizer in average year
1,200 Tons of fertilizer potential for Railroad
1,175 Tons of farm machinery in average year
725 Tons of farm machinery potential for Railroad
1,000 Tons of miscellaneous products in average year
-- Tons of miscellaneous products potential for Railroad

Summary:		
Grain	1,163	Railroad Cars
Fertilizer	15	Railroad Cars
Machinery	48	Railroad Cars
Miscellaneous	--	Railroad Cars
	1,220	Railroad Cars

13 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$941,291
Additional fertilizer costs	6,000
Additional machinery costs	14,500
Miscellaneous commodities	0
Total loss of income annually	$961,791

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	1	2
Railroad employees	7	14
Other	19	38
Total	27	54

Concentration Of Population

54 Jobs lost
43 Families move
138 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$7,008	x	2.3	=	$16,118
Fertilizer Dealers	0	x	2.3	=	0
Implement Dealers	150	x	2.3	=	345
Others	0	x	2.3	=	0
Totals	$7,158	x	2.3	=	$16,463

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss		
grains to alternate elevators	$941,291	
less increased trucker income	184,976	
	$756,315	
grains to old elevators	366,383	
Total	$1,122,698	
Average of two options	$561,349	
fertilizer costs	6,000	
machinery costs	14,500	
miscellaneous commodities costs	0	
Total farm income loss		$581,849
(b) Income to elevator & fertilizer employees		6,000
(c) Income to other employees		114,000
(d) Income to railroad employees		85,050
(e) Loss of expenditures of goods & services		7,158
Total direct income loss		$709,007

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$1,394,736
Railroad income lost	127,050
Total income loss	$1,521,786

$230 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$34,727.58
Indirect (10% devaluation of commerical property)	29,692.00
Total tax loss	$64,419.58

Additional Fuels Consumed

Between 52,777 and 220,721 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	491,297
Additional trips @ 48 miles	10,176
Line of trucks at 40 m.p.h.	164 miles long
Trips per work day	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	1,471,474
Additional 529 mile trips	2,782
Line of trucks at 55 m.p.h.	188 miles long
Trips per work day	11

Wildlife Preservation

92	Miles of right of way
88.5	Miles suitable for wildlife
1,085	Acres
852	Cock pheasants produced/year
426	Man days of hunting

APPENDIX H

Chapter 51
Trail City-Isabel (MW10)
(Line) (RR)
54.9 Miles Long

Area Served

Parts of 3 counties Northern South Dakota
Total population 12,385
8 Communities in Trade Area (TA)
3,530 Estimate population in T.A.
4 Grain elevators in T.A.
1 Licensed fertilizer dealers in T.A.
3 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

840,777 Bu. of grain transported annually from T.A.
323 Tons of fertilizer in average year
275 Tons of fertilizer potential for Railroad
473 Tons of farm machinery in average year
250 Tons of farm machinery potential for Railroad
375 Tons of miscellaneous products in average year
0 Tons of miscellaneous products potential for Railroad

Summary:			
	Grain	396	Railroad Cars
	Fertilizer	4	Railroad Cars
	Machinery	17	Railroad Cars
	Miscellaneous	0	Railroad Cars
		417	Railroad Cars

8 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$153,559
Additional fertilizer costs	1,375
Additional machinery costs	5,000
Miscellaneous commodities	0
Total loss of income annually	$159,934

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	5	10
Railroad employees	4	8
Other	0	0
Total	9	18

Concentration Of Population

18 Jobs lost
14 Families move
45 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$4,378	x	2.3	=	$10,069
Fertilizer Dealers	0	x	2.3	=	0
Implement Dealers	602	x	2.3	=	1,385
Others	0	x	2.3	=	0
Totals	$4,980	x	2.3	=	$11,454

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss

grains to alternate elevators		$279,674	
less increased trucker income		55,935	
		$223,739	
grains to old elevators		126,115	
	Total	$349,854	
Average of two options		$174,927	
fertilizer costs		1,375	
machinery costs		5,000	
miscellaneous commodities costs		0	
Total farm income loss			$181,302

(b)	Income to elevator & fertilizer employees	-30,000
(c)	Income to other employees	0
(d)	Income to railroad employees	48,600
(e)	Loss of expenditures of goods & services	4,980
	Total direct income loss	$156,282

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$359,449
Railroad income lost	72,600
Total income loss	$432,049

$122 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$2,887.9[illegible]
Indirect (10% devaluation of commerical property)	3,784.0[illegible]
Total tax loss	$6,691.9[illegible]

Additional Fuels Consumed

Between 10,505 and 112,232 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	105,053	
Additional trips @ 30 miles	3,502	
Line of trucks at 40 m.p.h.	56	miles long
Trips per work day	14	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	748,208	
Additional 417 mile trips	1,796	
Line of trucks at 55 m.p.h.	61	miles long
Trips per work day	4	

Wildlife Preservation

54.9	Miles of right of way
52.9	Miles suitable for wildlife
641	Acres
503	Cock pheasants produced/year
252	Man days of hunting

APPENDIX I

Chapter 52
Trail City-Faith (MWII)
(Line) (RR)
106.1 Miles Long

Area Served

Parts of 8 counties Northern South Dakota
Total population 44,119
20 Communities in Trade Area (TA)
11,673 Estimate population in T.A.
7 Grain elevators in T.A.
5 Licensed fertilizer dealers in T.A.
0 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

3,538,986 Bu. of grain transported annually from T.A.
42.5 Tons of fertilizer in average year
0 Tons of fertilizer potential for Railroad
0 Tons of farm machinery in average year
0 Tons of farm machinery potential for Railroad
3,859 Tons of miscellaneous products in average year
250 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	1,685	Railroad Cars
Fertilizer	0	Railroad Cars
Machinery	0	Railroad Cars
Miscellaneous	10	Railroad Cars
	1,695	Railroad Cars

16 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$514,213
Additional fertilizer costs	0
Additional machinery costs	0
Miscellaneous commodities	1,250
Total loss of income annually	$515,463

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	2	4
Railroad employees	8	16
Other	0	0
Total	10	20

Concentration Of Population

20 Jobs lost
16 Families move
51 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$2,616	x	2.3	=	$6,016
Fertilizer Dealers	60	x	2.3	=	138
Implement Dealers	0	x	2.3	=	0
Others	0	x	2.3	=	0
Totals	2,676	x	2.3	=	$6,154

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss			
grains to alternate elevators		$514,213	
less increased trucker income		102,843	
		$411,370	
grains to old elevators		530,847	
	Total	$942,217	
Average of two options		$471,108	
fertilizer costs		0	
machinery costs		0	
miscellaneous commodities costs		1,250	
Total farm income loss			$472,358
(b) Income to elevator & fertilizer employees			12,000
(c) Income to other employees			0
(d) Income to railroad employees			97,200
(e) Loss of expenditures of goods & services			2,676
Total direct income loss			$487,034

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$1,120,178
Railroad income lost	145,200
Total income loss	$1,265,378

$108 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 7,076.53
Indirect (10% devaluation of commerical property)	5,431.00
Total tax loss	$12,507.53

Additional Fuels Consumed

Between 69,614 and 372,103 gallons of additional fuel depending on method of transporting grains.
(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain
(300 bushel farm trucks)

Total miles traveled	696,147	
Additional trips @ 23.6 miles	29,490	
Line of trucks at 40 m.p.h.		475 miles long
Trips per work day		118

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	3,721,030	
Additional 459 mile trips	8,108	
Line of trucks at 55 m.p.h.		459 miles long
Trips per work day		32

Wildlife Preservation

106.1	Miles of right of way
104.1	Miles suitable for wildlife
1,262	Acres
991	Cock pheasants produced/year
495	Man days of hunting

APPENDIX J

Chapter 62
Mitchell-Murdo (MM21A)
(Line) (RR)
142.3 Miles Long

Area Served

Parts of 13 counties Southern South Dakota
Total population 69,671
14 Communities in Trade Area (TA)
20,307 Estimate population in T.A.
21 Grain elevators in T.A.
21 Licensed fertilizer dealers in T.A.
9 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

8,217,954 Bu. of grain transported annually from T.A.
2,947 Tons of fertilizer in average year
2,206 Tons of fertilizer potential for Railroad
1,572 Tons of farm machinery in average year
396 Tons of farm machinery potential for Railroad
14,543 Tons of miscellaneous products in average year
2,210 Tons of miscellaneous products potential for Railroad

Summary:		
	Grain	3,913 Railroad Cars
	Fertilizer	28 Railroad Cars
	Machinery	26 Railroad Cars
	Miscellaneous	79 Railroad Cars
		4,046 Railroad Cars
	28.4	Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$1,032,420
Additional fertilizer costs	11,030
Additional machinery costs	7,920
Miscellaneous commodities	11,050
Total loss of income annually	$1,062,420

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	3.5	7
Railroad employees	11	22
Other	1	2
Total	15.5	31

Concentration Of Population

31 Jobs lost
25 Families move
80 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier	=	Total Losses Goods & Service
Elevator	$67,651	x	2.3	=	$155,597
Fertilizer Dealers	1,100	x	2.3	=	2,530
Implement Dealers	1,627	x	2.3	=	3,742
Others	0	x	2.3	=	0
Totals	$70,378	x	2.3	=	$161,869

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss			
grains to alternate elevators		$1,032,420	
less increased trucker income		206,484	
		$825,936	
grains to old elevators		1,232,693	
	Total	$2,058,629	
Average of two options		$1,029,314	
fertilizer costs		11,030	
machinery costs		7,920	
miscellaneous commodities costs		11,050	
Total farm income loss			$1,059,314
(b) Income to elevator & fertilizer employees			21,000
(c) Income to other employees			6,000
(d) Income to railroad employees			13,365
(e) Loss of expenditures of goods & services			70,378
Total direct income loss			$1,156,692

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$2,660,392
Railroad income lost	79,365
Total income loss	$2,739,757

$135 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$22,683.45
Indirect (10% devaluation of commerical property)	64,450.00
Total tax loss	87,133.45

Additional Fuels Consumed

Between 165,771 and 1,071,752 gallons of additional fuel depending on method of transporting grains.
(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)		
Total miles traveled	1,657,723	
Additional trips @ 48 miles	34,241	
Line of trucks at 40 m.p.h.	551	miles long
Trips per work day	137	

Present elevators to terminal market

(48,000 pound net weight trucks)		
Total miles traveled	7,145,716	
Additional 420 mile trips	17,034	
Line of trucks at 55 m.p.h.	1,153	miles long
Trips per work day	68	

Wildlife Preservation

142.3	Miles of right of way
138.8	Miles suitable for wildlife
1,682	Acres
1,320	Cock pheasants produced/year
660	Man days of hunting

Chapter 63
Murdo-Rapid City (MW21B)
(Line) (RR)
144 Miles Long

Area Served

Parts of 9 counties South-West South Dakota
Total population 87,265
13 Communities in Trade Area (TA)
4,323 Estimate population in T.A.
4 Grain elevators in T.A.
3 Licensed fertilizer dealers in T.A.
2 Other potential rail users in T.A.

Products To Be Transported Annually (Ave. Yr.)

1,422,605 Bu. of grain transported annually from T.A.
0 Tons of fertilizer in average year
0 Tons of fertilizer potential for Railroad
161 Tons of farm machinery in average year
134 Tons of farm machinery potential for Railroad
530 Tons of miscellaneous products in average year
215 Tons of miscellaneous products potential for Railroad

Summary:		
Grain	677	Railroad Cars
Fertilizer	0	Railroad Cars
Machinery	9	Railroad Cars
Miscellaneous	12	Railroad Cars
	698	Railroad Cars

5 Cars per mile

Increased Costs To Farmers In Trade Area Annually

Additional transportation/elevator costs for grain	$214,184
Additional fertilizer costs	0
Additional machinery costs	2,680
Miscellaneous commodities	1,075
Total loss of income annually	$217,939

Employment Lost

	Primary Jobs	Total Jobs
Elevator & fertilizer dealer employees	1.5	3
Railroad employees	11	22
Other	0	0
Total	12.5	25

Concentration Of Population

25 Jobs lost
20 Families move
64 Total people displaced (3.2 persons/family)

Expenditures For Goods and Services Lost Annually

Type of Business	Direct Losses	X	Multiplier		Total Losses Goods & Service
Elevator	$2,000	x	2.3	=	$4,600
Fertilizer Dealers	0	x	2.3	=	0
Implement Dealers	0	x	2.3	=	0
Others	0	x	2.3	=	0
Totals	$2,000	x	2.3	=	$4,600

Income Lost Annually In Trade Area

Direct Income Lost

(a) Farm income loss			
grains to alternate elevators		$214,976	
less increased trucker income		42,995	
		$171,981	
grains to old elevators		213,391	
	Total	$385,372	
Average of two options		$192,686	
fertilizer costs		0	
machinery costs		2,680	
miscellaneous commodities costs		1,075	
Total farm income loss			$196,441
(b) Income to elevator & fertilizer employees			9,000
(c) Income to other employees			0
(d) Income to railroad employees			133,650
(e) Loss of expenditures of goods & services			2,000
Total direct income loss			$207,441

Total Income Lost

(a) + (b) + (c) + (e) x 2.3 =	$477,114
Railroad income lost	199,650
Total income loss	$676,764

$156 per capita loss annually

Taxes Lost Annually

Direct (railroad's property)	$ 19,756.69
Indirect (10% devaluation of commerical property)	$118,674.00
Total tax loss	$138,[illegible]

Additional Fuels Consumed

Between 20,717 and 275,503 gallons of additional fuel depending on method of transporting grains.

(Note: this is an estimate for handling grains. It does not include estimates for fertilizer, chemicals, machinery, etc.)

Environmental Considerations

Increased Truck Traffic per Year--Grain Only

Farm to alternate elevator method of handling grain

(300 bushel farm trucks)

Total miles traveled	155,372	
Additional trips @ 26 miles	5,928	
Line of trucks at 40 m.p.h.	95	miles long
Trips per work day	24	

Present elevators to terminal market

(48,000 pound net weight trucks)

Total miles traveled	1,836,688	
Additional 543 mile trips	3,384	
Line of trucks at 55 m.p.h.	144	miles long
Trips per work day	14	

Wildlife Preservation

144	Miles of right of way
140.25	Miles suitable for wildlife
1,700	Acres
1,334	Cock pheasants produced/year
667	Man days of hunting

RAILROAD IMPACT STUDY

63 Rail Line Segments
in
South Dakota

Leonard A. Poth
Assistant Director

Joy Peterson
Statistician

Bulletin Number One Hundred Twenty-Four

December 1977
Business Research Bureau
School of Business
University of South Dakota
Vermillion, South Dakota 57069

Sponsored By
U.S. Department of Commerce
Economic Development Administration
Technical Assistance Project

In Cooperation With
The South Dakota Task Force on Railroad Policy
and
The South Dakota Department of Transportation
Pierre, South Dakota 57501

"This technical assistance study was accomplished under a grant from the Economic Development Administration. The statements, findings, conclusions, recommendations and other data in this report are solely those of the Grantee and do not necessarily reflect the views of the Economic Development Administration."

CHAPTER 4

Highway vs Railroad Construction Costs

South Dakota's roads were originally built as a supplement to the railroads. As the rail service declined and the economy expanded the truck traffic grew as has the need for a bigger and better highway system. There never has been enough money available to provide all the desired roads.

The cost of upgrading the highways to an acceptable level is only part of the story on highway costs. Shortly after highways are built or rebuilt they demand a maintenance program especially if they are subjected to any amount of truck traffic. The State of Illinois has been collecting data constantly since 1945 on this problem. In 1972, the Illinois Department of Transportation published a report of their findings. It is entitled "Traffic Evaluation for Illinois Pavement Design." (Research and Development Report #36). It contains a considerable amount of technical data but the important facts for this study are "one single-axle truck does as much damage to the pavement as 300 passenger cars and one multiple-axle truck does as much damage as 2,900 passenger cars."[18]

Expert testimony was given before the U.S. House of Representatives in August of 1974 in opposition to increasing the weight limits of trucks from 73,280 pounds to 80,000 pounds. This testimony stated that this increase in weight would increase highway maintenance costs 20 percent and pound hundreds of bridges to ruin.[19]

The many thousands of tons of commodities currently being hauled by trucks that would be hauled by rail if satisfactory service were available are discussed in other chapters of this study. If the millions of tons still being hauled by rail were hauled by trucks it would have disasterous effects on South Dakota's highway system.

Highways will be affected if rail lines are abandoned. Unfortunately, few studies have been performed to determine how much. However, due to the proposed abandonment of five branch lines in South Dakota, some rather detailed studies have been done on the areas served by these five lines. These five lines are in four different areas of South Dakota and can be considered representative of the whole state (only one of the five is in the West River area. However, a small percentage of the total rail system is in the West River Country).

By applying the cost factors developed in the five studies, it is possible to calculate an estimate of the cost for the whole state.

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[18] Quote of Langhorne Bond, Illinois Secretary of Transportation.

[19] Efforts are now being made at the Federal level to increase these legal road limits for trucks from 73,280 pounds to 80,000 pounds.

It was calculated that 634.14 miles of roads would be affected by the 458.07 miles of railroads, a ratio of 1.38 miles of road to 1 mile of railroad. The average cost of upgrading the roads to acceptable levels would be $128,756 per mile. The average cost of maintenance per mile per year after the upgrading was $5,254.

According to the South Dakota Public Utilities Commission there were 3,367.63 miles of main line in South Dakota as of December 31, 1973; see Table 7 below for details.

TABLE 7
RAILROAD MILEAGE OWNED AND OPERATED IN SOUTH DAKOTA
As of December 31, 1973

	Miles of Main Line	Miles Side Track	Total SD Mileage	Percent of Total
Milwaukee Road	1,621.12	292.71	1,913.83	48.98
Chicago & North Western	1,148.45	148.14	1,296.59	33.18
Burlington Northern	516.85	92.45	609.30	15.59
Soo Line	66.26	.62	66.88	1.71
Illinois Central	14.95	5.66	20.61	.54
Total	3,367.63	539.58	3,907.21	100.00

Source: South Dakota Public Utilities Commission, September 20, 1974

Applying the 1.38 to 1 ratio, it is estimated that 4,647.33 miles of highway would have to be upgraded and maintained. The total cost of upgrading would be $570,447,132. The maintenance per year would be $24,415,338. For forty years the maintenance costs would be $976,613,520.

The estimated costs of rebuilding the individual branch lines has only been made available from the railroads as lines are proposed for abandonment. (In both abandonment hearings held so far by the I.C.C., it appears from expert testimony presented that the railroads' estimates are quite high). Based on the figures developed in the five branch lines the average cost of upgrading branch lines in South Dakota is $77,977 per mile. Based on a variety of sources (railroad documents, testimony and current articles in media and periodicals) it appears the best estimate for maintenance of rail lines after upgrading is $3,000 per mile per year.

The 3,367.63 miles of rail lines in South Dakota would cost an estimated $262,597,685. The maintenance would be $10,102,890 annually. Over a 40 year period this would be $404,115,600.

Table 8 shows the comparisons of estimates to provide South Dakota with its required transportation over a 40 year period at present levels of economic activity.

TABLE 8
RAILROAD VS HIGHWAY COMPARISONS

	Rehabilitation Cost	40 Year Maintenance	Total
Railroad	$262,597,685	$404,115,600	$ 666,713,285
Highway	570,447,132	976,613,520	1,547,060,652

APPENDIX M

The University of South Dakota Business Research Bureau conducted an extensive analysis of railroad abandonment problems in South Dakota. Chapter 4 of that analysis concerned increased highway costs if railroads were abandoned. A copy of Chapter 4 is enclosed for your information. Any questions regarding their study should be directed to the Business Research Bureau.

The impact on the highways in District Five is developed from the Business Research Bureau format. The cost estimates are based on mid-1977 prices and have not been updated for inflation.

There are 886.80 miles of highways which would be impacted if the railroads in District Five were abandoned (642.61 miles of railroad x 1.38). The one-time average cost of upgrading these highways would be $108,860,020 (886.80 miles x $122,756/mile). The average maintenance cost per year would be $4,659,247 (886.80 miles x $5254/mile). The maintenance cost for a 20-year life cycle on these highways would be $93,184,940 ($4,659,247/year x 20 years).

APPENDIX N

TOTAL RAILROAD TRACKAGE

1978

COUNTY	1978 RAILROAD	MAIN TRACK	SIDE TRACK	TOTAL TRACK
Buffalo County	None	-0-	-0-	-0-
Campbell County	Milwaukee Road Soo Line	1.64 31.27	-0- -0-	1.64 31.27
Corson County	Milwaukee Road	114.60	10.48	125.08
Dewey County	Milwaukee Road	112.96	2.80	115.76
Haakon County	Chicago & Northwestern	38.24	-0-	38.24
Hughes County	Chicago & Northwestern	50.68	1.10	51.78
Hyde County	Chicago & Northwestern	17.94	.42	18.36
Jones County	Milwaukee Road Chicago & Northwestern	39.42 15.68	.78 .87	40.20 16.55
Lyman County*	Milwaukee Road	53.90	.29	54.19
Mellette County	None	-0-	-0-	-0-
Perkins County	Milwaukee Road	4.26	.39	4.65
Potter County	Chicago & Northwestern	10.32	.34	10.66
Stanley County	Chicago & Northwestern	29.08	.89	29.97
Sully County	Chicago & Northwestern	25.22	.33	25.55
Todd County	None	-0-	-0-	-0-
Tripp County	Chicago & Northwestern	-0-	-0-	-0-
Walworth County	Milwaukee Road	41.18	9.17	50.35
Ziebach County	Milwaukee Road	28.22	.14	28.36

SOURCE: South Dakota Department of Transportation

Total Mile State Track 3,565.86 miles (main & side)

$$\frac{\text{District V}}{\text{State}} = \frac{642.61}{3,565.86} = .1802 \text{ or } 18\%$$

APPENDIX O

TOTAL RAILROAD TRACKAGE
BY RAILLINE
1978

DISTRICT TOTALS	MILES OF MAIN LINE	PERCENT OF TOTAL	MILES OF SIDE TRACK	PERCENT OF TOTAL
Milwaukee Road	396.18	.6446	24.05	.8569
Chicago & Northwestern	187.15	.3045	3.95	.1410
Soo Line	31.27	.0508	-0-	.0000
TOTALS	614.61	.9999	28.00	.9999

SOURCE: South Dakota Department of Transportation

Senator EXON. The last witness whom we have today is a man who has probably come the farthest of any except the staff and two Senators, Ron Reimann, from Washington, D.C.

Ron, we would be very pleased to hear your testimony, and then I am sure that we will have some questions for you. Welcome.

STATEMENT OF RON REIMANN, ACTING ASSOCIATE ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. REIMANN. Thank you very much, Mr. Chairman, Senator Pressler. I have my prepared testimony submitted. Because it gets quite a bit into the detail of the proposal, with your consent I will make some comments on what we have heard so far this afternoon.

Senator PRESSLER. Without objection, we will enter your statement in the record.

Mr. REIMANN. Our proposal is a transportation bill. It would be wrong for the Department of Transportation, to draft a bill that sought to remedy only the railroad problem without dealing with those on whom the railroads rely: the shippers.

Railroads mean nothing without shippers and commodities to be shipped. In preparing the bill, we have had to look at the needs of the railroads as well as the needs of the shippers in trying to come up with a proper balance. Many adjustments will need to be made both by railroads and shippers. They won't always be easy adjustments. Things have been going in a retrograde direction for far too long in the railroad transportation system.

We have had hearings formally and informally around the country to try to deal with the needs and concerns of various shippers' groups. It's on that that our bill was based. Because of the advanced state of deterioration of the railroad system in this country, the cure is going to take some strong medicine. That is, I think, as it should be.

We have heard expressions of worry, concern, and fear from the people in this country over what deregulation might bring. It is a complicated question, and the bill reflects those complexities; it is a complicated bill.

Nonetheless we are still listening. We don't think we have a lock on all the intelligence in the country.

We are in the real world here. This is where the bills are paid and this is where the people are, who have to deal with the results of what we in the executive and you in the legislature propose. We are certainly flexible. We are listening to what happens here in the field.

I would like to make a couple of points about the overall deregulation in the railroad problem. First of all, the railroad problem is not simply overregulation.

That is a key notion.

We have the problem of management efficiency, labor productivity, failure to innovate, and failure to adapt to changing circumstances. When I say that, I am not putting any onus on the laboring men in this country or managers in this country, but a combination of these circumstances have come together to limit the effectiveness of all these groups.

We feel, and this was brought out by one of the gentlemen on the farm and users group, that the railroads can be run as a business. His question rhetorically was, "why can't that railroad run as a business? It looks to me like it will make money." He was a businessman and he saw an opportunity. We have got lots of smart people in rail management and rail labor. But few railroads make money. We think part of the reason for that is that railroads are suppressed in their ability to innovate and to use the assets, that they in many cases, can't make money.

One example is the astonishing fact that 40 percent of the railroad cars in this country move around empty. That would be an opportunity for a healthy industry—one that is not shackled by overregulation—that a businessman would try to grab hold of and use productively. We think the railroads could do that.

From what we hear of the deregulation of perishables, which came about several weeks ago, railroads are making use of emply backhaul space or what was formerly empty backhaul space between the Midwest and the growing regions of southern California. This is the kind of thing we think that deregulation can do. We are not talking about raising rates to extract the last nickle out of captive shippers. We don't want that to happen and we are working on ways to prevent that from happening.

What we do want the railroads to do is to get excited about the business they are in, to be able to use the opportunities they have. We know they have fuel efficiency advantages over other modes. They have speed advantages over some modes. They have a reasonably good network, albeit, some of it overbuilt, but a good starting point to make the system really work in cooperation with other modes and in some cases, alone.

There is only so much that the Government can do to help this process along. The most important thing we think we can do is to reform the regulatory climate and, so to speak, turn them on—get

them excited about the opportunities. I know enough railroad managers to know that can happen.

I think the laboring men in this country, when confidence is rebuilt in the future of their industry, will be as excited as the rest of the industry, and make their contributions to improving productivity. They are doing it already in many cases. I would bring up one more item that you mentioned, Mr. Chairman, about the movement of railroad cars. After loading one in an area, you sent it off and hope that it gets where it is supposed to go. This is an example of what has happened in a capital-starved industry.

Other transportation modes can keep pretty good track of how cars move from one place to another. We hear stories, as I am sure you have, about cars that are lost for weeks and for months. In other parts of the transportation industry, there are automated data systems wherein traces for freight can be done almost instantaneously. Some railroads have that. But the industry, through a task force, with the help of the Department of Transportation, is developing a number of means where more centralized control of cars—a system called car-scheduling, to name one—in which the movement of cars over the line and through terminals can be planned and undertaken more efficiently.

The decentralized procedure prevails in many railroads now. Car scheduling for instance is more of a controlled movement in which there are some assurances for shippers that his car will arrive on such and such a date. We think that is very important. It is understandable why it's taken a long time for the railroads to adapt to that kind of a system.

Senator EXON. Why is it understandable that it has taken the railroads so long to adapt to that kind of a system, if I may interrupt you?

Mr. REIMANN. Yes, sir, you may. We finished a study last November called the Prospectus for Change of the Freight Railroad Industry. It was a capital-shortfall study mandated by the 4-R Act. The study showed that the railroads had been disinvesting in large areas of the plant, and over the 10-year period from 1976 to 1985 would fall short from $13 to $16 billion in their capital needs. When your deficit in terms of investment is that great, you have to cut many corners.

Expensive, and somewhat risky, investment programs are set aside. I think this is an explanation as to why railroads have not been more innovative in this area.

Senator EXON. So you are saying that without capital, the first place they cut back is on maintenance of track?

Mr. REIMANN. That is correct.

Senator EXON. They have to keep themselves solvent.

Therefore, they are not keeping up with their overall equipment to keep their railroad in a safe, efficient operating condition.

Mr. REIMANN. That is exactly right, sir.

Senator EXON. Thank you .

Mr. REIMANN. I would like to simply wind up by saying that we are in a crucial period of the railroads' history, particularly as they relate to the Government. We have, in the opinion of a few, not many more years before there may be massive bankruptcies and the threat of nationalization of large parts of the system.

As you know, the situation is serious in the northeast and has been over many years. There is a great deal of instability in some midwestern railroads. The administration and Federal railroad administrator recognize this and place top priority on a bill which would effectively give railroads the opportunity to act as businesses and reduce the regulation they have to work under now.

Thank you very much, Mr. Chairman, Senator Pressler, for inviting the Department to come and present its case for deregulation.

[The statement follows:]

STATEMENT OF RONALD H. REIMANN, ACTING ASSOCIATE ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Good afternoon. Thank you for the opportunity to speak to you today on the proposed Railroad Deregulation Act of 1979, and particularly on how it will affect the transportation of agricultural commodities.

The last ten years have been a period of tremendous growth and change in the agricultural sector of the United States economy. The growth in grain exports has been especially impressive. Exports in 1978 were 16 percent greater than in 1973, despite the fact that the 1973 level included a large part of the historic Russian grain movement. A second important development has been the tremendous increase in on-farm storage capacity, which has given the farmer far greater control over the timing of the shipment of his crops. Last year, when the Department of Agriculture did its initial survey of on-farm and off-farm grain storage capacity, South Dakota capacity on farms was 5 times greater than commercial storage off-farm. This year's report indicates that farm storage for corn exploded again: corn storage on the farm now is eight times the off-farm commercial storage.

Unfortunately, adjustments in the transportation system, especially regarding railroads, have failed to keep pace with these changes. While other portions of the system have been free from most regulatory restraints in their ability to adjust, the railroads have not.

As a consequence, many railroads today have serious, deep-rooted financial problems, which manifest themselves to shippers in a number of ways, including poor equipment utilization, deteriorating roadbeds, and recurring car shortages. These problems are especially severe for many of the railroads serving our farmlands. We could attempt to remedy some of these ills, at least in the short-run, with piecemeal, bandaid-like solutions. I'm sure you are familiar with some of those which have been proposed. We could address the car shortage problem by maintaining a standby fleet, to be called into service during times of peak demand. We could pour money into the branchline network, to assure that all existing rights-of-way are kept in place, whether or not they represent the most efficient form of transportation. The government could direct the use of railroad equipment in South Dakota and other parts of the farm belt. These measures would not solve the problem, however, because they address only the symptoms of the railroad industry's underlying illness. That illness is the inability of a railroad company to respond effectively to the changing needs of the economy and the shipping public. We believe that the present, outmoded regulatory environment is a basic cause of this inflexibility, and we are, therefore, recommending a fundamental change in the relationship between the Federal Government and the rail industry. We have been, and we will continue, working with farmers, agricultural shippers and receivers in fashioning the changes needed to improve agricultural transportation.

Railroads today face intense competition from other modes of transportation, particularly from the sectors of the motor and water carrier industries that are largely exempt from regulation. For example, in the first four months of this year, two-thirds of the grain moving into both Minneapolis and Duluth-Superior area elevators moved in by truck. The rapid expansion of long-distance trucking of grains, including some from the Upper Great Plains to the West Coast, is ample evidence that conditions have changed drastically since the 19th century, when the unrestrained market power of the railroads created the need for regulatory controls. As the railroads have become progressively weaker, we have tried to modify the existing regulatory framework in specific areas, but these efforts have had disappointingly limited success.

We believe that additional piecemeal modifications also would fail. Therefore, our bill is a comprehensive measure designed to make fundamental changes in Federal regulation of the rail industry—moving us away from governmental control and towards reliance on competition in the marketplace. I would stress that our bill, as

a whole, is a system of checks and balances. Its pieces are designed to work together. We believe a comprehensive approach is essential if we are to develop an improved, rational, efficient transportation system. Now, I would like to describe the major sections of our proposed Railroad Deregulation Act of 1979 that are of particular interest to shippers of agricultural commodities.

RATEMAKING

We are proposing to phase out maximum rate regulation over a five-year transition period. During the five-year transition, there will be a yearly 7-percent zone of reasonableness, on top of inflation, in which carriers will be free to raise their rates as long as they are not discriminatory. For rates outside the zone, the ICC will retain its ability to reduce rate increases, if a shipper can prove—with real evidence based on real situations—that there is no effective transportation alternative, and if the railroad cannot prove its rate reasonable. During this transition period, the Department will be required to conduct two studies to determine how well this approach is working—whether competition is protecting shippers. The Department is required to recommend any legislative changes that are necessary to insure that users of the rail system will have the benefits of competition—through either competition or regulation. Minimum rate regulation, requiring carriers to set rates that cover the costs associated with a movement, will be maintained indefinitely to prohibit predatory pricing. So, too, will discrimination provisions like those already in place, changed only to reflect existing court decisions.

Under our bill, the ICC will no longer have the authority to suspend rates, nor will it be able to initiate investigations on its own. Currently, the ICC can suspend a newly proposed rate, based on the possibility that it might eventually be found unlawful, without letting it be tried in the marketplace. Our bill required shippers or others who are actually affected by the rail rate at issue to request ICC action, and the resulting cases will be argued on the basis of the facts in the specific situation. The bill will require the ICC to make a decision within 4 months, and the ICC can award damages and attorneys' fees, so that a railroad would have no incentive to abuse this no-suspend feature.

The required notice period for rate changes will be reduced over a three-year period, eventually arriving at a system in which no notice is required—a system agricultural shippers are quite familiar with from their dealings with unregulated trucks and barges. The railroads will be required to publish all rail rates upon their effective date, and the essential terms of contract rates will also be made public so that shippers in similar circumstances can avail themselves of the same rate and service terms.

Notwithstanding this rate freedom, railroads will be required to cooperate with one another to provide nationwide connecting service. Through routes are basic to a national rail network, and the ICC will retain its power to require them. We will, however, eliminate the ICCs power to mandate a joint rate to apply for the entire movement. Railroads will be allowed to set their own joint rates and divide the revenues as they see fit. If the carriers cannot agree on a joint rate, or a division, the rates on individual portions can be added together to get a total so that shippers will have the continued convenience of single factor rates, and not have to deal separately with several carriers for a joint line movement. The elimination of mandatory joint rates is essential to allow each carrier in a through movement to set the rate for the service it provides without having to obtain the concurrence of its connecting carriers. Our proposal will eliminate the long and expensive divisions cases that have characterized ICC joint rate setting in the past. To accommodate efficient and prompt joint ratemaking, we will maintain antitrust immunity for discussions of joint line rates, but that immunity will be granted only to those carriers actually participating, or offering to participate, in the movement.

Greater rate flexibility is essential for a healthier and more responsive railroad industry. We believe our proposals will lead to rates more carefully tailored to the needs of individual shippers. We expect to see more rate/service options and more peak-load, seasonal, and contract rates. Some rates will go up and others down—particularly during the off-peak—but, in general, we anticipate that shippers and railroads will talk to one another and shippers will buy what they need—not what the ICC, or other carriers, or government institutions are capable of devising. We believe the bill will encourage innovative ratemaking, which may open new markets, such as the West Coast, for Midwest grain.

The bill's provisions that provide greater rate flexibility would allow the railroads to adjust their rates rapidly to respond to changes in demand—just as truck and barge carriers of grain do already. No longer will rail rates be locked at a given level. When demand drops, and trucks and barges reduce their rates to attract business, the railroads could attempt to remain competitive by reducing their rates.

This would allow them to earn revenue with cars that would otherwise sit idle. Year round utilization of rail equipment would increase the amount of grain the railroads can carry, increasing their productivity and improving their service. When demand increases, all modes would increase their rates. The higher rates would allocate the available equipment to those shippers who place the highest value on its immediate availability, and would make it profitable for the railroads to buy more equipment to handle the peak demand.

If the railroads are given full rate flexibility, a shipper who chooses to wait until grain prices rise and everyone wants to sell and ship grain will pay a higher, peak-period rate. But the available equipment will be provided to him to move his grain. Alternatively, he can sell his grain during an off-peak period when rail rates will be lower. The availability of commercial storage and the growth of farm storage make it easier for the shipper to wait until grain prices and transportation rates are attractive before deciding to sell. Another option the shipper will have is to contract in advance for the service he will need at a specific, agreed upon rate. The Administration's bill encourages the use of contract rates. Shippers will be able to negotiate with the railroads to fix part or all of their transportation costs, as is done with barges now. A contract could be made far in advance, or with little notice, with the assurance that, once the railroad accepted the offer, it would be legally bound to provide service. Volume, frequency and shipping dates will be negotiated by the parties involved.

While this system will be new to rail transportation, it has been used very successfully by the trucks and barges—and grain shippers have shown their ability and their willingness to market grain using the non-rail modes. As long as the level of rail rates is fixed, the railroads will be unable to provide service on demand during peak periods. Allowing rates to fluctuate with demand will make it possible for the railroads to provide service during peak periods to those who value it most. The fixed rail rate level, which makes pricing grain so convenient, makes the marketing of grain exceedingly difficult during peak demand periods, as it too often results in a loss of service availability.

INDUSTRY STRUCTURE

Improving the railroads' financial health is not just a matter of raising their revenues. They must also cut their costs. We believe restructuring of the railroads' physical properties is an essential element in improving industry finances. We recognize that this means there will be more abandonments, and that this prospect is disturbing to shippers and communities served by lines that may be abandoned. Our approach is to addres the problem of excess rail capacity without denying shippers and communities the right to rail services where they are willing to pay the costs of such services. When we talk about abandonments, it is important to realize that States, shippers, carriers and labor have opportunities to investigate alternatives to abandonment in cases where a line is not profitable today. I would like to list four of these. First, under section 401 of the 4R Act, consolidation and coordination of facilities can take place. Where there are two branch lines serving an area, perhaps only one can be profitable. It is often possible to work out an arrangement where service will be continued and made profitable by consolidating or coordinating those facilities. Second, the Local Rail Services Assistance Act of 1978 enables us now to put our capital investment funds into lines before they are abandoned, so that they can be made profitable. Third, the pricing flexibility that I discussed earlier will be of assistance in helping shippers and railroads work out arrangements that will make a line profitable. Fourth, our successful St. Louis Terminal Project, which is based on management-labor cooperation, can be expanded to branch line situations. In some cases where branch lines are unprofitable, arrangements between labor and management to increase operating efficiency may save the branch line and jobs.

For those rail lines that cannot be made to cover costs, the bill's abandonment provision will allow the necessary rationalization of the rail system, by providing clearer guidelines for the abandonment process. This will eliminate the burden such lines place on other rail traffic. It is far better to permit the abandonment of unprofitable segments than to allow a whole railroad to go bankrupt, and far fairer than to require shippers on other lines to pay more than their share of the railroad's costs.

Under the bill, the ICC will still review proposed abandonm,ent applications, pursuant to a public convenience and necessity test, but its investigation will be subject to strict standards and time limits. The application must be granted if the railroad can show that operating the line is non-compensatory, or that the benefits of abandonment exceeded its costs to the public. However, service will be continued on a line if an interested party offers to subsidize operations or purchase the line

and the ICC finds that the subsidy or purchase price is, according to statutory standards, adequate.

Many people are concerned that increased abando;nment will injure small towns and will necessitate additional trucking—using more fuel and damaging roads. Studies of abando;nments in Iowa and Minnesota have found the impacts of abandonments on rural communities to be relatively minor. Commercial operations are adjusted to allow the communities to maintain a healthy eco;no;mic base. With regard to rural roads and bridges, many will need to be upgraded even if no rail lines are abandoned, to move larger farm trucks and equipment, school buses, and many delivery trucks. Most of the non-farming traffic to and from rural communities shifted from rail soon after trucks were developed, and growth of this traffic continues. Fuel consumption could actually be reduced by some abando;nments, as low-density branchline operations are among the least fuel efficient of all rail operations. Also, the abando;nment of some lines and the use of rail subterminal train-loading elevators could reduce the need for long-distance trucking, saving fuel and reducing wear on the highways.

These changes in local economies and in local rail and highway needs have made the reevaluation of public transportation investments essential. The State of South Dakota is about to undertake such a major, in-depth study of its current and future needs. It will analyze the costs and benefits of various alternatives to determine what the basic transportation system of the State should be.

RAIL OPERATIONS

The ICC can, today, order a railroad to provide a given type and number of cars to a particular shipper at a particular time, at a particular rate. The bill will curtail this authority substantially, allowing such intervention only in times of true national or transportation emergencies, as determined by the President. Responsibility for issuing service orders would be moved from the ICC to the Department of Transportation. Limiting the use of this authority to genuine emergencies will allow the railroads to have greater control over their day-to-day operatio;ns. We simply cannot look to the government any longer to decide who should get which cars on which days, and how much shippers or other railroads should pay for those cars. Again, however, we provide a constraint based on principles of fundamental fairness: the co;mmon carrier obligation will be retained. Railroads will be required to provide service to everyone willing to pay the lawful, going rate. The only exception will be to allow the railroads to honor the terms of prior contracts or other obligations for cars and service—the only basis on which such contracts can work.

Considerable concern has been voiced that the bill will allow the railroads to raise their rates, without providing any incentives for them to improve their service. it is true that the bill does not legislate mandatory service improvements. But then, we don't see how this would be effective when 92 years of Federal regulation have been unsuccessful in this regard. We are confident, however, that our bill will lead to improved service, by providing the carriers the opportunity to earn a reasonable profit on existing traffic and allowing them the rate and service flexibility to attract new traffic. We are confident that the carriers will earn more by providing efficient, dependable service—at appropriate rates—than by running trains at restricted speeds on deteriorated tracks.

OTHER ISSUES

Some feel that our bill would give the railroads a free hand to take advantage of the shipper who is dependent on rail service, the so-called "captive shipper." We disagree, because we haver concluded that in most cases there is adequate competition to limit the potential for monopolistic abuses by the railroads. The ability to truck grain to another railroad, a barge terminal, a local market or even to a distant market severely limits the railroads' market power. Vast amounts of grain are already moving in such patterns. We hope that the effective use of the rate flexibility provided by our bill will allow the railroads to recapture some of this traffic—something they can do only by offering attractive rates and dependable service. Combined truck-barge movements are now used from areas formerly though captive to rail. Additionally, the fact that grain from one area must compete with grain from other areas, and even from other countries, limits the extent to which railroads can raise their rates. Nevertheless, we recognize that many shippers are concerned about rail rate freedom and the 5-year transition period is intended to insure that there will be no abrupt shocks and that there will be time for Congressional action to provide protection should it be required in some situations.

Another concern I have heard is that rail rate increases will make our grain uncompetitive in the world market. This strikes at the heart of one of the effective

limitations on rail rate increases. The railroads will not raise their rates to the point where they shut off export gain shipments by rail, because they need this business. More likely, export rail rates will be reduced during slack export periods to attract business, making U.S. grain more competitive, and then raised during peak periods when the high market prices will permit shippers to pay higher rates and still make a profit. Unreasonably high peak-period export rates by one carrier would be prevented by competition with other carriers who can move grain from other regions, and by the potential for more truck-barge shipments.

I know that the question in your minds is whether railroad deregulation will be good for agriculture. As you decide, I ask you not to scrutinize each provision of the bill separately, but to consider the legislation as a whole, and to consider the type of transportation system we believe it will foster. Compare that to the rail system now serving agriculture, and the system we will be left with if present trends continue unaltered. We believe that reliance on the marketplace will produce a system that will be good not only for the railroad industry, but also for the shippers it serves, and especially for agriculture. We believe that you will come to the same conclusion.

Senator EXON. Thank you, Mr. Reimann. I have a question or two. I am sure that Senator Pressler will have some questions. You indicated early in your testimony that the Railroad Deregulation Act which is before us was constructed with the shippers' interest in mind. If all of us could be convinced that the act would work out as constructed, then I am sure this bill would go sailing through the Congress without any difficulties whatsoever.

What about this captive shipper matter? I want to ask you about it. Oftentimes we find that the administration's answer to the question of the captive shipper is that, contracts will protect these shippers adequately. We have been asking for some time now the Deputy Secretary of the FRA, Mr. Gallamore, to help us define what a captive shipper is and to determine how do we take care of him.

Let me give you an example of two captive shippers without getting too specific. Let's take a situation where with the increased dependence on coal, someone has established a coal mine in Montana to strip mine coal which we need very badly. This operation has contracted with a powerplant, either public or private, to deliver so much coal at least in total tonnage to that plant. It seems to me in such a situation you have got a captive producer of coal who went up into that area of Montana and opened up a strip mine so that he could mine the coal and, put it on railcars, and has contracted for a place to deliver the coal.

Let's assume the act before us became law. What possible protection would the captive supplier on one end of the line have, who certainly is not in a position to haul coal by truck, to the powerplant on the other end of the line? Let's say they are both big. Let's say they are both in a position to pay the increased costs.

Nevertheless, if the railroads should come along under the proposed deregulation and say that a line is not profitable, and that therefore we are going to discontinue it, does that not place both the supplier and receiver of the coal in a totally untenable position? Are they not captive shippers?

Mr. REIMANN. In the case of coal I think you could make an argument using the formulation in our bill that they would be a captive shipper. The test there, is there alternative rail transportation available at 110 percent of the quoted rate of the carrying railroad or more or truck, 125 percent of truck, pretty impractical over long distances for coal.

So, in most cases I would think long-distance coal haul if there were only one carrier would indeed be captive under provisions of the bill. That lasts for 5 years. After 5 years there is no captive shipper protection. I think something that gets overlooked a lot that needs to be on the record is that the bill also provides for a competition study at the second year and fourth year. The idea behind that is to see how the bill is operating over this 5 years where there is protection. By seeing and studying various shippers and carriers, what kind of protection, if any, will be necessary for captive shippers in the out-years, that is, beyond the fifth year?

We don't have a backlog of data to look at because we, of course, have always had regulation. What we do know from Canada is that there has not been a problem like that, that the railroads in Canada recognize that their bread and butter is hauling commodities such as ore and coal and pulpwood, and so on.

And they have been able to either contract or work out some kind of an agreed rate so they can do business with one another. There are many differences in the Canadian experience. Certainly there's not been a great deal of hostility between shipper and railroad in Canada as there has been in the United States.

On the other hand, there isn't a great deal of competition in Canada, because they don't have as extensive a road system, as we and they have only two major railroads.

Senator EXON. And, of course, it is a government which is going more and more socialistic all the time. They only have 20 million people in the country. I have heard so often, that it has worked in Canada.

I suggest to you that I am not sure the Canadian situation is very parallel to what we have in the United States. Do you think it is?

Mr. REIMANN. I concede that. That is really the best example we have. I don't want to push that parallel too far, Mr. Chairman. But I would suggest that the studies on competition and captive shipper issues are a very important part of that bill, because if it turns out that there are captive shippers popping up everywhere, which I am not sure we are going to find, then, yes, it's our responsibility according to the way the bill is written, to draft legislation acknowledging that and protecting those captive shippers. One other point is that in the instance that you describe, where a utility and coal mine were contracting a long-term supply of coal, under deregulation a parallel contract at the same time would be drawn with the railroads, so it would be in the railroad's interest to look at new business as an opportunity.

The utility would not be locked into business necessarily if he had not yet made up his mind from whom he was going to purchase his coal. He could bargain with coal suppliers and the railroads at the same time. So the instance you described, is to some degree a peculiarity. It occurs when there is already an existing long-term coal contract that the railroad might be in a position to exploit.

Under existing regulations that would be less of a problem, but I acknowledge that as a transitory problem.

Senator EXON. Thank you. Senator Pressler.

Senator PRESSLER. Thank you for your testimony. I know you are a former, I think, congressional fellow over at the Congress. I have Norm Zuckert helping me now who helped write a lot of the material I put in the transportation policy report. I guess you are the closest thing we have here as a spokesman for the Carter administration today, or for the concept of what is trying to be done on deregulation. I listened with interest to your testimony.

You said about 40 percent of our boxcars in the United States are going around empty somewhere. Now does that mean they are traveling from one place to another empty or are they just sitting empty?

Mr. REIMANN. They are moving empty. That would be all freight cars, including boxcars. I am not sure how the ratio works out from one type to another.

Senator PRESSLER. That is an amazing figure. Do you think under deregulation that would go down dramatically?

Mr. REIMANN. Under deregulation, Senator, a rail company, if he had an accumulation of empty cars in one particular city, would be able to call up a shipper who perhaps was shipping predominantly by truck or water and say; "Look, I have to move these cars out to, say, the west coast, where I have a need for them. I can move them empty or I can give you a pricing break, if you want to load them."

That kind of dealing, like businessmen do most anywhere else, would be possible. Instead of hauling those cars which cost upward of $40,000 apiece new, without earning any revenue at all, he would be earning something.

Senator PRESSLER. You have heard here this afternoon in addition to the 40 percent boxcar problem being empty, and we are in a State in a rural area that is short of them, that the administration tells us that much of today's poor rail service results from excessive regulation. And, of course, you have heard today that there are some very concerned people, captive shippers in rural areas, and they have testified very frankly against the position you advocate. You know that you will take back to the Federal Railroad Administration some of the ideas from the rural and smaller towns that you have heard here today.

But will their needs be taken care of under the administration's bill?

Mr. REIMANN. I hope that we can. I prefaced my remarks by saying that this is not a bill that is going to offer everybody something. The bill is designed to try and improve the lot of both the shipper and carriers generally. But some people are going to feel a pinch. Some people are going to be hurt. There is no way that you can move massive legislation and give everybody a better situation than what they started with.

I have to be very frank in saying that. We have labored for about 1 year in trying to devise a bill that will do the most good for the most people, be the most economically and commercially sound kind of a proposal.

I accept your charge to carry back what I have heard here. We need to hear the reaction of the people about the bill—how are they going to be affected by it—because there are just literally millions of different situations, kinds of commodities and shippers in this country that are going to be affected by it.

Senator PRESSLER. Thank you very much.

Senator EXON. One more question. The example which you were using, as I understand it, is that if we deregulate, the railroads, for example, could give a special rate, discount-upon-discount rate to move a product from Boston, Mass., to Sioux Falls, S. Dak., as part of their movement to San Diego. Is that correct?

Mr. REIMANN. Yes, sir.

Senator EXON. That is an interesting concept, because we heard some testimony this morning from independent truckers who said they thought deregulation would really be a good thing for them. They thought that they would be in a position to compete. You believe that the railroads could return to a healthy condition under this deregulation bill, for example, by allowing them to make the special rates which you mentioned. Have I misinterpreted what you said?

Mr. REIMANN. No, sir, you have not so far.

Senator EXON. Maybe you are one step ahead of me. It seems to me that what you are outlining in this bill might well, over a period of time, make the railroad industry healthy. Let's assume that would happen. Would we not be back in the situation where, because of a healthy railroad industry, we would find a healthy monopoly situation and be back in the difficulty which we had at one time with the railroad industry where they did have too much control in too many areas?

How would we solve that; with antitrust legislation or regulation once again?

Mr. REIMANN. Well, that is an interesting question and looks off into a very heady future that we haven't studied all that much. But I think a fair answer to your question, Mr. Chairman, is that trucks are not going to go away. If rail rates were to increase on medium and long hauls, there are also going to be trucks there looking for that business.

If the rates get too high, a trucker, particularly a deregulated one, could move in. He would send the message to the railroads and to the shippers: "Look, if these rates are going that high, I can move in and economically move that traffic." It's pretty much a market phenomenon that we envisage with intermodal competition, water, truck, and line.

Senator EXON. Thank you very much. We appreciate that you have come to testify.

Any further questions, Larry?

Senator PRESSLER. No. I just want to make a very short 2 minute closing statement when we get finished.

Senator EXON. Why don't you go ahead at this time.

Senator PRESSLER. Great.

Senator EXON. Thank you, Mr. Reimann.

Senator PRESSLER. I wanted to thank our neighbor, Senator Exon, for coming back to his State of birth to a very well-attended public hearing. I think you have conducted these hearings very well. We had over three dozen witnesses. I am told we have had over 250 people listening at different times of the day at least. They have told us of their concerns, and we South Dakotans really appreciate this opportunity.

It's not very often we get to have a chairman of a committee. We thank you very much for coming, and we really appreciate it.

Senator EXON. Well, thank you, Larry. And thank everybody who has come. I want to thank you and your staff for the great facilities which we have had here. I that think the testimony which we have heard today has been excellent. We have had a good cross section, and I am sure that this hearing will be helpful to us as we proceed on this bill in Washington, D.C.

I thank everyone once again. This meeting will stand in recess until 9 in the morning in Omaha.

[Whereupon at 4:43 p.m., the hearing was adjourned, to reconvene at 9 a.m., Friday July 6, 1979, in Omaha, Nebr.]

RAILROAD DEREGULATION ACT OF 1979

FRIDAY, JULY 6, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Omaha, Nebr.

The subcommittee met at 9 a.m., at the Omaha-Douglas Civic Center, 18th and Farnum Streets, Omaha, Nebr., Hon. J. James Exon presiding.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. We will call the meeting of the Surface Transportation Subcommittee to order.

May I take this opportunity to welcome all of you who have come to these chambers today from both within the State and from without to present testimony on the merits of S. 796, the Railroad Deregulation Act of 1979.

Senator Howard Cannon, chairman of the Senate Committee on Commerce, Science, and Transportation, stated on the day he introduced this bill on behalf of the administration:

> The financial difficulties of the rail industry are well recognized. Because of the fundamental crisis in the rail industry, the federal government has been obliged to contribute over $1 billion annually to the preservation of the rail freight system. Continuation of these trends could result in an industry facing enormous capital shortfalls and increasing dependence on the financial support of the federal government.

While we recognize the vitally important nature of our railroad industry in this Nation as an integral part of the overall commercial transportation system, the methods which we use to revitalize our Nation's rail industry are not easily agreed upon in the Congress or in the industry itself. Many difficult and taxing problems and questions remain to be solved and answered if we are to turn this Nation's rail industry around in time to prevent its demise.

S. 796 was offered by the administration as its solution to this Nation's rail problems. However, it is definitely not the panacea that some would hope to the everdeepening financial crisis of the railroads. Many questions remain to be answered with respect to the various provisions of this legislation. We must carefully review and develop equitable solutions to the captive shipper problem. As the U.S. Senator from a rural agricultural State, one of my greatest concerns is the economic welfare of those individuals in sparsely settled populated areas who may face economic hardship under this type of legislation due to their unique dependence upon one mode of transportation, that being rail, in which to conduct their commerce, their trade, and in some cases their only transportation.

Hardship must be prevented to protect our small rural communities.

There are other questions to which we seek response. Will discontinuing maximum rate regulatory actually stimulate competition or will it allow railroads to eventually drive out all competitors, thereby creating a condition in which railroads would have the opportunity to bleed their dependent or captive shippers? Does the abandonment provision in S. 796 provide too much latitude for the rail industry to eliminate not only known unprofitable lines but also those which have proven commercial but less profitable for some traffic? This freedom of abandonment is indeed an area in which the subcommittee needs much input in order to determine if changes are needed, and if so, how they are to be made. What is being proposed through S. 796 will change the entire economic structure of this Nation's railroad system if it is enacted.

While I certainly support the concept behind less Government regulation in the private sector, and I believe Senator Pressler shares these thoughts with me, I cannot support deregulation for the sake of deregulation, if such action will do untold damage to our Nation's economic system. S. 796 has provided this subcommittee with a vehicle to explore the ramifications of deregulation. It is our sincere desire that those of you who have come to testify today and those who submit written statements for the hearing record will provide Senator Pressler and I and the whole committee and subcommittee with the input, the advice, the counsel and the expert testimony to which we today look forward. I am sure that there will be concerns expressed on all areas of this bill by those who support it, by those who do not support it, and by those who might be able to support it with some amendments.

Before I turn to my colleague for any opening statements which he may wish to make prior to the testimony, I want to advise all that we are hoping to limit your remarks to about 10 minutes each. If you have prepared statements, we will be happy to take those for the record and then have you, if possible, give in capsule form the subject of your testimony. After that we will have questions undoubtedly from Senator Pressler and myself, but we are not going to rush anyone this morning. We have come out here to listen and get the input of people who might not have the opportunity to come to Washington, D.C.

We thank Senator Cannon for authorizing our coming out here and holding these hearings. It is an action of bringing Government to the people, and we are very interested in the testimony that we are about to receive.

I must remind you that some of the questions which we will be asking today might not necessarily reflect our point of view. We have an obligation as Senators conducting these hearings to try to clarify as many issues as we can.

We certainly appreciate the fact that you have come here, and I thank all of you for being in attendance this morning. I am hopeful that when we leave here Senator Pressler and I, and Senator Zorinsky, who will be our first witness, might have a better understanding of some of the major concerns which some of us already have about this proposed bill.

Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Well, thank you very much, and thank all of you for being here.

Very briefly, let me say that Senator Exon did a great job of chairing a hearing in South Dakota yesterday in which we heard witnesses and tried to get a point of view from rural and small town America. In part, these hearings are to educate and to bring us information that we wouldn't receive in Washington hearings, and to make them more accessible to both the citizens and news media in our States that are faced with particularly difficult problems.

In both South Dakota and Nebraska, I might say that we take a national view certainly, but our first concern is how these bills are going to affect people in our home States. We do have a different situation than many parts of the country.

Now in Washington today the word "deregulation" is probably the most fashionable word, and indeed it's a word that I like, but we must remember that if we deregulate rail, which is the subject of this hearing, if we deregulate trucking, if we deregulate bus, if we deregulate the common carrier responsibility that has been a part of our case law and administrative regulation regarding transportation, that is, if a carrier takes some rich routes, they are also obligated to take some poor routes and maybe even some unprofitable routes. There are areas that need to be deregulated and there are improvements that can be made, but I hope we don't abandon that common carrier responsibility. I'm here basically to listen and to again thank the staff from the Commerce Committee and my staff and Senator Exon's staff for the hearings, and with that I am prepared to hear the first witness.

Senator EXON. Thank you, Senator Pressler.

We will now begin our testimony. Our first witness this morning is a colleague of ours in the Congress, Senator Ed Zorinsky.

STATEMENT OF HON. EDWARD ZORINSKY, U.S. SENATOR FROM NEBRASKA

Senator ZORINSKY. Thank you.

Senator EXON. Thank you very much for coming.

Senator ZORINSKY. I wish to thank my colleagues, Senator Exon, Senator Pressler, for this opportunity to testify before the Commerce Committee on S. 769, the Railroad Deregulation Act of 1979.

I might start my comments by saying that this hearing is as timely as the administration's proposal to deregulate the Nation's railroads is untimely. We are about to begin wheat harvest, and are quickly approaching the corn harvest. Coincidentally, rapidly increasing world grain prices are stimulating more grain movement.

Just as we are approaching the season of greatest demand for grain transportation, our country is facing a serious fuel crisis. In the past week I have heard increasing reports of railroad fuel shortage and inadequate diesel fuel for trucks. The energy crisis is likely to exacerbate the chronic transportation problems which plague Nebraska agricultural communities.

Activity over the next few months will highlight one single, indisputable fact which is crucial to the railroad deregulation issue.

The well-being of agriculture in our Nation's grain belts—and specifically in the State of Nebraska—hinges on the existence of an adequate, reliable transportation system.

I am convinced that unconditional deregulation of the railroad industry will jeopardize the continued existence of such a system.

Last month, as a member of the Senate Committee on Agriculture, I chaired two hearings—one in North Platte and another in Lincoln—on various agricultural transportation issues. The message from the many farmers and shippers at those hearing was clear: the American railroad industry needs help, but the answer is not deregulation.

No one argues against the proposition that our Nation's railroads must remain healthy. Indeed, only if they do will they be able to meet the needs of the industries they serve. Railroads must be able to earn an adequate return on their investment. The industry cannot be expected to bear the cost of providing service where it cannot make an adequate return.

Nevertheless, I am concerned that in seeking the salvation of our Nation's railroads, we will endanger yet another industry—that being agriculture. In pursuing a means of reducing costs to the railroad industry, we must be sure that we are truly cutting costs and not merely shifting them to another sector of the economy.

The streamlined abandonment procedures proposed in the administration bill undoubtedly will reduce some railroad costs by facilitating the abandonment of unproductive trackage. But those costs will simply be transferred to other sectors. Loss of a branch line railroad, for example, may have severe ramifications on all members of nearby communities. Shippers of grain and receivers of bulk commodities, such as fertilizer, will be forced to find alternative sources of transportation. Most often this will mean shifting to truck transportation—a more expensive and less fuel efficient transportation means.

The higher shipping costs will be passed on, in turn, to the farmer in the form of lower prices for his crops. The Nebraska State Department of Agriculture testified at the Agriculture Committee hearings I mentioned that the value to a farmer of a single bushel of grain is between 20 and 22 cents more when transported by rail hopper car than by truck.

Abandonments also shift costs from the railroads to the local, State, and Federal governments with the responsibility for maintaining our Nation's roads and bridges. In many parts of Nebraska and other agricultural states, the roads and bridges are inadequate to handle the increased traffic and heavier loads the switch from rail shipping would entail. Nebraska alone has over a thousand bridges which are listed by the U.S. Department of Transportation as either deficient or obsolete.

Costs may be transferred more directly through the simple mechanism of increased rail rates. The administration's proposal provides for the ultimate removal of all maximum rate regulation. Under S. 769 the Interstate Commerce Commission would lose its authority to control price increases. I am concerned that without regulation, rates for agricultural shippers with little or no practical alternative will skyrocket.

I am troubled by other aspects of deregulation as well. Without ICC control over car service, smaller shippers may suffer as more cars are sent to the larger firms. Without ICC regulations or per diem and mileage rates, shippers who have invested in their own cars will have no assurance of an adequate return for their investment.

Finally, without sufficient notice of rate increases, shippers and farmers will be unable to accurately assess freight costs and set prices. Ultimately the burden of this increased risk will be borne by the farmer in the form of lower prices for his grain.

The timing of the administration's proposal is troublesome as well. With our country in the midst of its most severe energy crisis—and the prospect of steadily increasing fuel costs ahead—we should examine closely any proposal which may increase fuel use. Trucking—in most cases the available alternative—is far less fuel efficient than rail shipment. It may be less costly to our country in the long run, to continue rail service, even on marginal lines, than to promote the switch to a less fuel efficient means of transportation.

In summary, Senator Exon, as a member of the Agriculture Committee, I have weighed carefully, the possible consequences of railroad deregulation on the agricultural communities of our nation. I am convinced that unqualified deregulation is not the wisest course to pursue in solving the railroad industry problems. I am equally convinced that deregulation, as currently proposed, would have disastrous effects on the agriculture sector of our economy. The industries and the communities which depend upon an adequate, reliable and predictable rail system cannot survive the massive changes that deregulation would entail.

I commend you, Senator Exon, and you also, Senator Pressler, for holding these hearings and I appreciate the opportunity of being able to testify before you. Thank you.

Senator EXON. Thank you very much. We appreciate your expert testimony. You and I have discussed this on many occasions, and I think we share basically the same concerns. I do have one question. In your testimony you say that in the long run it might be better for the country to continue some type of subsidization of the railroads to maintain some of these lines. Is that in essence how you feel about this, recognizing that we do have problems in certain areas?

Senator ZORINSKY. Yes, because I feel the alternative to that is to subsidize local governments that don't have the economic ability for the improvements that would be necessary for structural bridges and things of that nature in the event that the increased traffic were switched.

Senator EXON. Thank you, Ed.

Senator Pressler.

Senator PRESSLER. Yes. I have just a couple of questions.

First of all, Ed, I know that you're one of the outstanding spokesmen for agriculture, and your concern in this area is also a concern of mine, but I'm wondering realistically, can we hope to maintain rail service as we have known it in the Midwest? Now presently you know the trains run through small towns. Are we going to have to go to regional centers, realistically, for grain? I guess

deregulation, if we had that, probably a lot of these small routes would be abandoned to small towns. And are we asking too much of the railroads to require them to stop in every small town?

Senator ZORINSKY. Not in every small town, no. However, as you're aware, Senator, Senator McGovern and I have introduced the subterminal bill which will offer another alternative or another tool available for selection of the most efficient form of transportation. I don't say that we should continue as we have in the past. Hopefully we can streamline the operation, and reregulate rather than deregulate.

Senator PRESSLER. I'm also a supporter of your subterminal bill. I think that shows a good initiative that we are trying to find a way to have a regional area where the grain can come to. But I'm also concerned what this would do to the small town elevators. Maybe we could have a zone price for truckers to ship into the regional terminals so that if you lived 30 miles away from a regional terminal you would haul your grain to the regional terminal in a truck. This might mean that the small town elevator in your hometown might go out of business, where the rail now keeps those small town elevators going. That is my one hangup about the subterminal.

Senator ZORINSKY. With or without the subterminal bill, that is happening right now. The bill has no impact—the subterminals can be built and are being built without the bill being in effect.

Senator PRESSLER. That's right, so eventually it's happening anyway I guess.

Senator ZORINSKY. Yes.

Senator PRESSLER. One thing railroads under regulation have done is they have kind of preserved that small town grain elevator. When I go into a lot of my small towns the only place I can find anybody is the grain elevator or cafe or local pool hall. The point is that the grain elevator is the last economic viable institution in a lot of these little towns.

If we deregulate under this bill, I think those trains are going to pull out of those small towns tomorrow. Maybe we need, as you say, to reregulate with the subterminal facilities. I'm just concerned. I think trains have provided a real service in keeping those small town grain elevators going. I'm afraid if we pass this bill, as you have pointed out in your fine testimony, we're going to shut down what is left of those small towns.

Senator ZORINSKY. I agree with you.

Senator PRESSLER. Thank you very much for your testimony and for your good work. I follow your leadership often.

Senator ZORINSKY. Thank you, Senator.

Senator EXON. Ed, thank you for the testimony. If you have time and would like to join us here on the panel, we would be glad to have you stay as long as you can.

Senator ZORINSKY. Thank you.

Senator EXON. Our next witness is another colleague of ours, Congressman Cavanaugh. John, welcome, and we are very pleased that you have come.

STATEMENT OF HON. JOHN CAVANAUGH, U.S. REPRESENTATIVE FROM NEBRASKA

Mr. CAVANAUGH. Thank you, Mr. Chairman. It's a pleasure to be here and I want to commend you for bringing these hearings to Nebraska and bringing my former colleague from the House, Senator Pressler, to Nebraska. It's a pleasure to have you in our State and in the second congressional district.

I appreciate your concern and efforts on this issue and I want especially to commend Senator Exon for the remarkable leadership that he has demonstrated across the board in transportation issues in the short time that he has been in the Senate. His willingness to bring these hearings out to the people is another important contribution to this issue.

I appreciate the opportunity to present some initial reactions to the administration's proposals on rail deregulation. I would like first to set out several basic principles which underlie my approach to the specific issues raised by S. 796, the legislation with which this committee is presently concerned.

One, the railroads will play an increasingly important—in fact indispensible—role in the transport of the Nation's freight over the next half century, principally as haulers of coal and grain. The health of our Nation is therefore tied unalterably to the health of the railroads.

Two, after decades of neglect, the current state of our railroads is critical. Unless major initiatives are taken to arrest this decline and to establish the basis for an efficient, financially sound, and truly national rail freight system, we will be faced later with nationalizing a bankrupt system. Partial deregulation—the streamlining and rationalization of burdensome Government controls—is a necessary first step toward sounder management of the railroads.

Three, this partial deregulation must be carried out in a manner that does not injure sectors of our economy which rely heavily on railroad transport, most notably the grain industry of the Midwest.

Four, public control of and governmental accountability for the process of rail deregulation must be insured through congressional oversight of phased-in deregulation.

I will now deal with these points in greater detail.

Rail transport is not an anachronistic relic of the 19th century preserved for romantic notions. It is, when properly operated, an extremely efficient mode of hauling freight over our vast continental expanse. While the barge, airplane, pipeline, and truck have cut deeply into what was once the preponderant mode of interstate transport, the growing energy shortage in the United States guarantees that the train will be called upon to pick up an increasing share of the freight.

With the revived emphasis on coal for many of our energy needs, we are already seeing a major increase in utilization of our long-haul rail lines. In 1978, over one-quarter of total rail tonnage was accounted for by coal, which provided about 13 percent of total industry revenue. Only the poor state of our current rolling stock has prevented even greater utilization, and thus the industry presently plans to invest $5 to $7 billion between now and 1985 for new coal cars. An additional $4 to $5 billion is earmarked for upgrading existing coal rail lines, mainly in the West and Midwest. The just-

released report by the congressionally mandated National Transportation Policy Study Commission predicts that by the late 1990's transportation of western coal will actually necessitate construction of several new railroads. The Commission forecasts that by the year 2000 coal movement by rail will rise by 400 percent over current figures, reaching about 1.2 billion tons.

The railroads are also critical to the continued ability of our Nation to feed both our own vast Nation and the grain-importing countries of the world. Judging from Union Pacific's figures showing that grain and soybean shipments on its rails were up 22 percent in 1978, this close relationship between agriculture and the railroads is becoming even more intimate in the Midwest. Our farmers' reliance on the rails—including, I would emphasize, the many smaller branch lines—cannot be replaced by truck transport without a sharp escalation of cost, which would likely drive many small farmers out of business. The transportation bottlenecks which would result from any serious constriction of our rail network would also have a major impact on our balance of trade, given the importance of our grain exports.

In short, any national transportation policy which does not address the continuing deterioration of our rail system will cause major problems for our energy and agricultural policies as well. We need the railroads, and our children will need them even more.

I am sure that the representatives of Union Pacific and Burlington Northern testifying here today will explain the dismal situation in their industry far more effectively than I can. These two railroads are in much better shape than most—due in large measure to better management—but it will come as no secret to anyone here that our privately owned rail transport system is dying. The prognoses may differ on how long the patient can hold out, but they are in agreement that without radical surgery there is no expectation of restored health.

It does not require an experienced auditor to conclude that an industry which for the past 4 years achieved a return on net investment of less than 2 percent cannot long sustain its operating expenses, let alone carry out any major plan of modernization. By comparison, the trucking industry returns about 19 percent on investment and the barge industry over 16 percent. According to the Association of American Railroads, the industry has not had a rate of return as high as the cost of its debt capital since 1955. DOT has estimated that there is a capital shortfall in the rail industry, excluding ConRail, of $13 to $16 billion over the next 5 years just to keep the system operating at its present capacity. Obviously funds of such magnitude cannot be generated from within the industry unless rail earnings improve substantially.

The serious condition of the industry is also indicated by the following:

In a recent survey, the Federal Railroad Administration estimated that over 14 percent of all track was subject to "slow orders" because of poor condition; in some cases, maximum speed is as low as 10 miles per hour.

The "bad order ratio" for locomotives, meaning the percentage of locomotives out of commission, reached 10 percent in 1978 and has climbed each year since 1974.

Between 1967 and 1977 there was a 10-percent drop in the number of freight cars in service.

The Milwaukee Road and the Rock Island have been hit with such serious financial difficulties that their continued operation is in doubt.

Without the capital to modernize, innovate, and offer reliable, efficient service, the railroads have seen their share of various freight and commodity markets progressively eaten away by the trucking, barge, pipeline, and air freight industries. In 1929, 77 percent of the Nation's freight moved on rails; in 1945, it was down to 60 percent; and by 1977 only about 36 percent was carried by rail. Even for agricultural products, the railroads now carry less than half the total, or about 43 percent.

I do not believe this decline reflects the fact that rails have simply become outmoded or innately inefficient compared to their competitors. Rather, the inefficiencies have been built into the system over the past century and the industry, with few exceptions, has become incapable of exercising the type of American inventiveness, dynamism, and risk taking which generally characterize U.S. business.

Let me quickly add that I am encouraged by the attitude displayed by Union Pacific and Burlington Northern toward deregulation. They seem ready both to take the risks of increased competition and to take advantage of the opportunities offered for innovative management. I hope they will also keep in mind that the health of their customers in the Middle West, including the smaller farmers, will have a continuing impact on their market prospects.

I have been reading "Hear That Lonely Whistle Blow," Dee Brown's fascinating account of the building of the railroads. His description of the powerful, aggressive, and too often predatory railroad magnates makes it abundantly clear why the Federal Government had to step in and clamp down on ratemaking, mergers, labor conditions, financing, and almost all aspects of the railroads' operations. Some think that if the lid is taken off these same abuses will spring back to life. Personally, I think we have gone so far toward emasculating the industry's initiative that the real problem will be to restore some of the dynamism which motivated the construction of the railroads in the last century. Subject to the reservations which I will touch on, I think we must allow the industry more latitude in ratemaking, operation, consolidation and mergers, abandonments, and marketing. The question we must carefully address in the coming months through hearings such as this one is how much latitude.

I believe that streamlining governmental involvement in the rail industry is indispensable to restoring its health and competitive position vis-a-vis the other modes of freight transport. I have, however, avoided any blanket endorsement of either total deregulation or S. 796.

There are clear and compelling reasons to approach rail deregulation cautiously. In the first place, while the railroads are far more enmeshed in Government redtape than competing transport industries, it would be naive to suggest that the normal or natural state for those industries is an open and free market. A high degree of regulation—often for good reasons—still characterizes the

trucking, air freight, pipeline, and barge industries, notwithstanding the administration's efforts to reduce controls. Thus, the context within which we are discussing S. 796 is not, "Should the railroads compete in a free market?" but rather, "What is the proper mix of regulation and the marketplace to maximize rail efficiency and service?" And of equal importance is the question: How quickly can that proper mix be achieved without causing disruptions or inequities?

I am concerned that the administration's proposed changes go too far, too fast in the direction of unregulated decisionmaking by the railroads.

In the critical area of ratemaking, I am concerned by the fact that even in the 5-year transitional period the railroads can too easily raise rates above the 7-percent zone of reasonableness. The shipper's burden of proving the absence of effective competition—that he is a captive shipper—appears unduly weighty. Indeed, it is this area of S. 796 that ICC Chairman O'Neal singled out as the most objectionable. We should not ignore his warning that elimination of the Commission's maximum rate regulation would be grossly unfair to shippers in noncompetitive markets. And we must bear in mind that, had the transition period provisions of S. 796 been in effect, 1974–78 rate increases of 97.4 percent would have been allowable and thus likely, not even accounting for probable rate increases above and beyond the zone of reasonableness.

There must be sufficient residual authority in the Commission to insure that the railroads don't use their new rate flexibility merely to raise prices in markets where competition is weak while neglecting to compete aggressively in markets where they face competition from trucks.

Thus we come right back to an issue with which the railroads, the shippers, and the ICC have been struggling since passage of the landmark Railroad Revitalization and Regulatory Reform Act of 1976: What constitutes market dominance by a railroad? This question cannot be legislated away by stacking the deck totally in favor of the railroads and at the expense of the genuine captive shipper. I will be interested to see the outcome of the Commission's current attempt to redefine market dominance in a way that gives the railroads more flexibility without undermining needed protections for the captive shipper.

The bill's provisions for rail line abandonment also reflect an imbalance which threatens the small shippers. Despite efforts by DOT spokesmen to paint the proposed abandonment procedure as an adversary process providing full public involvement, S. 796 makes it almost certain that such hearings will give short shrift to arguments against abandonment by communities or shippers threatened with economic ruin.

I am not unsympathetic to the railroads, needs to rationalize their operations and eliminate money-losing lines, but hearings on proposals to cut service must allow for meaningful, but not dilatory, public participation. As written, the administration bill leaves almost no room for evidence other than that bearing on the line's historic profitability, even if rate increases or local subsidies could make the line viable in the future.

Another area of major concern, particularly as it affects Nebraskan and Middle Western agricultural interest, is the termination of ICC authority to issue car service orders in emergencies. Last year the region experienced the worst car shortage in two decades. Without the Commission's intervention, there would have been a major crisis. It is far from clear that DOT's new role in this area, requiring prior Presidential approval, would provide the flexibility and speed needed to respond to floods and other emergencies. Given the continuing general shortage of railroad cars, the reluctance of railroads to provide even a limited number of hopper cars to branch line operations for small grain elevators, and the likely DOT sense of priorities in such emergencies, I would be reluctant to see the Commission's authority transferred.

I am sure that these hearings will bring out more fully than I have just done the particular agricultural and regional concerns which have to be more equitably addressed in the administration's proposals.

The only way to insure that deregulation of the railroad industry is carried out to the extent and at the rate demanded by the overall national interest is through a close and continuing congressional role in its implementation.

We have received many assurances and hear optimistic predictions as to what results will accrue from specific provisions of the legislation. In reality, there is considerable uncertainty about what will happen as century-old controls are removed from the railroads. It would be prudent, therefore, to provide in the legislation itself for periodic review and appraisal by the Congress of how the deregulation process is working, including the opportunity to delay or cancel implementation of subsequent stages.

We may also wish to divide the administration's proposed transition period itself into stages of deregulation and to establish procedures for committee or full congressional review of each stage.

There must also be procedures for continuing public input into the evaluation process. Those who are most affected by the sweeping proposals should not feel that deregulation is an all-or-nothing gamble in which the rules cannot be modified by feedback on how it is actually operating. We must remember that phased deregulation is not an end in itself, but—hopefully—a process to make the railroads more efficient servants of the public's need.

Even if carried out in a phased, responsive manner, partial deregulation of the railroads will require difficult adjustments by all concerned: railroad management, railroad labor, the farmer, and the Government. I hope that a spirit of accommodation will prevail despite the very legitimate efforts of each group to insure that the bill reflects its basic interests.

Although I have indicated today a general sympathy for the objectives of rail deregulation, I urge you to review the arguments presented by each group in order to help shape legislation which not only allows the railroad to make a profit, but also assures the farmer of the opportunity to get his produce to the market at a reasonable price. Unless both of those goals are accommodated, certainly the interests of Nebraska and the interest of our Nation will not be served.

I again wish to commend you, Senator Exon, and I think that with your stewardship and leadership we will see this legislation evolve and be hammered into a workable formula that both preserves the future health of our railroads and protects the interest of small farmers and towns and agricultural economy of our State.

I appreciate the opportunity to be here today.

Senator EXON. Congressman Cavanaugh, thank you very much for your well-delivered, well-prepared testimony. You have brought out interesting points and obviously have done much studying of this matter.

What is your comment on a view, which we have heard from some during the extensive hearings in Washington and also to some extent in our hearings in Sioux Falls yesterday, that we should deregulate the railroad industry so that, under the free enterprise system, the railroads can go out and do what they can do best, that is, providing transportation without the shackles of government rules, regulations and redtape?

In this regard, the example of the deregulation of the airline industry is often referred to. It is said that the airlines have reduced fares and supposedly improved service, at least between the major points.

But it was recognized in testimony that some of the smaller areas were hurt when we did deregulate the airline industry.

What is your view on whether there is a similarity between deregulation of the airline industry and the railroad industry? If it was a good thing and was supposed to improve service overall in the airline industry, would these results necessarily follow with regard to the railroad industry?

Mr. CAVANAUGH. Well, I think it would be an extremely dangerous and erroneous premise on which to proceed, namely that the railroad industry is identical to or even analogous to the American airline industry. They have entirely different origins and entirely different existences. The nature of the two industries is not at all alike.

I think that it is deceptive logic to presume that the effects of deregulation of the rail industry would be in any way identical to those of the airline industry.

First of all, the airline industry was in a much healthier condition than we find the railroad industry in today. There was a much higher level of competition, of real competition and potential for competition in the airline industry than exists in the rail industry. In order to recreate, really, a dynamic of competition in very many areas of the rail industry, the capital investment required is prohibitive.

You are going to have to live with the fact that many service areas are totally dependent on the railroad industry. This was not true in the airline industry. The airline industry retains the flexibility to move into new markets almost at will. The amount of capitalization required is really minimal to shift from one market to another.

In the rail industry, on the other hand, you have to build your delivery system, and that is a tremendous and significant investment. All in all, I think it would be a very dangerous principle to proceed on the basis that they are the same, and thus to treat

them the same in terms of their relationship to the Government, their relationship to their customers, and their relationship to the general national economy.

What I am urging this committee to do is to look at the railroad industry in its own setting, in its own context and in terms of the needs of the Nation that have to be met by the rail industry, and not to be caught in the trap of assuming that in all cases less Government is better. Rather, we should be guided by the principle that better government is better. What we need to do is adjust the rules to accommodate new needs and circumstances, but not to abandon all the rules altogether.

Senator EXON. Congressman, in your testimony you indicated what I think has been a feeling of the subcommittee and possibly the committee itself, that while we need to look at reducing Government control over a major industry like the railroad industry, which for the most part we recognize is sick by usual financial standards, we must be concerned about the type of changes to be made.

How do we change this bill which might help the railroads become more financially sound than they are today? What amendments would make this bill more acceptable and one that might pass, with the desired result for all.

We always come back to the critical situation regarding the captive shipper. And the captive shipper, of course, is one who most recognize would be hurt the most if this bill were enacted as proposed, because it would leave, especially after 5 years, any captive shipper in a position of being cut off almost at will by the railroad.

So we have been searching for some way to protect the captive shipper. Then we have had a great deal of difficulty in defining what is a captive shipper. I do not know that you have a definition, but I will ask you, and the others who will testify, if you have a definition of a captive shipper, or a partial captive shipper. If so, we would like to have your definition, because this is a critical problem and would affect whether or not this bill or anything like it could be passed by Congress.

Mr. CAVANAUGH. I think that that is one of the most difficult problems that the committee and the Congress is going to have to grapple with in terms of reaching really a new definition of captive shipper. I would say we have to be realistic and honest, first of all. We have to assume that if we are going to provide the real opportunity for revitalization of the rail industry that we have to give them more flexibility in making marketing and service area decisions. And that there has to be a greater emphasis placed upon the profitability of the market areas and the service areas that the rail industry is going to move into. We have to find that balance between the legitimate economic needs of the railroads, to enable them to find the capital and establish themselves as a fair profit-making industry, on the one hand, and the general economic health of their service areas on the other. The fact is I don't think we can either demand or expect or aspire to preserving rail service for all areas that currently have it.

And you are going to have to let some of those decisions be dictated by market conditions, on the basis of reasonable profit for

the industry. But not all of these decisions can be made on this basis. It would be a mistake to go that far, to make profitability the sole criterion, and I think that the legislation now before the committee basically does that. It says the sole criterion for abandonment will be profitability. If the objector cannot demonstrate that the line is profitable, then the abandonment will be granted. I think that that is far too extreme. There are other economic interests that certainly must be accommodated.

But what the committee must seek to do is fashion a formula which, while not saving all lines, establishes a system of reasonableness in which there is a criterion of general economic health of particular regions that must continue to be served, and perhaps fashion a system of subsidization for those lines. I think we also have to be honest in that regard with the American people and the taxpayers, and let them know that there are general economic interests which require that, if we are to have a healthy rail transport industry, we may have to share the burdens of some uneconomical aspects of it among the whole citizenry. And we must make that a public policy decision. We must determine what level of subsidy is in the overall interest of the country.

You have my sympathy in terms of defining captive shipper and then defining his rights. I would say you are not going to find an absolute black or white formula with which to do that. You are going to have to have some standard of reasonable economic interest to counterbalance the fact of unprofitability of certain market areas.

Senator EXON. Thank you.

Senator Pressler?

Senator PRESSLER. John, thank you for your fine testimony. Senator Exon's questions have covered some of the area in which I am interested. In the House when we were serving together, you were one of the outstanding spokesmen for both rural interests and urban interests. As I understand it your district is unique in that you represent a city and also some very rural areas, is that right? You have about five counties?

Mr. CAVANAUGH. I have four counties outside the city here.

Senator PRESSLER. You mentioned the car service authority of the ICC, the supply of box cars and hopper cars which would probably be of great interest in your rural areas and throughout western Nebraska. Yesterday we heard one witness say, "Well if we didn't have the ICC involved, the free enterprise system, would guarantee cars where they are supposed to be," and so forth. I tend not to agree with that.

I think we have to have a strong need for the car service order. In your testimony you mentioned that car service order authority. Now if we pass this bill in its present form as introduced, we are going to eliminate the car service order. What is your reaction to that?

Mr. CAVANAUGH. Well, I think that I did express in my testimony that I think that would be unwise and that clearly the market forces have not been able to accommodate all of the interests in terms of availability of grain and hopper cars. As long as that deficiency exists we must insure that there are effective methods of dealing with the problem. I wouldn't say that the shortage would

always have to exist. A recapitalization of the industry may, over time, alleviate that deficiency.

It's analogous to the rule 9 situation that we found ourselves in. Early in the year we anticipated a shortage of fuels. And we also anticipated, based on good evidence, that the marketplace was not going to apportion out that shortage to meet the most immediate need, which was accommodation of the agricultural planting season. So we had to take an artificial action in order to manipulate the marketplace to serve that seasonal need and to alter the normal flow.

That same kind of situation is almost a peripheral reality in terms of grain hopper cars. There is an absolute shortage. Every season there is a shortage. And there has to be some public policy way, some overriding view of it, to force adjustment that otherwise would not occur and would result in severe economic hardships and disruptions to the general agricultural economy. I think the absence of that power and authority would be a serious threat, certainly to the economic health of our region.

Senator PRESSLER. A final question. In the House it seems as though we used to always be voting a subsidy to the Penn Central or one of the other railroads in the East. Congressman Nolan, you and I, and probably others were trying to get more of that money into the Midwest, but if we are talking about deregulating the railroads, what should our philosophy be in Congress about these subsidies. Of course, the Penn Central, a lot of people thought it was involved in other businesses and there was a lot of distrust about where the money was really going; although I certainly think it was probably used as well as it could be.

Now the Milwaukee Road is in bankruptcy and Senator Baucus, Senators Exon, Zorinsky and I, and others have been concerned.

Where do we go? Just in closing, a little bit of your philosophy on these subsidies to railroad.

Mr. CAVANAUGH. What I think would be a reasonable thing to do in the context of deregulation. What we want to create is as nearly an honest market situation as is practicable serving the other surrounding needs.

That means really to try and allow the railroad industry to make those kinds of decisions that are going to make it profitable. But reserve an authority to say, "Well, we agree with you that this particular line is not going to be a profitable endeavor for you. But the public policy here really requires a continuation of service. And, in view of the other economic needs of this particular region and this particular line, we feel there is an overriding public interest in continuing service there."

So devise a system that makes up that differential so that the other shippers, the other customers, or the industry itself, are not the sole entities absorbing that loss. And they shouldn't be, because the reason for that loss, the reason for that loss being sustained, is a judgment outside of a business judgment and outside of a purely economic judgment.

It entails broader social goals, so that should be accommodated in the broad spectrum. We should direct subsidies at those targeted areas where we have made a public policy judgment, according to some standard, that we want to continue service there, that it's

essential to continue service there to sustain a broader economic base.

But to try and make that differentiation, which we don't do today, we basically force the burden of that cost on the rail industry. And we have seen, I think, the catastrophic economic consequences of that for that industry.

Senator PRESSLER. Thank you very much for your fine testimony.

Senator EXON. Thank you.

Senator Zorinsky, do you have any questions?

Senator ZORINSKY. No, Jim. Congressman Cavanaugh, I think you have made an indepth study on the subject and are to be complimented for your ability to grasp the situation. And I, like you, feel very similar to your description in the statement. Thank you.

Senator EXON. Thank you, Congressman Cavanaugh.

Mr. CAVANAUGH. Thank you.

Senator EXON. Our next witness is Mr. Harold Simpson, chairman of the public service commission, former Senator of Nebraska. Welcome, Senator. We are pleased that you have come to testify this morning.

STATEMENT OF HAROLD SIMPSON, COMMISSIONER, PUBLIC SERVICE COMMISSION, LINCOLN, NEBR.

Mr. SIMPSON. Thank you.

Senator EXON. If any of your colleagues from the commission are with you here, they are welcome to sit with you.

Mr. SIMPSON. Mr. Mannelly is here. He's gone over what I am going to say and he agrees with it.

Senator EXON. Fine.

Mr. SIMPSON. We did testify when Senator Zorinsky was in Lincoln at the Agriculture Committee. We appreciate the opportunity of the Senate committee's coming to Nebraska so that Nebraska people can tell you their problems here, rather than having to go the other way all the time.

I am Harold Simpson, chairman of the Nebraska Public Service Commission. This hearing allows me to attest to some of the problems that our commission sees with the advent of rail deregulation.

Of great concern are the areas of rates and abandonments. Under rates, railroads should continue to be allowed to make joint applications, or general rate applications for all railroads because of the numbers or rates for combination routes on two or more rail lines in one shipment. No. 2, allowing rate increase on 1-day notice, except in emergency situations, make it almost impossible to make the necessary tariff changes, especially where you are updated and have a computer set up.

Also, firms buying or selling commodities on the basis of certain freight rates would be unable to protect themselves from the sudden cost changes.

No. 3, rates on captive products could be raised or lowered by up to 20 percent in 1 year's time. Nebraska grain apparently is a captive product. If grain rates are raised on smaller quantities and reduced on larger quantities, such as unit trains, the smalltown elevator will be pushed out of business.

Grain then would be trucked at a greater expense to the grower, and the smalltown businesses and farmers need to have these elevators on rail lines close by.

No. 4, allowing contract rates will let railroads choose who receives the special rate and who would be excluded. Those that are excluded are going to be out of business.

The giving of special rates to one and not the other business was one of the main reasons why the ICC came into existence in the first place. How can we believe that human nature has changed or think that deregulation will work any better now than it did before?

In the area of abandonments, a rail network reduction in the eastern industrial States may not be the major problem that it is in rural Nebraska. Several branch lines in Nebraska already have been abandoned, not because they couldn't return a profit, but because primarily of poor service.

An example: cars were not furnished in any quantity. Trains were run in long, irregular intervals and charged rates are far above competition in that general area to certain destinations. Now we would hope that before lines are abandoned, the possibility of private, local, State, and Federal assistance for rehabilitation should be considered.

The enactment of our State rail plan early next year should aid in working out feasible solutions in some of the cases. One other serious point I think that we ought to note.

I see this in going around Nebraska and in South Dakota on abandonments, is the fact that everything is tore up, and the land is returned. So I would make this point, that where an abandonment is allowed, whether on a branch or a main line, consideration be given to keeping that right-of-way intact for some period of time.

The energy crunch and changing transportation might necessitate the need for a future rail line in that area. One railroad right now is having difficulty in acquiring right-of-way for a proposed new line in eastern Wyoming and western Nebraska.

In closing, in our opinion, while there are some aspects of regulation which may need revising, we object to considerable portions of what advocates of deregulation are proposing because of the adverse effects on our Nebraska people and their economy. Thank you.

Senator EXON. Commissioner, thank you very much. We appreciate your testimony, especially as you represent the Commission, which deals with rates and regulations.

I take it that you are opposed to the bill which is presently before us? Do you feel that we should eliminate this bill altogether, or do you feel that with some amendments which might be worked out a bill as at least a step toward deregulation over the long pull might be a positive move in the right direction?

I assume that you agree with the fact, generally speaking, that our national rail system is in sad disrepair, partly because of the financial situation in which most of the roads find themselves. I would just like you, if you could, to amplify a little bit on regulation of the rail industry from the standpoint of a man experienced in regulation and rates.

In this regard, do you believe that some move now toward deregulation would be a step in the right direction, or do you feel that we should just continue with our present series of regulations administered by the ICC and the State regulatory agencies?

Mr. SIMPSON. Well, I think that in looking this over, I see the bill as coming before the input. So on that basis, I can't see how the bill could be very well worked to do what I think is necessary for a transportation system.

I think the need is what you are doing right now. Come out and get input, and then go back and draw a bill which will cover the areas that we do have the need for some changes. And nobody is saying that the railroads aren't in trouble, and there is no doubt that there are some places where there is even going to have to be additional help from some source in Government, or the shippers who want to continue those lines, or else those lines are just going to have to fold.

And in some cases, these are not branch lines we are talking about; they are main lines. So I think that my estimation is that the bill is premature. You are proper in having hearings and with that input, that your staff could then write something that would cover what is really needed.

Senator EXON. Can you help us out any on our frequently repeated question concerning the proper definition of a captive shipper?

Mr. SIMPSON. That is pretty broad, and I think that my interpretation—an awful lot of people could be covered by that. One person would say that if you didn't have more than one railroad coming into your town you might be a captive shipper because you only have one rail line to go on. It could be broader to two or three truck lines in there also.

I am not sure that I have the answer to what the captive shipper really would be. I guess the end result has to be, when we get down and see in rural Nebraska, that a town only has one form of transportation, and that might be 1 day a week, they are pretty captive.

Senator EXON. Thank you. Senator Pressler?

Senator PRESSLER. Yes, now as I understand it you are the commissioner of what I call public utilities. You take care of the public utilities rates and so forth.

Mr. SIMPSON. Yes.

Senator PRESSLER. It is a very unique job. You have a key oversight there. You have some interrelationship with the supply of boxcars, as I understand it. In this bill I am troubled—the rail deregulation bill before us—the car service order business.

Now the State public utilities commission somehow comes into play on that, do they not presently? I mean, you can make a special request. Does the State commission have any power if a town in western Nebraska comes to you and says we have got to have boxcars?

Of course, the ICC is supposed to order the railroad to send them, and bureaucratically this sometimes takes 2 or 3 months to get done, but does your commission have anything to do with that?

Mr. SIMPSON. We do not directly have the power to order a railroad to move cars to a certain location, no. Probably the easiest way we would have would be either in negotiating with the rail-

road and ask them to move some cars, or if that does not work, we would have to go to the ICC and help the local shippers expound on their problem.

Senator PRESSLER. Do you think that if we pass this bill as it presently is, the railroads will manage their affairs better and get their boxcars around better. They are under this car service order, and they feel there would be more boxcars out here if we passed this bill.

Do you agree with that?

Mr. SIMPSON. No. The very first thing is that there are not enough boxcars in the first place. And as far as the old boxcars, we are having less of those all the time. There are more hopper cars.

I think if there is not some authority higher, who at least has the—has to have the authority to tell you to do something, if you don't have that there, why participate when you can just take them over here and get them all filled?

If you don't have enough cars anyhow, why run one out to him when you can do it here? So it is not actually to me the necessity of the ICC saying, send these here and send those there, but the opportunity that they can do that if you don't spread them out and give somebody down the line cars.

Senator EXON. Senator Zorinsky?

Senator ZORINSKY. Thank you, Senator. I just have one question, Harold. I would like to know if you have a comment upon the fact that last year, ConRail was fined by the ICC $2 million for their inability to get grain cars to where they were needed. Then very quietly this year, almost undetected, except by some sharp-nosed media people, it was discovered they had cancelled all the fines against the railroad for their failure to provide grain cars.

Do you feel that the ICC should use their fining ability and stick to it in these areas?

Mr. SIMPSON. Well, I think it was unfortunate, and ConRail was not the only railroad involved in the fine who got out from under them. There were others that were pretty substantial. It is unfortunate that when there is a real problem and it is not being handled, and the fines were assessed, that they can just be quietly dropped and forgotten about.

I think it takes away from the power of the ICC if they don't have some penalty. And they should not use that unreasonably. And I really didn't feel that they did in that case. If you give orders, and nothing happens, why, you have to have a penalty or else you are a dead duck.

Senator ZORINSKY. Thank you, Harold. I just wanted to get on the record that in light of Dan O'Neal's adamancy last year about enforcing their laws to the letter, this erodes a certain amount of their credibility.

Mr. SIMPSON. Definitely does.

Senator EXON. Ed, I am glad you brought that issue up, because the other side of that coin is, that the problem with ConRail's system of course is that here was a case where Government, by necessity, had to step in and subsidize the railroads.

ConRail is a Government-subsidized rail transportation system. The fact which I think should be recognized is that when another agency of Government attempts to place a fine on the ConRail

system, it in effect is asking the taxpayers who are already subsidizing the railroad to subsidize again, a fact which brings us back to the point that the more we get Government involved in such matters, the less effective Government is through the regulatory system. In this particular case it was the regulatory agency fining ConRail, the fine was not paid. If it had been paid, it would have been the taxpayers paying the fine, which is one of these problems with which we keep wrestling in Washington, D.C.

I have no further questions. Thank you very much for your testimony, Senator.

Mr. SIMPSON. Thank you.

Senator EXON. The next witness is Mr. Dominick Costello, Chief of Marketing, Nebraska Department of Agriculture. He is representing Governor Thone today, as I understand it.

Welcome, Dominick, we are very pleased to have you here.

STATEMENT OF DOMINICK P. COSTELLO, CHIEF, MARKETING DIVISION, NEBRASKA DEPARTMENT OF AGRICULTURE, LINCOLN, NEBR., ON BEHALF OF HON. CHARLES THONE, GOVERNOR OF NEBRASKA

Mr. COSTELLO. My name is Dominick Costello. I am chief of the marketing division of the Nebraska Department of Agriculture. I have been asked to testify on behalf of the department of agriculture on S. 796, the Railroad Deregulation Act of 1979.

I have also brought along copies of a statement by Gov. Charles Thone for presentation to the committee at the Governor's request as he was unable to be at the hearing today.

I will limit my testimony to the factors in the bill which we feel will play a role in marketing costs and reliability of service to agriculture.

On the subject of demand sensitive rates, the key word that needs to be emphasized in any ratesetting system is its predictability to the shipper who must include shipping costs in his price to the buyer at the port.

Most agricultural products are shipped and priced on a FOB basis as it is delivered to the ship. Unless the cost of shipping is predictable, it is impossible to set a fixed price to the buyer at the port.

If the cost of shipping is allowed to swing between a high point and low point based on demand for transportation equipment, the shipper will be forced to quote a price based on the highest shipping cost allowed in order to protect himself from financial loss. This added shipping cost will result in a lower price to the farmer.

We also believe that some provision must be made to allow railroads to develop and publish joint rates without attracting antitrust action by the Department of Justice. The alternative is to leave Nebraska firms negotiating with three or more railroads to get to the Gulf of Mexico.

We anticipate a period of extreme uncertainty if the railroads are suddenly allowed freedom to set their own rates without supervision of the ICC. The railroads have little recent experience in setting rates without regulations to guide them.

We also expect a series of court actions to develop following the attempts to set rates by the railroads, causing an extended period of uncertainty.

In times of uncertainty, the shippers tend to protect themselves by either charging the highest possible rate or by discontinuing shipping altogether. This results in the farmer being forced out of the market entirely or being forced to accept a lower price in order to market his product at all.

What needs to be understood by those considering this legislation is that all marketing costs for agricultural products are paid by the farmer in the form of a lower price. Any increased costs involved in moving his product to market under this legislation will first be passed back to the farmer in the form of a lower price.

If the price drops below the cost of production, the consumer will then find that supplies of the product are tight and prices will be forced up to meet the increased costs of production and delivery to the food processor or distributor.

We feel that the key to a successful change in the regulations must be based on the predictability of the rail rates and costs to the farmer. A second factor needs to be considered. Will the action taken in the legislation improve the predictability of the arrival of shipments of agricultural produce at its destination?

Unless the product arrives at a predictable date and is charged a predictable cost, the end result will be a less effective and more expensive system of marketing and transportation than the one we have at the present time.

An inefficient and costly transportation system is every bit as important as a marketing barrier as in an unreasonable tariff or regulation in another country.

We must not establish any more barriers to selling America's agricultural production abroad. This is particularly critical to Nebraska because we are about as far away from the Nation's export ports as we can get.

I am prepared to answer any questions, if you have any.

Senator EXON. Mr. Costello, thank you very much for your testimony.

Certainly you represent a very important segment of our economy, agricultural products. I take it from the letter which the committee received from Governor Thone, which without objection we will make a part of the record, that you and the Governor do feel that we should be moving into some areas of deregulation during a transition period, but over a longer period of time than is presently provided in S. 796. Is that a fair assessment?

Mr. COSTELLO. That is correct. The industry needs some time to adjust to change. If they know it's coming and know what it is, they can make the necessary adjustments.

Senator EXON. Thank you. I have no further questions.

Senator Pressler?

Senator PRESSLER. Yes. Please tell Charlie Thone hello for me. I served in the House with him and enjoyed it very much. I appreciate the message you have from the Governor. Your department of agriculture is no doubt very concerned about this whole business of getting not only the movement of grain out, but also getting repair parts, and things that are not what we call carloads. This moves

both by train and by truck in an intermodal fashion. But so often proponents of total deregulation say, well, these loads will go under the free enterprise system, and I am for free enterprise, don't get me wrong, and that is probably true of whole loads.

When a farmer needs a repair part and he doesn't have scheduled service, or when he needs something that is not a full load, some pesticide or some insecticide or, a supplier in a small town, I think that is a key thing that we just kind of gloss over here. When we talk about deregulation of rail or truck or anything else, we tend to think in terms of moving what they call, or what I am told is called a whole load.

But in the agricultural industry, in moving supplies back, we frequently need to have partial loads. Some of the suppliers in the smaller towns of insecticides or of machinery repair parts really need a scheduled service that they don't have to depend on getting a whole load. Is that something that you would, generally speaking, agree with?

Mr. COSTELLO. I sure would, Senator. One of the real nightmares I have in the marketing division is shipping a sample of something out of the State of Nebraska. We often get requests for samples of things like potato chips and popcorn and various agricultural products, somewhere between 50 and 100 pounds. If it weighs over 50 pounds, UPS won't take it unless you put it in two packages. They don't serve every community in the State. They are a useful way of moving some of these things, but this is one of the real difficulties we have. If it's less than a carlot or trucklot, it's very, very difficult.

Senator PRESSLER. I thank you very much.

Senator EXON. Senator Zorinsky?

Senator ZORINSKY. I have no questions, Mr. Chairman.

Senator EXON. Thank you very much, Mr. Costello. We appreciate your being here.

Mr. COSTELLO. Thank you, Senator. Good to see you again.

[The letter referred to follows:]

STATE OF NEBRASKA,
Lincoln, Nebr., June 28, 1979.

Senator J. JAMES EXON,
Senate Office Building, Washington, D.C.

DEAR SENATOR EXON: Please enter this letter in the record of testimony.

The potential impact of the Railroad Deregulation Act of 1979 is unknown. It does have a potentially destabilizing affect on the economy of Nebraska and therefore should receive very careful consideration. Extending the transition period from 5 to 7 years would provide more time for adjustment and evaluation of the effects of deregulation.

In its present form, the proposed Act would create an unpredictable rate structure, that would have the greatest adverse impact upon small agricultural and small industrial shippers. These shippers can least endure the expected changes in the rate structure and should be protected specifically from large or unpredictable rates. The formation of commodity trains to achieve economies of scale and distance organized for the benefit of these shippers should also be specifically addressed in the proposed legislation.

In related areas of concern, it appears that "captive shippers" need greater protection than is currently provided and that the ICC should continue to monitor the progress of railroad deregulation and the resulting improvement or decline in the quality of service.

Orderly railroad deregulation should be supported as the most efficient and cost-effective means to reestablish an economically sound railroad system. To accomplish such an objective requires that the good faith setting of joint, through and special

rates should not be hindered by the unreasonable fear of anti-trust actions by the Justice Department.

In fact, cooperation between the agencies of government, both State and Federal should be encouraged specifically in the proposed Act so that creative financing techniques can be developed to purchase, maintain and/or provide incentives for branch line operations on low-density lines scheduled for abandonment. Where purchase and/or subsidy of a line scheduled for abandonment is being considered by State Government or local interests the period of consideration from the date of publication in the Federal Register of the intention to abandon a line should be increased to 90 days. That extension of time more reasonably allows for creative financing techniques to be implemented and operations continued on that line.

In conclusion, railroad deregulation will affect the structure of the railroad industry and the economy of Nebraska. Legislation of such importance and unknown consequences deserves careful consideration and a gradual approach.

Thank you for entering this letter in the testimony.

Sincerely,

CHARLES THONE, *Governor.*

Senator EXON. The next witness we will call at this time is, Thomas J. Lamphier, of the Burlington Northern Railroad and from Minnneapolis, Minn. Mr. Lamphier, if you would come forward, please. We have a copy of your testimony which without objection we will incorporate as part of the record. We understand that you have some time constraints. You are a railroad person, but like everyone else, you are traveling by airplane today, I presume.

STATEMENT OF THOMAS J. LAMPHIER, BURLINGTON NORTHERN RAILROAD, MINNEAPOLIS, MINN.; ACCOMPANIED BY JAMES R. WALKER

Mr. LAMPHIER. Yes, sir.

Senator EXON. We hope that you will be able to give us a synopsis of the written testimony which you wish to present. We are looking forward to it with interest, because Burlington Northern has a key role to play in the overall transportation picture in Nebraska and the Midwest. With that, I will recognize you for any comments which you wish to make.

Mr. LAMPHIER. Thank you very much, Senator. It is good to see you again, Senator Pressler, Senator Zorinsky. For the record, my name is Thomas J. Lamphier. I am president of the transportation division of Burlington Northern, Inc., and my address is 176 East Fifth Street, St. Paul, Minn.

I have with me our general counsel, Mr. James R. Walker, address the same. Thank you very much for allowing me to address you this morning, and I want to respond to your invitation concerning this proposal to deregulate the railroad industry.

Since the subcommittee has already received the views of many railroad officials, including those expressed by Mr. William H. Dempsey, president of the AAR, I realize what I say today may be somewhat repetitious. Nevertheless, I also believe you want to examine the issues from the particular perspective of the Great Plains States. This I am happy to do since Burlington Northern regards this State and others in the Great Plains as extremely important to our company.

However, before I do this, I would like to make a number of general observations since we are concerned with Federal legislation that has a national effect. These and other observations are

contained in greater detail in the written statement which you have before you.

My first and most important point is that the present rail regulatory system simply is not working. For too many years railroad earnings have been far below those of any other U.S. industry and, as a result, railroads chronically have been unable to totally meet their requirements for capital investment and modernization.

One of the principal causes is the enormous Federal investment in highways and waterways that provide indirect but very meaningful subsidies to our competitors. In the interest of time and recognizing the limited purpose of this hearing, I will not pursue that subject further. I would say, however, that the underlying problem with existing Federal regulation is that it no longer serves the purpose for which it was created.

The original rationale was based on the concept that railroads possessed a monopoly. Today, competition within the transport sector is universal and very strong in nearly every phase. Trucks and barges, in addition to having the roads and rivers provided, are largely unregulated, free to pick and choose the traffic they wish to handle and the customers they wish to serve. Somehow, there is a widely held view that the railroad—that railroad business is different from other private businesses. That we can go forever without earnings.

There seems to be a view that railroads have some special obligation to perform social services, that they ought to subsidize other businesses and make up any geographical disadvantage that a certain territory may have. In short, we are expected without compensation to serve as an instrument for carrying out social policy.

This committee will be asked to do a great many things to protect special interests, to protect communities and regions, to protect small shippers, to protect against abuses to "captive shippers." And that word, captive shippers, is in quotation marks. To protect consumers of electricity. To protect other railroads from mergers and communities from abandonments. To protect truckers against rail competition and to protect shippers by compelling railroads to provide freight cars on demand. If railroads are to continue to function as privately owned and operated systems, there must be a substantial revision in the national transportation policy, a policy that will treat railroads fairly and equitably with other modes and other interests.

I would like to spend just the next few minutes discussing some aspects of the administration's proposed bill. Although the bill addresses many of the problems of our industry, it also possesses some proposals that give us cause for concern. One major area of disagreement is the proposal to prohibit after 2 years the use of rate bureaus for getting general rate increases, a mechanism that has been our chief means for recovering cost increases passed on to us through higher expense for material, fuel, and wages.

Rate bureaus also are the mechanism that enables railroads to establish joint rates and divisions on an orderly basis. Unlike other transport modes, more than 70 percent of the rail industry's traffic moves over two or more railroads under a system of joint rates. This open and frequent interchanging of traffic is almost as old as

the railroad industry itself and is one of its chief advantages, making the railroads a truly national transportation system.

The proposal contained in S. 796 that would permit a railroad to refuse to participate in a joint rate is very troublesome in that it would force shippers to perform time-consuming mathematics to determine which joint-line route offered the lowest charges. It also would permit a single-line railroad to unduly influence the flow of traffic, either by refusing to participate in certain joint-line routes, or by pricing the joint-line rates higher than its own single-line haul. The latter, of course, could force traffic to that single-line route and make the joint-line rate uncompetitive.

We are disturbed by the administration's proposal concerning mergers, for the result would be to make some transactions more burdensome to railroads than other businesses, since we would be subject to liabilities not borne by other industries in general, specifically the statutory labor protection provisions.

There also is the matter of the so-called captive shipper. The ultimate question is not whether certain shippers must use rail service, but instead, whether the railroads actually have unlimited power to set rates that shippers would be charged. I would point out that there is a substantial market competition, that is, different markets served by different railroads tend to keep rail rates in line. Therefore, it is in the self-interest of a railroad to see that any shipper who is dependent upon it for service is able to reach markets at a cost that keeps his product profitable. If the railroad ignores the shipper's competitive ability, that marketplace and sales opportunities disappear and so does the railroad's traffic.

Here in Nebraska there obviously is concern about the effect deregulation would have on car supply. As with most grain-producing States, the availability of cars has been a frequent and serious question for many, many years. Much of this recent surge in demand for equipment has come about as a result of both the growth of the export market, and the wide availability of on-farm storage.

The situation has been complicated further by a significant shift of export grain from the gulf coast ports to elevators on the Pacific Northwest ports. This has lengthened rail hauls, and therefore, turnaround time for equipment. Although inadequate earnings have to some extent influenced the number of cars available, the other factor is the fluctuating demand for cars. If the rate structure were able to reflect the availability of cars, that market mechanism would have quickly sorted out bona fide shippers who have a real cost-based need to move traffic immediately from the operator who habitually overorders cars and whose primary interest is to use rail service as a threat to truckers, truckers which he really prefers to use.

A flexible pricing system is exactly the same system used by inland barge operators and the unregulated motor carriers. And as I am sure you know, the barge operators increase rates by as much as 300 or 400 percent in times of tranportation shortage.

I submit to your committee that it is about time we gave this kind of pricing at least a try. Maybe the time isn't right for complete rate deregulation, but we are certainly ready for a method that will assist car distribution and reflect the value of our

cars. I certainly appreciate this opportunity to appear before you, and of course, I will be willing to answer any questions that you might have.

Senator EXON. Thank you very much, Mr. Lamphier. We have made your full detailed statement part of the record, and we appreciate very much your coming here to give us your interpretation.

I would just like to make an observation or two, and then give you a chance to respond. Those of us sitting up here have other considerations which we have to look at, and you, who operate a railroad, have your considerations. Therefore, our views are not always going to mirror one another exactly.

I have noticed that the railroads which have come before our committee to testify have asked for some freedom in the marketplace. You likewise have made some statements to the effect that your railroad is no longer the only way to ship products and that you do indeed have intense competition in many areas.

But the other side of the coin is that the railroads are different and have been throughout our history. I am not sure, for example, that we can just turn the railroads loose specifically by reason of the captive shipper.

I believe that you basically testified that the railroads should be able to set rates, and that competition would make the railroads keep their pricing in line.

We have concerns in this regard.

For a moment, let's just set agriculture aside because we all know that agriculture is a keen concern to all of us. I want to cite to you a problem and see what would be your response if you were sitting up here and we were sitting down there.

Let's envision a situation where, because of our national energy crisis someone has leased property and is in the business of producing coal in Wyoming or Montana. And he has contracted, for example, with a utility somewhere in these Plains States.

I think you would agree that the only feasible way of moving that coal from Montana to a point near a utility would be via rail. We are very much concerned about the fact that that producer, in my opinion, is a true captive shipper and that, I suggest to you, it would not be practical for him to move coal from that strip mine in Wyoming or Montana to another point by truck.

There then is a captive shipper which we feel would be pretty much at the mercy of the railroad, No. 1, in light of the setting of rates, and No. 2, from the standpoint of a potential abandonment of the line.

Do you care to expound on this situation and help us out a little bit?

Mr. LAMPHIER. Oh, you bet. Yes, sir.

I think there is a difference between a captive shipper in terms of his physical position on the railroad and the example you cite is certainly a case where the mine and public utility are tied together by a single rail line.

But coal is certainly a case in point, where the competition comes not from the mine that may be on the Burlington Northern alone, but from Union Pacific coal in Wyoming as a second source which this particular utility can go to. Colorado coal is competitive in many areas of the Midwest, and a lot of it is moving.

And as you move this utility or powerplant farther south, you then bring in New Mexico coal, and in Texas itself, there is the availability of Texas lignites.

So the public utility has many alternative sources of coal. And, therefore, they are not capitve from a pricing-purchasing point of view to a mine on Burlington Northern, or to a mine captive on the Union Pacific, or to a mine even on the Rio Grande. They can select and choose between those lines because the coal is generally comparable in Btu content.

Incidentally, another situation with respect to this so-called captive shipper is—can be exemplified by grain, where we have a line in Nebraska that is roughly parallel to a Union Pacific line. Our line of rates for movement of grain to the west coast were higher than UP's unit train rates.

And, as a result, grain elevators on our line were trucking over to the Union Pacific. We therefore have reduced our rates to make our rates in that territory competitive with the Union Pacific rates.

So, even those elevators which appear to be captive on our railroad, in fact, are not because they can, by the use of the motor carrier, get to other points on other transportation companies.

Senator EXON. I assume that the line which you mention is the line that Burlington had with Union Pacific which runs into the northwest part of the State.

Mr. LAMPHIER. Yes.

Senator EXON. Well, I would have to agree with you to some extent that when you have railroads running parallel, you do have some competition.

But let's go back to the point which I made before. Let's assume that this utility to which I am referring and which is depending upon the Montana coal is located on a branch line where there is no other railroad within 50, 60, or 70 miles of that plant.

Are not both the producer of that coal, and, more importantly, the utility in that case, captive shippers completely at the mercy of the railroad?

Mr. LAMPHIER. No, I really don't think so. Because of the joint rates and routes, the utility can get at other sources of coal. Even if you look at the plant at Arbor, Nebraska, for example, which is at the end or on a branch line of the Burlington Northern. That powerplant could get coal from sources other than a mine in Wyoming on our line. That might involve using Union Pacific Railroad or a combination of the Denver and Rio Grande, Union Pacific and Burlington at Omaha for delivery to the powerplant.

Senator EXON. Let me follow up on that. The movement which you describe is the combination of the Denver, Rio Grande, and Union Pacific, which gets us right back into the interline connections and the setting of rates, problems not only among shippers, whether captive or otherwise, but also, as I understand, among the railroads themselves. They have a great deal of difficulty getting together and agreeing on who should get what share of each and every rate.

Do you think that there is any reasonable possibility that the railroad industry itself might be able to get together and come up with a standard formula which would eliminate the concern of many of us that you might have two or three railroads involved in

a shipment, and that you might have two of them charging a reasonable rate and the third railroad saying that it will not handle the shipment unless it gets so much more?

Do you think that there is some kind of an overall plan, upon which the railroads could agree, which would take care of such problems? What has been your experience in this area?

Mr. LAMPHIER. Well, I think ultimately they do arrive at an agreement on what the line of rates will be. As a matter of fact, a third railroad, if he doesn't join the rates of the others, wouldn't get the traffic. That is, if he's holding out for a higher level of rates, he will not participate in the traffic. The shipper will route against him, and the shipper is the fellow who is going to control that rate mechanism.

Senator EXON. That is true, but the shipper can only control a rate mechanism where there is indeed competition. Your testimony would indicate that you really believe that in all or most instances there is such competition.

Mr. LAMPHIER. Yes, sir.

Senator EXON. On numerous occasions. Does that mean that you really do not believe that there is such a thing as a captive shipper?

Mr. LAMPHIER. That is what I mean. Not tied by geography to a specific place? No, sir, I do not.

Senator EXON. We have much testimony which does not agree with that position.

Mr. LAMPHIER. OK.

Senator EXON. You are certainly entitled to your opinion.

Senator Pressler.

Senator PRESSLER. You mentioned in your fine testimony that you were somewhat envious of some of the subsidies that other railroads get.

Mr. LAMPHIER. No, not other railroads.

Senator PRESSLER. Pardon?

Mr. LAMPHIER. Not other railroads.

Senator PRESSLER. Other modes of transportation, for example?

Mr. LAMPHIER. Highways and waterway operators.

Senator PRESSLER. I see. So the barges and trucks are what you were referring to being subsidized via their rights of ways.

Since I have been in Congress, we have voted some pretty big chunks of money, and before I came to Congress, for the group called ConRail, I guess, $2.1 billion. I have always wondered, can we expect Midwest railroads to start becoming viable or are we in kind of Gresham's law, we keep sending good money into a bad money pool, and I don't know if we are getting ahead any with ConRail.

Of course, it gets most of that money, but Burlington Northern doesn't get help like that, do they?

Mr. LAMPHIER. No, sir. We do not. As a matter of fact, the only subsidy that I know that Burlington Northern has is for a branch line rehabilitation between Creston and Cumberland, Iowa. That gets paid back eventually to the people who put up the money. And we are foursqaure against having a ConRail west.

As I am sure, Senator, you know that various parties of interest have been working diligently, that is the departments of—State

departments of transportation, the Federal DOT and the Federal Railroad Administration and the Interstate Commerce Commission, to solve the problems associated with the Milwaukee Road.

And I think that given cooperation of all the parties and that cooperation is quite evident, that a solution to the Milwaukee Road situation can be achieved. So far as the Rock Island is concerned, as you may know, a few years ago when the Rock Island was about to run out of cash, a plan was developed by the Interstate Commerce Commission for that railroad to be operated by other railroads and would have provided service for about 90 percent of the Rock Island shippers.

That plan should have been allowed to go into effect, because there is a need for a rationalization in the country, and it doesn't necessarily involve wholesale abandonment. But we have to deal with breaking up these corporate structures.

Senator PRESSLER. So you are very much against the concept of a ConRail west?

Mr. LAMPHIER. You bet.

Senator PRESSLER. Now, a couple of years ago, I had the pleasure of riding Burlington Northern from Sioux Falls to Yankton via special permission.

Mr. LAMPHIER. I heard about that.

Senator PRESSLER. I enjoyed it very much. Our top speed though was 15 miles per hour, and it was a wonderful crew, and I got my uncle, Ed Clausen, up there who works for Burlington Northern. Maybe I embarrassed him, but that is the reason I chose that railroad.

And I wanted to see how the thing worked. We went to pick up cars in different towns and it is a beautiful ride. The thing was that the top speed hauling grain in that area from Sioux Falls to Yankton was about 10 or 15 miles per hour. And there is a belief—not necessarily about Burlington Northern, but a belief—and maybe it is part of a popular folklore, that there is abondonment by neglect.

Maybe some of the railroad companies, if they really want to abandon some small routes and can't get permission to do it, maybe they don't repair the track very much; I'm not saying Burlington Northern does that.

Indeed in the shoes in which we sit up here, sometimes we have to ask questions that don't reflect our position. Do we essentially have a railroad which would rather be off a route, kind of letting it go—making service so bad that eventually it is just abandoned?

Mr. LAMPHIER. It is true, and I am very familiar with the Yankton line, having worked as a road master in South Dakota about 25 years ago, it is true that as the traffic on that line reduced, the level of maintenance is reduced. That is exactly what has happened on that line.

It is adjacent to Interstate 29 and the grain moves on Interstate 29. It doesn't move from Yankton to Sioux Falls to Sioux City on the BN. It would be imprudent for the Burlington Northern to go in and completely rehabilitate that line by putting in all new ties and relaying it with welded rail for a traffic density of 250,000 gross tons per mile annually.

The others—and that is a good example, Senator, is the fact that that is a very short line in terms of distance, and a basic day is still 100 miles. So no matter how far that crew goes, if they only go 75 miles, they get the 100 miles pay. So it is basically a high-cost line as well.

Senator PRESSLER. It is probably a line that you are either breaking even on or losing money on, I suppose, realistically.

Mr. LAMPHIER. I cannot honestly say whether it is a category 1 line in South Dakota. The only line that I know of in South Dakota, we have an application for abandonment is from Sioux Falls to Hayti, S. Dak.

As a matter of fact, we are going to cut back that abandonment to Wentworth at the request of the State DOT.

Senator PRESSLER. Yes, I appreciated Burlington Northern's efforts, and I do want to take this opportunity to thank Burlington Northern. I suppose I was breaking all kinds of rules, OSHA and everything else by riding on the train down there.

Mr. LAMPHIER. I will give you a ride anyplace you want to go on the BN.

Senator PRESSLER. Thank you very much.

Senator EXON. Senator Zorinsky.

Senator ZORINSKY. I thank you, Mr. Chairman.

Mr. Lamphier, have you purchased any coal lately?

Mr. LAMPHIER. Any what?

Senator ZORINSKY. Coal. I mean, are you involved in any coal purchases?

Mr. LAMPHIER. No, sir.

Senator ZORINSKY. Well, referring to Senator Exon's statement, I might bring out the point that coal is not necessarily the same as coal. Low-sulfur content coal, because of EPA requirements, is probably the most sought-after that we have. It is not abundant everywhere that there is coal. And so actually, the consistency concerning the low-sulfur content coal does play a determining factor. I don't mean to be redundant, but does it play a part in utilities' ability to select and choose as to the preference concerning the purchase of coal, because there is a difference.

Mr. LAMPHIER. Yes, in all of the other regions that I cited mined low-sulfur coal.

Senator ZORINSKY. Though some are less low-sulfur coal than other.

Mr. LAMPHIER. True.

Senator ZORINSKY. Having been on the board of Omaha Public Power District board of directors here in Omaha, I am very familiar with low-sulfur content coal. Even though many claim to have low sulfur coal, analysis might prove that coal from one mine is far more desirable than from another mine.

Do you have the ability right now to move the grain that is in the grain reserve now if it were released?

Mr. LAMPHIER. No, sir.

Senator ZORINSKY. Well, you are in agreement with another company who normally uses the phrase "We can handle it." They said they couldn't handle it.

Mr. LAMPHIER. I am positive.

Senator ZORINSKY. Have you told the USDA this? They seem to think that there is rail capacity to move the grain. I am hearing there isn't. I appreciate your sincerity and honest answer. The grain elevators, in many areas, I understand have stopped purchasing grain because they can't get commitments for the transport of the grain that they have on hand.

Mr. LAMPHIER. Yes, sir.

Senator ZORINSKY. I just did want to make the point that when you do see a situation such as that developing, those of us who are telling the USDA that the railroads haven't the capacity to pick up all the grain at one time, would appreciate support from your industry.

Mr. LAMPHIER. You know, Senator, we have had this problem in the past with Commodity Credit, where they would start repositioning grain right at harvest time.

Senator ZORINSKY. Right.

Mr. LAMPHIER. It created chaos in the transportation of grain. Incidentally, as an indication of the importance of grain to us, 25 percent of Burlington's revenue comes from agricultural products. And about one-third percent of that alone is grain. So we are very interested in the business.

Senator ZORINSKY. Thank you.

Senator EXON. Thank you, Ed. I have one more question, Mr. Lamphier.

We have heard much testimony which states that while the railroads are having a great deal of difficulty in many areas, the real reason for the financial dilemma in the rail industry is that the railroads have just had bad management in the last 15 to 25 years. Do you agree with that statement?

Mr. LAMPHIER. Present company excepted.

Senator EXON. However you want to answer it.

Mr. LAMPHIER. We think Burlington Northern has pretty good management. And there are probably other railroads that have better or poorer management. But I think in general the industry has had good management. I know our company, for example, continuously recruits college graduates from all disciplines that we expect to move up into the management of the company. I know the Union Pacific and other railroads do.

I must honestly say, in 1973, we looked at the Milwaukee Road as a—thinking about the possibility of merging with them. Except for the engineering department and the—some of the top people in the company, there were very few college graduates in the management of the Milwaukee Road. I did notice that, what I felt to be a shortage of college people, but it is because of their financial situation. I am sure they are unable to attract well-educated people to their company. There may be other railroads in similar situations.

Senator EXON. There is a bottom line to all of this. Let me go further making a statement, with which you might or might not agree. There are two good railroads in this part of the country of which we are proud. Yours is one, and the Union Pacific is the other.

Mr. LAMPHIER. Thank you.

Senator EXON. Most people recognize that you are well-managed, even though we do not always have grain cars where and when we

want them. Although I am sure that you are not making as high a return on investment as might be necessary, comparatively speaking your railroad and the Union Pacific are roads that have done quite well from the standpoint of financial success.

If the Burlington Northern had been in control of the Milwaukee and Rock Island, do you think that those two roads would be in a different financial situation today than they are now?

Mr. LAMPHIER. Yes, I do. And I think the character of those two roads would be different today given the management. But I do think their situation would have been different.

Senator EXON. Thank you very much. I have no further questions. We appreciate your coming.

Mr. LAMPHIER. Thank you very much for hearing me.

[The statement follows:]

STATEMENT OF THOMAS J. LAMPHIER, PRESIDENT, TRANSPORTATION DIVISION, BURLINGTON NORTHERN INC.

Mr. Chairman and members of the subcommittee, I am pleased to respond to your invitation to appear and testify respecting the Administration proposal for deregulation of the railroad industry. Since the views of many railroad officials have already been received by the subcommittee, including those expressed by Mr. Wm. H. Dempsey, President of the Association of American Railroads, I cannot entirely avoid repetition. However, I am sure that at this hearing you wish to examine the issues from the perspective of the Great Plains states in particular. I will do so, since Burlington Northern, of course, regards this state and others in the territory as extremely important to the company. However, I would like to make a number of general observations since we are concerned with Federal legislation which would have a nationwide effect.

My first and most important point is that, from any standpoint, the present rail regulatory system is simply not working. The industry, as a whole, earned a rate of return of only 1.6 percent in 1978 and this was the fourth consecutive year in which it failed to exceed a return of 2 percent. Even the strongest roads achieved only about half the rate of 10.6 percent which the Interstate Commerce Commission has now said is necessary to sustain adequate rail service. Only three major railroads managed to achieve a 7 percent return and none exceeded 9 percent.

The railroads' earnings are far below those of any other major U.S. industry. As a result the industry is chronically unable to meet its requirements for capital investment and modernization. One of the principal causes of the industry low earnings is the enormous Federal investment in highways and waterways, a subject which I will not pursue due to the limited purpose of this hearing. The underlying problem with the existing scheme of Federal regulation of railroads, which I distinguish from other basic problems, is that it no longer serves the purpose for which it was created.

The rationale for most regulation was based on the concept that the economic powers possessed by the industry before the turn of the century and for some years thereafter gave it a monopoly which, in the public interest, had to be regulated. Today competition within the transport sector is almost universal and very strong in nearly every phase. Truck and barge carriers now dominate many of the transport markets to the virtual exclusion of the railroads. There is also intense direct competition among railroads and equally intense indirect competition among them in meeting the competitive needs of their respective shippers. Thus while the railroad industry continues to serve a vital national interest it is no longer the sole mode of transportation but is one element of a much larger transportation system which offers many alternatives to shippers. Yet the modes which offer the severest competition to the railroads are largely unregulated. Somehow there is a widely held view that the railroad business is different from other private business—that it can go on forever without earnings. There seems to be a view that railroads have some special duty to perform social services—that they ought to subsidize other businesses and make up for geographic disadvantages to which some territories are subject. In short, they are expected without compensation to serve as instrumentalities for carrying out social policy.

The railroad industry is in dire need of substantial revision in national transportation policy if it is to continue to function as a privately owned and operate system. We must have national recognition of the fact that although inter-city freight

tonnage almost doubled between 1947–1977, railroad tonnage decreased by 9 percent. Speaking in terms of ton-miles in this 30-year period, truck traffic increased 450 percent, and pipeline traffic 433 percent. Barge traffic increased by 700 percent, while the railroads increased by only 25 percent almost all of which was low rated traffic. During the same period railroad revenues dropped from 70 percent of the total for regulated carriers to 30 percent, a statistic which is skewed by the fact that during the same period barge operations were almost totally deregulated as was a great proportion of the motor carriage. More than half of all industrial goods were transported by non-rail modes. Nationwide, of the 23 classifications of manufactured goods only as to four does the rail share of the total amount to more than 50 percent. The railroads are no longer even the dominant carrier of agricultural products since they carried but 43 percent of the total in 1977.

This committee will be asked to do a great many things to protect special interests—to protect communities and regions, to protect small shippers, to guard against abuses of captive shippers, to protect consumers of electricity, to sidetrack rail mergers and abandonments, to protect truckers against rail competition, to compel the provision of freight cars on demand, and so on. But to quote Mr. Dempsey, "What is this nation's real worry? The only sick man in the room is our privately owned rail industry, and he does not have any more blood to give. Indeed if massive transfusions are not forth-coming soon in the form of increased revenues and decreased costs many of our privately owned railroads may not be around to celebrate their 100th anniversary under Federal regulations."

The railroad industry has an affirmative legislative program in which, for the most part, we concur and it has been dealt with in the Washington hearings. I will not repeat it, but I think it is fair to say that the Administration's proposed bill addresses many of the concerns of the industry and we have similar ideas on particular issues. However, we have real concern over some of the specific proposals embraced by the bill as well as with subjects which it has omitted.

One of our major areas of disagreement concerns the proposal to prohibit after two years the use of rate bureau processes for changing general rate levels. The railroads have been experiencing cost inflation at the rate of abour 11 percent a year and it has used the general rate increase mechanism largely to cover cost increases, rather than for improvement of net revenues. As I have said, our rate of return on an investment is just over 1 percent. The Administration, however, seems to believe that in two years time the railroad industry can install what is sometimes called a "price leadership" as a replacement for the system which has produced well over 90 percent of the revenue adjustments made by the railroads during the past 10 years. We have not set an unregulated rate for 90 years and the rate system itself is extremely complicated. There are literally hundreds of millions of rail rates because of the great multiplicity of routes an variety of traffic handled. Moreover, over 70 percent of the industry's traffic moves over two or more railroads under a system of joint rates that is almost as old as railroading itself. Thus the railroads cannot support this Administration's proposal for it would produce unmanageable difficulties in simply making up for unavoidable cost increases produced by monetary inflation. As I have said, many railroads are nearly bankrupt now and are unlikely to survive any such difficult transition. The overriding consideration, of course, is that while the Administration proposed this change in the name of rate freedom, in point of fact we would be a long way from the kind of pricing freedom which other industries routinely enjoy.

Another problem with the Administration's bill is what we call its new anti-merger policy. The DOT's studies themselves demonstrate that the railroad industry suffers from an excess of plant and from a need to improve traffic density. Its work shows, for example, that 67 percent of rail traffic moves over 20 percent of the route miles and that 33 percent of the route miles carry only 1 percent of the traffic. This certainly indicates that all options for restructuring the industry should be maintained and certainly mergers ought to be encouraged. Those who express concern about the concentration which has occurred in the railroad business certainly ought to recognize that this was a false concern in light of the railroads' decline in traffic in earnings and in market shares. The present law is certainly restrictive enough in that those transactions still must be approved by the Interstate Commerce Commission in extensive proceedings in which the Department of Transportation and Justice are free to participate freely on all issues. I should call attention also to the fact that the Administration's proposal would be more burdensome to the railroads than to other businesses, since it would also subject us to liabilities not borne by industry in general, namely, statutory labor protection provisions.

The Administration also loses sight of the goal—the improvement of rail service, which in turn depends on improvement of rail earnings. This it does by a truly ridiculous proposal to abandon the legislation which requires ICC certification of

rail routes. Under its scheme any railroad could build a line anywhere, irrespective of the financial effect on itself or on other carriers. It would also require the grant of reciprocal switching services without regard to existing rail competition. Thus the Administration put railroads into the business of other railroads, but it wouldn't be so quick to let railroads out of what are deemed to be service obligations. How this squares with DOT's conclusion that the industry's essential problem is overcapacity is simply beyond my comprehension.

I come then to the point that I have alluded to before, namely, that railroads cannot function as if they were regulated franchised monopolies like electric utilities, while at the same time they are subjected to intense competition from other transport modes which are unregulated and subsidized. If the railroads are not to be permitted to manage their assets so as to provide adequate earnings, as do other private industries then the cost of the required misuse of assets should be a public cost. Certainly no other business has to engage in expensive drawn-out litigation for the purpose of eliminating marginal or unprofitable business. To put it another way, if a Nebraska farmer finds that he cannot profitably grow corn in view of his estimate of future prices, he is perfectly free to switch to soy beans or some other crop. The fact that the change he and others like him make cause price fluctuations which may damage the consumer doesn't warrant regulation of the farmer's prices; indeed the government provides him with price supports. Why then should the railroads be required to provide demonstrably unprofitable transportation service, particularly when in this day and age other service is readily available for most classes of traffic?

This is not to say that we are demanding subsidies like the farmer in my analogy. What I do say is that we can't bear the social burdens we once carried when so-called "value of service" pricing was both reasonable and possible in the days when the railroads were the dominant transport mode. Some other way is going to have to be found to deal with those matters if it is deemed in the public interest to provide for them.

I shall deal only briefly with another disagreement we have with the Administration's approach to rate bureau proceedings, an exceedingly complex subject which has been reviewed in detail for the subcommittee at an earlier hearing by our Mr. O. W. Cobb. Basically, rate bureaus function in the ratemaking process pursuant to agreements which are immunized from the effect of the antitrust laws as long as they are operated under guidelines promulgated by the Interstate Commerce Commission. They operate as they do because of the necessity for railroads to collaborate in providing joint line rates for through transportation services. However, the Administration proposes to prohibit discussion of single line rates or in those cases where a carrier cannot "practicably participate" in joint line rates. This scheme creates significant antitrust exposure every time a railroad having a single line rate between two points discusses a joint line rate between the same points. This happens regularly and is unavoidable. Absent unusual circumstances, the two rates have to be the same for competitive reasons and it would not be possible to set the joint line rate without at least some understanding as to the single line rate. The shipping community supports our position and it is thus difficult to ascertain the source of this demand.

The proposal contained in S. 796 to permit a railroad to refuse to participate in a joint rate is very troublesome. One must remember that the movement of joint line traffic is, in effect, a joint venture. Each participant ought to have something to say about the outcome of that venture. If substantial number of joint line rates were to be eliminated, a major marketing problem woud be created for the industry and for the shippers who employ it. If each railroads were to publish a price for through traffic only as it might move over its own railroad, the users of rail service would have a tremendous problem on their hands for it would be necessary for them to add up the various charges and by a process of elimination discover which joint line route offered the lowest charges. Moreover, the scheme would permit any one carrier participating in a joint line haul to impose its own views on its connections as to the total charges it ought to apply. If our connections were to be wrong in their judgments, we would suffer the consequences through loss of traffic and would have no power to respond. Furthermore, if a connecting carrier also has a single line route which competes with joint line routes it could in effect refuse to participate in any of those routes except its own, all without regard as to which route might be the most efficient or which one was needed in the public interest. It may be possible to work out some compromise solution to this highly technical problem but, as written, this portion of S. 796 is unacceptable.

There is also the matter of so-called captive shipper. Mr. Dempsey explained the railroads' proposal on May 22nd and we think it a great improvement over the bill itself. The ultimate question is not whether particular shippers must use rail service

but, rather, whether the railroads actually have unlimited power as to the level of the rates which would be charged him. If they do not have that kind of ratemaking authority because of the competition offered by other markets, then the shipper in question is not captive in any real sense. This is simply because it is in the self-interest of any railroad to see that the shipper who is dependent upon it for service is able to reach the markets for this product at a cost which keeps that shipper's business profitable. If the railroad ignores the shipper's marketing problems, those markets will disappear and so will the railroad's traffic.

It is, of course, perfectly true that many individual shippers are, in effect, tied to the service of an individual railroad. Coal mines are a good example. Those of Wyoming are ordinarily served by one railroad and the electric utility which pays the freight on that coal undoubtedly regards themselves as "captive." This is true only in the narrow sense that if the coal from that particular mine is the coal the utility requires above all other sources of fuel. We on the Burlington Northern have to work with the coal mines and utilities which we serve in order to arrive at rates which will assure that the traffic will move on our railroad. In the West and Midwest the shipper has the option of taking coal from mines on BN or Union Pacific or, depending on location, from the Santa Fe or the Denver & Rio Grande Western. This, as I have said, is what we call market competition and if we do not compete with rates which are low enough to permit the traffic to move, we will have no business. This is not to say that shippers may not regard our rates as too high; everybody always regards all freight rates as too high, just as we all think we must pay too much for automobiles or any other article of commerce. The fact remains that it is in the interest of the railroads to price their services reasonably for only by that means can they maintain the flow of traffic upon which their own lines depend for survival.

In this connection I would like to make one further point: if, as seems clear from their earnings record the railroads are not getting enough for the services they render, they obviously cannot recoup at the expense of those shippers who have effective competitive modes available to them. Thus if the rails are to maintain earnings at a level which will permit them in the public interest to provide quality transportation service, where is the money to come from? Obviously it must be from those whose transportation needs are best met by rail service. The question really boils down to whether or not the Administration or the Congress are sufficiently interested in maintaining a privately operated rail system to face up to the fact that somebody has got to "pay the freight." Demonstrably the regulatory agencies have not been able to make the adjustments necessary to keep the industry healthy and service has suffered greatly as a result. Why then shouldn't the marketplace be permitted to decide these questions as it does successfully with most of the national economy?

Here in Nebraska there is obviously concern as to the effect which the deregulation bill would have upon car supply. As with most grain producing states the availability of cars has frequently been a serious question for many years. There is then nothing new about what is loosely termed the car shortage. It could as well be termed a demand surplus since transport needs closely and directly reflect grain sales and therefore market prices. When the grain market is volatile, so is the demand for transport and it is inconceivable that the railroads or any other transport instrumentality could maintain sufficient equipment at all times to meet immediately these unforeseeable surges in demand. Those surges of course have been greatly accentuated by the growth of both the export market and the wide availability of on-farm storage. Given these circumstances, one extremely important means by which to relieve the car shortage is to "even out" market fluctuations, particularly as they affect the export trade. Undoubtedly the Chairman is familiar with this complex question with which I do not now propose to deal. You are also aware that shortages in other kinds of transportation and in commercial storage capacity—which can appear anywhere between our domestic farms and foreign points of grain consumption—aggravate rail transportation and independently contribute to grain price fluctuations.

As demonstrating to some degree the variability in transport demand, I am attaching a graph which shows the wide swings in this company's grain loadings in the last eight years. However, it does not fully reflect the sudden shifts in demand for in peak periods we obviously didn't meet all requests for cars even though there were also periods when many cars were not used because there was no business for them to handle. Note also that the fluctuations reflected by the graph have been accentuated in recent years, chiefly for the reasons I have mentioned. I point out also that during most of 1977 there was a surplus of grain cars, a situation which had existed also for most of 1976 and part of 1975, bearing out my point that the surplus/shortage situation corresponds to fluctuations in export demand. In the crop

year 1976–1977 U.S. wheat exports approximated 950 million bushels, while in crop year 1977–78 wheat exports reached 1.12 billion bushels and are estimated to total 1.2 billion in 1978–79. At the same time corn exports increased by 200 million bushels with an even bigger increase projected for 1978–79.

All of these problems have been complicated further by the shift of much export traffic from Gulf port elevators to those on the West Coast. This has lengthened rail hauls and therefore the turn-around time of equipment. It is also during this period that the railroads have necessarily been phasing out the obsolescent, largely worn-out 40-foot box car as its principal grain carrying unit. The shift, as you know, is to meet the preferences of both the shipping public and the railroads for the much larger 100-ton hopper car. The capital costs involved are very large and the process is a relatively slow one. This is partly a reflection of one further reason for the car shortage, namely, the inadequate earnings of the railroad industry, which I have heretofore discussed and which you often heard discussed; yet it is one of the two ultimate facts which lie behind the car shortage. The other, as I have said, is the fluctuating demand for cars.

There is, to be sure, a reasonable solution for car supply problems. It may not be particularly palatable, but I am prepared to offer you an early end to the grain car shortage if you will amend the laws appropriately. If car supply were dependent upon the price a shipper was willing to bid for cars, that market mechanism would very quickly sort out the bona fide shipper who has a real cost-based need to move traffic immediately from the operator who habitually over-orders and whose essential interest is in having the threat of rail service as a discipline for the truckers which he really prefers to use. Such a system would also provide incentive to many classes of rail car owners—not simply the railroads—to acquire new cars sufficient to meet the true demand. While I appreciate the fact that this concept is almost unthinkable when considered in terms of the historic role of the railroads, yet it is exactly what inland water carriers and the unregulated motor carriers do. As I am sure you know, the barge operators' rates may increase by three or four hundred percent in times of transportation shortage. Yet that practice doesn't seem to bother anybody although at the same time the very idea of demand pricing for rail service is thought outlandish by many, including some of the big grain merchandising firms who themselves own and operate barge fleets. I submit to the Committee it is about time we gave this kind of pricing a good substantial try. Maybe the time isn't right for complete rate deregulation but we are certainly ready for a method of car distribution which reflects the value of the availability of cars. I particularly commend this concept to you.

I appreciate having had the opportunity to appear before you and would of course be willing to answer your questions so far as I am able.

Senator EXON. The next witness will be Mr. Ronald Reimann, Acting Associate Administrator for the Federal Railroad Administration, Washington, D.C., accompanied by Mr. Ed Heitz, Agriculture Transportation, for the same organization of Washington.

STATEMENT OF RONALD REIMANN, ACTING ASSOCIATE ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; ACCOMPANIED BY ED HEITZ, AGRICULTURE TRANSPORTATION

Mr. REIMANN. Thank you.

Senator EXON. Thank you for coming to Omaha this morning. We had you in Sioux Falls yesterday. Mr. Reimann, I will ask you to lead off.

Mr. REIMANN. Thank you very much, Mr. Chairman, Senator Pressler, and Senator Zorinsky. We appreciate the opportunity to speak to you today on the proposed Railroad Deregulation Act of 1979, and particularly on how it will affect the transportation of agricultural commodities.

The last 10 years have been a period of tremendous growth and change in the agricultural sector of the U.S. economy. The growth in grain exports has been especially great. Exports in 1978 were 16 percent greater than in 1973, despite the fact that the 1973 level included a large part of the historic Russian grain movement.

A second important development has been the increase in on-farm storage capacity, which has given the farmer far greater control over the timing of the shipment of his crops. The amount of onfarm storage in Nebraska for corn, for example, is about 2½ times that of commercial, off-farm storage, while on-farm storage capacity for soybeans equals commercial capacity. This combination of on- and off-farm storage has made it possible to store entire harvests until the optimal shipping time occurs.

Unfortunately, adjustments in the transportation system, especially regarding railroads, have failed to keep pace with these changes. While other portions of the system have been free from most regulatory restraints in their ability to adjust, the railroads have not. As a consequence, many railroads today have serious, deep-rooted financial problems, which manifest themselves to shippers in a number of ways, including poor equipment utilization, deteriorating roadbeds, and recurring car shortages. These problems are especially severe for many of the railroads serving our farmlands.

We could attempt to remedy some of these ills, at least in the short run, with piecemeal, bandaid-like solutions. I'm sure you are familiar with some of those which have been proposed. We could address the car shortage problem by maintaining a standby fleet, to be called into service during times of peak demand. We could pour money into the branchline network, to assure that all existing rights-of-way are kept in place, whether or not they represent the most efficient form of transportation. The Government could direct the use of railroad equipment in Nebraska and other parts of the farm belt.

These measures would not solve the problem, however, because they address only the symptoms of the railroad industry's underlying illness. That illness is the inability of a railroad company to respond effectively to the changing needs of the economy and the shipping public. We believe that the present, outmoded regulatory environment is a basic cause of this inflexibility, and we are, therefore, recommending a fundamental change in the relationship between the Federal Government and the rail industry. We have been, and we will continue, working with farmers, agricultural shippers, and receivers in fashioning the changes needed to improve agricultural transportation.

Railroads today face intense competition from other modes of transportation, particularly from the sectors of the motor and water carrier industries that are largely exempt from regulation. The rapid expansion of long-distance trucking of grains, including some from the Upper Great Plains to the west coast, is ample evidence that conditions have changed drastically since the 19th century, when the unrestrained market power of the railroads created the need for regulatory controls. As the railroads have become progressively weaker, we have tried to modify the existing regulatory framework in specific areas, but these efforts have had disappointingly limited success.

We believe that additional piecemeal modifications also would fail. Therefore, our bill is a comprehensive measure designed to make fundamental changes in Federal regulation of the rail industry—moving us away from governmental control and toward reli-

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ance on competition in the marketplace. I would stress that our bill as a whole is a system of checks and balances. Its pieces are designed to work together. We believe a comprehensive approach is essential if we are to develop an improved, rational, efficient transportation system.

Mr. Chairman, the rest of my statement I would like to submit for the record. I would like to make a couple of comments to just briefly summarize.

Senator EXON. Without objection, we will accept your full statement.

Mr. REIMANN. The captive shipper as you have pointed out, continually comes up as being a fearsome and, I think, justifiably worrisome issue in talking about railroad deregulation. I think it is incorrect to characterize what we are proposing as total deregulation, certainly, because there are still provisions to deal with the so-called captive shipper problem.

Whether or not they turn out to be adequate, nobody really knows. It is an extraordinarily complicated situation we face when we look at railroad transportation of all the commodities in all the markets we talk about. For that reason the bill proposes two studies, one at the end of the second year and one at the end of the fourth year of the 5-year transition period. Those studies are designed to give a fair and comprehensive look at what captive shippers there might be. Certainly they will begin to turn up during this transition period.

But I would like to focus on one other aspect of the captive shipper question and that is this: all too often the bill is looked at as a device for providing that $13 to $16 billion capital shortfall that the railroads need—either from the Federal Government or these poor shippers who don't have an opportunity to ship any other way.

But there really are a couple other areas that the bill provides for and—this isn't discussed all that often—that will generate railroad revenues. The first one is traffic which is really competitive, but, under the implementation of the market dominance provision by the Interstate Commerce Commission, is regulated in such a way that the railroads cannot collect adequate revenues from that traffic. This is because of a kind of empirical test that finds this traffic to be noncompetitive or captive.

Our bill would allow much of this traffic, which we believe is truly competitive to be charged rates that would contribute to some degree, to this capital shortfall. The second, and I think probably the most exciting and potentially innovative area for capture of revenues is capacity.

As we heard in Sioux Falls yesterday, about 40 percent of the freight cars in this country move unloaded. A new freight car costs between $35,000 and $40,000 apiece. That is a lot of capital investment that is moving without being used. In some large measure it is not being used because regulations prevent the flexible marketing of that capacity. Our bill would permit the railroads to use this capacity much more flexibly to recover all of the cost and perhaps even make some contribution toward its capital deficit that we are talking about. I would like to make one other point about comments on the energy question and deregulation at the same time.

Certainly, railroads and energy and deregulation are very much interrelated. One of the important aspects of energy that we often overlook is that railroads are not always the most energy-efficient mode. Diesel-powered locomotives average around 3,000 horsepower. If that locomotive is pulling, say, just one freight car, this powerful piece of equipment is being used inefficiently. Its efficient use varies, depending upon terrain and how much of the train is loaded and how long it is. When it's being used efficiently—with a large number of loads—then that system is more fuel efficient than most of its competitors.

But it would be rash to suggest that, in every case where a railroad is competing with highway transportation, that the railroad is always going to be more fuel efficient. Railroads, like so many other things, tend to be efficient when they can capitalize on volume and large masses of material. Without making judgments on any particular branchline case, there are many branchline operations which are just not fuel efficient. They are not labor efficient either because of the labor requirements to maintain the branchline to operate over them on low volumes of traffic.

I know the question on your mind is whether rail deregulation will be good for agriculture. As you decide, I ask you not to scrutinize each provision of the bill separately, but to consider the legislation as a whole, and to consider the type of transportation system we believe it will foster. Compare that to the rail system now, the volumes of testimony and legions of witnesses we have heard complaining about rail transportation service that we'll be left with if the present trends continue unaltered.

We believe that reliance on the marketplace will produce a system that will be good not only for the railroad industry, but also for the shippers it serves and especially agriculture. Thank you very much.

Senator EXON. Thank you. Mr. Heitz, do you have a statement, or are you here to answer questions?

Mr. HEITZ. I came primarily to answer any questions that may come up on agriculture as it relates to transportation. I came on board FRA a little less than a year ago to try and provide a bridge of effective communication between the two industries. I have been in this area more than 30 years, starting out with a shipper. As I worked my way toward Washington, instead of the way most people start out—they start out in government and go to the railroads and then go to shippers—I started out the other way, solving practical problems in small areas and working up to policy levels.

I have seen that people talk from different points of view because they are of different points of view. People in the Midwest talk differently than people in New England. People in agriculture talk differently than people in coal. And they communicate that way, and for a long period of time in transportation, people have been talking past each other.

I hope to continue in FRA to find and communicate effectively between the two industries.

Senator EXON. Thank you. I have a question or two. I know, Mr. Reimann, that you referred yesterday and again this morning to the fact that about 40 percent of the cars which are moving on the railroads today are moving empty. You cited the cost of those cars,

and I certainly see the fact of cost as indicating inefficiency. You also suggested that if S. 796 were adopted, it would solve that problem of inefficiency because it would allow the railroads to be out from under the rules, regulations, and redtape which presently prevent them from always having cars full. The goal would be to eliminate all or most of that 40 percent of the cars which are moving empty now; is that correct?

Mr. REIMANN. Yes, sir.

Senator EXON. Now, we could do that, could we not, by amendments to the present law, rather than by making sweeping changes as proposed in S. 796? Is it true that that 40 percent, in your opinion, are running empty because of present prohibitions?

Mr. REIMANN. Yes, sir, that is correct.

Senator EXON. Could we, then, correct that situation without going as far as the enactment of S. 796?

Mr. REIMANN. Well, that is true. Of course, the rate and recovery of lost opportunities to earn capital go much farther than just using this particular part of the excess capacity. We are talking about allowing the railroads to be innovative over a much wider scope. Part of that includes the question of excess lines that ought not to be there: the abandonment issue. Another part deals with the flexibility to price on a peak and seasonal basis: more relevant to your specific concerns of moving grain and evening out the demand for grain-moving cars.

Senator EXON. I would just suggest, Mr. Reimann, that the bill before us, S. 796, is going to have great difficulty being acted upon favorably in its present form by the Commerce Committee, let alone being passed by the Senate.

If I said today that I cannot and will not support S. 796 in its present form, do you have some amendments which you could suggest to me as an alternative step in the direction of deregulation without going as far as S. 796 proposes? Has anyone come to you with that kind of a question, asking you what you would do if you were told "no" by the U.S. Senate on S. 796?

Mr. REIMANN. Well, I think I can speak for the Federal Railroad Administrator on this. We are pushing very hard to maintain S. 796 as a comprehensive bill. That is, one that deals with the ratemaking, with the antidiscrimination, with the mergers, the consolidations, the abandonments and all of the other provisions that are in the bill. I think I am also reflecting accurately his and the Secretary's position that we are flexible. We are not going to be doctrinaire about every word in that bill.

As I mentioned last night, we are here in part to listen. We are getting good feedback from agricultural interests and others. And because of the complexity of the bill, we do want to take back ideas and so on. As for being prepared to offer an amendment right now, no, we are not.

Senator EXON. I did not expect you to offer one now. It would be unfair of me to ask you that. As advice, for whatever it is worth to you, I would state that S. 796 is in enough difficulty. If we want to take any steps at all to strengthen our rail system and maintain the free-enterprise system, in which both of us believe, I would suggest that this is a time when the people who have done a great

deal of study on this matter should start coming forth with some alternatives.

I for one, cannot veto S. 796. I am not a Governor any more. But if that bill were ever presented to me as the Chief Executive, I would veto it. But I am only a Senator now. I am advising you however, that in my opinion S. 796 is never going to pass in its present form. Therefore, I would hope, and I am suggesting, that your agency might be asked officially or unofficially by Members of the Congress about what could be done to take a step toward deregulation without going as far as S. 796. So I am just advising you of that for what it is worth.

Mr. REIMANN. Mr. Chairman, I appreciate that. If I may answer in response, the burden of my testimony is that we think that we need a comprehensive act to once and for all get the regulatory climate on the right track. As such, we think we need the whole cloth of this kind of an approach.

Again, we are flexible, and we would be willing to work, as we have been, with Members of the Congress and with shippers and railroad groups to deal with specifics that they feel may need adjustment.

Senator EXON. Thank you very much. Senator Pressler, you had to be out of the room on a call, but it is your turn to ask questions. Why don't I just defer to Senator Zorinsky for a moment to let you finish your conversation? Senator Zorinsky.

Senator ZORINSKY. Thank you, Mr. Chairman. Mr. Reimann, you know, oftentimes rural areas are penalized by legislation such as the bill being discussed today. There is another similar bill coming down the pike, also in Senator Exon's jurisdiction under the Commerce Committee, called communications deregulation. It seems to me that any time you try to equate economically the justification for a farm area paying the actual cost of service to an urban area, it becomes not only prohibitory but confiscatory. Therefore, the entire system has to offset some of those deficits.

My question is, Do you as the Administrator, look at this as a total system, at a profit and loss balance that tells the ultimate story? I feel, being from Nebraska, and I know many of my colleagues feel likewise, that often when we consider legislation, it turns out to weigh very heavily in favor of densely populated areas because that is where the votes are. I think that we should be looking at rail transportation as a system which has deficits in some areas, offset by additional profits generated in other areas.

Mr. REIMANN. Senator Zorinsky, the frank answer to the question is that we ar taking the economic approach. We feel very strongly that no one area should be required to subsidize services to another. I think in large part because of the failure of that kind of cross subsidy, we have the difficulty with the railroad system that exists today. The deterioration of much of the railroad trackage in the Middle West, certainly in the Northeast, has occurred simply because the contributions from other areas have been inadequate.

Competition has tended to hold those contributions down. Cross-subsidy tends to disadvantage those who must provide the cross-subsidy. They may be the coal shippers, the producers of pulpwood, or others. It just has not worked.

We think the legitimate way to deal with that and resurrect the railroad system is to provide a clear earnings incentive across the board in every line of business. This has worked so well in most other areas of U.S. commerce.

Senator ZORINSKY. I would point out that you're very unique in your attempt to approach this on a bottom line profit analysis. If this is successful, it will be the first time in the history of this country that we have really been conscious and aware that there should be no subsidization whatsoever. It's unbelievable to me that if you had a relative in a rural area that couldn't afford a telephone on that basis but could have afforded it if rates were averaged out with a denser populated area, you couldn't call that relative. The same is true of rail service or State and Federal highways. If you had them strictly on a density of use basis some of them couldn't be justified. Even though the body can live without many of the arteries and veins that God placed in it, it functions much better as a total system. And some of them probably don't have a cost-benefit ratio to them.

When I see the foreign aid that goes out of this country, it's ludicrous for the administration to talk about nonsubsidization to American citizens whose livelihood may rise or fall on the availability of that subsidization.

Mr. REIMANN. Clearly, Senator Zorinsky, one of the alternatives is a program of subsidy. Our experience with resurrecting ConRail in the Northeast, our understanding of what has happened to railroads in foreign countries, suggests that that becomes a very expensive way to run a railroad. We are taking what we think may be one of the last opportunities to try and prevent that from happening with the railroads. A program of subsidy seems to be a bottomless pit.

Senator ZORINSKY. I might suggest there is nothing wrong with ConRail, but there is a lot wrong with the management of ConRail. I found out last year on the Commerce Committee, once you opened one can, you had to open a thousand other cans.

Mr. REIMANN. Yes, sir. I would only respectfully submit that ConRail was preceded by Penn Central, which was preceded by a number of other railroads which are all now components of ConRail, and the managements of some of those were good, but they were operating in a regulatory system that would not permit them to adjust to changing economic realities.

Consequently, they merged to stave off economic disaster. In hindsight, the merger made that economic disaster all the more pronounced.

Senator ZORINSKY. If we gave the MX missile system to ConRail and gave the schedule to the Russians, they would never know where the missiles were because ConRail doesn't know where its cars are. Thank you.

Senator EXON. Thank you, Senator Zorinsky.

Senator Pressler.

Senator PRESSLER. Let me first apologize for having to go out of the room during your testimony. I had a call from my Washington office.

In any event, I understand your testimony was very similar to that which you presented yesterday in Sioux Falls, so I had heard

it and I had presented a question or two yesterday. A question that I have today, and I guess you repeated the point on 40 percent of the cars that are empty, and the National Railway Utilization Corp., I understand has 90 percent of their freight cars that are utilized.

You're an advocate of deregulation. I guess you're the closest thing we have here—I guess you would be the spokesman for the Carter administration here, for the administration position. Isn't that right?

Mr. REIMANN. Yes, sir.

Senator PRESSLER. How does the National Railway Utilization Corp., get 90 percent freight car utility?

Mr. REIMANN. Well, I don't want to become a spokesman for the National Railway Utilization Corp. I'm not qualified to do that. My understanding is that they are able to arrange loads so that the car can be reloaded in roughly the same area that it was unloaded, and then moved back. This is done through a kind of an informal communications system. This is the kind of efficiency that we would like to exploit by making rates attractive. That particular organization has new cars and they are able to sell their services on the basis of clean, brand new cars. We would like to see the railroads, though, who have to handle all kinds of cars, not just the boxcars, be able to sell their services on the basis of attractive rates.

As I mentioned yesterday, too, Senator Pressler, the movement of cars right now is governed by a number of car service rules and car service orders that have been enforced by the Interstate Commerce Commission. We think there are better ways of doing that. One of them is a communications system called Freight Car Scheduling which would tighten up on the use of those cars by reducing delays and providing more management in moving a car from its original destination. The system should result in shorter transit times, quicker turn-around and more scientific assignment of the empty to a need.

Senator PRESSLER. I know I asked you yesterday and I wouldn't ask you to repeat it again, but under the bill that you advocate, there would be an end to the car assignment service by the ICC. I guess you're confident that we would have plenty of hoppers out here under a completely free system.

Mr. REIMANN. Well, that gets back to the peak rate provision in the bill which would essentially permit railroads to adjust rates as trucks and barges do. The railroads could deal with periods of excess demand and low demand by adjusting their prices. It would be to a farmer's benefit, to ship when his market price is somewhat less attractive because he could take advantage of a reduced freight rate because the cars would be available. In balance then, off peak shipping becomes more attractive to the farmer when he looks at his reduced freight rate.

Senator PRESSLER. Thank you very much.

Senator EXON. Mr. Reimann, thank you very much for being here once again and we appreciated your testimony.

Mr. REIMANN. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RONALD H. REIMANN, ACTING ASSOCIATE ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Good morning. Thank you for giving me the opportunity to speak to you today on the proposed Railroad Deregulation Act of 1979, and particularly on how it will affect the transportation of agricultural commodities.

The last ten years have been a period of tremendous growth and change in the agricultural sector of the United States economy. The growth in grain exports has been especially great. Exports in 1978 were 16 percent greater than in 1973, despite the fact that the 1973 level included a large part of the historic Russian grain movement. A second important development has been the increase in on-farm storage capacity, which has given the farmer far greater control over the timing of the shipment of his crops. The amount of on-farm storage in Nebraska for corn, for example, is about 2½ times that of commercial, off-farm storage, while on-farm storage capacity for soybeans equals commercial capacity. This combination of on and off farm storage has made it possible to store entire harvests until the optimal shipping time occurs.

Unfortunately, adjustments in the transportation system, especially regarding railroads, have failed to keep pace with these changes. While other portions of the system have been free from most regulatory restraints in their ability to adjust, the railroads have not.

As a consequence, many railroads today have serious, deep-rooted financial problems, which manifest themselves to shippers in a number of ways, including poor equipment utilization, deteriorating roadbeds, and recurring car shortages. These problems are especially severe for many of the railroads serving our farmlands. We could attempt to remedy some of these ills, at least in the short-run, with piecemeal, bandaid-like solutions. I'm sure you are familiar with some of those which have been proposed. We could address the car shortage problem by maintaining a stand-by fleet, to be called into service during times of peak demand. We could pour money into the branchline network, to assure that all existing rights-of-way are kept in place, whether or not they represent the most efficient form of transportation. The government could direct the use of railroad equipment in Nebraska and other parts of the farm belt. These measures would not solve the problem, however, because they address only the symptoms of the railroad industry's underlying illness. That illness is the inability of a railroad company to respond effectively to the changing needs of the economy and the shipping public. We believe that the present, outmoded regulatory environment is a basic cause of this inflexibility, and we are, therefore, recommending a fundamental change in the relationship between the Federal Government and the rail industry. We have been, and we will continue, working with farmers, agricultural shippers and receivers in fashioning the changes needed to improve agricultural transportation.

Railroads today face intense competition from other modes of transportation, particularly from the sectors of the motor and water carrier industries that are largely exempt from regulation. The rapid expansion of long-distance trucking of grains, including some from the Upper Great Plains to the West Coast, is ample evidence that conditions have changed drastically since the 19th century, when the unrestrained market power of the railroads created the need for regulatory controls. As the railroads have become progressively weaker, we have tried to modify the existing regulatory framework in specific areas, but these efforts have had disappointingly limited success.

We believe that additional piecemeal modifications also would fail. Therefore, our bill is a comprehensive measure designed to make fundamental changes in Federal regulation of the rail industry—moving us away from governmental control and towards reliance on competition in the marketplace. I would stress that our bill, as a whole, is a system of checks and balances. Its pieces are designed to work together. We believe a comprehensive approach is essential if we are to develop and improved, rational, efficient transportation system. Now, I would like to describe the major sections of our proposed Railroad Deregulation Act of 1979 that are of particular interest to shippers of agricultural commodities.

RATEMAKING

We are proposing to phase out maximum rate regulation for a five-year transition period. During the five-year transition, there will be a yearly 7-percent zone of reasonableness, on top of inflation, in which carriers will be free to raise their rates as long as they are not discriminatory. For rates outside the zone, the ICC will retain its ability to reduce rate increases, if a shipper can prove—with real evidence based on real situations—that there is no effective transportation alternative, and if the railroad cannot prove its rate reasonable. During this transition period, the

Department will be required to conduct two studies to determine how well this approach is working—whether competition is protecting shippers. The Department is required to recommend any legislative changes that are necessary to insure that users of the rail system will have the benefits of competition—through either competition or regulation. Minimum rate regulation, requiring carriers to set rates that cover the costs associated with a movement, will be maintained indefinitely to prohibit predatory pricing. So, too, will discrimination provisions like those already in place, changed only to reflect existing court decisions.

Under our bill, the ICC will no longer have the authority to suspend rates, nor will it be able to initiate investigations on its own. Currently, the ICC can suspend a newly proposed rate, based on the possibility that it might eventually be found unlawful, without letting it be tried in the marketplace. Our bill requires shippers or others who are actually affected by the rail rate at issue to request ICC action, and the resulting cases will be argued on the basis of the facts in the specific situation. The bill will require the ICC to make a decision within 4 months, and the ICC can award damages and attorneys' fees, so that a railroad would have no incentive to abuse this no-suspend feature.

The required notice period for rate changes will be reduced over a three-year period, eventually arriving at a system in which no notice is required—a system agricultural shippers are quite familiar with from their dealings with unregulated trucks and barges. The railroads will be required to publish all rail rates upon their effective date, and the essential terms of contract rates will also be made public so that shippers in similar circumstances can avail themselves of the same rate and service terms.

Notwithstanding this rate freedom, railroads will be required to cooperate with one another to provide nationwide connecting service. Through routes are basic to a national rail network, and the ICC will retain its power to require them. We will, however, eliminate the ICC's power to mandate a joint rate to apply for the entire movement. Railroads will be allowed to set their own joint rates and divide the revenues as they see fit. If the carriers cannot agree on a joint rate, or a division, the rates on individual portions can be added together to get a total so that shippers will have the continued convenience of single factor rates, and not have to deal separately with several carriers for a joint-line movement. The elimination of mandatory joint rates is essential to allow each carrier in a through movement to set the rate for the service it provides without having to obtain the concurrence of its connecting carriers. Our proposal will eliminate the long and expensive divisions cases that have characterized ICC joint rate setting in the past. To accommodate efficient and prompt joint ratemaking, we will maintain antitrust immunity for discussions of joint-line rates, but that immunity will be granted only to those carriers actually participating, or offering to participate, in the movement.

Greater rate flexibility is essential for a healthier and more responsive railroad industry. We believe our proposals will lead to rates more carefully tailored to the needs of individual shippers. We expect to see more rate/service options and more peak-load, seasonal, and contract rates. Some rates will go up and others down—particularly during the off-peak—but, in general, we anticipate that shippers and railroads will talk to one another and shippers will buy what they need—not what the ICC, or other carriers, or government institutions are capable of devising. We believe the bill will encourage innovative ratemaking, which may open new markets, such as the West Coast, for Midwest grain.

The bill's provisions that provide greater rate flexibility would allow the railroads to adjust their rates rapidly to respond to changes in demand—just as truck and barge carriers of grain do already. No longer will rail rates be locked at a given level. When demand drops, and trucks and barges reduce their rates to attract business, the railroads could attempt to remain competitive by reducing their rates. This would allow them to earn revenue with cars that would otherwise sit idle. Year round utilizations of rail equipment would increase the amount of grain the railroads can carry, increasing their productivity and improving their service. When demand increases, all modes would increase their rates. The higher rates would allocate the available equipment to those shippers who place the highest value on its immediate availability, and would make it profitable for the railroads to buy more equipment to handle the peak demand.

If the railroads are given full rate flexibility, a shipper who chooses to wait until grain prices rise and everyone wants to sell and ship grain will pay a higher, peak-period rate. But the available equipment will be provided to him to move his grain. Alternatively, he can sell his grain during an off-peak period when rail rates will be lower. The availability of commercial storage and the growth of farm storage make it easier for the shipper to wait until grain prices and transportation rates are attractive before deciding to sell. Another option the shipper will have is to contract

in advance for the service he will need at a specific, agreed upon rate. The Administration's bill encourages the use of contract rates. Shippers will be able to negotiate with the railroads to fix part or all of their transportation costs, as is done with barges now. A contract could be made far in advance, or with little notice, with the assurance that, once the railroad accepted the offer, it would be legally bound to provide service. Volume, frequency and shipping dates will be negotiated by the parties involved.

While this system will be new to rail transportation, it has been used very successfully by the trucks and barges—and grain shippers have shown their ability and their willingness to market grain using the non-rail modes. As long as the level of rail rates is fixed, the railroads will be unable to provide service on demand during peak periods. Allowing rates to fluctuate with demand will make it possible for the railroads to provide service during peak periods to those who value it most. The fixed rail rate level, which makes pricing grain so convenient, makes the marketing of grain exceedingly difficult during peak demand periods, as it too often results in a loss of service availability.

INDUSTRY STRUCTURE

Improving the railroads' financial health is not just a matter of raising their revenues. They must also cut their costs. We believe restructuring of the railroads' physical properties is an essential element in improving industry finances. We recognize that this means there will be more abandonments, and that this prospect is disturbing to shippers and communities served by lines that may be abandoned. Our approach is to address the problem of excess rail capacity without denying shippers and communities the right to rail services where they are willing to pay the costs of such services. When we talk about abandonments, it is important to realize that States, shippers, carriers and labor have opportunities to investigate alternatives to abandonment in cases where a line is not profitable today. I would like to list four of these. First, under section 401 of the 4R Act, consolidation and coordination of facilities can take place. Where there are two branch lines serving an area, perhaps only one can be profitable. It is often possible to work out an arrangement where service will be continued and made profitable by consolidating or coordinating those facilities. Second, the Local Rail Services Assistance Act of 1978 enables us now to put our capital investment funds into lines before they are abandoned, so that they can be made profitable. Third, the pricing flexibility that I discussed earlier will be of assistance in helping shippers and railroads work out arrangements that will make a line profitable. Fourth, our successful St. Louis Terminal Project, which is based on management-labor cooperation, can be expanded to branch line situations. In some cases where branch lines are unprofitable, arrangements between labor and management to increase operating efficiency may save both the branch line and jobs.

For those rail lines that cannot be made to cover costs, the bill's abandonment provision will allow the necessary rationalization of the rail system, by providing clearer guidelines for the abandonment process. This will eliminate the burden such lines place on other rail traffic. It is far better to permit the abandonment of unprofitable segments than to allow a whole railroad to go bankrupt, and far fairer than to require shippers on other lines to pay more than their share of the railroad's costs.

Under the bill, the ICC will still review proposed abandonment applications, pursuant to a public convenience and necessity test, but its investigation will be subject to strict standards and time limits. The Application must be granted if the railroad can show that operating the line is non-compensatory, or that the benefits of abandonment exceeded its costs to the public. However, service will be continued on a line if an interested party offers to subsidize operations or purchase the line and the ICC finds that the subsidy or purchase price is, according to statutory standards, adequate.

Many people are concerned that increased abandonment will injure small towns and will necessitate additional trucking—using more fuel and damaging roads. Studies of abandonments in Iowa and Minnesota have found the impacts of abandonments on rural communities to be relatively minor. Commercial operations are adjusted to allow the communities to maintain a healthy economic base. With regard to rural roads and bridges, many will need to be upgraded even if no rail lines are abandoned, to move larger farm trucks and equipment, school buses, and many delivery trucks. Most of the non-farming traffic to and from rural communities shifted from rail soon after trucks were developed, and growth of this traffic continues. Fuel consumption could actually be reduced by some abandonments, as low density branchline operations are among the least fuel efficient of all rail operations. Also, the abandonment of some lines and the use of rail subterminal

train-loading elevators could reduce the need for long-distance trucking, saving fuel and reducing wear on the highways.

The ICC can, today, order a railroad to provide a given type and number of cars to a particular shipper at a particular time, at a particular rate. The bill will curtail this authority substantially, allowing such intervention only in times of true national or transportation emergencies, as determined by the President. Responsibility for issuing service orders would be moved from the ICC to the Department of Transportation. Limiting the use of this authority to genuine emergencies will allow the railroads to have greater control over their day-to-day operations. We simply cannot look to the government any longer to decide who should get which cars on which days, and how much shippers or other railroads should pay for those cars. Again, however, we provide a constraint based on principles of fundamental fairness: the common carrier obligation will be retained. Railroads will be required to provide service to everyone willing to pay the lawful, going rate. The only exception will be to allow the railroads to honor the terms of prior contracts or other obligations for cars and service—the only basis on which such contracts can work.

Considerable concern has been voiced that the bill will allow the railroads to raise their rates, without providing any incentives for them to improve their service. It is true that the bill does not legislate mandatory service improvements. But then, we don't see how this would be effective when 92 years of Federal regulation have been unsuccessful in this regard. We are confident, however, that our bill will lead to improved service, by providing the carriers the opportunity to earn a reasonable profit on existing traffic and allowing them the rate and service flexibility to attract new traffic. We are confident that the carriers will earn more by providing efficient, dependable service—at appropriate rates—than by running trains at restricted speeds on deteriorated tracks.

OTHER ISSUES

Some feel that our bill would give the railroads a free hand to take advantage of the shipper who is dependent on rail service, the so-called "captive shipper." We disagree, because we have concluded that in most cases there is adequate competition to limit the potential for monopolistic abuses by the railroads. The ability to truck grain to another railroad, a barge terminal, a local market or even to a distant market severely limits the railroads' market power. Vast amounts of grain are already moving in such patterns. We hope that the effective use of the rate flexibility provided by our bill will allow the railroads to recapture some of this traffic—something they can do only by offering attractive rates and dependable service. Combined truck-barge movements are now used from areas formerly thought captive to rail. Additionally, the fact that grain from one area must compete with grain from other areas, and even from other countries, limits the extent to which railroads can raise their rates. Nevertheless, we recognize that many shippers are concerned about rail rate freedom and the 5-year transition period is intended to insure that there will be no abrupt shocks and that there will be time for Congressional action to provide protection should it be rquired in some situations.

Another concern I have heard is that rail rate increases will make our grain uncompetitive in the world market. This strikes at the heart of one of the effective limitations on rail rate increases. The railroads will not raise their rates to the point where they shut off export grain shipments by rail, because they need this business. More likely, export rail rates will be reduced during slack export periods to attract business, making U.S. grain more competitive, and then raised during peak periods when the high market prices will permit shippers to pay higher rates and still make a profit. Unreasonably high peak-period export rates by one carrier would be prevented by competition with other carriers who can move grain from other regions, and by the potential for more truck-barge shipments.

I know that the question in your minds is whether railroad deregulation will be good for agriculture. As you decide, I ask you not to scrutinize each provision of the bill separately, but to consider the legislation as a whole, and to consider the type of transportation system we believe it will foster. Compare that to the rail system now serving agriculture, and the system we will be left with if present trends continue unaltered. We believe that reliance on the marketplace will produce a system that will be good not only for the railroad industry, but also for the shippers it serves, and especially for agriculture. We believe that you will come to the same conclusion.

Senator EXON. Next I will call Mr. C. B. Schaefer of the Union Pacific Railroad, from Omaha, Nebr.

While Mr. Schaefer is coming down, I would like to announce the schedule for the rest of the day. We are not planning any luncheon break because our staff must catch a plane this afternoon, and we are making every effort to finish by 2 o'clock. After we hear from Mr. Schaefer, we will go right down the list. I will now read the order in which I intend to call these individuals as they appear on the list. We might be able to accommodate any of you who for travel reasons need to be called earlier. If you so advise us with a note. But without any other changes, after Mr. Schaefer, we will hear from Mr. Oxton, Mr. Anderson, Mr. Robert Andersen, Mr. Swiler, Mr. James Preston, Mr. Dennis Wright, Mr. Raymond Cloutier, and Mr. Don Jacka. That will be the order unless we have someone who must leave for travel reasons.

Mr. Schaefer, thank you very much for being here. We will hear your testimony at this time. Please proceed.

STATEMENT OF C. B. SCHAEFER, UNION PACIFIC RAILROAD, OMAHA, NEBR.

Mr. SCHAEFER. Thank you, Senator Exon.

My name is C. Barry Schaefer, vice president-law for Union Pacific.

Senator EXON. Your statement is accepted.

Mr. SCHAEFER. Thank you.

I see I have covered a number of the areas other witnesses have covered this morning.

As a matter of information, Union Pacific testified before this Senate committee in Reno on April 20. At that time the president was our witness. He summarized our position with respect to S. 796 which simply is that we generally support the concept of deregulation as embraced in the four corners of that bill. We do have some reservations about certain aspects of the DOT approach to mergers, general rate increases and several other aspects of the bill. Basically, we support the fundamental concept.

I have followed these hearings which your subcommittee and Senator Cannon's subcommitte have chaired for the past 4 months and I have been particularly interested in testimony that has been presented by shipper witnesses. This morning I would like to comment briefly on some of the central themes which I see repeated in that testimony and provide you our views on those themes and perhaps a different perception of the problems that they reflect.

First of all, there seems to be some dispute about the economic situation of the rail industry. A number of witnesses have said that the rail industry does in fact suffer from deferred maintenance. Our earnings are low. We have an inadequate return on investment. We have massive capital needs.

At the same time, however, we find other witnesses saying that in effect the rail industry still has the capacity to cross-subsidize uneconomic operations.

The plain fact is, Senator, the rail industry is on a downward financial spiral. We suffer particularly from the fact that we are on the leading edge of inflation. We have to own, operate and maintain our own fixed plant. What a distinction with respect to our competitors, trucks and bargelines, which operate, in some cases on a federally subsidized or federally owned fixed plant. As inflation

costs go up, they hit us very directly on the front end. I think the figures speak for themselves.

It's our opinion that the rail deregulation initiative which the Department of Transportation is currently offering represents an opportunity to break this spiral, to move out aggressively and to provide revitalization to an industry which in our opinion will be critically important for the future economic development of this Nation.

Another point which comes out in some of the testimony before your committee is the concept that the railroad industry has a self-destructive pricing mentality; namely, that left to their own devices, railroad managers would price their services in a way that they would dry up demand for those services. I think you can point to particular, perhaps isolated instances where railroad pricing has not been as prudent as it might be. But overall we have a relatively sophisticated pricing analysis capacity in the industry.

In fact, our problem is that we face intense competition from unregulated barge and water carriers and our pricing to a large extent is governed by this competition.

I would also like to say at this time that a large segment of the testimony which has been received by your committee has been directed at certain anomalies in the Department of Transportation Act. Specifically, I refer to the fact that the act contemplates a total deregulation of ratemaking after a 5-year period. I think this is a matter of legitimate concern and I would like to speak to the captive shipper question in a few minutes, but I don't think that the thrust of that testimony should detract from the fundamental concept of deregulation, which is that railroads should be treated more as independent private enterprise institutions than as distinguished from public utilities. That seems to me to be the very fundamental issue.

I'm hopeful that the testimony which tends to confuse this issue will be carefully weighed and considered.

Finally, we have heard this morning a number of comments on the social role of railroads in the late 20th century. It's quite clear that railroads do play an important social role in the sense that they are the lifeblood of transportation in many sectors of the economy. At the same time, that role has dramatically changed in the last 100 years. The intensive competition which we face today from trucks and from water carriers subsidized in part by the Federal Government has really limited our ability to cross-subsidize services. One example which drove this point home to me recently was a study which was done for the industry by Richard J. Barber Associates, Inc., on the economics of the current rail situation. In that study Mr. Barber pointed out that if you were to take the railroads' losses on passenger service—which were imposed on the railroad industry after World War II up until 1971 when Amtrak took over passenger service—and applied the amount on a current dollar basis, you would end up with a $6 billion figure—a $6 billion figure. That very closely approximates some people's view of the current deferred maintenance situation in the industry.

So when we talk about cross-subsidy and when we talk about the need to provide uneconomic rail services, services at less than

variable cost, it seems to me that we have to be realistic about where those funds are going to come from.

We have heard testimony about the railroads' competition in intermodal markets and obviously one of the effects of this competition is to limit the railroads' ability to extract substantially more income from those markets. At the same time, we have heard testimony and questions you have raised this morning about what should the pricing strategy be with respect to coal rates, considering limitations on coal rates based on their effect on energy conservation objectives, the impact on consumers and so forth. The discussion involves placing constraints on those markets which might be characterized as rail-dominant. But somewhere you have to come to a bottom line; such a program embraces cross-subsidy and the continued applications of variable costs as the limiting factor in railroad rates.

Let me talk a little bit about some of the specific issues that have come up in the testimony. The question of captive shipper: I think it's a vexing problem. I worked on an industry committee to deal with the issue of market dominance. In fact, I worked with the House and Senate Commerce Committees back in 1975 when the 4-R Act was being drafted. I know a lot of time was spent examining the question of market dominance.

How do we find a mechanism that is going to sort out the shipper who has legitimate transportation alternatives, who has effective restraints on ratemaking abuse by the railroads?

The result of the 4-R Act was to delegate to the ICC what might be viewed as an almost impossible charge, in my opinion, and that is the requirement for the Commission to go through a fairly complex analysis in a relative short period of time. The Commission responded by establishing several presumptions which would allow for administrative convenience a in determination of whether or not a shipper was subject to market dominance by a rail carrier. We objected to those presumptions because we thought they were too far-reaching and had the net effect of chilling the type of deregulation which the drafters of the 4-R Act contemplated. Nevertheless, the captive shipper is a vexing problem.

In my opinion, we should approach the captive shipper problem from a somewhat different angle. First of all, I think we have to recognize, as I have said several times this morning, that there is a pervasive competition in the marketplace. We have to recognize that, while there are shippers who rely to a large extent on rail, they also rely and get services from trucks and other carriers. So that the competitive balance has shifted.

Second, and I think this is a point that has not been stressed, the contract rate provision of S. 796 provides a very highly promising mechanism for ultimately resolving the captive shipper problem. I say ultimately because I'm not sure that you can say the contract rates are going to solve every captive shipper problem that exists today.

But take the situation where you have a shipper who's contemplating an incremental investment in an existing plant. Currently he makes that investment based on his view of what the future rail rates are going to be. If he makes a substantial investment which calculates a rate of return to him of let's say 25 percent or 20

percent, which may be his capital turnover rate, and then 2 or 3 years later the rail rate is increased by 10, 15, or 20 percent and he does not achieve his projected rate of return, obviously, he's very distressed with that prospect.

On the other hand, if that shipper has the ability to enter into a contract with the railroad at the time he is thinking of making that incremental investment in order to establish what the future rates and services will be, it seems to me that he could well be adequately protected against what might be characterized as abuses.

Let me apply this process of thinking to the coal situation, for example, and comment on your question earlier this morning about the utility that is located in Texas that has coal sources in Wyoming or Montana—how does he deal with deregulation—is he not truly a captive shipper? Well, I guess I have two comments on that. First, if you're talking about a utility which is contemplating the construction of a new coal plant, I certainly agree with Mr. Lamphier that in such a situation it will be sourcing out coal from as many sources as possible and using as many transportation alternatives as possible. It might locate the utility, for example, on a waterway so that there is barge capacity available. It might locate the utility at a place where there are two or three railroads serving his utility. So there is a lot of competition on the front end here. Given contract rate authority, not only can the utility rely on that type of competition, but it can sit down with the carrier or carriers involved and say, "I'm willing to locate my facility on your railroad if you're willing to give me the kind of forward-looking contract rates that are going to fit into and dovetail nicely with my coal supply contract."

In that sense, it seems to me you can unlock the captive shipper problem through the use of contract rates.

Let me be clear on Union Pacific's position on the captive shipper issue, particularly as it relates to S. 796. I think we have to be honest and say that at least in the near-term period there are going to be some shippers who are legitimately captive shippers, however you define that term. At the same time, I think that the number of those shippers and the circumstances involved in captivity are a lot less than what I have heard testified to before this committee.

I think you have to strike some realistic economic balance, particularly in the context of the revenue needs of the industry. How you sort that out is a difficult problem. We are working on it internally. We are thinking about it. We are not in a position at this time to offer any recommendations to the committee, but I think as the year goes on and as these hearings develop our thoughts further, we will be in a position through the industry to perhaps come forward with a constructive alternative to the captive shipper problem, because I agree with you, unless we really deal with this problem, we're going to have tough sledding in getting this bill through your committee and through the Congress.

Let me comment on a few other aspects of this issue of deregulation, then perhaps entertain your questions.

One of the things that concerns me is an undercurrent in some of the testimony which tends to attack differential or value-of-

service pricing. There have been witnesses before your committee who have testified to the fact that railroads should be limited in their ability to establish maximum rates based on the return of fully allocated or fully distributed costs plus a reasonable return on investment. That is the classical monopoly model of pricing, utility pricing if you will.

As we are, I think, fully aware, the railroads are not monopolistic, not in the utility pricing mode. They must have the capacity to charge a spectrum of rates which in their totality are going to generate revenues adequate to justify the reinvestment in the plant and facilities which are really necessary to revitalize this industry. That spectrum of rates is going to encompass in my opinion a fairly broad variety, or disparity, or you might say zone of revenue to cost ratios. It's also going to reflect the realities of the marketplace. One of the arguments that is made against differential pricing is that a shipper shouldn't be forced to pay a rate which represents a higher cost recovery than another shipper of another commodity, because that is simply not fair. As a practical matter, if you push off the low-end shippers, the shippers whose revenues recover simply variable costs or a slight increment above that, what you're doing is forcing a redistribution of the cost structure across the balance of the shipping community. That redistribution has the potential of increasing the cost for all the shippers. So not only is differential pricing a way of economic life for the rail industry, but in my opinion it continues to make good sense in terms of the overall economics of the shipping industries.

Another issue which has come up is the question of rate flexibility. We have heard testimony this morning about the problems of shippers responding to rate adjustments on very short notice, the inability to adjust their business situation to accommodate these rate adjustments. As a practical matter, however, barges can increase their rates over a 6-month period from 60 percent of the published tariff to 300 percent of the published tariff. There are many sectors which have become accustomed to these kinds of pricing variations. Admittedly, they don't like it. If I were a shipper I don't think I would be particularly enamored to that type of rate fluctuation, but it has its benefits in the railroad industry because of our very high fixed costs, of allowing us in my opinion to get better utilization out of our plant and equipment. It also allows us to fine-tune availability of plant and equipment to respond to market conditions.

While I'm clearly not willing to represent to you that pricing flexibility is going to solve the historic car shortage problem, I think it will make a substantial contribution to ameliorating that problem in the future.

I think another element of deregulation which we should emphasize here is it's going to provide for better service. I was reading through one of our clipping files the other day and came across an interesting article which quoted Mr. Lawrence, president of Braniff Airways, as saying that initially he was opposed to air deregulation because he felt that Braniff would suffer at the hands of the bigger airlines—United and so forth. But having now gone to the trough, having supped at the trough of deregulation, he was excited about it.

One of the reasons he was excited about it was that he felt that it produced a new inspiration to his agreement employees and his management. They were now in a competitive environment. They had to fight for survival. They had to innovate and they had to respond. I think there is some potential for that in the rail industry.

Commenting on your questions to Mr. Lawrence about the relative management styles and abilities, would one railroad management be better off today than another. I think the real inquiry here is what impact has deregulation had on management attitudes, management philosophies, risk-taking, innovation, rate of return. If you're operating in an environment which is constrained not only by historical regulatory attitudes toward innovation but also constrained by lack of capital because your rate of return is inadequate to do things that you think should be done, there is no question in my mind you're going to produce a conservative management. You're not going to attract the kind of aggressive talent that this industry really needs to survive in the 21st century. So I, for one, think deregulation has a lot of intangible benefits which we are eventually going to see, because we're going to really perform the service this country expects of us.

For those reasons, Senator, I personally support the concept of deregulation, as does Union Pacific.

Senator EXON. Thank you very much, Mr. Schaefer. Your testimony was excellent. We appreciate it. I was particularly pleased to see that Union Pacific recognizes that there is such a thing as a captive shipper. I would suggest to you that if there is no such thing as a captive shipper, the U.S. Senate will invent one.

Mr. SCHAEFER. I think you're absolutely right.

Senator EXON. Although we are not trying under the new bill to regulate the return of investment for the railroads, we should emphasize once again here that the railroad industry in the United States in general is in financial difficulty and has not been able to attract the capital that is necessary.

I said earlier that we are very proud of Union Pacific and Burlington, and what they have done. Their success, I am sure, results from good management, which maybe is somewhat more aggressive and innovative even under the structured system that we have now, and also, as you probably would be the first to agree, to some extent from the location in which they operate.

What during the last few years has been the average return on investment for the Union Pacific? Can you tell us that?

Mr. SCHAEFER. Well, in 1978 our return was just less than 8 percent. I believe it's comparable for 1977.

Senator EXON. What is the average for the railroad industry as a whole in the United States, do you know?

Mr. SCHAEFER. If you include ConRail——

Senator EXON. Let's not count ConRail.

Mr. SCHAEFER. Now I'm going to have to go back in my memory.

Senator EXON. Well, give me a figure.

Mr. SCHAEFER. The general rule of thumb is that the average for the last several years has been less than 2 percent.

Senator EXON. Less than 2 percent. OK. I have heard that figure.

Mr. SCHAEFER. I think that is a valid figure and it really doesn't change that much, I mean in terms of the relative cost of capital. If you take out ConRail, I think it's 4 or 5 percent.

Senator EXON. I am sure that you have had enough experience to give us an answer to this question. If you were to set a reasonable return on investment which a railroad would have to have as a minimum to allow it to keep up its plant, tracks, and equipment under today's economic situation, what would be the percentage figure necessary to enable the railroad to be successful financially?

Mr. SCHAEFER. Let me answer that question, Senator, by saying that in a pending proceeding before the ICC, sort of an ongoing proceeding, the rail industry is required annually to produce a cost of capital calculation based on a formula the Commission has developed. The most recent submission, which was sent in last week, indicates that the cost of capital for the industry is about 12.6 percent. It's fairly rudimentary economics, in my opinion, that if your rate of return does not meet your cost of capital then you basically can't effectively replenish your plant. I would say we are really talking in these inflationary times of a minimum of cost of capital.

Now we have a capital catchup problem as well. There is deferred maintenance in the industry. There is a need for additional equipment in some sectors. So if you were to be realistic about it, you would be talking about 13, 14, 15 percent which is not unreasonable in my opinion. If you look at the deregulated trucking industry, for example, their rate of return last year was 18.4 percent. If you look down the spectrum of industry generally, you're talking 18, 20, 22 percent. So I don't want to say that we need a 25-percent rate of return, but I would say we have a long way to go here from an industry average of 2 or 3 percent up to 13, 14, 15 percent in terms of an adequate rate of return over a longer term.

Senator EXON. Thank you. I have one more observation and question. You indicated that some feel that the railroads are intentionally pricing themselves out of the market. I do not think that this is the case. Certainly when one looks at the abandonment of some of the lines he might get that impression. You have indicated that you have a sophisticated pricing policy. I think that it is true with Union Pacific. But with your sophisticated pricing policy, if S. 796 becomes law, I am afraid that we would be right back to our overriding concern for the captive shipper. I believe that a sophisticated pricing policy would allow and would dictate that a road would eliminate many lines which simply do not approach profitability under such a pricing system. Is that a fair statement?

Mr. SCHAEFER. Well, I think what you might call the intentional reduction of business theory here is the result of a number of complex factors and clearly a result of competition. Taking your branch line example, I can't speak with the degree of familiarity that Mr. Lamphier could about your line in South Dakota, but if over the years the railroads have slipped into a standby position in terms of providing service—that is to say, that they are really only called upon to provide service when trucks and other modes of transportation are not available. From a management point of view, and looking at a limited amount of resources that can be devoted to plant and equipment, quite obviously you're going to

distribute those resources in areas where you have a better service base.

If that situation changes, if the pricing initiatives we are talking about in this legislation allow for more flexibility, they will allow for more effective competition, and railroads will get out of the standby position where they have fixed rates against which trucks and barges play; once railroads can become more effective, then some of these properties would look a lot more attractive in my opinion. That, coupled with the subterminal concept, would really reorganize and rearrange some of the lines to make them geographically more efficient.

In those situations we may well be looking at the concept of upgrading these branch lines and once upgraded they may now run at a profitable level. The problem is that over the years they have been in effect deteriorated through the economic system.

Senator EXON. If I might interrupt, they have been deteriorated because, as I understand it, the return on investment of the railroads has not allowed the railroads to make new ties and to put in new ties and new tracks. When they do not have an adequate return on investment, management starts cutting corners where it is the least painful for them to cut corners.

Mr. SCHAEFER. Exactly. That, coupled with the change in service patterns, too. There have been a number of factors which come together. If you're going to change that, if we're going to play in a new ballgame here, then there may well be instances where once you got that line up to an operating level it could continue to sustain itself. That is one of the provisions we see in the 4-R Act, for example, where there are State rehabilitation subsidy programs and where other States have taken the initiative of starting their own program. We are talking here about a little different situation—putting in capital investment to get the line up to grade where you can cover the cost of handling the big hopper cars—rather than simply continuing operations. That capital hurdle is many times the factor which really governs the abandonment decision. It's an integrated web. Without that level of improvement in physical plant you can't provide the best service. If you can't provide the service you don't get the business. If you don't get the business your revenues don't cover your costs.

So I really think that while there is a legitimate concern about the abandonment provisions of this bill, they do interrelate to the pricing provisions, and the contract rate provisions. As the witness from the FRA said, it really is a whole fabric which has to be looked at in its totality.

Senator EXON. Thank you, Mr. Schaefer.

Senator Pressler.

Senator PRESSLER. First of all, I understand you were one of the creators of Rail Box, which sounds to me like a very good joint program. You have been very innovative in management as I understand it. I understand your railroad was originally one that Averell Harriman and his family started and somehow it got to be a western railroad, but it seems to be one of the better managed even at 8 percent return. At least it's one of the ones that are viable. Maybe you're just lucky and have a lot of coal to haul and that makes a lot of profit. I don't know. What single ingredient do

you think makes your railroad different, that makes it profitable in this age of bankruptcy and ConRails and Milwaukees going bankrupt now and so forth? What single thing would you say makes your railroad different?

Mr. SCHAEFER. Senator, I would love to say it was management, but I have to be honest with you. I think there are a number of factors. Probably if you had to single out one factor which has helped Union Pacific, it's the fact that when A. H. Harriman rescued the Union Pacific from the organization in 1897 with assistance of Penlobe & Co. and took over what was initially a federally chartered and financed company, but was in bankruptcy because of its heavy debt structure, over the years the guidance of the Harriman family has been one of reinvestment in rail plant. There was and continues to be, I think, a relatively moderate dividend policy from the railroad based in part on the philosophy of reinvesting effectively in our rail plant.

One of the other circumstances that I think was beneficial to us was that in that reorganization in 1897 there were a lot of branch lines which had been built for speculative purposes and reorganization did not pick up the branch lines so that we ended up with largely a truck system.

Another extremely important factor is basically the genesis of our business. We were a railroad that was constructed as a result of a Federal study in 1853 for a central corridor route, an efficient route between Omaha-Council Bluffs on the one hand and Ogden on the other hand, connecting with the Central Pacific to the west coast. It's one of the most efficient railroads in the United States. We have exceptionally high densities. We get economies of scale and so forth. So you have those factors which are not truly related to the day-to-day management of a company which have over the years helped us maintain our property in excellent condition.

On top of that, we have been the beneficiary of natural resource deposits, coal in Wyoming which you cite; also trona deposits in Wyoming which provide us with the backbone of our traffic.

Speaking to the management question, we have not however sat idly by and just let these advantages fall in our lap. We have been aggressive in the merchandise traffic management, TOFC, setting up automobile parts, recognizing that it's very important for long-term stability to have a broad base of commodities to handle. I think that is where our management has been very helpful to us.

Senator PRESSLER. I know that Congressman Cavanaugh mentioned this book here, "The Whistle Blow," by D. Brown, or somebody.

Does that present an accurate history and assessment of your railroad also?

Mr. SCHAEFER. I would like to submit my comments after I have had a chance to review the book.

Senator PRESSLER. I am going to get that and look at it. Maybe John will give it to me. Thank you very much.

Mr. SCHAEFER. Thank you, Senator.

[The statement follows:]

STATEMENT OF C. BARRY SCHAEFER, VICE PRESIDENT—LAW, UNION PACIFIC RAILROAD

Mr. Chairman and Members of the Subcommittee. My name is C. Barry Schaefer, and I am Vice President—Law for Union Pacific Railroad. Please accept my thanks for this opportunity to express the views of Union Pacific on the matter of rail deregulation.

It is our opinion that major changes are necessary in the structure of regulation, not merely in the process. We must keep in mind the fact that the Interstate Commerce Commission's powers over the railroad industry were created by Congress in response to specific economic and social conditions existing at the time of their enactment. Since virtually all of these powers were in place by 1920, we are dealing with institutional mechanisms which have not been subject to a major revision in more than 50 years. Both the railroad industry and the American economy have undergone dramatic changes during the intervening period, but there have been few efforts to focus on whether the basic approach to regulation continues to serve the public interest. In recent years, there have been several attempts at regulatory reform, but the Congress is now to be congratulated for its willingness to consider the fundamental regulatory alternatives.

It is natural for proposals for change to create suspicion and concern among those who fear that they might be adversely affected. The Subcommittee has heard testimony from a number of parties expressing these fears and will undoubtedly hear more. We have reviewed this testimony, and while some of the points raised are unquestionably valid, we feel that many others demonstrate a basic misunderstanding about both the problems created by the existing regulatory scheme and the likely effects of change.

Since John C. Kenefick, president of Union Pacific Railroad, has previously given testimony on Union Pacific's views concerning the Department of Transportation bill, S. 796, I would like to use my time today to accomplish three things. First, I will attempt to point out some of the basic flaws in the arguments used by opponents of deregulation. I will then turn to a discussion of certain specific areas of their concern—the captive shipper, the control of undue rate increases, and the conflict between pricing flexibility and rate stability. Finally, I would like to discuss the positive benefits that can be expected for railroads, shippers and the public if the railroad industry is granted the regulatory freedom it needs.

FUNDAMENTAL ERRORS IN ARGUMENTS AGAINST DEREGULATION

A fundamental error made by many opponents of rail deregulation is the assumption that most of the railroad industry is doing well enough under the existing regulatory scheme. For example, in its testimony on May 23, 1979, the Edison Electric Institute described S. 796 as "The Administration's effort to solve the problems of Conrail and a few other lines with a blanket industry solution . . .". The previous day, the Kansas City Board of Trade stated its belief that most railroads are in "good financial shape," except in the Northeast. The Board of Trade evidently holds this view even though it acknowledges elsewhere in its testimony that "massive infusions of capital appear to be necessary."

The sorry fact of the matter is that the entire railroad industry is in financial peril. In the 4-R Act, Congress directed the Interstate Commerce Commission to determine what constitutes an adequate rate of return for the railroad industry. The Commission has never fulfilled this directive, but it is reasonable to conclude that the industry is entitled to a return on net investment at least equal to its cost of capital, which the Commission has calculated to be 10.6 percent. The railroads believe that the proper figure is 12.5 percent but the point here is that virtually no railroad earns even as much as the ICC's estimation of the cost of capital. In the 12 months ending June, 1978, the industry's actual rate of return on investment was an incredible 0.24 percent. Union Pacific, a comparatively profitable railroad, earned 7.27 percent. The highest return earned by any major railroad in 1978 was 8.56 percent. Not since 1973 has even a single major railroad had a return on investment as high as 10.6 percent.

Another way to look at the railroads' financial condition is to consider the effect of inflation. In 1956, the industry had a total income, before extraordinary items, of $876.3 million. In order to stay even with inflation, this would have required income for the year ended June 30, 1978 of $2,038.2 million. Actual industry income for the period was $138.8 million. In other words, 1956 income was 6.3 times as large as the most recent figure, but 1956 purchasing power was 14.7 times as great. The result of this extended period of inadequate earnings is, as the Kansas City Board of Trade recognizes, a deteriorization of physical plant. Returning this plant to adequate operating condition will require "massive infusions of capital." As this Subcommit-

tee has already heard, the Federal Railway Administration estimates this capital shortfall to be more than $16 billion. There is obviously a real question of how the rail industry can be expected to raise this money from the private sector as long as it is unable to earn an adequate return.

The second basic flaw in the arguments advanced by opponents of deregulation is the assertion that comprehensive ICC regulation is necessary to protect the railroads' own best interests, and that in the absence of such broad-scale regulation the railroads would routinely engage in self-destructive practices. The Commission itself seems to accept this. In his testimony last month, Chairman O'Neal took pains to point out that indiscriminate rate increases could dry up traffic.

This contention runs in the face of a fundamental economic principle, familiar to any first-year economics student, that economic self-interest will ultimately try to prevail. More significant than this particular insight is the attitude it evidences. Railroad management knows far better than Mr. O'Neal that the success of their companies depends on the willingness of shippers to move traffic by rail. If rail rates are too high, shippers will shift to other modes, or they will arrange to haul their own freight, or, in the last analysis, they will simply cease to ship. In any of those cases the railroad suffers. This fact is so obvious that we regard it as one of the most persuasive arguments to be made in response to those who fear exorbitant increases in rail rates. But the attitude of paternalism which is demonstrated by this kind of statement is part of our overall problem with the current regulatory system. Railroads are a mature industry, and the professional managers that they hire do not need the ICC to second-guess the business wisdom of their decisions.

We have also observed that some of the arguments advanced in testimony before this Subcommittee seem simply to miss the point of what is at issue here. Thus, the Subcommittee has heard witnesses whose comments are so narrowly confined to particular anomalies of the Department of Transportation proposal that there is a real danger that the underlying issues will be lost in a web of arguments addressed to special features of the DOT bill. On this point I need simply say that hardly anyone believes the DOT bill should be enacted without amendment. But that does not show any fundamental fault in the concept of deregulation. Another aspect of this problem is the use of "straw men" for discussion purposes. As one brief example, the Edison Electric Institute states that it is an underlying premise for deregulation that there is competition for "all" traffic. This is, of course, not the case; but neither is it the point. Where the forces of competition do work—and we believe that this is the case in the overwhelming majority of situations—the regulatory mechanisms should be structured to reflect that fact.

The final type of flaw that we have noticed is not so much a conceptual error as it is a dispute about the purposes of regulation. The Congress has heard—and will continue to hear—much about the social impact of deregulation on various users of rail services. It has been asserted, for example, that rates for the transportation of coal should be kept low in order to slow the rising costs of energy, and there is also great concern about the effect deregulation would have on the smallest shippers.

It is not surprising to see this emphasis on social rather than economic considerations. Much of the original Interstate Commerce Act was aimed at achieving goals of social policy, and even today the Act is riddled with special rules which apply only to particular classes of shippers. The problem with these pleas for social justice is that the railroads can no longer afford to bear more than their share of the economic burden. The goals of society are the responsibility of all of us, not simply the railroad industry, and the costs that are created in acheiving these goals must be borne by all of us. The railroads are simply not the "deep pocket" that they once were.

While time does not permit a detailed discussion here, the Canadian experience may be useful to the Subcommittee as it attempts to reconcile social needs with economic imperatives. As you have heard in previous testimony, Canada has determined that the price for transporting grain by rail would be too high if it were left to the free market. But rather than attempting to keep the rate arbitrarily low (thereby shifting the burden of the cost to other shippers or to the railroad stockholders), the Canadian government determined to subsidize the grain shipments. The Canadians have thus recognized that they are dealing with a national problem, and they have provided a national solution.

REBUTTAL OF SPECIFIC ARGUMENTS

Perhaps the single most discussed issue in the entire deregulation debate is the effect of deregulation on the so-called "captive shipper." The basic concern here is that railroads would use a monopoly position to exploit shippers who have no alternative to rail transportation. Let me say at the outset that Union Pacific supports the concept of continued regulation of the rates charged shippers who are

truly "captive." We recognize that there is a continuing need for some residual form of regulation in order to ensure that rates charged to captive shippers are reasonable. Having said this, however, I must also hasten to point out that it is our view that such shippers are rare exceptions. The overwhelming evidence is that the vast majority of rail shipments are subject to competition. If we fail to acknowledge this fact, we fail to acknowledge the changes that have occurred in the Nation's economy in the past thirty years.

There is abundant statistical data to support this conclusion. First and foremost is the fact that railroads have been driven from their former dominant role in the movement of freight. In the 30 years between 1947 and 1977, the railroad market share of inter-city freight tonnage carried has declined from 56 percent to 27 percent. In that same period, the trucking industry has increased from 19 percent of inter-city domestic freight tonnage to 39 percent. At the same time, barge traffic has doubled, moving from a 5 percent market share to 10 percent. Even more dramatic is the fact that the tonnage moved by rail has declined in absolute terms as well as in percentage of traffic. While the economy (real GNP) was growing 185 percent, industrial production was up 250 percent, and total inter-city freight tonnage increased by 91 percent, the railroads carried 9 percent fewer tons in 1977 than in 1947.

The simple fact of the matter is that competition, not monopoly, is the dominant characteristic of freight transportation today.

Even for those commodities which are traditionally considered to be rail-dependent, such as grain and coal, huge quantities are now being shipped by modes other than rail. As recently as 1974 the railroads carried about 60 percent of all grain transported in the United States. In just three years the percentage of grain originated by rail had fallen to 43 percent. As late as 1970 more than half of all grains transported to Chicago arrived by rail. Five years later one one-third of the grain arriving in Chicago was transported by rail. By 1977 it was down to less than one-fifth.

In the Northwest, improvements in the Columbia River system have greatly increased the percentage of grain moved to West Coast ports by barge. In 1967, railroads accounted for almost three-quarters of the wheat delivered to West Coast ports, with barges handling less than one-fifth. In 1976–77, the barge share had grown to 40 percent, more than doubled its percentage only 10 years earlier. In landlocked areas trucks have become effective competitors with the railroads for grain traffic. Truck movement of grain from North Dakota accounted for 19 percent of total shipments in 1974–75. Each year since then the truck share has increased so that by 1977–78 the truck share had nearly doubled to 34 percent of the total. Similar patterns exist throughout the country, and, of course, all of the inroads made by trucks and barges come at the railroads' expense. Shippers who have switched to other forms of transportation can hardly be captives of the railroads.

As for coal, railroad coal originations as a percentage of total coal production declined 29 percent between 1954 and 1977. About half of all U.S. coal transport today involves participation by non-rail modes, particularly truck and water. Moreover, it is clear that technological changes are likely to further lessen the percentage of coal transported by railroad in the future. The first of these is mine-mouth generation of electricity, which essentially eliminates the need for any long-haul coal movement. This technique now accounts for about one out of every eight coal "shipments" to electric utilities. The second technological change is the feasibility of coal slurry pipelines. One such pipeline is already in operation and half a dozen others are in the advanced planning stage. Some of these have capacities as high as 25 million tons each year.

There is another limitation which must be made in any attempt to define the captive shipper. A finding of captivity should never depend simply on a percentage of a particular shipper's traffic which moves by rail. Many shipping decisions are based more on historical factors—on the way the shipper has traditionally done business—rather than on the presence or absence of competition. Thus, the fact that a particular shipper moves a certain percent of its goods by rail does not, by itself, mean that the shipper is dependent solely upon rail transportation. It can also mean that the railroad is competing effectively, by providing good service to the customer. Any attempt to over-emphasize the amount of traffic which has moved by rail from a particular shipper will thus penalize those carriers which provide superior service. It would be anomalous indeed if good service were made a ground for tighter regulation.

A final limitation which should be made on the concept of captivity is that new shippers, such as newly-constructed utilities, should automatically be deemed non-captive. A utility which is seeking a site for a new plant has a broad range of options. It should not be considered to be captive to a particular railroad simply

because it chooses to locate alongside a railroad track, any more than it would be "captive" to a barge line if it located alongside a river. Moreover, a utility—or any other railroad customer—would have the option of insulating itself from the alleged results of captivity through the device of a contract rate. Such a contract could provide the stable and predictable rate level that utilities say they need without unnecessary regulation by the Interstate Commerce Commission.

While we are addressing this subject of captivity and competition, I would like to point out some of the other complexities involved. It is not enough to inquire as to the transportation alternatives available to a particular shipper. The real issue is not so much "captivity" as it is whether or not the forces of competition are at work to restrain rates. One of the factors which must be considered in determining the effectiveness of the forces of competition is what might be called the captivity of the railroad. Railroads have a fixed plant: their track cannot simply be moved around in the way that trucks can easily travel to different destinations. This elementary fact means that railroads are restricted to traffic that conforms to their fixed plants. This restriction on railroads in offering competitive service provides a strong incentive to keep rates reasonable when the alternative is that their traffic will disappear.

A related issue is the effect of product competition. Whether or not there is a transportation alternative open to a particular shipper, the railroad often finds that it must keep its rates down in order to help the shipper be competitive at the destination point with shippers from other areas. If the total price to the shipper's customer, including the cost of transportation, is too high, then the shipper will not be able to sell his product, and the railroad will lose the traffic. In such a situation, it is readily apparent that the "captivity" of the shipper is essentially irrelevant for ratemaking purposes. Both the shipper and the railroad have an interest in keeping costs down.

Thus, while the captive shipper question has been a focal point for discussion, the underlying fear is that railroads will use the rate freedom gained under deregulation to engage in price gouging. Our first response to this argument is that the railroad industry currently has an infinitesimal rate of return, and that under the circumstances it is difficult to imagine the industry being in a position to gouge anyone. As noted above, virtually no railroad earns as much as its cost of capital.

There is no denying that railroads will have to raise some of their rates. Inflation and the present unsatisfactory rate of return makes that inevitable. But even after rate increases, it is highly unlikely that the industry as a whole could become as profitable as many of its customers. Taking just a few examples, and comparing net income to net worth, the electric and gas utilities averaged an 11.3 percent return in 1978, the chemical products industry averaged 15 percent, the automotive manufacturers 17.2 percent, and manufacturing overall averaged 15.9 percent. Railroads earned 1.7 percent.

For the sake of further comparison, the trucking industry had an 18.4 percent return during the same year. Moreover, while some rates will go up, others will go down, and in the long run a healthy rail transportation system will be cheaper than an unhealthy one. The experience of Conrail in the East and the Rock Island and Milwaukee Roads in the West shows that the only alternative to a profit-making industry is an increase in the number of railroad bankruptcies, with an ever-spreading drain on the public treasury.

Another aspect of the railroads' rate-setting policy which has come under attack is the practice of "differential pricing." Under this approach, the rates set for a particular commodity take into consideration the value of the transportation service to the shippers of that commodity as well as the cost. Thus, the rates are cost-related, but are not necessarily cost-based. Some witnesses have argued that cost-based pricing is more in tune with the economic models they have developed. The problem is that these models apply to monopoly businesses. It is not surprising, therefore, that the strongest advocates for cost-based pricing are utilities—classic monopolies, which are accustomed to the advantages and burdens of that status. Railroads are not monopolies, and it has been a very long time since they were.

Since the theory makes a basic assumption which is contrary to fact, it is also not surprising to find that the theory doesn't work in the practical world. Many rates must presently be set below the fully-allocated cost of moving the traffic in order to meet competition from other transportation modes, or because of social policies enforced by the ICC. While it could be suggested that railroads should not attempt to meet their competitors' prices if doing so means carrying traffic at less than fully-allocated costs, this argument fails because such a large proportion of total costs come from the railroads' fixed plant. As long as traffic is carried at a rate which exceeds its variable costs, it can contribute to meeting the fixed costs. The result is beneficial both for the railroad and for the railroads' other shippers. In the

absence of the low-rated shipper, the fixed costs would have to be spread among fewer shippers, driving rates ever higher.

It should also be noted that differential pricing, or some variation on it, is a practice engaged in by almost every business. To take just one example, there can be no doubt that some automobile lines are more profitable to the manufacturer than others. Yet no one suggests that General Motors should be required to make the same percentage profit on a Corvette as it does on a Chevette. Unless there is some provable, unfair burden placed on one shipper because of a rate charged to another, railroads should be free, like other businesses, to relate their charges to the value of the service provided to the customer.

The last area I would like to discuss is that of rate flexibility. Rate flexibility means more than the ability to raise or lower rates. It means the ability to do so quickly in response to changes in the marketplace. Today there are two main obstacles to ratemaking flexibility. The first of these is the requirement that proposed new rates be announced at least 30 days prior to their effective date. It is difficult for the railroads to make market-sensitive rate adjustments, because it is often impossible to anticipate changes in the market more than a few days—or sometimes, a few hours—in advance. The second obstacle is the ICC's suspension power. Any new rate can be suspended for seven or even ten months from its proposed effective date. When a rate is proposed in response to a transient market condition, a suspension is the same as a rejection.

It is our view that rate flexibility will not in fact cause any great hardship on shippers, and that it offers the possibility of significant benefits. It should be remembered that other transportation modes can and do vary their rates with the demand for their services. They can quickly raise rates to earn profits when the market demand is high, and they can lower them just as quickly if the market does not respond. For example, grain hauled in bulk by water carriers is exempt from rate regulation.

There is a normal rate—the tariff rate—but actual charges are the result of negotiations between shippers and the barge companies. When there is a low period of demand for transportation (such as a low period in grain exports), barge companies reduce their rates in order to attract grain shipments from the railroads. In periods of high demand, however, rates climb sharply. In one study conducted by the Iowa Department of Transportation and Iowa State University, it was found that in early 1975, during a period of low export activity, actual barge rates declined to 60 percent of tariff. But during the harvest season that same year, barge rates climbed to as much as 300 percent of tariff. Unregulated trucking companies can make similar flexible responses to market conditions. There are two points to be learned from these facts. First, it is difficult for railroads to compete successfully against such practices. Second, shippers are already used to dealing with changing, seasonal pricing in transportation.

If railroads get the pricing flexibility that they need, there will be advantages for both railroads and shippers. Rates which change in response to changes in demand offer the opportunity to even out demand over the course of the year. Right now, with rates more or less constant over the year, railroads customarily incur a shortage of equipment when competing modes' rates go up, and excess capacity when they go down. But if shippers are given incentive to ship at "off peak" periods, there will be more rail equipment available for traffic which has to move at the peak. A flatter demand curve will also make it easier for railroads to estimate their equipment needs, and hence to ensure an adequate car supply. Moreover, increased utilization of equipment will help keep costs down.

There may, of course, be some shippers who feel they have to have a constant rate over the course of the year. Such a shipper would not be harmed by permitting pricing flexibility. Any shipper that needs or wants rate stability could protect itself by entering into a contract rate with the railroad.

THE POSITIVE ASPECTS OF DEREGULATION

I would now like to focus more directly on the positive results that can be expected for both railroads and shippers if the Congress adopts the regulatory changes that we propose. Foremost among these is an improvement in service to our customers. As I indicated earlier, pricing flexibility will make service and price innovations possible. Without the restrictions of the present price-setting structure, we will be able to "fine tune" the services we offer so as to more closely meet the needs of shippers. They would not pay for services they do not need and would be able to arrange for additional services as they require, without the delays inherent in obtaining regulatory approval of the rates charged for each service.

Second, the capital shortfall will be eased. This will enable the railroad industry to undertake the upgrading of equipment and facilities that is so desperately

needed. We will be able to offer more cars, more specialized cars to meet particular shippers' needs, and smoother and faster operations to all.

Yet another improvement that can be anticipated would take place within the railroads themselves. With an increased reliance on the free market, both labor and management will know that their livelihood depends on their ability to meet the needs of the shippers. As a result, we expect to improve productivity. This will lower costs, and more importantly, increase the sensitivity of railroad personnel to shippers' demands.

In addition to improved service, I believe that over the long run we can expect that costs will go down under deregulation (or at least that they will not rise as quickly as they otherwise would). Under deregulation, railroads will have more resources to devote to research and development—and, because of their newly competitive position, more incentive to expend those resources. At the present time, there is shocklingly little attention paid to the R&D function within the industry or within the government. Yet research has been able to lower unit costs in virtually every other industry. There is no reason to assume that railroads are any exception.

Moreover, the railroad industry devotes large amounts of its manpower and resources simply to comply with existing ICC regulations. Many of these regulations would no longer be necessary if the Interstate Commerce Act is amended; our resources could then be devoted to more productive use. The Commission's actions under its Service Orders authority is one example of what I have in mind. The Commission has had a long and unfortunate history of using this authority to interfere with the management decisions of the railroad industry in ways that serve neither railroads nor shippers. Last year, for example, in Service Order 1335, the Commission proposed to require the entire railroad industry to give expedited attention to the repair of narrow-door boxcars, in order to alleviate a supposed nationwide shortage of them for grain service. I will not here extensively detail the facts of that case, but suffice it to say that there was no real shortage, and certainly no nationwide problem. The narrow-door boxcar is an inefficient type of car in little demand. It is used primarily to supplement covered hopper cars, and our energies would have better been devoted to fixing covered hoppers and other cars first. The adoption of Public Law 95–607 by Congress ultimately eliminated the impact of Service Order 1335, but not before the railroads had been compelled to expend substantial time and effort developing evidence on the irrationality of the order; if the order had gone into effect, the amount of wasted effort and expense would have been greatly magnified. This is the sort of inefficiency which is generated by the regulatory process and which, if eliminated, would lower our costs.

Finally, the fact of profitability will, of itself, help to lower long-run costs. Railroads will be able to attract capital and management expertise that they need, and they will be able to do so without massive infusions of government money.

CONCLUSION

After ninety years of regulation of the railroad industry by the ICC, two facts are inescapable. Railroads are unable to provide optimum rail freight service to shippers and the public, and the railroad industry is in severe financial straits. There are only two ways to remove the railroad industry from these predicaments. The first is for the government to provide continuing and increasing assistance to the industry as more and more carriers face bankruptcy. The second is a restructuring of the environment in which railroads operate, so that they can earn the profits that they need to survive. Railroads are fuel efficient; they are environmentally desirable; and I believe that they have an important role to play in the Nation's transportation system. But they can no longer survive in a regulatory atmosphere created for a different world. They need an Interstate Commerce Act that takes into account the realities of the 1980's and beyond.

Senator EXON. Thank you very much, Mr. Schaefer. We appreciate your testimony. The next witness is Mr. Neil Oxton on behalf of the Nebraska Agricultural Council and also President of the Farm Union in Nebraska.

STATEMENT OF NEIL OXTON, NEBRASKA AGRICULTURAL COUNCIL, LINCOLN, NEBR.

Mr. OXTON. Thank you, Senator, ladies and gentlemen. My name is Neil Oxton and I am the president of the Farmers Union of Nebraska, a general farm organization. However, I am represent-

ing here today the Nebraska Agricultural Council, of which the Farmers Union of Nebraska is a member.

The Nebraska Agricultural Council is a group of 25 agriculture-oriented organizations that was formed in 1968 for the purpose of encouraging and promoting the best interests of farmers and ranchers. The Nebraska Agricultural Council works toward the fullest development of agriculture within the public interest. The Agricultural Council constantly seeks sound solutions to the problems affecting agriculture.

The primary function of the council is to act as a clearinghouse to collect and disseminate agricultural information concerning major national, State, and local legislation to its members and the general public.

On behalf of the 25 organizations comprising the Nebraska Agricultural Council and myself, we appreciate this opportunity to share our views with the subcommittee here today.

S. 796 was introduced by the administration in response to a report by the Secretary of Transportation entitled, "A Prospectus for Change in the Freight Railroad Industry." The purported aim is to enhance the railroads' position by encouraging competition. However, S. 796 simply will increase their revenues at the expense of certain captive shippers.

We will concede economic regulation may be the cause of a portion of the railroads' problem. Nevertheless, in the Secretary's report he cites as equal causes of the problem the changing industrial base and shifts in industry location, labor and management problems, and the subsidization of competing modes. Yet S. 796 deals with only one symptom. Nothing in this bill will cure any of the inefficiencies or labor or technical problems that the rail industry faces. Nothing encourages them to solve their problems.

There are a number of points in S. 796 which will do nothing but harm to agricultural producers.

The bill would allow rates to be increased 7 percent above the inflation rate for the first 5 years of the bill. If we were lucky enough to have an annual inflation rate of say 7 percent, our rates could increase 70 percent in the next 5 years and as producers we would have no recourse but to pay.

The railroads have stated that a revenue to a variable cost ratio of 165 percent will cover full costs of the movement plus return them a profit of 12.5 percent. Wheat in the western district earned them 184 percent. This 19 percent above full costs and a profit can only be termed unearned revenue.

The railroad industry has stated that about two-thirds to three-fourths of their traffic moved below full costs. They have stated that this traffic cannot be expected to sustain the increases which are necessary if the carriers are to achieve a fair return on their investment.

These statements clearly illustrate the intent of the railroad industry to garner as much revenue from its captive traffic as possible. In most areas the only competition the railroads experience is from the trucking industry. Trucks are, except for short hauls, the high-cost form of transportation. If rates on the railroads increase enough, trucks will appear. Presently the railroads lower rates to meet their competition. This essentially will drive the

trucks from the market. Under deregulation the exempt carrier will stand no chance of survival.

We agree that the rate of return for the railroad industry is not very good. However, if we compare the western district to the remainder, the rate of return is not near as bad as when we talk about the industry as a whole. Let us not compare the Union Pacific and the Burlington Northern with ConRail. It is unfair to both the Union Pacific and the Burlington Northern. What we do when we talk of the industry nationwide says that they will all operate the same. It is not so. We cannot apply a solution mainly aimed at the situation in the Northeast and expect it to be workable in the Midwest. Many will take the situation of the Milwaukee Road and claim that is an indication of the situation of the midwestern roads. This is not so. The Milwaukee's problem was in a management decision, not regulation. They have been in trouble since they went transcontinental in 1909.

The abandonment section of the bill simply makes it easier to abandon a line. We think it is necessary to eliminate the lengthy timespan railroads face when they not attempt to abandon a line. The 4-R Act reduced the timespan from previous years. It may not have speeded the process enough.

However, we should not eliminate the public convenience and necessity test in an abandonment. An abandonment case must consider more than dollars. It must consider the need for a line, the physical restructuring of an area, income loss, and many other factors.

When a serious look is taken on S. 796 we must only conclude that it was drafted in a vacuum. We find only one group which is in support of the bill and that is DOT. We grant that some reregulation may be necessary. However, it is important to have as much input as possible. The 4-R Act made some gigantic strides in reregulation; many of its provisions were unused, but for a period of time they were available.

There is one important concept we must make a decision on. Do we want to maintain the railroad industry as a common carrier?

A common carrier is a transportation company that holds itself out as ready to serve the general public for hire at reasonable rates, without discrimination up to the limit of the facilities of the carrier.

This concept has been derived from common law.

The important thing we must do as both a State and Nation is made a decision on a national transportation policy. We have to decide what role each mode is to play, what role they can play depending upon energy efficiency. Before we should consider deregulation a transportation policy must be developed.

Consider the deregulation of air service in Nebraska. What it has meant in most instances has been reduced air service.

The huge farm-held grain reserve has changed things considerably. Marketing may well become more orderly as we emerge from under the monopoly power of those who have exploited our transportation shortcoming in the past. It follows naturally then that the railroad industry will be able to level off their peaks and valleys that have tended to follow our farmers' booms and busts in the past.

Mr. Chairman, Senator Pressler, we thank you from the members of the Nebraska Agricultural Council.

Senator EXON. Thank you very much, Neil. We appreciated your fine testimony. You once again listed the concerns of those of us who are very legitimately concerned about agriculture.

I am going to follow with a question or two, but at this time I would like to give my colleague a chance to ask any questions which he may have. Senator?

Senator PRESSLER. Neil, thank you. Yesterday we heard from Ben Radcliffe, who I am sure is a friend of yours.

Mr. OXTON. Yes.

Senator PRESSLER. He is a good friend of mine. He gave testimony similar to yours. You said in abandonment you should consider the whole social and economic impact. I certainly agree.

Would we then subsidize the railroad or do you think the common carrier responsibility that you discuss later—would that be sufficient to pay the costs?

Let's say the railroad is operating at a loss. Would we subsidize it or where would we get the money to run it?

Mr. OXTON. My answer I think would be predicated upon Nebraska. What I said today is that we feel that our shippers and our farmers are doing their share of supporting the railroads and transportation business. If you look at it in the overall context I am sure some subsidies will be necessary in some areas, Senator. But I don't think they are necessary here.

Senator PRESSLER. Yes. I guess the concept of this business of responsibility of the common carrier which you has been part of our common law for a long time. But this rail deregulation bill, it appears to me, would for the first time say that we are abandoning that.

Would you agree with that? Is that the way you are reading it?

Mr. OXTON. No; I put that in their because I wanted to reiterate that, Senator.

Senator PRESSLER. So you feel we have got to keep the common carrier responsibility and the traditional concept that if somebody takes some rich routes they have also got to take some poor ones and it is the across-the-board common carrier responsibility that has been imbedded in our laws?

Mr. OXTON. Correct.

Senator PRESSLER. Thank you very much.

Mr. OXTON. Thank you, Senator.

Senator EXON. Neil, I agree with your testimony, but I am going to ask you a question which keeps popping up. Maybe you can phrase a response to it which represents not only the Farmers Union but also the larger Agricultural Council which you are representing here today.

You said in your testimony that you believe that the public convenience and necessity part of the law should remain in effect to protect the interests which we think need protection. The other side of that argument of course is the position of the railroads which we have heard in testimony on many occasions and which indicates the problem of a return on investment. Somewhere between 2 and 8 percent.

You properly recognize in your testimony that such a return is not adequate. When we invoke the public convenience and necessity clause, generally we are talking about an industry which has monopolistic power to the extent that their return on investment is so sound that they can indeed take on some unprofitable business.

The railroads, supported by the Department of Transportation, maintain that we have used the supposedly free enterprise system on the railroads and their profits under the present rules and regulations, to help cure our social ills, with some resulting imbalance.

When I speak of imbalance, of course I talk, as you well know, about a situation such as where the closer you are located to the gulf ports the better price you are going to get for a load of wheat.

We know of that imbalance which places us at a disadvantage out here.

Mr. OXTON. Yes.

Senator EXON. Do you really believe, though, that the public convenience and necessity fits in with the continuation of the railroad industry as a free enterprise system either under the present rules and regulations or S. 796, which in essence would make them totally free and allow them only to serve the areas and charge the rates which they want?

Mr. OXTON. Well, you know, you bring out a good point here. And I suppose representing 25 organizations, and you know them as well as I do Senator, perhaps I probably better not answer that question.

But I—we feel, as you related to the telephone service, I think it was you or one of the other Senators, you know, that sometimes a fellow of 2 or 3 miles from the line deserves the same telephone service as does local people. I don't see that we can change that too much.

Senator EXON. That parallel, which I did not raise, although one of the other questioners on the panel did, is in regard with regard to another matter which is before our Commerce Committee, the rewrite of the Communications Act of 1934, which covers all communications, including the telephone.

There is a difference between the telephone industry and the rail industry. It so happens that in the case of telephone, generally speaking, we have a highly profitable industry which has excellent returns on its investment. And under that kind of a structure we can, you know, say OK, and agree that with the telephone industry, if I want to make a call to Ravenna, Neb., the completion of that call is just as important to me or to the person calling from Ravenna, Neb., to Washington, D.C., as if I am calling someone in Omaha.

I only bring that fact out to point to another one of the concerns which we have. I think basically that it comes back, and I suspect that you would agree, to the recognition that since the railroads have historically been regulated and did have at one time a preferred place in the marketplace, we simply cannot eliminate, in a short period of time at the least, all controls and allow railroads to make a divestiture of certain routes that would bring economic ruin, I suggest, to many sections of the country, especially to the rural sections.

Mr. OXTON. Right. What we are calling for here, Senator, is a complete transportation study. And we made that clear in our testimony, that we need to have that. And each mode of transportation ought to be considered—their strong points, their weak points. And I suppose that the railroads would require some subsidization in an area where maybe they have extensive railroad holdings now, where there is all forms of other competition.

They are the ones that are costing us the money. We are paying our way out here. That's the point that I would like to make.

Senator Exon. We had interesting testimony yesterday in Sioux Falls from one man who operated an elevator. He said that the rail line had been abandoned and that the railroad had taken up the track. And he said, in all candor, that this did not hurt him as an elevator operator. He is now shipping by truck and has not had any problems.

But he said that it has not been good for the farmers who supply him with the grains which he sells. What he has had to do is just assess them the excess costs which he has had in going with trucks rather than rail.

It is a complicated problem, and we come back to the captive shipper situation once again, do we not?

Mr. OXTON. I was going to say that man evidently hasn't had the energy situation trickle down to his local elevator yet.

Senator EXON. At least he had not when he testified yesterday afternoon, at about 2:30. It may have changed this morning. I guess that there are no further questions. Thank you very much. We appreciate your coming.

Moving on, then, the next witness is Mr. Robert L. Anderson, Nebraska Grain and Feed Dealers Association. He works out of Lincoln but travels throughout the State. Bob, would you please come forward?

We are glad that you have come to testify today, and we will ask you to proceed at this time.

STATEMENT OF ROBERT L. ANDERSON, NEBRASKA GRAIN & FEED DEALERS, LINCOLN, NEBR.

Mr. ANDERSON. Thank you. Due to some of the comments this morning, I think I am going to leave most of my remarks intact, even though they are in written form.

Senator EXON. We will certainly accept without objection now your full written testimony, of which we have a copy. If you would like to summarize your testimony at this time, we would be glad to hear from you.

Mr. ANDERSON. OK. Senator, I am Bob Anderson, Executive Vice President of the Nebraska Grain & Feed Dealers Association, a trade organization of over 1,100 grain and feed firms within the State of Nebraska. At this time, I want to thank this subcommittee for the opportunity to be able to speak to you about S. 796.

The Nebraska Grain & Feed Dealers Association for some time now has been in opposition to S. 796. Our opposition to the deregulation bill of the railroads can be traced to the thinking which originally set up the Interstate Commerce Commission in 1887. The creation of the ICC came about due to a boxcar shortage in North Dakota with a shipment at that time. It is interesting to note only

18 years previous to the creation of the ICC, in 1869, the railroads for the first time were linked from our east coast to our west coast.

Previous to the creation of the ICC, the railroad barons were given the latitude and freedom to play with rates and services furnished to railroad shippers; therefore, this brought about the creation of the ICC to furnish a dependable, reliable, and fair railroad transportation system in our country.

It now appears if S. 796 is passed into law, we are going to go back to those days previous to 1887 when the railroads would be able to, one, set railroad shipping rates at their own discretion; two, furnish equipment to whomever they see fit and however they desire; three, assess penalties as they see fit; four, abandon branchlines for whatever reasons; five, shift the burden of proof on any contention or question by the grain shipper onto the shoulders of that same shipper; six, totally hamstring the one government agency which now seeks to keep our country's railroad transportation system both fair and reliable—the ICC.

All of the preceding items I have outlined would work to the detriment of grain shippers, especially country elevators, located in small towns in rural Nebraska.

I must remind you, railroad deregulation is not airline deregulation. Railroad grain shippers located within rural Nebraska, called country elevators, are by and large served by one railroad carrier. In essence, this railroad carrier has a monopoly by serving and providing rail equipment to these captive country elevators. Deregulation of the Nation's railroads would have an entire different effect on these country elevator grain shippers and rural Nebraska than did the deregulation of the airline-airports of this country.

An airline can fly into any number of airports (cities). Airlines also only reach about 4 percent of their total potential traffic, whereas railroads reach more than this volume and only compete with two other known carriers which are trucks and barges, which are not really competitors in Nebraska. If the country grain elevator does not have the capability of ordering rail equipment from several different carriers, he is captive. Herein lies the difference between railroad and airline deregulation.

Another area we have hit this morning is the difference between Nebraska and other States, and railroad transportation in Nebraska is not the same as these other States.

Many words and articles have been written in the past few months explaining how the rate of return on the Nation's railroad carriers is less than 1 percent and the railroads need help. The problems facing ConRail, the Milwaukee, and other similarly situated railroads are not generally faced by the rail carriers who serve Nebraska for several reasons.

One, there is very little duplicating railroad line mileage within the State. Two, very few railroad branchlines in Nebraska are proposed as candidates for abandonment. Three, grain production within Nebraska has risen dramatically during the past 15 years due to the extensive expansion of irrigation within our State. Four, the dramatic increase in coal movement through our State from the low-sulphur, coal-producing region in Wyoming.

Now, railroad deregulation does have some detrimental effects on Nebraska farmers and rural areas. For the most part the rail-

roads serving Nebraska are viable and make a decent rate of return. The Railroad Deregulation bill, if passed into law, would have a detrimental effect on rural Nebraska. The passage of this bill would allow the railroads to further centralize and speed up a trend where the big shippers would have the advantage over the smaller shippers; the big cities would have the advantage over the small towns; and the small grain shippers would be forced to join larger units, meaning less competition for the Nebraska farmer's grain.

Today, the country grain elevator in Nebraska must bid 5 to 30 cents less a bushel for farmer's grain if he ships the farmer's grain by truck; deregulation of the railroads would only accelerate the movement of grain by the country elevator via truck shipments. Again, meaning a lower bid for the farmer's grain.

Herein lies one of the problems, as outlined under deregulation of the country's railroads. We seem to be treating the various problems of the railroads as static, with after-the-fact solutions. Our total transportation system within the country is a dynamic, changing system which must continue to adapt to changing trends and to include all of our transportation mediums: railroad, truck, and barge.

If the railroads are deregulated, and more grain must be shipped by way of truck, what effect will this have on our highway transportation system? For instance, a truck with a 10-percent overload causes approximately a 50-percent increase on the wear and tear of that road. And that is according to a South Dakota Extension Service release.

How are we going to pay for this increased damage to our rural roads caused by the abandonment of tracks or the nonmovement of grain by rail from our rural grain shipping points? I believe we need to address the problems of our entire rural transportation system—its causes and effect, not one single entity, but all of them together, as one total, dynamic system.

Re-regulation, we feel, is needed, not deregulation. While the association is interested in addressing the entire spectrum of rural transportation problems, as they face grain, the association is also interested in keeping and making the railroads more viable on a profitmaking basis.

Over a month ago, the association testified before two U.S. Senate subcommittee hearings in North Platte and Lincoln, Nebr., before Senator Ed Zorinsky. Many, many other positive solutions and alternatives were presented, which could be incorporated by the railroads, rather than deregulation as outlined in our testimony at that time, and we have attached a copy of that testimony with this statement.

Grain shippers in Nebraska realize there need to be changes and there need to be improvements made by the railroads in order to stay viable. However, many of these changes and solutions are not outlined within the deregulation legislation. For instance: labor contracts—there is a need for change in labor contracts which pay for work positions that don't work, the Hundred-Mile Rule, which allows for payment for time that is not worked; there are such things as hot-lunch rules, et cetera.

Taxation—the taxes paid to the various governmental subunits by the railroads is fantastic. This taxation should be looked at and brought more on the line with the taxation of other existing businesses.

Change in railroad accounting systems—the railroads use, many times, a different type of accounting system, which allows them to be either worse off or better off than they actually are, compared to other businesses. For instance, where most businesses use a depreciation accounting system, the railroads use a betterment accounting system. Under the betterment accounting system, the asset maintains a constant value, and should it be repaired or replaced with a like item, the repair or replacement are considered to be expenses applied to that year's operations. Too many times maintenance of lines is not performed, and over an extended period of time, a railroad's rate of return on an investment appears lower than it should be.

Contract services—railroads and grain shippers could contract for service by—on the day of arrival of the equipment, how long the equipment would take to go to destination, and then return.

Railroad deregulation as outlined under S. 796 would not address, as I mentioned earlier, some of the true problems which exist with the railroads, for example, labor contracts and taxation. Railroad deregulation would force Nebraska's grain trade to move more grain by truck and eventually force most of our country elevators out of the shipment of grain. If this happens, there will be less competition in Nebraska's grain trade bidding for the farmer's grain and when that happens, the farmer will be receiving less and less for the purchase of this grain.

On behalf of Nebraska's grain trade and Nebraska's farmers, I urge this subcommittee to look for positive alternatives and solutions to the railroad's problems. Not a negative solution, like deregulation, for the railroad's problems—which is not needed.

On behalf of the association, I pledge our support, in any way, to work with this subcommittee, the railroads and the ICC, to implement some of the positive answers and solutions to these railroad problems, which will mutually benefit Nebraska's grain shippers and Nebraska's railroads.

Again, thank you for giving me this opportunity to address this subcommittee.

Senator EXON. Mr. Anderson, thank you very much for your testimony. We have accepted it with the attachments as a full part of the record.

I appreciate the new suggestions which you have made regarding taxation of railroads, and I am hopeful that we will continue to hear positive suggestions from the people whom you represent. We recognize that these people are going to be hit very hard, or that they are going to have to hit their customers very hard because they are the ones who generally handle the grain for the family-size farmers across Nebraska.

Thank you for your testimony. I have no further questions.

Senator Pressler.

Senator PRESSLER. I have two brief questions. Let me also compliment you and thank you for your testimony. Your comments on the ability to enter into contract services interested me.

Do you feel the ability to enter into these contract services with railroads will improve service as well as guarantee a rate level?

Mr. ANDERSON. Well, one of the problems—now the reason I didn't address rates is one of the difficulties we have in the grain trade. We have to know our costs in order to buy from the farmer and sell to somebody else. But on the services, when we contract those—and the reason I propose that is we have two difficulties.

The railroads say to the grain trade, look, you inflate your orders. We are not sure how many cars you have ordered, what you need. And on the other hand, the grain trade says, you know, if you could furnish us the equipment, we wouldn't have to inflate these orders. So under this, the elevator would be able to contract, say, on August 12—he could get three hopper cars, and they would take 15 days to go to the gulf, or it would take 20 days to go to northwest coast, and then return.

If he wanted to reduce that equipment he would know it would be on September such and such; in this way it would help the railroads to know what capital they need to put equipment in, and those orders wouldn't be inflated. And the trade could then reliably sell and buy from the farmer without the present problem—we don't know when we are going to get equipment, and so, therefore, you have to go to a truck bid, which is lower.

Senator PRESSLER. In relation to that, I take it, Nebraska grain and feed dealers, you represent the people also who sell these commercial feeds, Purina, and so forth?

Mr. ANDERSON. Correct.

Senator PRESSLER. And probably sometimes they don't have what you haul a full load. But some of these smaller grain elevators, I guess they would be your outlets, wouldn't they? They would be your members and outlets, the smalltown elevator. They carry a line of feed, Purina, or something like that, don't they? Am I not correct there?

Mr. ANDERSON. Well, Senator, when it comes to shipping with railroads, versus the truck movement, the only restriction I would say on full movement, if it comes to whoever is shipping, if it is feed manufacturers shipping to a feed dealer or a grain elevator shipping, the only times I know when they don't ship a full load is when we have a weight-restricted line. Then the shipment might come on with a bigger hopper car and you can only fill it two-thirds full. We have the same problem with barges on the Missouri here. We can't run full weight.

Senator PRESSLER. But you are in a position to watch the smalltown grain elevators. Are a lot of those just going out of business? Or do they seem to be thriving?

Mr. ANDERSON. What we have found from the questions asked by farm publication, when we went back and checked our records, is we haven't seen any of them per se go out of business. Now we have seen them merge and become a secondary or branch location, you know, either of a cooperative or a bigger independent. We might see some mergers. We checked the past 2 years. There has not been a drastic trend to go out of business. I think their volume of business goes down if they have to move only by truck, for instance.

Senator PRESSLER. Thank you very much.

Senator EXON. Thank you very much, Mr. Anderson. We appreciate your coming.

Mr. ANDERSON. Thank you.

[The statement follows:]

STATEMENT OF ROBERT L. ANDERSON, EXECUTIVE VICE PRESIDENT, NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

I am Robert L. Anderson, Executive Vice President of the Nebraska Grain and Feed Dealers Association, a trade organization of over 1100 grain and feed firms within the State of Nebraska. At this time I want to thank this Subcommittee for the opportunity to be able to speak to you about Senate Bill 796, the Railroad De-regulation Act of 1979.

ASSOCIATION OPPOSES S. 796, RAILROAD DEREGULATION ACT OF 1979

The Nebraska Grain and Feed Dealers Association for some time now has been in opposition to Senate Bill 796. Our opposition to the de-regulation bill of the railroads can be traced to the thinking which originally set up the Interstate Commerce Commission (ICC) in 1887. The creation of the ICC came about due to a boxcar shortage in North Dakota with a shipment at that time. It is interesting to note only 18 years previous to the creation of the ICC, in 1869, the railroads for the first time were linked from our East coast to our West coast.

Previous to the creation of the ICC, the railroad barons were given the latitude and freedom to play with rates and services furnished to railroad shippers; therefore, this brought about the creation of the Interstate Commerce Commission to furnish a dependable, reliable, and fair railroad transportation system in our country.

It now appears, if Senate Bill 796 is passed into law, we are going to go back to those days previous to 1887 when the railroads would be able to:

1. Set railroad shipping rates at their own discretion.
2. Furnish equipment to whomever they see fit and however they desire.
3. Assess penalties as they see fit.
4. Abandon branch lines for whatever reasons.
5. Shift the burden of proof on any contention or question by the grain shipper onto the shoulders of that same shipper.
6. Totally ham string the one government agency which now seeks to keep our country's railroad transportation system both fair and reliable—the Interstate Commerce Commission.

All of the preceding items I have outlined would work to the detriment of grain shippers, especially country elevators, located in small towns in rural Nebraska.

Railroad de-regulation is not airline de-regulation. Railroad grain shippers located within rural Nebraska, called country elevators, are by and large served by one railroad carrier. In essence, this railroad carrier has a monopoly by serving and providing rail equipment to these "captive" country elevators. De-regulation of the Nation's railroads would have an entire different effect on these country elevator grain shippers and rural Nebraska than did the de-regulation of the airline-airports of this country.

An airline can fly into any number of airports (cities). Airlines also only reach about four percent of their total potential traffic, whereas railroads reach more than this volume and only compete with two other known carriers which are trucks and barges, which are not really competitors in Nebraska. If the country grain elevator does not have the capability of ordering rail equipment from several different carriers, he is captive. Herein lies the difference between railroad and airline de-regulation.

RAILROAD TRANSPORTATION IN NEBRASKA IS NOT THE SAME AS OTHER STATES

Many words and articles have been written in the past few months explaining how the rate of return on the Nation's railroad carriers is less than one percent and the railroads need help. The problems facing Conrail, the Milwaukee, and other similarly situated railroads are not generally faced by the rail carriers who serve Nebraska for several reasons:

1. There is very little duplicating railroad line mileage within the state.
2. Very few railroad branch lines in Nebraska are proposed as candidates for abandonment.
3. Grain production within Nebraska has risen dramatically during the past 15 years due to the extensive expansion of irrigation within our state.

4. The dramatic increase in coal movement through our state from the low-sulphur, coal producing region in Wyoming.

Railroad de-regulation means detrimental effects on Nebraska farmers and rural areas. For the most part the railroads serving Nebraska are viable and make a decent rate of return. The railroad de-regulation bill, if passed into law, would have a detrimental effect on rural Nebraska. The passage of this bill would allow the railroads to further centralize and speed up a trend where the big shippers would have the advantage over the smaller shippers; the big cities would have the advantage over the small towns; and, the small grain shippers would be forced to join larger units, meaning less competition for the Nebraska farmer's grain.

Today, the country grain elevator in Nebraska must bid 5-30 cents less a bushel for farmer's grain if he ships the farmer's grain by truck; de-regulation of the railroads would only accelerate the movement of grain by the country elevator via truck shipments. Again, meaning a lower bid for the farmer's grain.

Herein lies one of the problems, as outlined under de-regulation of the country's railroads. We seem to be treating the various problems of the railroads as static, with after-the-fact solutions. Our total transportation system within the country is a dynamic, changing system which must continue to adapt to changing trends and to include all of our transportation mediums: railroad, truck, and barge.

If the railroads are de-regulated, and more grain must be shipped by way of truck; what effect will this have on our highway transportation system? For instance, a truck with a 10 percent overload causes approximately a 50 percent increase on the wear and tear of that road. How are we going to pay for this increased damage to our rural roads caused by the abandonment of tracks or the non-movement of grain by rail from our rural grain shipping points? I believe we need to address the problems of our entire rural transportation system—its causes and effect, not one single entity, but all of them together, as one total, dynamic system.

Re-regulation of the railroads is needed, not de-regulation. While the Association is interested in addressing the entire spectrum of rural transportation problems, as they face grain, the Association is also interested in keeping and making the railroads more viable on a profit-making basis. Over a month ago, the Association testified before two United States Senate Sub-Committee Hearings in North Platte and Lincoln, Nebraska, before Senator Ed Zorinsky. Many, many other positive solutions and alternatives were presented, which could be incorporated by the railroads, rather than railroad de-regulation. Grain shippers in Nebraska realize there needs to be changes and there need to be improvements made by the railroads in order to stay viable. However, many of these changes and solutions are not outlined within the de-regulation legislation. For instance:

1. *Labor contracts.*—There is a need for change in labor contracts which pay for work positions that don't work: the Hundred-Mile Rule, which allows for payment for time that is not worked; hot-lunch rules, etc.

2. *Taxation.*—The taxes paid to the various governmental sub-units by the railroads is fantastic. This taxation should be looked at and brought more on the line with the taxation of other existing businesses.

3. *Change in railroad accounting systems.*—The railroads use, many times, a different type of accounting system, which allows them to appear either worse-off or better-off than they actually are, compared to other businesses. For instance, where most businesses use a depreciation accounting system, the railroads use a betterment accounting system. Under the betterment accounting system, the asset maintains a constant value, and should it be repaired or replaced with a like item, the repair or replacement are considered to be expenses applied to that year's operations. Too many times maintenance of lines is not performed, and over an extended period of time, a railroad's rate of return on an investment appears lower than it should be.

4. *Contract services.*—Railroads and gain shippers could contract for service by—on the day of arrival of the equipment, how long the equipment would take to go to destination, and then—return.

Railroads, shippers, and the government should work together on solutions. Railroad de-regulation is the wrong solution for the right problems. The Association agrees the railroads should make a profitable return. But, since they are similar to a public utility and have some of the same rights and responsibilities of a public utility (monopoly), they have a utility's responsibility to serve its consumers (customers) fairly, equitably, while still making a profit. In Nebraska, over the past two years we have faced a constant shortage of railroad equipment to move our grain to destinations. Any railroad carrier who could have supplied needed railroad equipment to Nebraska's grain shippers would have very easily made an even greater profit, and a very healthy one at that. If the railroads couldn't make a profit on

grain shipments the past two years, then there is definitely something wrong with our railroad transportation system, and it must be with the railroads.

Railroad de-regulation as outlined under Senate Bill 796 would not address, as I mentioned earlier, some of the true problems which exist with the railroads: for example—labor contracts and taxation. Railroad de-regulation would force Nebraska's grain trade to move more grain by truck and eventually force most of our country elevators of the shipment of grain. If this happens, there will be less competition in Nebraska's grain trade bidding for the farmer's grain and when that happens, the farmer will be receiving less and less for the purchase of this grain.

On behalf of Nebraska's grain trade and Nebraska's farmers, I urge this Sub-Committee to look for positive alternatives and solutions to some of the railroad's problems. Not a negative solution, like de-regulation, for the railroad's problems—which is not needed. On behalf of the Association, I pledge our support, in any way, to work with this Sub-Committee, the railroads and the Interstate Commerce Commission, to implement some of the positive answers and solutions to these railroad problems, which will mutually benefit Nebraska's grain shippers and Nebraska's railroads. Again, thank you for giving me this opportunity to address this Sub-Committee, and I look forward to working with you in any way, in finding the solutions to our numerous railroad transportation problems which are being experienced by the grain trade in Nebraska.

**********TESTIMONY**********



STATEMENTS PREPARED

BY

THE NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION
1620 "M" STREET - 2nd FLOOR NORTH
LINCOLN, NE 68508
402/432-1258

PRESENTED BEFORE THE

UNITED STATES SENATE

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTY
SUB-COMMITTEE ON AGRICULTURE MARKETING, PRODUCTION AND STABILIZATION OF PRICES

TUESDAY, MAY 29, 1979 - NORTH PLATTE, NEBRASKA

WEDNESDAY, MAY 30, 1979 - LINCOLN, NEBRASKA

COMMITTEE HEARING TOPIC:

RURAL TRANSPORTATION IN NEBRASKA

Robert L. Anderson - Executive Vice President
Herbert C. Meissner - Association Board of Directors
LeRoy Vineyard - Chairman - Association Transportation Committee
David J. Rasmussen, Association President

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PREFACE

On behalf of the Nebraska Grain and Feed Dealers Association, a sincere thank you goes to Senator Edward Zorinsky for his interest in rural transportation problems and needs in Nebraska.

This interest has been evidenced by the Hearings conducted in North Platte and Lincoln, Nebraska, on May 29 and 30, 1979. These Hearings have given agriculture's voice a chance to be heard before the United State Government.

This Testimony is the result of several year's work of the Nebraska Grain and Feed Dealers Association. It has been published to inform the members of the Association of the problems we are experiencing with rural issues and transportation, to state the position of the Nebraska Grain and Feed Dealers Association, to outline suggestions on attacking some of the problems and some of the work that has been done, and to suggest solutions and alternatives in a positive way, for the benefit of the membership of the Nebraska Grain and Feed Dealers Association.

RESPECTFULLY SUBMITTED:

Robert L. Anderson

Robert L. Anderson
Executive Vice President
NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

LINCOLN, NEBRASKA

BEFORE

THE

UNITED STATES SENATE

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTY

SUB-COMMITTEE ON AGRICULTURAL MARKETING, PRODUCTION AND STABILIZATION OF PRICES

TUESDAY, MAY 29, 1979

NORTH PLATTE, NEBRASKA

POSITIVE SOLUTIONS AND ALTERNATIVES FOR RURAL TRANSPORTATION PROBLEMS

TESTIMONY BY:

Robert L. Anderson

Executive Vice President

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION
1620 "M" Street - 2nd Floor North
Lincoln, NE 68508

402/432-1258

I am Robert L. Anderson, Executive Vice President of the Nebraska Grain and Feed Dealers Association, a trade organization of over 1100 grain and feed firms within the State of Nebraska. I thank this Committee for the opportunity to be able to speak to you today about the various railroad problems affecting the grain and feed trades within Nebraska.

During the past two years, it has been my opportunity and privilege to work with the Association's Board of Directors and Transportation Committee in their attempts to solve the numerous problems with the shipments of grain within and from Nebraska. Today, I will allow the other testifiers to speak about the problems and the documentation of those problems which are quite numerous within our State. My testimony will be limited to only the "POTENTIAL ALTERNATIVES AND SOLUTIONS" to the problems of shipping grain or feed and the receiving of fertilizer and ag-chemicals within our State. The alternatives I will propose are the result of suggestions by many within the trades in Nebraska and my personal outlook for solutions to some of these problems.

My solutions and alternatives to some of these railroad shipment problems in Nebraska will be outlined in the following categories:

1. Equipment
2. Operations
3. Innovative grain shipment methods and rates
4. Taxes
5. Railroad lines and side track
6. General

Equipment Problems Solutions and Alternatives:

1. Better preventive maintenance performed by railroads on rail equipment to prevent breakdowns.
2. Faster maintenance by the railroads on broken-down rail cars.
3. Either penalize railroads for the spotting of non-useable equipment or mandating a replacement car for a non-useable car within 48 hours.

4. Not allow predominantly barge shippers to have the same preference on railroad equipment as predominantly railroad shippers during the off-barge season and during equipment shortages.
5. Rennovate boxcars instead of retiring them; and, moth balling these boxcars during periods of surplus.
6. Have the railroads build combination boxcar-hopper bottom cars for better utilization of front and back hauls plus flexibility of moving more than just a limited type of product or commodity.
7. Use by the railroads of steel or plastic covered tops on open-top rail cars (coal, balast, etc.) to utilize these during their off-season use and at times of equipment shortages for grain.
8. Pay the shipper a premium or per diem for cleaning rail cars or performing minor fixing of these cars.
9. Allow an increasing, sliding scale per diem penalty to be paid the origin railroad carrier for delay in movement of shipments on the destination railroad carrier's line.
10. Allow the payment to the origin railroad carrier by the destination railroad carrier a payment for a car-use allowance plus a straight mileage on the division of revenues between the carriers.
11. Allow the creation of a national rail car and locomotive pool corporation to be formed by the railroads, which can then own rail cars and locomotives, with the incentives of the use of guaranteed government loans or rapid tax write-offs given to the corporation.
12. Change the allowable unloading time at port destination elevators to be the same on all equipment, either 24 hours or 48 hours.
13. Assess "negative" demurrage charges to be paid the grain shipper by the railroad for not moving loaded rail cars within 48 hours.
14. Extend the inspection time requirements on locomotives during equipment and locomotive shortages.

15. Suspend the duty (18%) tariff on Mexican produced rail equipment during equipment shortages.
16. Allow railroads to contract with grain rail shippers for supplying rail equipment during equipment shortages on the following requirements:
    a. Time of arrival of contracted equipment.
    b. Amount of equipment to be provided.
    c. Length of time to ship this equipment to a destination and return it to the shipper.
17. Have the Interstate Commerce Commission set railroad equipment supply formulas for all railroads during equipment shortages.
18. Place on each railroad car a solid state, electronic signalizing device to allow railroads to trace their equipment by computer on an actual location basis.

Operations Suggestions:

1. Renovate the labor rules and contracts for railroad carriers:
    a. Allow local crews to work over-time on certain lines with turn-around problems.
    b. Mandate the elimination of unnecessary work positions (national 51.6% labor cost for all carriers and 65% for Conrail).
    c. Force compulsory arbitration on labor contracts after a last-offer basis between a railroad and their labor negotiators.
    d. Eliminate the 100 mile rule from labor contracts which allow the payment of one day's pay after traveling 100 miles.
2. Ask railroads to evaluate their business practices and accounting practices against similar enterprises on:
    a. Pensions.
    b. Salary.
    c. Maintenance.
    d. Equipment purchases.

3. Ask railroads to redesign their switching yards to facilitate the movement of cars through these switching points and also in assembling cars to be moved quicker from these switching yards.
4. Ask for better and more communications between railroads and shippers (this has improved immensely between the Nebraska grain and feed trades and the railroads during the past six months):
   a. When to expect cars.
   b. Actual rates and rate changes.
   c. Better billing services rather than using mobile agents.
   d. The actual condition of cars.
   e. General information.

Grain Shipment Methods & Rate Suggestions:

1. The use of shuttle trains to expedite the utilization of equipment during equipment shortages (multi-station pick-up of equipment which is shipped intact with power to a single destination and then returned to the same area in the State):
   a. At harvest time from several origin grain shippers to a terminal or sub-terminal.
   b. Allow a first priority basis on distribution of shuttle equipment during rail equipment shortages.
   c. Set up on a point-to-point basis from many origin participating elevators to a single destination.
   d. Use of modified shuttles to provide known arrival times and amount of equipment to be provided to single car shippers.
   e. Have the railroads provide a destination coordinator for shuttles during equipment shortage times.
2. More shipment of grain on origin grades and weights to prevent shipment delays.

3. Have the railroads provide central-point weighing and inspection of grain on single shipment, loaded grain cars to prevent Inspection and Diversion (I & D) time delays.
4. The railroads pick up loaded grain cars within 24 hours during equipment shortages.

Rates:

1. Have railroads provide more grain on-line flat rates, no I & D or transit privileges, to increase utilization of equipment.
2. Have railroads lower their rates, during abundant equipment times, to provide incentives for off-season shipments which can be kept on-line of the carrier.
3. Have railroad carriers equalize their domestic and export rates.
4. Have railroads figure their transportation rates on a zonal or postal-type system rather than tariffs.
5. Re-look at all transit provisions now being provided for in grain shipments.

Tax Suggestions:

1. Set a fairer taxation by state, local, and federal government of the railroads:
   a. Lower local and state taxes on branch railroad lines.
   b. Phase in taxation on railroad line improvements, especially branch-lines, after a delayed period of time.
   c. Allow an increased or rapid depreciation on the purchase of new rail cars or locomotives by the railroads to be used to ship grain.
   d. Lower the tax requirements or equalize tax requirements on the railroads to other industrial uses.

Railroad Line Improvement Suggestions:

1. Repair (slow-order) rail lines on a sooner basis.
2. Better inspection checks by the railroads along with maintenance of their lines to prevent derailments.

3. Set practical guidelines, to allow the railroads to abandon a branch rail line:
   a. Potential export grain volume in the area.
   b. Fertilizer consumption in the area which could be shipped in by rail.
   c. The potential for or the present location of small industry within the area.
   d. Whether railroad has made attempts in the past two years to upgrade the line and whether grain shipping rates have been upgraded.
4. Encouragement of State legislation like the Association's L.B. 507 which would permit railroads, shippers, State government and the Federal Government to jointly improve rail lines within an area.

General Suggestions:

1. Provide for better communication between USDA and the railroads on international crop conditions and their forecasts which could affect the movement of grain on the nation's rail carriers.
2. Support the retention of the ICC as a separate administrative agency to oversee the nation's transportation industry rather than a new agency or one less experienced in railroad matters.

This concludes the list of suggestions, potential alternatives and solutions as I have received them or have added them to the preceding list. Hopefully, they will be of use to this Committee in exploring solutions to our very drastic problems of railroad transportation for Nebraska's grain and feed trades.

I am sure there are other solutions to our present problems which I have not touched on, but please let me leave one last suggestion which might encompass other solutions with this Committee as you seek to find answers and solutions to our railroad problems. "That is an expression which has been floating around the grain trade in recent months by George Santayana, "Those who cannot remember the past are condemned to repeat it." And, I might say, in my own words, "Those who cannot remember the past are condemned to repeat their mistakes over and over again."

Again, thank you for allowing me this opportunity to address this Committee and let me assure you the Association stands ready in any way to work with you in seeking to find solutions to our numerous railroad transportation problems in Nebraska for the grain trade.

Respectfully Submitted:

Robert L. Anderson,
Executive Vice President
NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

LINCOLN, NEBRASKA

BEFORE

THE

UNITED STATES SENATE

COMMITTEE ON AGRICULTURAL, NUTRITION AND FORESTRY

SUB-COMMITTEE ON AGRICULTURAL MARKETING, PRODUCTION AND STABILIZATION OF PRICES

TUESDAY, MAY 29, 1979

NORTH PLATTE, NEBRASKA

POSITION STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION - OPPOSITION TO SENATE BILLS

TESTIMONY BY:

Herbert C. Meissner

Board of Directors

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

1620 "M" Street - 2nd Floor North

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POSITION STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION - OPPOSITION TO SENATE BILLS

As a member of the Senate Agriculture Committee, Senator Zorinsky, you deserve thanks on behalf of the Nebraska Grain and Feed Dealers Association for bringing this hearing to Nebraska. Ny name is Herbert C. Meissner, and I represent the Nebraska Grain and Feed Dealers Association which has 1100-member firms. I am a member of the Board of Directors of the Association and also am the owner of a small country elevator located in Sutherland, Nebraska, Shoup & Sons, Inc. which is located on the Union Pacific railroad.

The purpose for my appearance before this Committee is to record opposition to many concepts which are coming out of the United States Congress. The Association is opposed to the following:

1. Senate Bill #796 - which is a bill in the Senate to allow for de-regulation of the nation's railroad system.
2. Senate Bill #261 - which is a bill promoted by Senator George McGovern and co-sponsored by you, Senator Zorinsky. This bill would create the Grain Sub-Terminal Storage Act of 1979. I also understand that the House has not yet drafted a version of this bill; but the Senate, on a unanimous vote with no opposition, passed this bill on Wednesday, May 23, 1979.
3. Another bill which concerns the industry is House Bill #3042 - which is Representative Weaver's bill for the creation of a National Grain Board within Commodity Credit Corporation to have control on all export grain sales.
4. A concept which is being sought in the states and which may be an approaching piece of legislation in the Nation's Congress which calls for an Interstate Grain Marketing Compact among consenting states.

TRENDS INDICATED BY MOVES IN LAW:

Pool these four concepts together. What remains is a lot less private enterprise (whether farmer owned cooperative structuring or independent structuring) and a lot more government control.

To address government control, I would like to point out to you that it is the Association's contention that if the government would get a little further away from business - we would have a lot less trouble. The grain farmer is subject to the same problems with government that the grain shippers and buyers are saddled with, since the cost is all built in. The grain and feed shippers in Nebraska are subject to the following governmental agencies - both state and federal:

1. Government monitoring and checking of all scales that we use for weight of grain, through the Department of Agriculture.
2. Government checking and inspection of moisture meters for testing and revarification of accuracy on checking grain through the Public Service Commission.
3. Government monitoring and inspection of grain warehouses for proof of records; plus bonding requirements through the Public Service Commission or the Federal Government.
4. ASCS and Commodity Credit regulations on contract storage rates.
5. Government inspection on Corn Borer Certificates to ship to west coast and south regions through the Department of Agriculture.
6. The United States Department of Agriculture and FDA (Food and Drug Administration) grain studies, such as an aflatoxin problem; and also research and checking through the Institute of Agriculture.
7. Grain grades and inspection of the inspectors through the Federal Grain Inspection Service (FGIS.)

8. Food and Drug Administration monitoring on the condition of grain.
9. Interstate Commerce Commission (ICC) requirements on Railroad Shipments.
10. ICC and Public Service Commission requirements on Railroad Shipments.
11. Federal Grain Inspection Service regulations on Grain Shipments.
12. Department of Motor Vehicles requirements on trucking of grain.
13. U.S. Department of Transportation requirements on trucking of grain
14. Public Service Commission requirements on trucking of grain.
15. Department of Environmental Control monitoring dust coming out of the elevator (state).
16. Environmental Protection Agency requirements for building inspections and dust emission (federal).
17. Occupational Safety Health Administration (OSHA) requirements for safe working conditions.
18. Food and Drug Administration on bagging, fumigating, etc.
19. Department of Labor and Wage and Hour laws regulating our payroll.
20. Internal Revenue Service requirements, reports, etc.
21. State Department of Revenue auditors and reporting requirements.

These are some regulators, and there are more we have not mentioned.

SENATE BILL #796 - DE-REGULATION OF RAILROAD INDUSTRY:

In all earnestness, Congress may be addressing the right problem, but we honestly feel that they have the wrong solution. Railroads have complained that they cannot operate at a profit under regulation; that branch-lines are not able to withstand newer hoppers and faster traffic; they claim a lack of efficiency in single and small car-lot shipments; problems with weight-restricted lines; lack of power to raise and lower rates in an efficient manner; lack of freedom in establishing prices; restrictions on negotiations with other rail carriers. They also feel there is too much government red tape and the branch-lines are a losing proposition for them.

Would you believe with all these complaints and un-economical cries, Nebraska's farmers and grain shippers are still able to operate at a profit if they only get rail cars?

Why is de-regulation not the solution? The reason the Nebraska Grain and Feed Dealers Association has taken opposition is the drastic turn-over of the apple cart that would occur.

1. More research is necessary.
2. More review of rules and laws that now affect the railroad industry.
3. Look more closely at making changes, re-regulation and modification rather than erase the 92-year old Interstate Commerce Commission (ICC.)

De-regulation proposals were worked up by "biased persons" for a year and a half. Those affected have only a very short time to respond and protect themselves to defend the current system.

Under de-regulation, let's be honest:

1. New Railroads will not be formed, and no new lines will be added. We'll totally put a stop to any growth from the railroad industry. Thus we have proof of a non-competitive industry. Most lines exist in good condition now and no diversification will exist other than mass movement of the farmer's grain. Railroads began when land was at a premium and they had room to move. Time has long passed and it is time we preserve those existing lines and the locations that are now available. The railroad industry should strive to hang on to those existing lines (whether mainline or branchline) and also the land they do have.
2. De-regulation points to elimination of the single and small-car lot shipper of Nebraska grain. The railroads point to these as unfeasible. But what about the single-car shipments into small communities of

fertilizer, chemicals, feed, seed and machinery to produce the grain. Will they be immediately shut-off?

3. Proposed rates and increases by railroads which take affect would thrust the burden of proof on the shippers. What of the small country elevator handling Nebraska grain? Now the Interstate Commerce Commission is the only place he can turn for help.

   Another point: If the cost of any other supply rises for the grain shipper or farmer, he has elsewhere to shop. What about railroad grain shipping? The non-competitive nature allows him no re-course but to turn to a much more expensive alternative.

   Under the proposal, the ICC would be stripped of investigative powers or other jurisdiction. The small shipper and farmer would lose since he has no rate analyst or expensive legal people to help him; and he would be eventually forced out of business.

4. Sources of the sale of farmer's products would be decreased. Today, the grain farmer is able to shop around for the most competitive bids (highest price.) Under de-regulation, only a few large shippers would control an area.

   Prices would necessarily and obviously be set for the area. This would tend to take away from the private, competitive enterprise and there would be a lessor "check-and-balance" system for keeping the grain buyers honest. A dis-honest dealer does not stay in the business very long in a competitive system.

5. Under de-regulation, contract rates to the grain shipper would not be subject to the approval of the ICC. The shipper and the farmer would lose the right to protest. Total inequity would exist (which was the reason the ICC was started in the first place.) The railroad could fluctuate increases over-night. It is beyond me how a grain dealer, with this loss of protection could sell grain for future delivery dates.

One increase and the grain shipper could be completely burned out.

6. Under de-regulation the railroads could set their own penalties for demurrage - would be better if demurrage were charged for railroads not moving cars when they are loaded.
7. No incentive to supply a fair distribution of grain cars.
8. Branch-lines would be abandoned (although my feeling is that railroads are missing the boat in that this is their last chance to expand).
9. All ICC dispute protections would be lost.
10. Give the shipper and grain farmer the same clout as the drafters of the de-regulation proposal have had. What is the impact on agriculture.
11. Not every state highway and county road are as heavily traveled as the Interstate system - but they are still necessary.

SENATE BILL #261 - SUB-TERMINAL FACILITIES ACT OF 1979:

This bill is another recognition of a problem but a wrong solution. This bill will create a governmental control on grain farmers and shippers. I would only pose the question: If the railroad industry is non-competitive and they should be regulated - then why de-regulation. If the grain farmers and shippers are to remain competitive - why additional regulation. It could force the grain industry to become non-competitive and then cry for de-regulation in a few years. It doesn't make sense.

1. Senate Bill #261 ties very closely with the Railroad de-regulation legislation. In fact, this bill only enhances the other. It addresses the fact that there should be only big sub-terminals and terminals so branchlines can be abandoned and contract shipping can be done.
2. The problem is not a lack of storage. If it were, we would not be crying to get our grain moved.
3. The natural course can and does happen - both cooperative and independents who are building sub-terminals and terminal locations are taking advantage of multi-car rates to the West Coast. This is much more feasible than the government controlling this area.

4. At the present time, Nebraska railroads do not look too bad in the abandonment area. The major carriers are financially strong. Farmers also now have more options under the system, as it exists, to move grain when, how, where they want or if they prefer to store it. The producer still has quite a bit of control over his grain and I don't think we're ready to strip him of that freedom.
5. Rail is still the most economical way to ship Nebraska grain; even on slow branchlines, even in single-car lots. Imagine up-graded lines, more equitable rates and fair treatment to shippers -- the rail industry would profit all the way down to the shipper and Nebraska's farmer.

There has never really been a storage shortage in Nebraska. It's the problem of lack of rail cars to ship the grain. Let's not waste time keeping the grain in the state, but ship it out for a profit. Let's work on the foreign trade agreements and tariffs and better rail systems. The channels all the way down to Nebraska's farmer will benefit.

ADDITIONAL LEGISLATION AFFECTING THE GRAIN INDUSTRY:

Two other areas which we would like to stress are opposition to Representative James Weaver's (Oregon) Bill - H.R. 3042 to create a National Grain Board; and the other area is the trend in many states to create an Interstate Grain Marketing Compact. Shippers, farmers and the entire industry should really cry for help. As I mentioned before, these proposed laws may have the intent to address the right problem -- however they are the most wrong solution. Restrictions rather than enhancement should be reversed.

SUMMARY:

I will again emphasize that the proposed laws do address some current problems. The solutions lie in moving a step beyond and look at the foreign roadblocks in export. The industry (Nebraska's farmer and grain shippers) is not ready for the drastic affects in all the proposals. They are ready for answers to: Why the $3.42 per bushel tariff on wheat into German millers hands?

Why the slow unloading of wheat shipped to China? Why can't I sell my grain today - lack of grain cars again. Let's focus on perfecting and enhancing the system we have.

I sincerely thank you for your time today, and offer the help of the Nebraska Grain and Feed Dealers Association to assist your Committee Senator Zorinsky, to find better solutions to these problems.

Respectfully Submitted:

_____

Herbert C. Meissner

Board of Directors

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

LINCOLN, NEBRASKA

BEFORE

THE

UNITED STATES SENATE

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

SUB-COMMITTEE ON AGRICULTURAL MARKETING, PRODUCTION AND STABILIZATION OF PRICES

WEDNESDAY, MAY 30, 1979

LINCOLN, NEBRASKA

POSITION STATEMENT

TRANSPORTATION COMMITTEE - NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

TESTIMONY BY:

LEROY VINEYARD

CHAIRMAN

TRANSPORTATION COMMITTEE OF THE NEBRASKA GRAIN & FEED DEALERS ASSOCIATION

1620 "M" Street - 2nd Floor North

Lincoln, NE 68508

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POSITION STATEMENT
TRANSPORTATION COMMITTEE - NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

Senator Zorinsky and honored guests, my name is LeRoy Vineyard and I am appearing before you today as the Chairman of the Transportation Committee of the 1100-member Nebraska Grain and Feed Dealers Association. I also appear as an elevator owner from York, Nebraska, with my operation located on the Burlington Northern railroad. The Association's Transportation Committee contains ten members representing seven different districts in the state of Nebraska, who are, in my opinion, a very representative group of knowledgeable grain and feed dealers from Nebraska. The number of years of experience in the total Committee gives me a great deal of confidence in working on solutions to problems and building new ways for keeping Nebraska's grain farmers in business for many years.

In January of 1976, the Association's Transportation Committee was brought back to life after being on the side-lines for a few years. The needs were there. The trend in grain transportation movement was shifting and we saw the needs of Nebraska's grain farmer not being met. Also, problems were brewing with more production and steady increases in grain car shortages; a new word called ABANDONMENT arose and we could see that there were many unfair rates and anti-quated grain rail rate structures popping up all over Nebraska as more grain was being shipped.

PURPOSE OF APPEARING BEFORE COMMITTEE:

The reason I am appearing before this Committee is a very honest one -- Congress has gotten our attention. Believe me, on behalf of the Association, the grain and feed dealers in Nebraska, and Nebraska's grain farmers, we are quite frightened by this trend in Congress. The purpose of my testimony is:

1. To state the Association's opposition to Senate Bill #796 and Senate Bill #261.

2. To outline for this Committee what the Association's Transportation Committee has been able to accomplish in the three and one-half years it has again been active.

3. To suggest an approach of working out:

   A. Immediate and critical problems.

   B. Short-term problems and potential short-term problems.

   C. Long-term economical problems.

OPPOSITION TO CONGRESSIONAL LEGISLATION:

Let's look at the facts:

1. We have two bills in Congress which will have an effect on the movement of grain in Nebraska, on the storage of grain in Nebraska, and the trend for the entire nation and our international marketing structure. Will the out-come of these two bills be what we are looking for? I honestly can say no. Nothing was ever solved by creating another government agency to regulate a competitive industry. Secondly, how can we de-regulate a non-competitive industry without leaving drastic affects on small shippers and grain farmers?

2. The Nebraska Grain and Feed Dealers Association takes strong opposition to Senate Bill #796. This bill to de-regulate the rail transportation industry points to nothing but havoc. Next, the Association also has resolved opposition to Senate Bill #261 - a bill which would allow for government financing of grain sub-terminals.

3. Before we go any further, recognize in your minds who is supporting de-regulation of the railroad industry? Are grain farmers in favor of this proposal? I speak for the 1100-member Association, which lists approximately 859 country elevators, and we feel strong opposition. Where is support coming from on government financing of grain sub-terminals?

I think you'll see an important correlation in comparing notes on these two bills.

4. Let's for a moment consider what de-regulation will mean. The Interstate Commerce Commission's (ICC) authority over maximum rates charged for grain hauling would be repealed after the first five years. Secondly, the ICC would lose its authority for investigations and suspension of rates. The only way a grain rail rate increase could be rejected is if evidence was found that the railroad abused its market power.

The ICC would also no longer have any power over discriminatory rates. Contract shipping would immediately be allowed, without ICC approval and small grain shippers would be left out in the cold. Grain shippers would have to go to court to prove discrimination.

In reality, there will be a change. Rail lines will be abandoned, and small communities will have no where to turn. What will happen when there is a grain car shortage? Compare this to the telephone company and if this industry were no longer regulated. However, de-regulation of the airline industry has a different twist. There is competition - meaning that run-ways are not limited to one airline, nor are airports. This is entirely not the case with a railroad track.

5. Government financing of grain sub-terminals: The Association feels this is a blatant thrust to take away the incentive for private enterprise growing on its own, and small towns being able to grow from the agricultural economy keeping the town alive. This legislation will invite the abandonment of the rail line and small towns will no longer invite other industries for their prosperity.

I cannot go along with this bill. With 859-some country elevators in Nebraska, we're approaching a way to close them up or negate their existence. The grain elevator operator feels he is efficient, that he does have future expansion capabilities and that the days of the country elevator are not over.

Why create another agency to deal out grants and loans for this purpose? Shouldn't private enterprise be able to take care of itself? This bill scares me by the fact that it admits that de-regulation of rail roads is here.

ASSOCIATION TRANSPORTATION COMMITTEE ACTIVITIES:

The following lists four areas the Transportation Committee has been active in and the accomplishments during the past three years:

RATES

August 18, 1977:	Lowered the Burlington Northern-Central Nebraska Feed Grain Rates to Denver.
August 19, 1977:	The Committee improved the rate by lowering the corn, milo and soybean rates on the Union Pacific to the Gulf.
September 17, 1977:	The Committee was able to get incorporated, lower rates on corn, milo and wheat on the Chicago North Western on flat rates to Omaha from Nebraska Origins and better Gulf rates from Nebraska Origins.
September 30, 1977:	Lowered the Burlington Northern Western Nebraska Wheat to Gulf rates.
January 30, 1978:	Created Nebraska Rail Map rates on corn and soybeans to the Gulf; on corn, milo and wheat to Omaha, and Kansas City; and, wheat rates to the Gulf.
April 14, 1979:	Lowered the Burlington Northern - Western Nebraska rate for Wheat to the North west Coast

OTHER RATES TRANSPORTATION COMMITTEE HAS WORKED ON:

The Transportation Committee has also been actively pursuing some additional rate changes for Nebraska grain shippers, which include:

1. The equalization of rates on all commodities to Omaha and Kansas City markets.
2. Lowering Western Nebraska Burlington Northern rates on all commodities, by way of Denver.
3. Equalizing spread on Union Pacific Uni-train - West Coast rates versus single car rates.
4. The Committee has asked the Union Pacific to add single-car, west coast-feed grain export rates.
5. Work on improving flat rates on all commodities for Nebraska carriers to Omaha, Kansas City, Lincoln and Hastings markets.
6. Worked for an extension of the Burlington Northern's allowance of single-car of feed grains to move at the 15-car rate to the Northwest Coast.
7. Conducted a joint meeting with the Nebraska Public Service Commission and Railroad rate officials on Nebraska Grain Rates in July of 1978.
8. Currently doing work on spreads between West Coast and Gulf rates on Uni-train, feed-grain rail shipments.

TRANSPORTATION COMMITTEE WORK ON GRAIN CAR SHORTAGES:

November, 1977:	Transportation Committee and Association Board of Directors formulated policy on railroad grain car equipment shortages.
February, 1978:	Executive Vice-President of the Association met with Rail-road equipment people.
March 1978:	Committee requested help from the Interstate Commerce Commission on grain car shortages.
April 1978:	Interstate Commerce Commission held informal hearing in Omaha for Nebraska shippers to voice their problems with grain car shortages.
May, 1978:	The Association requested the Interstate Commerce Commission to investigate compliance of Commission Service Orders by Nebraska carriers.
May 1978:	Requested special help from Nebraska railroad grain carriers to move wheat from western Nebraska before the summer harvest.
June 1978:	A 25-car shuttle train was arranged from Northwest Nebraska to Omaha.

October 1978: Meetings with Union Pacific officials and Nebraska Grain Inspection Officials were held on modified-system-shuttle on distribution of grain cars.

March 1979: Association held meeting with Missouri Pacific railroad people and equipment officials along with the Nebraska Missouri Pacific shippers on equipment shortages.

April 1979: Twenty Nebraska Burlington Northern grain shippers went to St. Paul, Minnesota to meet with Burlington Northern Officials on rates and equipment shortages.

April 1979: Association Executive Vice-President went to Chicago to the Chicago Northwestern railroad to increase from 25 to 40 cars in the shuttle servicing northwerstern Nebraska.

OTHER TRANSPORTATION COMMITTEE ACTIVITIES:

Other problems that the Transportation Committee has taken action on include:

1. Working on the improvement of accuracy of railroad track scales in Nebraska.
2. Working to determine the railroad's intentions on buying and leasing sidetrack and properties.
3. Protesting Interstate Commerce Commission orders:
   A. Several Ex Parte percentage rate increases.
   B. Increased demurrage charges.
4. Introduced Legislative Bill #507 in the Nebraska Legislature - the Agricultural Branch-line Act of 1979.
5. Taken strong opposition to:
   A. Senate Bill #796 - the proposal for the de-regulation of the nation's railraods.
   B. Senate Bill #261 - the proposal for Government financing of Sub-terminal storage.

AN APPROACH TO SOLVING THE PROBLEMS:

The Transportation Committee has worked in the past, with anyone who is willing to give help, including: 1) Interstate Commerce Commission; 2) United States Department of Agriculture; 3) Nebraska's Congressional Delegation; 4) State Senators; 5) The five Nebraska Railroads (Rock Island, Missouri Pacific, Union Pacific, Chicago Northwestern and Burlington Northern); 6) The Nebraska Public Service Commission; and Committees like yours, Senator Zorinsky. In

fact, the Nebraska Department of Agriculture has just added a hot-line number and help for grain shippers on locating cars and what to do during grain car equipment shortages. This was done through the expansion of the Marketing Department in the past couple months.

A. Immediate and critical problems: It has never been a wise approach to jump in with new laws or just abandoning existing laws to put an end to the immediate situation. If the industry has been able to exist under present laws for many years (the ICC has been around since 1887,) now is not the time to get rid of it. Secondly, it is not the right approach either to create another level of government to finance grain sub-terminals. The perfect example of this is the messed-up inspection and slow-down of grain movement that the Federal Grain Inspection Service has caused. On the immediate, we must look at the current laws. Can they be changed or modified for better results. Most important - is the current law being followed and if it were, would we be having these problems?

B. Short-term problems and potential short-term problems: Perhaps our answer is to work with the problems and try to project what may happen in the near future. When it comes to de-regulation - lets work with the railroad and check their figures and supplies. For storage, I don't think we have a problem if we once get equitable treatment on rates and grain cars to ship our grain. But, just how out-dated are those country elevators? How inefficient are the country elevators? I think we'll once again find that the key is getting grain cars to move the grain. However, if it's money to finance these operations, I think private enterprise (whether cooperative or independent) will be able to work on this themselves, without government meddling.

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C. Long-term economical problems: That's what de-regulation and possible government financing of grain sub-terminals is addressing. The two pieces of legislation are a rash attempt without enough statistics to back up the concepts. Let's do studies. Let's use the Interstate Commerce Commission, USDA, State Departments of Agriculture, and yes, the Nebraska Grain and Feed Dealers Association is anxious to give a hand at looking at "long-term economical problems and looking for solutions."

We cannot, however, jump into new laws and erase existing laws without the facts; and I don't think we have the facts to back up these two rash attempts.

On behalf of the Nebraska Grain and Feed Dealers Association and the Transportation Committee, I would like to sincerely thank this Committee for allowing me to testify today. I would like to stress one area: As Chairman of the Transportation Committee, I need your help. The future of Nebraska's grain industry is at stake, and we are offering our hand to you, and our knowledge about Nebraska's grain industry. I would only urge you not to support either of these two laws, without proper investigation. It appears to me we would be jumping from the frying pan into the fire.

Again, my thanks.

Respectfully Submitted:

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LeRoy Vineyard

Transportation Committee Chairman

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

STATEMENT

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

LINCOLN, NEBRASKA

BEFORE

THE

UNITED STATES SENATE

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

SUB-COMMITTEE ON AGRICULTURAL MARKETING, PRODUCTION AND STABILIZATION OF PRICES

WEDNESDAY, MAY 30, 1979

LINCOLN, NEBRASKA

ECONOMIC STATISTICS AFFECTING GRAIN MARKETING AND TRANSPORTATION

TESTIMONY BY:

David J. Rasmussen

President

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION

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ECONOMIC STATISTICS AFFECTING GRAIN MARKETING AND TRANSPORTATION

Honorable Senator Zorinsky, guests and members of the Committee staff, my name is David J. Rasmussen, and I am President of the 1100-member Nebraska Grain and Feed Dealers Association. I am also the President and owner of Rasmussen Grain and Supply Company, Bradshaw, Nebraska, a small, independent country elevator located on the Burlington Northern railroad. I wish to thank you for the opportunity to appear before this Committee today.

My testimony will address some of the economic statistics and facts as they relate today to the nation and Nebraska's shipment of grain by the railroad industry. These facts, I am hopeful, will assist the Committee in looking for possible solutions and alternatives to the current and immediate difficulties of railroad transportation being experienced by Nebraska farmers, grain shippers and small communities.

With these Nebraska facts, and how they relate to the national and international picture, I think the Committee can get a better understanding of the problems we are experiencing and how they actually exist.

I really feel we should work in an expansion of progression of our agricultural sector. As an example of this theory of expansion: Once something has begun, and the system is progressing, the only way it can continue to expand and be improved is by working on each problem as it appears and developes. However, I do not feel that we need to re-trace the beginning of each problem, nor am I suggesting we try to re-invent the wheel.

Our grain marketing system will not continue unless we center our attention on our export grain markets; give more work to increasing foreign grain markets; or perform better research for domestic use of agricultural products and the like.

All things necessary to improve our grain marketing system are currently in existance:

A. Production is at an all time high through-out the state.

B. We are continuing to work and see better production efficiency.

C. Storage space has been adequate for an efficient storage system and for movement of grain from storage to destination markets, disrupted only by shortage of railroad equipment or trucks to move this grain. Even with the current Federal Crop Reserve programs, Federal assistance has initiated the building of plentiful on-farm storage and an additional increase in commercial storage space will easily handle our Nebraska crops.

D. Railroad mainlines and branchlines still exist in Nebraska. Many of these branch-lines need perfection and up-grading. However, we should not abandon these precious lines because we will never again have the opportunity that was prevalent in the early 1800's, when the railroads were given land and the right to build the existing lines. We need to more efficiently use these existing lines. The structure is there.

E. Grain rail car shortages exist, but efficient usage of cars, through shuttles, Interstate Commerce Commission (ICC) service orders and other existing methods within the law should be strengthened.

F. Re-investment of coal profits in all areas of rail-line effieiency should be a consideration to help the movement of grain.

G. New and innovative ideas are in use and being researched for grain movement including using open-top cars for grain, by installing portable tops, and the like.

H. Domestic buyers and markets are in existence as well as an expanding foreign market.

I. The big wall is the gap between the United States and foreign markets where the government has meddled into controlling or leveraging grain sales.

Based on these thoughts, my testimony is to present the economic overview of Nebraska as it relates nationally and how our Nebraska grain must be moved into domestic and foreign markets, and will also address some railraod statistics and other marketing and production statistics.

The following is information about the grain and feed marketing system and I want to talk about each of these areas:

1. Grain Production Facts.
2. Grain Storage Statistics.
3. Grain Marketing.
4. Exporting of Grain.
5. Rail Equipment Supply and Demand.
6. Rail Equipment Shortages.
7. Turnaround Time.
8. Railroad Economics.
9. Rail Road De-Regulation.

GRAIN PRODUCTION FACTS:

The government cannot control agriculture, but they have tried to control production through the reserve programs. Problems exist in that they cannot predict the weather, domestic consumption or market dominance. Therefore, we are at times faced with a distorted view of the market.

Factors of the recent railroad car crunch (shortage) have been based on some productivity figures. In Nebraska, corn production has risen from

434.3 million bushels in 1969; 534 million in 1972; 628.7 million in 1977; to an estimate of 740.2 million bushels in 1978. This is an increase of 70% alone in Nebraska for increased corn production. In the last five years, national wheat production has been up 80 percent with increased foreign purchases. Along with this, corn, soybeans, feed grains and so on, have also been up (exports).

However, cut backs have occurred in other feed grains other than corn, which is primarily due to increased foreign markets and these other feed grains have remained primarily for domestic consumption. Example: Barley production is down 1 percent; oats production is down 15 percent; and sorghum (including milo) is down 10 percent.

The market has not been able to coordinate this demand with the increases, so prices have tended to stay down. To keep up with this production, however, the late 1977 foreign demand became healthier and prices rose along with the addition of the farmer-owned grain reserve.

GRAIN STORAGE STATISTICS:

At the present time, more storage exists "on-farm" than ever before, reflecting USDA assistance for on-farm storage facilities; commercial building is also on the increase. Private industry has been capable of supplying adequate grain storage on its own, with the only dent to the system being the shortage of rail cars.

With this, the local grain dealer must rely on a line of credit to pay the farmer for his grain. The grain is then moved to larger buyers at a profit (ideally) to both. Without the needed grain cars, dealers run out of ready cash, and must take the brunt of late charges of non-delivered and contracted grain, due to no cars to move the grain. This can result in an estimated loss to the dealer and eventually to the farmer of up to and even exceeding 10 cents/bushel.

GRAIN MARKETING STATISTICS:

Maintenance of current track, better use of grain rail transportation systems and creating a demand for grain & feed exports are extremely important. We have seen a change in the marketing trend since 1972. Prior to that time, we experienced a "demand-pull" system (someone wants grain at higher prices). Now we are experiencing the "supply-push" system (rid the producer of grain at given market prices).

This has thrown a wrench into the way the railroads have handled grain movement. Also, other things which add to the problem are weather conditions, which make grain-barge shipping more difficult when the Mississippi and the Great Lakes become frozen over. Also, rail cars and locomotives are slowed up on snow-covered and blocked tracks during winter months when grain is moving.

Before 1972 with the demand-pull system, we had grain car shortages during harvest, even though Nebraska has mainly two harvest seasons: summer months for small grains and fall harvesting for feed grains. This split and with the movement of grain mainly during harvest made shortages of equipment more sporadic rather than the continuous one we now have.

U.S.D.A. has estimated that grain sales will reach 289 million tons by 1985 and this is 32 million tons over the 1977-78 grain movement. With the devaluation of the U.S. dollar on the world market, making export purchases for U.S. grain have made prices attractive to foreign buyers. Couple the wrench of the grain rail-car shortage, foreign and economic price factors, particularly expensive foreign tariffs and trade agreements, with the minimal barge grain shipments because of scarce availability in Nebraska, and we have disrupted, once again, the profitable grain marketing capabilities for Nebraska producers. Nebraska does have export and out-of-state markets. Nebraska can move by rail grain to the Northwest Coast (Oregon-Washington); Denver; Texas Gulf (Galveston); Kansas City; Omaha; Louisiana Gulf and the Arkansas Poultry Market.

The creation of the Federal Grain Inspection Service and its costly and ridiculous procedures have not, in anyway, helped out our grain marketing from Nebraska. This agency, which began with a budget of 9.3 million dollars, has now grown to a point of 56 million plus dollar budget in 1978. It appears this has harmed more than helped. We don't need the government improving the quality of any portion of the marketing system.

Other problems which exist in the grain marketing channels -- should not be equated with poor storage facilities or origin locations. The problem is in the export area. These include loading and unloading facilities at foreign ports. I say, government and industry must work together to solve these problems. Other countries are currently struggling over this problem, and their government's intervention has not done any magic for them.

Approaches like government control of grain storage facilities, interstate compacts to investigate the grain and feed industry all the way down to the farmer and the ridiculous ideas that a National Grain Board should be established are about as "solution-oriented" as the Federal Grain Inspection Service was; and that is only adding to the problem. It forces the Nebraska farmer and shipper to spend a majority of their time filling out forms, keeping records, meeting standards that are un-necessary or using the correct color of government tape. It almost suffocates us and points to a possible end of Nebraska's farmer and grain and feed dealer.

RAIL EQUIPMENT SUPPLY AND DEMAND:

According to American Association of Railroad's figures, 78 percent of all grain rail movement now is in covered hoppers. As the figures in the graph (see Exhibit A) indicate, if there are 159,766 available covered hoppers for grain movement; and if there are an additional 95,000 privately owned hoppers; plus, if 78 percent of all grain moved is in covered hopper cars - then the 245,893 available box cars do not actually carry any weight but add more dead-weight.

Take the 234,000+ (add private and rail owned) hoppers in inventory, plus what ever number of boxes were used of the 245,893 available: During the first 13 weeks of 1978, carrier placement averaged only 22,389 per week which was 1573 per week less than the same period in 1977. If this could be increased to 30,000 per week, they would average, at best, a turn-around every eight weeks and probably 10-12 weeks would be a more fair assumption.

The USDA has urged the railroad and warned them to buy more grain cars (covered hoppers) to meet the rising need. 17,000 more cars are necessary projecting to 1985. These grain cars are totally worth $612 million in 1978 dollars. Each car approximately will cost $36,000 (twice the cost of 1971).

By the year 2000, as many as 130,000 more grain covered hoppers might be needed which is a 58,000 increase over requirement now. These assumptions are based on 15 trips per year, which has been falling steadily. Fewer cars would be needed if efficiency was incorporated to 20 trips per year, and the factor as mentioned before could be reduced by 5,000 cars to be added to the grain fleet.

It is projected also, that by the year 2000, grain sales will increase by 414 million tons over the current 1977-78 sales of 156 million tons. During the spring of last year, grain rail car shortages averaged 33,000 short per day.

They also warned that the railroads should now plan for an increase in grain traffic, and they should plan on carrying a major share of that grain hauling based on fuel costs and new waterway use charges which will limit their use.

Our grain car shortage is not as bad as a few months ago; actually it has gone from critical to very bad. However, if projections are correct, supplies of box cars will decrease at an increasing rate and grain hoppers will increase at a decreasing rate.

EXPORTING OF GRAIN:

Nebraska shippers now move approximately 30 percent of their corn out of state; and, this has kept pace with increased production.30 percent of their milo; 36 percent of the soybeans produced (does not include meal or oil); and 55 percent of their wheat to either the Gulf or West Coast markets.

The United States share of corn export was 44 percent in 1970 and 1971. This has increased up to 70 percent in the recent year in the share of corn exports. The world has bought 1.7 billion bushels of U.S. corn in each of the three previous years -which is greater than one-fourth of the U.S. annual crop. It is estimated that this will increase to 1.8 billion bushels for the 1978-79 crop year.

The U.S. will meet their obligations of production of 25-30 percent of the world feed-grain exports, even though, as referenced above, other feed grain intentions (oats, barley, sorghum) are all down.

The bright picture is the fact that $25-26 billion dollars of grain export sales are anticipated this year, topping $24 billion dollars last year.

RAIL EQUIPMENT SHORTAGES:

During the Russian purchases and movement of grain in 1972-74, we experienced the largest ever shortage of railcars. This total ran at a daily shortage of 14,234 cars/day. However, last summer, shortages ran at 40,000 cars to the fall drop to 27,000 cars.

What the industry has continually tried to point out is -- grain is where the present and future of the railroads is and will continue. Grain will continue to require movement. It is the oldest industry under our noses. The need will not shift or diminish; the demand will only increase since it is a raw material. The other advantage is no real research is necessary other than better use of existing rail lines, grain cars and grain transportation methods.

TURN-AROUND TIME:

Turn-around time is the length of time a grain rail car experiences once it leaves its origin (elevator), arrives at destination and is returned to the origin location or area. Problems are created when grain cars arrive at locations and are unsuitable for loading, and are lost or broken apart at destination. In March of 1978, 12.6 percent of the fleet of grain boxcars were un-usable on arrival for loading at elevators. This is a high percentage, considering somewhere in the 3-5 percent range is normal.

There has also been a shift in trend from box car usage to hopper car usage. Even though the railroad branch-lines need to be up-graded to handle grain hopper cars, American Association of Railroad statistics show from 1970 through 1977- Boxcar loadings decreased by 2,649,140 and hopper car loadings increased by 763,765.

In 1967, 18 million freight cars were in service - averaging 19 trips per year with a turn around time of every 19 days. In 1977, 16.5 trips per year every 22 days. We are currently somewhere at 15.2 trips per year. The decrease in available cars has come from larger car replacements and out-dated and small cars taken out of service. However, we are not getting better turn around, or efficient use.

To meet the grain movement demand, 17,000 new covered hopper cars are necessary by 1985. However, if the average number of trips per year could increase from the current 15.2 to 20, a decrease of 5,000 cars could stand the load.

RAILROAD ECONOMICS:

Facts show that currently 51 percent of the operating revenue in the railroad industry has gone to labor (Conrail may be as high as 65 percent.) I think this shows a lack of efficiency. This cost has become one of the problems for grain shippers.

Statistics show that 3/4 of railroad traffic produces 130 percent of their variable costs. However, to cover full cost, plus 10 percent profit, the traffic would have to produce revenue at 143 percent of variable costs. The railroads claim that a ratio of 165 is needed on all traffic to attain a profit of 12.5 percent.

In 1975, agriculture used 8.8 percent of rail ton miles while contributing 15.2 percent of the revenue. Coal and lumber use 20.5 percent (coal)[1] and 9.9 percent (lumber) ton miles and furnished 5.4 percent and 3.5 percent revenue respectively. True, their may be some cost difference in handling; however, the figures are interesting.

GETTING THE GRAIN MOVED - NO TO DE-REGULATION:

Why even think of de-regulation? From the beginning, transportation has been in the public interest and has required public investment. During the old "Colonial Road" days, the toll-road lead to the trend of internal improvements. In the early 1800's, there came a national committment to this trend. First, were the canals; after the Civil War, the railroads were constructed with public funds and land; next the state, national and interstate highway systems came about. Meanwhile, the Corp of Engineers improved on the water-ways.

The day the railroad linked the East to the West in 1869, was the step which led to the creation of the Interstate Commerce Commission in 1887. This came about because of continuous disputes/abuses in the system. It was recognized that rail transportation was critical to the survival and all business and communities were dependent on that rail transportation. Since competition relies on equity the Interstate Commerce Commission was necessary. The rail barons played reciprocity games with variations in rates and services - thus the ICC.

Deregulation disrupts the free-marketing enterprise system of grain and feed marketing. Tradition was always for decentralization and the railroads were part

of this trend. The trends in recent years have bent toward centralization and de-regulation would only speed the trend. Big shippers would gain over small shippers. Big cities over small communities. Small grain shippers would be forced to join into larger units; they would disappear whether they were privately owned or farmer-owned cooperatives.

Trucking alternatives would be the way to move grain for the farmer, since no new rail-lines would be added. It still is beyond me why a railroad would want to give up its branch-lines when they will lose them forever. Trucking is un-economical, except for short hauls because of high energy costs and highway congestion. We would only be faced with the same problem with the highway system that we are experiencing with branch-lines in the future. If the railroads raise their rates enough, through de-regulation, trucks will come into an imbalance. But, on the contrary, if the railroads would reduce their rates to keep trucks "off-the-road" they would be meeting "heads-up" in competition, and we could have a decline and imbalance of trucking and the rail system. If this can happen during regulation, imagine de-regulation.

CONCLUSION AND SUMMARY:

The Nebraska Grain and Feed Dealers Association has been aggressively on alternatives and solutions to immediate and present problems; solving the short-term problems to the best of our ability; and looking forward to the next five to ten years for a better grain and feed industry for Nebraska's farmers.

I have really tried to point out some necessary topics and information about grain and feed production, movement and sales in my testimony. Before the Association's Transportation Committee began looking to solutions to these problems and looking for alternatives, all this information had to be available to

make judgements and work on solutions. It is the Association's position that we dare not even think of de-regulation of the railroad industry, especially for the sake of Nebraska's grain farmer.

All this regulation has been presented to us so fast that we have not even had a chance to re-act properly. Along with the de-regulation concept, we also have facing us the potential of government financing of grain storage facilities in Senate Bill 261, which the Association also strongly opposes. One other problem we can see for grain farmers is the proposal of the National Grain Board in House Bill 3042. All these concepts are attempts at solving problems but the Association opposes them by the fact that we think they will only add to our problems. It's sort of like from the "frying pan into the fire;" and this without turning down the heat before we make a move.

We, as dealers in Nebraska, want to protect the free-marketing system and will do all we can to work with your Committee to get to the solutions to our very real problems, and get the grain moving for Nebraska's farmer.

I thank you for the opportunity to testify before your committee and again want to offer our help and information to you.

Respectfully Submitted:

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David J. Rasmussen
President
NEBRASKA GRAIN & FEED DEALERS ASSOCIATION

"EXHIBIT A"

(Courtesy of Farmers Elevator Ass'n of Minnesota)

	Boxes	# Decrease	Hoppers	# Increase
1955	666,238		37,688	
1960	655,418	10,280	61,407	23,719
1965	508,713	46,705	81,753	20,346
1967	454,761	53,952	105,027	23,274
1968	427,206	27,555	118,960	13,933
1969	404,592	22,614	122,566	3,606
1970	386,499	18,093	125,867	3,301
1971	367,833	18,666	130,954	5,087
1972	350,493	17,540	138,099	7,145
1973	332,927	17,566	141,672	3,573
1974	326,484	6,443	150,499	8,827
1975	319,346	7,138	154,302	3,803
1976	304,910	14,436	156,850	2,548
1977	281,663	23,247	158,850	2,000
1978	245,893	35,770	159,766	916

"EXHIBIT B"

NUMBER OF CARS OF GRAIN LOADED BY RAILROAD

AS FURNISHED BY AMERICAN ASSOCIATION OF RAILROADS

From Statement CS-54A

	1972	1973	1974	1975	1976	1977	1978
Union Pacific	94,246	106,941	106,370	92,152	96,926	91,982	114,853
Missouri Pacific	87,125	119,874	98,588	92,195	88,704	94,013	89,268
Burlington Northern	313,939	345,047	318,009	262,652	264,509	232,766	245,000
Rock Island	97,984	112,663	103,275	99,155	85,513	86,872	95,471
Chicago North Western	136,660	183,552	152,772	104,240	97,480	83,787	102,654

Senator EXON. We will move on now to the next Andersen, Robert C. Andersen, representing the Nebraska Cooperative Council of Lincoln.

STATEMENT OF ROBERT C. ANDERSEN, NEBRASKA COOPERATIVE COUNCIL

Mr. ANDERSEN. Thank you.

Senator EXON. Welcome. We are very glad to have you. Mr. Andersen, we have a copy of your testimony here. We will accept that, without objection, for the record.

Maybe you could go through and give us the information which you think particularly highlights the concern of the people whom you represent, especially if you could cover ground different from that which has been covered by the other witnesses, many of whom have overlapping concerns and considerations, probably the same as those of the groups which you represent.

But at this time, we will recognize you, and we appreciate very much your coming.

Mr. ANDERSEN. All right.

Senator Exon, Senator Pressler, my name is Robert Andersen and I am the executive secretary of the Nebraska Cooperative Council, a trade association composed of 235 agricultural cooperatives throughout the State of Nebraska.

These farmer-owned and farmer-controlled marketing supply cooperatives currently are servicing approximately 175,000 members and patrons throughout the State.

On behalf of the executive board and myself, we appreciate this opportunity to share our views pursuant to the Railroad Deregulation Act of 1979 with the subcommittee.

On June 25 and 26, both our legislative advisory committee and executive board met to review the various legislative and regulatory proposals which would have an impact on cooperatives and the membership.

A large amount of the time was spent analyzing S. 796. It was the unanimous conclusion that the distance between the intent and purpose of the bill and its actual impact if enacted would be staggering.

Gentlemen, this is a very comprehensive and confusing bill. It is not only confusing from the standpoint of what it would do but is confusing from the standpoint of interpretation.

According to the DOT officials, the purpose and intent is to give the railroads maximum flexibility to compete among themselves for the provision of freight transportation services.

We wonder if the real impact of the changes would be to permit the railroads to price as they please where they do not have to compete.

If the DOT and railroads are really interested in eliminating regulation which limits the bill to railroads to compete for traffic, one would assume numerous petitions would have been filed as a result of the 4-R Act in 1976, surprisingly only one such request has been made.

The Nebraska Cooperative Council believes the competitive forces should set prices where competition exists but we just as fervently believe that regulation of rates is necessary where one

party to a transaction holds a monopoly power over a service vital to another party to the transaction.

This bill would relax discrimination and predatory pricing rules by setting up new rules on how, when, where a shipper or injured party or ICC should investigate or suspend such a rate.

S. 796 would throw all such responsibilities on the shoulders of a shipper. Currently, the Commission says the railroads publish this rate and we think it's discriminatory because we didn't have to prove it ourselves.

The ICC would evaluate it. If the ICC established that such was indeed discriminatory, railroads would have the responsibility of proving otherwise. Under the bill, the shipper would have to come in and say this is discriminatory and here is the proof after the rates have become effective whereas before, prices could be approved prior to rates becoming effective.

The expense for the prospective shipper and members could prove to be substantial. Currently, the market dominance test is working reasonably well.

The party protesting the rate increase must establish a rebuttal position. Then the burden of coming forth with evidence to prove competition—excuse me, falls on the party best able to do so, the carrier.

If the carrier shows basis of effective competition, he may raise the rate under consideration at will. If the Commission concludes competition doesn't exist, the carrier may raise the rate to the level the Commission finds acceptable.

It's our belief that a railroad free of regulatory constraints wouldn't show much interest in signing contracts or offering rates which might negate its marketing advantage over the captive traffic.

Shippers who have no alternative must be protected from rate-gouging. Existing statutes permit shippers to petition the ICC and require that protection. S. 796 repeals that provision.

The DOT is suggesting in section 107 to allow carriers to change rate on a 1-day's notice. Such will allow any commercial ventures involving transporting of commodities by rail to be finalized without the assurance of what the transportation costs may be.

This DOT concept is built on the assumption that all shippers are billed companies with unlimited computer capabilities to receive and digest rate fluctuations whereas in actuality, it often takes several days for rates to reach rural shippers.

Thirty-days' notice should be maintained to provide shippers adequate time to provide efficient use of their moneys devoted to transportation services.

The legislation provides for abandonment more easily and quickly. Additionally, other railroads can come in and serve existing areas and plant facilities even though they are not located there now.

It's my understanding it would allow railroads the right-of-way to build cross tracks to get there. Abandonment proceedings should try to establish minimum and maximum time in which such can be handled.

I believe if they file and there is no protest within 60 days, they can abandon immediately. If there is a protest, the whole thing should be filed within 240 days.

If you are located on a branch line planning abandonment, the completing of all necessary statements and information requires a considerable amount of time and effort.

While we are in favor of ample time being given in protest against abandonment for the shippers to be represented, we also agree that there are no protests, where points are not using a line, they shouldn't have to carry them for any undue time.

Section 103, investigative rates, in order of setting rates, outlines the Commission may not send rates after enactment and may not investigate the raise after December 31, 1984. Suspension power is an important protection to the agricultural marketers, particularly family farmers who sell their production for a set price less transportation cost.

Refunds paid to multinational trading companies simply do not trickle down to the local elevators and to their farmer customers.

Suspension is the only way to insure that the person who truly pays the freight is not assessed an unduly high charge. Investigative power should not be repealed as they provide a means of testing reasonableness of rates proposals and potential conflict with sections of the Interstate Commerce Act.

Section 109 is of concern in that the results of the proposed bill will be ascertained after enactment. We believe objective studies should be conducted first, then pursued accordingly.

Apparently the DOT proposes to act first and worry about the consequences later. We believe that thorough studies would be very useful. One group beginning to seek these answers to these and other important questions is the Rural Transportation Advisory Task Force. This blue-ribbon panel established by Congress last October and jointly chaired by the Secretaries of Transportation and Agriculture is now actively engaged in identifying the critical problems of America's rural transportation system and in developing solutions to these problems.

The final report of the task force is due in January 1980. Nebraska Cooperative Council generally agrees that the rail industry needs relief in the form of reduced and/or improved regulation rather than total deregulation as indicated in the DOT paper.

We are in opposition to S. 796 in summary for the following reasons:

One, there is no protection to the rail customer regarding rates and services. This bill eliminates any responsibility of the carrier to provide service to their customers.

Two, shipper rates will be at the discretion of carrier, more emphasis will be placed upon contract rates. The railroad will give priority contracts over all the requests for receiving and delivering rates.

Three, it eliminates requirement for established joint rates in connection with other modes.

Four, it will allow carriers to accelerate abandonment procedure with less input by affected shippers.

Five, it will eventually permit railroads to change rates on 1-day's notice.

Six, it will deny shippers the right to object to unreasonable rate levels prior to the effective date.

Seven, it will result in virtual elimination of the ICC and transfer their duties to the DOT. The Cooperative Council and its members are not opposed to change. In fact, we support progressive, realistic change.

We are, however, opposed to legislation that has the potential of destroying a viable rural America.

Senator EXON. Mr. Andersen, thank you very much for your testimony. We appreciate it.

I have just one question. I know that you are not experts in overall shipping problems which exist around the United States or in the rail industry. I gleaned, though, from your testimony at the end and in other places that you are not objecting to change itself.

But you are objecting to this specific piece of legislation S. 796. Would it be safe to say then that you do recognize the difficulties of the rail industry but also you recognize that we should come up with some kind of a more gradual deregulation, while taking into account the concern which has been expressed on many occasions here by the captive shipper, of whom you speak and to whose hardships you refer if service were cancelled or rates were raised?

Mr. ANDERSEN. Oh, precisely, Senator Exon. I think that it would behoove all parties involved to wait until this Rural Transportation Advisory Task Force comes out with their report in 1980, I believe January. Let's see what they have ascertained and go from there.

But to—we fully recognize the problems of the railroad. I think that this has gotten to be kind of common terminology. Everybody earlier today and at these hearings that were held about 2 months ago with Senator Zorinsky, the common theme seemed to be not total deregulation but reregulation.

I think we ought to be very, very careful in this, because I represent the rural interest, and we definitely have a concern out there.

Senator EXON. Thank you very much, Mr. Andersen.

Senator Pressler?

Senator PRESSLER. Let me congratulate you on your testimony. I am very close to the cooperative movement in South Dakota. I appreciate what you are doing.

Your third point in your testimony says that it eliminates the requirement for established joint rates in connection with other modes. Would you want to elaborate on that a little bit, or you could later for the record if you would rather.

Mr. ANDERSEN. Oh, I think the thing I was referring to there was about the rate bureaus. Currently we have the opportunity right now that, if we want to, for example, ship some grain down to the gulf, we can contact Burlington Northern. They would contact the other railroads they would be utilizing as far as the shipment of that grain down there.

They would be getting back to us with what the rates would be, et cetera. It's my understanding, and I want to point out that it's my understanding, this is a very complicated bill if you start reading this through.

Senator EXON. I certainly agree.

Mr. ANDERSEN. But it's our understanding that under S. 796 that you would have to contact each of the respective railroads involved with the shipment of that grain down there.

For example, if you were going the Burlington Northern, then you would have to contact, say, the MKT, any other railroads that would be involved there. To us, this is going to be a costly procedure as far as establishing what rates would be available, et cetera.

This rate bureau, maybe it needs to be amended somewhat, but I don't think the total concept needs to be diluted.

Senator PRESSLER. I notice in your testimony you mention some of the frivolous complaints. If we keep the present regulatory framework, how can we eliminate frivolous complaints of high rates resulting in temporary suspensions of the rate and financially harm the railroad?

As I understand it, a frivolous complaint can be filed about a high rate just more or less out of the blue and the whole thing is suspended.

Mr. ANDERSEN. We don't like to think that we here in Nebraska do that. But I can fully appreciate the concern there.

It looks to me that it's—the opportunity that we have right now in protesting any rate increase prior to the enactment would be perhaps more acceptable route than the alternative.

If there is going to be a question, let's question it prior to enactment. If it is unfair or discriminatory, such could be resolved as I indicated prior to the enactment.

Granted, you probably would have some complaints coming forth that probably are without foundation. I will grant you that.

However, as compared to the alternative in which the rates would go into—be acted upon, then come in with the complaints, I think that would be a very costly measure.

And that costs us money and time as far as attorneys' fees.

Senator PRESSLER. Thank you very much for your testimony.

[The statement follows:]

STATEMENT OF ROBERT C. ANDERSEN, EXECUTIVE SECERTARY, THE NEBRASKA COOPERATIVE COUNCIL

Mr. Chairman and Members of the Subcommittee, my name is Robert Andersen and I am the Executive Secretary of the Nebraska Cooperative Council, a trade association composed of two hundred and thirty-five agricultural cooperatives throughout the State of Nebraska. These farmer-owned and farmer-controlled marketing and supply cooperatives currently are servicing approximately one hundred and seventy-five thousand members and patrons.

Cooperatives are the off-farm extension of the farming operation, making available on a nonprofit cooperative basis, those services which most farmers cannot perform on an individual basis. The United States Department of Agriculture estimates that five out of every six American farmers belong to one or more farmer cooperatives.

Nationally, the annual cost to farmer cooperatives for transportation runs into the billions of dollars, and involves all modes of transportation. Rail transportation, however, accounts for nearly one-half of the total transportation cost of farmer cooperative associations.

On behalf of the Executive Board and myself, we appreciate this opportunity to share our views pursuant to the Railroad Deregulation Act of 1979 with this Subcommittee.

On June 25th and 26th, both our Legislative Advisory Committee and the Executive Board met to review the various legislative and regulatory proposals which would have an impact on cooperatives and their membership. A large amount of that time was spent analyzing S. 796. It was the unanimous conclusion that the

distance between the intent and purpose of the Bill and it's actual impact, if enacted, would be staggering.

Gentlemen, this is a very comprehensive, confusing bill. It is not only confusing from the standpoint of what it would do, but it is confusing from the viewpoint of interpretation.

According to the D.O.T. officials, the purpose and intent is, "to give railroads maximum flexibility to compete amoung themselves and with other modes for the provision of freight transportation services." We wonder if the real impact of these changes would be to permit the railroads to price as they please where they do not have to compete. If the D.O.T. and the railroads are really interested in eliminating regulations, which limits the ability of the railroads to compete for traffic, then one would assume that numerous petitions have been filed as a result of the "Four-R" Act of 1976. Surprisingly, only one such request has been made.

RATE DISCRIMINATION AND REASONABLENESS OF RATES

The Nebraska Cooperative Council, like everyone else, believes that competitive forces should set prices where competition exists. But we just as fervently believe that regulation of rates is necessary where one party to a transaction holds a monopoly power over a service vital to the other party to the transaction. This Bill would relax the discrimination and predatory pricing rules of the railroads by setting up new rules on how, when and where a shipper or injured party or the Interstate Commerce Commission should investigate/suspend such a rate. S. 796 would throw all such responsibility on the shoulders of the shipper. Currently, a shipper can notify the Commission saying, "The railroads published this rate, and we think it is discriminatory because . . . ," but we did not have to prove it ourselves. Then, the I.C.C. would evaluate and determine whether or not it was, indeed, discriminatory. If the I.C.C. established such was indeed discriminatory, the railroads have the responsibility of proving otherwise. Under S. 796, the shipper would have to come in and say, "This is discriminatory and here is the proof." (after the rates already have become effective), whereas before, discriminatory prices could be proved prior to the rates becoming effective. The expenses for that respective shipper and it's members could prove to be substantial in verifying the discriminatory rate.

Currently, the "market dominance" test being applied by the Commission is working reasonably well. The party protesting the rate increase must establish a rebuttal presumption of market dominance by the carrier seeking the increase. Then the burden of coming forth with evidence to prove competition falls on the party best able to do so, the carrier. If the carrier shows a basis of effective competition, he may raise the rate under consideration at will. If the Commission concludes competition does not exist, the carrier may raise that rate to the level the Commission finds acceptable. It is our belief that a railroad, free of regulatory constraints, would not show much interest in signing contracts or offering rates which might negate its marketing power advantage of captive traffic.

Shippers who have no practical alternative but to move needed inputs and/or production over a single railroad or non-competing railroads, must be protected from rate-gouging. The existing statutes permit shippers to petition a neutral third party, the Interstate Commerce Commission, and to acquire that protection. S. 796 repeals that provision.

NOTICE AND PUBLICATION

The D.O.T. is suggesting in Section 107 to allow carriers to change rates on a one-day's notice. Such would allow any commercial ventures involving transporting of commodities by rail to be finalized without any assurance of what the transportation costs may be.

This D.O.T. concept seems to be built on the assumption that all shippers are billion dollar companies with unlimited computer capabilities to receive and digest rate fluctuations; whereas, in all actuality, it often takes several days for any new rate proposals to reach even major shippers in rural areas. The current thirty-day notice period should be maintained to provide shippers adequate time to plan efficient use of their monies devoted to purchasing transportation services.

ABANDONMENTS AND ENTRY

The proposed legislation provides for the abandonment of trackage more easily and quickly. Additionally, other railroads can come in and serve existing areas and plant facilities, even though they may not be located there now. It is my understanding that it would allow railroads the right of way to build across your tracks to get there. Abandonment proceedings have tried establish a minimum time in which

such can be handled. I believe that if they file and there is no protest within sixty days, then they can abandon immediately. If there is a protest, the whole thing has to be filed within two hundred and forty days. It may sound like an adequate amount of time, but if you are located on a branch-line fighting abandonment, the completing of all recessitated statements and information requires a considerable amount of time and effort. While we are in favor of ample time being given in protest against abandonment for the shippers to be represented, we also agree that where there are no protests the points given on a branch-line are not using the line, they should not have to carry them for any undue time.

RATE BUREAUS

This bill would eliminate rate bureaus which are merely a "vehicle" by which the railroads as members can sit down and discuss rate levels among themselves or with shippers. This vehicle was given an exemption from Anti-Trust action. Currently, Nebraska elevators shipping grain to Houston, Texas, for example, by Burlington Northern and Missouri, Kansas & Texas merely need to call Burlington Northern to request the current rates and discuss same. B.N. would then discuss this with M.K.T., come to an agreement, come back to us and say, "Okay, we will announce the proposal and we cannot foresee any problems with it." With the elimination of the rate-bureaus, we would first need to talk to B.N. and then M.K.T., individually, and if there are eight railroads in that route, we would need to talk to each one individually and eventually get them to speak to each of the others. We are agreeable that there needs to be some changes and improvements incorporated into same, however, not the elimination of the concept.

Section 103, Investigation Rates and Order of Setting Rates, outlines that the Commission may not suspend rates after enactment and may not investigate the raise after December 31, 1984.

Suspension power is an important protection to agricultural marketers, particularly family farmers who sell their production for a set price less transportation costs. Refunds paid to multi-national trading companies simply do not trickle down to local elevators and to their farmer customers. Suspension is the only way to insure that the person who truly pays the freight is not assessed an unlawfully high charge. Investigative powers should not be repealed, as they provide a flexible relatively assessable and affordable means of testing the reasonableness of rate proposals or their potential conflict with sections of the Interstate Commerce Act.

Section 109, Studies, is of concern to the Council in that the results of the enactment of this proposed bill will be ascertained after enactment. We believe that objective study should be conducted first and then pursued accordingly. Apparently, the D.O.T. proposes to act first and worry about the consequences later. We believe that thorough studies in several areas would be very useful in shaping a truly effective response to curtail rail revenue and service problems.

One group beginning to seek answers to these and other important questions is the Rural Transportation Advisory Task Force. This blue-ribbon panel, established by Congress last October and jointly chaired by the Secretaries of Transportation and Agriculture, is now actively engaged in identifying the critical problems of America's rural transportation system and in developing solutions to these problems. The final report of the Task Force is due in January 1980.

The Nebraska Cooperative Council generally agrees that the railroad industry needs relief in the form of reduced and/or improved regulation, rather than total deregulation, as indicated in the D.O.T. paper. We are in opposition to Senate Bill 796, in summary, for the following reasons.

1. There is no protection to the rail customer regarding rates and service. The Bill eliminates any responsibility of the carrier to provide service to their customers.
2. Shipper rates will be at the discretion of the carrier. More emphasis will be placed upon contract rates. The railroad will give priority contracts over all the requests for receiving and delivering rates.
3. It eliminates the requirement for established joint-rates in connection with other modes.
4. It will allow carriers to accelerate the abandonment procedure with less input by the affected shippers.
5. It will eventually permit railroads to change the rates on one-day's notice.
6. It will deny shippers the right to object to unreasonable rate levels prior to the effective date.
7. It will result in virtual elimination of the I.C.C. and the transfer of their duties to the D.O.T.

The Nebraska Cooperative Council and its members are not opposed to change. In fact, we support progressive and realistic change. We are, however, opposed to legislation that has potential of destroying a viable rural America.

Senator EXON. Thank you very much, Mr. Andersen.

We appreciate your coming.

The next witness is Marty McNeil, representing the United Transportation Union of Omaha, Nebr.

Marty, come down, please. Welcome to you. We heard from your counterpart in South Dakota yesterday and we welcome you here.

STATEMENT OF MARTIN McNEIL, UNITED TRANSPORTATION UNION, OMAHA, NEBR.

Mr. MCNEIL. My name is Martin McNeil, State legislative director of the United Transportation Union. My office, 206 Farm Credit Building, Omaha, Nebr.

Mr. Chairman, members of the subcommittee, on behalf of the members of the United Transportation Union and residents of the State of Nebraska, I wish to express our appreciation for this opportunity to present our views on a subject which we believe to be most vital to our interest and indeed the interest of all railroad employees of our national transportation system.

United Transportation Union represents conductors, freight men, switchmen, engineers, and operating crews of the railroads traversing the State of Nebraska.

We have upward of 3,000 members in the State of Nebraska and are also an international union.

Mr. Chairman, prior to the hearing, I was approached by representatives of the Brotherhood of Railway-Airline Clerks and Brotherhood of Maintenance-of-Way Employees that wanted me to speak for them as well.

If that is permissible.

Senator EXON. Without objection, I am sure that it would be in order.

Mr. MCNEIL. Mr. Jensen and Mr. Wilson decided I could speak for them with the same type.

Senator EXON. Without objection.

Mr. MCNEIL. I would like to offer a few brief remarks regarding railroad deregulation under S. 796 as it may affect our State's economy.

First, we would object to the portions of S. 796 regarding the abandonment of rail lines. This would hurt our grain shippers as well as all other shippers located on the branch line.

The destruction of rail lines solely because more money can be made by the corporation investing in other aspects of business must not be permitted.

When a railroad line is abandoned, its tracks are torn out and right-of-way sold, that line is gone forever. We oppose this bill for the disastrous effect it would have on those branch line abandonments.

Our smaller communities on these branch lines are already suffering from the shortage of cars they need for the movement of grain. With the enactment of this bill, our small communities would have to hire trucks for the movement of their commodities to a point on the main lines of the railroad.

With the fuel crisis we are facing and railroad transportation proven to be the most economical transportation fuelwise, the use

of another means to haul commodities definitely is not in the best interests.

The protection of the employees against defects of S. 796 are—similarly must be taken into consideration.

Loss of branch lines means loss of jobs. Much of the savings to be gained as a result of provisions of S. 796 will be made at the expense of the industry in terms of job abolishment and transfers. We feel it would authorize end-to-end mergers with almost no governmental control by removing the carrier from ICC jurisdiction.

The effect this would have on presently healthy railroads which compete with the merged railroads could well result in financial disaster because the first victims of an end-to-end merger are not other modes of transportation, but those railroads which compete with the merged railroad.

Any proposal to deregulate the railroad industry must be given careful consideration to protect the consumer, industry, and members within industry.

I wish again to express my appreciation to appear here before you. If you have any questions, I would be glad to try to answer them.

Senator EXON. Mr. McNeil, I thank you on behalf of the committee for your excellent testimony.

We appreciate it very much. I think that we basically covered for the record yesterday any questions which I might have. We certainly have had input from your organization and others similarly affected on this particular bill.

I thank you for coming. I have no further questions.

Senator Pressler.

Senator PRESSLER. Yes, we had some good testimony yesterday from the unions that would be affected and, of course, the jobs that affect human beings are very important.

We do have to address a question, though, and I ask this from the point of view of getting it in the record. I am one who has gotten a lot of support from certain parts of organized labor.

Nevertheless, the question is raised, words like featherbedding and words like if the unions won't help in making some economic changes, you know, are locked in, it becomes a hard question. You are dealing with people's careers.

They work 15 years and if you abandon a line do you have to find equal jobs other places? How do we deal with this complex problem?

Mr. MCNEIL. Well, Senator, we before, and we will again, on an abandonment application. We have negotiated with the railway to decrease the number of crewmen on these jobs. And other than that, with the seniority system rules, they just keep bumping down the ladder until finally the youngest man is out on the street.

Senator PRESSLER. Which is a very harsh thing which I hope we don't have to get into.

Mr. MCNEIL. Yes.

Senator PRESSLER. I am sure we will be hearing more testimony. I ask that to point out some of the issues that are being raised, and across the board, I think in reviewing this whole thing, we have to take a look at it.

But we thank you very much for your excellent testimony.

Mr. McNeil. Thank you.

Senator Exon. Marty, before you leave, just one question to which maybe you could respond, since you are knowledgeable in this field.

We had some testimony yesterday and also over the past weeks on the question of whether we have adequately provided for members of the union through the provisions under which they are compensated in cases where they have lost their jobs.

Could you briefly outline some of the specific objections to the related provisions in S. 796? I want you to comment on the fact that your testimony does not just speak to the good of the members of organized labor but also to the impact that abandonments would have on certain communities.

I know that you have very sincere concerns because I have discussed with you many proposed eliminations of branch line service. But there are things in the bill with regard to protection. Would you comment on what shortcomings there are, particularly from the union standpoint?

Mr. McNeil. Senator, I think probably the best blueprint for employee protection we have would be in your ConRail agreements that were made in the North and Northeast. These were acceptable. Our National Railway Labor's Executive Association and management and Government got together.

These were acceptable on all sides, if they were to be transferred hundreds of miles from their home. They would be given a moving allowance and pick up their work efforts on the other end without loss of pay.

And it's things like this. We have other agreements, like an abandonment, where we would, what they call a Washington job agreements or the New Orleans agreement. We have a lot of trouble with the ICC in applying these provisions of this law.

It's who interprets them. I think our best blueprint is the protect-employee agreement of the ConRail system.

Senator Exon. Even if we had that for the protection of the members of the union, we still have the other concern which you address, that is, the sheer economic loss to the community which happens to be located on a branch line facility or a main line which is abandoned.

Mr. McNeil. Yes. I am very pleased, I am a member of the State rail planning commission here in Nebraska, and we are trying to come up with a plan where we are not going to expect the Federal Government to give us whole subsidies on these lines that are in dire need of help.

We want to share between shippers, labor, and some from the Federal Government, of course.

Everybody reaches in there.

Senator Exon. Thank you very much, Mr. McNeil. We appreciate you coming.

Mr. McNeil. Thank you for letting me.

Senator Exon. The next witness is Mr. James Preston, Nebraska Motor Carriers Association, Lincoln.

STATEMENT OF JAMES PRESTON, NEBRASKA MOTOR CARRIERS ASSOCIATION, LINCOLN, NEBR.

Mr. PRESTON. Thank you.

Senator EXON. Thank you very much for coming.

Mr. PRESTON. Chairman Exon, Senator Pressler. It is a privilege to appear today and I will try to cut out a few items in here since you have received my written testimony previously.

Senator EXON. Let the record say that without objection your full written testimony is accepted.

Mr. PRESTON. Thank you, Senator. My name is Jim Preston. I am the managing director of the Nebraska Motor Carriers Association, a statewide trade association representing the bus and truck industry in Nebraska.

We appear here today to testify on S. 796, generally known as the Railroad Deregulation Act of 1979.

Understandably, it might be somewhat strange that a motor carrier State association would testify and make comments on this particular legislation. However, we are fully aware that in the first place anything that you do in this regard is going to obviously be a frontrunner to what may take place in the future as it pertains to our industry.

Furthermore, we have a great concern, and that is one of wanting to maintain the best overall economic climate possible for our State. Obviously, anything as important as transportation change is also going to have a major impact on the future of our State.

Mr. Chairman, the specific legislation that you are considering here today has far-reaching consequences which in our opinion requires the utmost caution in its deliberations. The ground rules that have been established for nearly 100 years in the railroad transportation industry are now being proposed for drastic revisions.

First, it is important to remind the committee that transportation in America has served this Nation well. It has not been accomplished by nationalization, but it has come about inside the private sector with ground rules established by our Federal and State Governments.

Now, no one is going to suggest that there cannot be some revisions; obviously, there can. Just within the last couple of weeks our industry has caused to be introduced in the House of Representatives, our own Motor Carrier Regulatory Improvement Act of 1979. We are proud of the fact that the chairman of the House Public Works Committee and the ranking minority member of that committee were the principal introducers along with many other leaders in the House.

Additionally, we expect introduction by Senator Warren Magnuson, the Senate version of the same legislation, and while we have some additional distinguished Members of the U.S. Senate that are already committed to serve as cosponsors, we are hopeful that both you, Senator Exon, and you, Senator Pressler, will be cosponsors on that legislation.

This is not fast-conceived legislation but has been well thought out and studied for the past 2 or 3 years and it is designed specifically to modernize many of the aspects of the original Interstate

Commerce Act in the motor carrier field, and not destroy what has served this State and this Nation so well.

The crisis that has been created in our industry with the independent owner-operators of this Nation is certainly a prime example of the need not to throw transportation services to the sky and let the wind scatter them where they may fall. This is a luxury that we cannot accept in America, and quite frankly, the very fact that some of the commodity movements in this Nation being on a for-hire basis but operating outside of the economic controls of the ICC and the public service commissions of the various States have definitely contributed to many of our trouble spots in transportation today.

In our State of Nebraska, as has been true in other States that are agricultural in nature, we hear the hue and cry repeatedly of the boxcar shortage. Members of the committee, that is nothing new. We have had boxcar shortages for years, and I can recall on many occasions with my own family in the grain business in Fairbury, Nebr., where we would go to the local coffee shop in the morning and talk to the train crew, which was known as the local, out of a grain car that day because we were desperate. That was going on 20, 30, and even more years ago.

It may be magnified today because of our increased productivity; but, certainly, the problem of the railroads investing in railroad cars to transport grain with their productivity of those cars probably at the bottom of the totem pole in their equipment utilization, is absolutely understandable as far as their capital investments are concerned.

Yet, all we hear is that you cannot afford to ship grain by truck. Well, part of the reason for this, of course, is the pricing structure by the railroads themselves for their transportation services and the national and international grain marketing operations.

If the Congress of this country would delegate to the ICC the establishment of joint routes and through rates between intermodal operations covering the transportation of agricultural commodities, I would suggest that you could relieve these problems substantially, and immediately, and yet preserve the vast majority of that traffic that is beneficial as a revenue producer, for the railroads.

There is inherent advantages to all modes of transportation. We need to be working hand in glove with the other modes, with the Congress, with the ICC, and the public service commissions to do the job that each of us can do best, and that is to move the commerce in this State and Nation.

Government, however, needs to be the referee. We need to have in this country a national transportation policy that promotes the best interest of all concerned. This needs to be done by the best people available and knowledgeable in transportation today.

S. 796 talks about abandonments and actually makes it much easier and simpler for the railroads if it is determined that revenues do not adequately cover costs of services on certain branch line operations. But why is that such a political football? Again if arrangements were developed and procedures were established between modes you wouldn't have the hue and cry at local levels that you are going to have on any abandonments proposed today.

I submit to this committee that the demand for deregulation of transportation is not motivated by the popular sentiment of Nebraskans or the people of this Nation. There is no ground swell of public opinion for these theories.

The baseless charges repeated constantly about the savings that will accrue to this Nation just don't exist.

Regulation of transportation in this Nation, and specifically in a rural State like Nebraska, was designed to establish balance by providing nondiscriminatory service at equitable rates. The significance of this requirement for a State like Nebraska, its 93 counties and its 668 populated communities, cannot be underestimated. We need, and we are entitled to, the same access to transportation service as are the Nation's populated cities and States.

The medium to small shippers of our great State of Nebraska have profited by their ability to compete with the giants throughout this Nation without concerning themselves about having transportation used as a whipping boy to benefit the industrialized States and the giant metropolitan areas.

We don't need that now, and we don't want it for the future. Whatever you do, gentlemen and members of the committee, please don't rip transportation apart to see if it can be put back together again like Humpty Dumpty. You could be tampering with the very foundation of this great Nation.

Thank you, and if there are any questions, Mr. Chairman, I would be happy to try and answer them.

Senator EXON. Thank you very much, Mr. Preston. We appreciate your summary, and we have accepted your full testimony as a part of the record.

You made a comment about the pricing structure and the fact that we are having some difficulty in moving grain. Certainly I know that you understand the situation, but just for the record, I will say that raw farm products are not covered by rates. I guess what you were pointing to, and I believe I heard correctly, was the fact that because of some outmoded weight and length restrictions on some of the trucks, we have great difficulty in moving grain in interstate commerce as opposed to intrastate commerce. Was that the thrust of your remarks?

Mr. PRESTON. Well, that of course is a part of it, Senator. But the other part of it, of course, is that we do not have presently any type of regulation of the raw agricultural products in truck transportation. If you did have this, where you could affect rates and routes on an intermodal basis, you could correct a lot of the inequities that now exist to the particular country elevators.

There is no reason for this except in a price structure that is basically brought about by the intransit procedures that exist in the rails only.

Senator EXON. We don't have the control of the movement of wheat today by truck inside the State of Nebraska.

Mr. PRESTON. That is correct. Nor is it outside of the State.

Senator EXON. Are you suggesting that it should be?

Mr. PRESTON. I am suggesting that it should be, and if it was you would not have the complications that you have with it today.

Senator EXON. Are you suggesting then that a farmer that has a truck——

Mr. PRESTON. No, sir. I am not suggesting private carriage. Obviously he can do whatever he wants. I am talking about the commercial movement of that product when it moves by truck.

Senator EXON. I see.

Mr. PRESTON. Because you are not talking about the problem with the farmer moving the commodity to first market at all.

Senator EXON. I have no further questions at this time, but I might have some later. I will turn it over to Senator Pressler at this time.

Senator PRESSLER. Now, would you say that there was some reregulation that might be necessary, like this issue of the backhaul? This has to relate to rail a little bit—I suppose they deliver sometimes. Is that an issue? Is their something that should be reregulated? You are against deregulation.

Mr. PRESTON. There certainly has to be some modernization, Senator, of some of the proposals or some of the conditions under which we function. There is no question about this. However, I think that when we talk about such things as the backhaul, keep in mind one man's backhaul is the other man's fronthaul. When you talk about this in respect to our industry, this is a very serious consideration.

What do you haul as a backhaul on an auto transporter?

Senator PRESSLER. Sure. Maybe a one-time trip and then the regularly scheduled carrier has to do it regularly. Would you say—most of your members would be great champions, as I am, of the free enterprise system. Now, do you find yourself a little uncomfortable being in the position of supporting continued regulation?

Mr. PRESTON. Not at all, because you are talking about differentiating on the one hand between governmental regulations brought about by just burdens on business, and economic regulations that provide transportation service to America. I think there is a definite distinction. Unfortunately, many advocates and theorists are not distinguishing between these two concepts.

Senator PRESSLER. Thank you very much for your testimony.

Mr. PRESTON. Thank you, Senator, and welcome to Nebraska.

Senator EXON. Thank you very much, and we appreciate your testimony. I for one will read what you have to say in your full testimony, and I am sure that the other members of the subcommittee will also. We appreciate your coming.

Mr. PRESTON. Thank you.

[The statement follows:]

STATEMENT OF JAMES N. PRESTON, MANAGING DIRECTOR, NEBRASKA MOTOR CARRIERS' ASSOCIATION, INC.

Mr. Chairman, and members of the Commerce Committee of the United States Senate: My name is James N. Preston and I am the managing director of the Nebraska Motor Carriers' Association, a state-wide trade association representing the bus and truck industry in Nebraska.

We appear here today to testify on S. 796, generally known as the Railroad Deregulation Act of 1979.

Understandably, it might be somewhat strange that a motor carrier state association would testify and make comments on this particular legislation. However, we are fully aware that in the first place anything that you do in this regard is going to obviously be a front runner to what may take place in the future as it pertains to our industry. Furthermore, we have a greater concern, and that is one of wanting to maintain the best overall economic climate possible for our state. Obviously, any-

thing as important as transportation change is also going to have a major impact on the future of our state.

Mr. Chairman, the specific legislation that you are considering here today has far-reaching consequences which in our opinion requires the utmost caution in its deliberations. The ground rules that have been established for nearly 100 years in the railroad transportation industry are now being proposed for drastic revisions.

First, it is important to remind the committee that transportation in America has served this nation well. It has not been accomplished by nationalization but it has come about inside the private sector with ground rules established by our federal and state governments.

Now no one is going to suggest that there cannot be some revisions. Obviously, there can. But it seems important at the outset that these changes must encompass first and foremost the assurances that transportation is going to continue to be available to all of America and that our changes, whether it be in rail or trucking, are going to continue to serve the people and the shippers of this nation. Furthermore, this consideration must be done on a nondiscriminatory basis and the rate structure must be established with uniformity so that one geographic area is not provided transportation benefits to the detriment of another.

The crisis that has been created in our industry with the independent owner-operators of this nation is certainly a prime example of the need not to throw transportation services to the sky and let the wind scatter them where they may fall. This is a luxury that we cannot accept in America, and quite frankly, in my humble opinion, the very fact that some of the commodity movements in this nation on a for-hire basis operating outside of the economic controls of the Interstate Commerce Commission and public service commissions of the various states have definitely contributed to many of our trouble spots in transportation today.

In our State of Nebraska, as has been true in other states that are agricultural in nature, we hear the hue and cry repeatedly of the "boxcar shortage." Members of the Committee, that is nothing new! We have had the boxcar shortage for years and I can recall on many occasions, with my own family in the grain business in Fairbury, Nebraska, where we would go to the local coffee shop in the morning and talk the train crew, which was know as the "local," out of a grain car that day because we were desperate. This was going on 20, 30 and even more years ago.

It may be magnified today because of our increased productivity; but, certainly, the problem of the railroads investing in railroad cars to transport grain with their productivity of those cars probably at the bottom of the totem pole in their equipment utilization, is absolutely understandable as far as their capital investments are concerned.

Yet, all we hear is that you "cannot afford to ship grain by truck." Well, part of the reason for this, of course, is the pricing structure by the railroads themselves for their transportation services and the national and international grain marketing operations.

If the Congress of this country would delegate to the I.C.C. the establishment of joint routes and through rates between intermodel operations covering the transportation of agricultural commodities, I would suggest that you could relieve these problems substantially, and immediately, and yet presserve the majority of that traffic that is beneficial as a revenue producer for the railroads.

There is inherent advantages to all modes of transportation. Instead of the giant fights between the truckers and the railroads and the airlines and the barge lines that holds down productivity, adds an additional tax on a mode, or establishes some other typ of governmental restriction that is beneficial to now one, we need to be working hand-in-glove with the other modes, with the Congress, with the I.C.C. and the public service commissions to do the job that each of us can do best . . . and that is to move the commerce in this nation.

Government needs to be the referee. We need to have in this country a national transportation policy that promotes the best interest of all concerned. This needs to be done by the best people available and knowledgeable in transportation today. Economists with theories that if we just "turn them loose," or we just establish "free entry," or if we just eliminate "rate bureaus" all of our problems will be solved. Nothing could be further from the truth!

You establish "free entry" in trucking tomorrow and all you have done is increase the number of trucks on the highway, all vying for the same amount of product. We are not like the airlines. We cannot create more freight tomorrow than is available today. My 7th grade son knows that, but apparently some economists with their theories don't understand it.

S. 796 talks about abandonments and actually makes it much easier and simpler for the railroads if it is determined that revenues do not adequately cover costs of services on certain branch line operations. But why is this such a political football?

Again, if arrangements were developed and procedures were established so that service when needed is available, if not by rail but by truck, then the hue and cry of the local areas would diminish.

If you abandon rate bureaus and eliminate collective rate making, all you are doing is establishing a hodgepodge and throwing every traffic manager in America out to sea to determine what really is going on in the rate world of transportation. Collective rate making simply brings together the unwieldy into manageable conditions establishing a stabilizing system that benefits the public, the shippers, and yes, the carriers themselves. We cannot afford the luxury of reducing transportation to a lottery.

I submit to this committee that the demand for deregulation is not motivated by the popular sentiment of the people of this nation. There is no ground swell of public opinion in this area.

The baseless charges that are repeated constantly about the savings that will accrue to this nation just don't exist.

Regulation of transportation in this nation was designed to establish balance by providing nondiscriminatory service at equitable rates. The significance of this requirement for a state like Nebraska, its 93 counties and its 668 populated communities, cannot be underestimated. We need and we are entitled to the same access to transportation services as are the nation's populated cities and states.

We've got some great communities in our state that have offered farmborn and raised manpower to the productivity of industry. Some of our Nebraska industry has been home grown and some has been attracted from outside our state's boundaries, but all of it has grown and flourished because of the availability of reasonably priced and dependable transportation. Whatever you do, gentlemen and members of the Committee, please don't rip this apart to see if it can be put back together again like Humpty Dumpty. You could be tampering with the very foundation of this great nation.

Thank you.

Senator EXON. Our next witnesses are Mr. Dennis Wright, an attorney representing the Public Power District of Columbus, Nebr., and Mr. Robert Buntain, director of the power division, Nebraska Public Power District.

Gentlemen, will you come forward please at this time?

STATEMENT OF R. DENNIS WRIGHT, ATTORNEY REPRESENTING THE PUBLIC POWER DISTRICT, COLUMBUS, NEBR.; ACCOMPANIED BY ROBERT BUNTAIN, DIRECTOR, POWER DIVISION, NEBRASKA PUBLIC POWER DISTRICT

Mr. WRIGHT. Senator Exon, Senator Pressler, I am Dennis Wright, an attorney for the district. This is Mr. Bob Buntain who is with me today. We have previously submitted the written statement of Mr. Robert Kamber which we would like to have entered into the record.

Senator EXON. Without objection it is accepted.

Mr. WRIGHT. I would like to summarize and touch upon the points that the district has raised through Mr. Kamber's statement. It appears to us the question is really one of regulation or competition. If competition is pervasive in the rail industry, we would be the first to support deregulation. Unfortunately, the Nebraska Public Power District is not an entity which can benefit from deregulation because, and this is the answer that you have all been waiting for, we are a captive shipper.

I would like to explain for a few moments how a utility in the Midwest becomes a captive shipper. Utilities are unique. No. 1, they are probably one of the largest users of the railroad services in the country. Right now NPPD has two large, 600-megawatt utility powerplants, one of which has been completed and the other of which is on the drawing board to be completed in 1981. A third

600-megawatt unit will be completed, if everything goes well, in 1986.

Each of these units is projected to need approximately 1.8 million tons of coal every year for the projected economic life of those plants, about 35 years. That's a lot of coal. And that's a lot of services that have to be rendered by the railroad.

Utilities are also unique because they need a lot of leadtime. That means it takes 5, 6, 7 years of planning, obtaining permits, and obtaining the capital necessary to construct one of these powerplants. For your information, the powerplant that we are building in Sutherland, Nebr., cost us about $337 million for the plant alone. The next plant coming on-line in 1981 is about $354 million. I think we can safely assume the third one will be even more expensive. We are talking about large sums of money.

You have got to get permits, you have got to comply with other Government regulations, primary of which is EPA regulations for new source emission standards and complying with the sulphur content in the coal which we ship. Now, to find compliance coal, as Senator Zorinsky pointed out earlier, you have got to go to the West. He very aptly put his finger on the point that there is indeed a great deal of difference between the many mining areas in Wyoming, Montana, Colorado, et cetera.

You try to determine the Btu content of that coal. You try to determine how much capacity your plant will have in terms of the boilers. What we are talking about here is delivered Btu's. You do all your planning around that. So what do you do to plan for the day when you do become a captive shipper, because ultimately you will. You try to deal with the railroads first by getting an agreement with them as to what the tariff rate will be at the time you need coal, which is usually 5 or 6 years hence.

The railroads respond, fine. We will enter into an agreement at this time, but you have got to do one thing first. You have got to go out and contract for a 20-year supply of coal with a coal producer. The utilties do that. They go out, reach an agreement with the railroad that says very specifically what the rate will be, subject to escalation during this interim period by an agreed upon formula. That is the way utilities have been doing this since about 1969.

With that railroad agreement in hand, the utility thinks, fine, notwithstanding, we may become a captive shipper when we finally site the plant. Everyone understands these plants aren't built on wheels. Once you spend $300, $400 million, that plant is fixed. You can't shove it around anywhere else. But, fine, you have the agreement of the railroad.

Now you go to the coal supplier. You need to get compliance coal because the EPA requires it. To get compliance coal, you go out west because it is low-sulphur coal. You do as the railroad requests you to do; you enter into a 20-year agreement. This is a binding contract which limits your source of coal for that particular plant to one company and one particular mining area.

You know the Btu content of the coal, you know everything about it. You have got a contract for 20 years. Now everything is fine. And you come up to the time that you need to deliver the coal.

In the interim you have spent a lot of other money relying upon what the railroad is going to do for you. You have to connect your plant, and in the case of NPPD, a 19-mile spur track was built from a plant in Sutherland, Nebr., to the BN's main line.

The railroad does not want to spend that kind of money so the utility has to if it wants to connect up. At that point in time you are locked in to that particular railroad. The utility has a coal contract for 20 years. The utility has sited and built its plant. It has constructed 19 miles of railroad track and now for all intents and purposes, there is now only one railroad in the entire United States that can serve that plant.

You can't get coal from other suppliers. The utility has a long term coal contract. The utility can't breach that contract, or if it does, it may suffer the tremendous economic penalties of doing so. Even more importantly, you can't get the coal that you designed your boiler for, because you need a certain Btu and other quality specifications that were taken into account in the engineering of the plant.

In addition, the utility had to go out and spend $7, $8 million to buy the coal cars so the railroads can use them. These coal cars are designed for the specific application that they were intended for, the unit train hauling the coal that the utility contracted for. The utility cannot go out into the spot market or attempt to find coal from other producers. If the utility does it may have breached the coal supply agreement that was entered into at the request of the railroad. Two, many of these spot coal market producers are in the same situation that your coal supplier is; they have committed their resources by contract to other purchasers. They don't have anything to sell.

No. 3, if you go to the small operator, there is no way that the small mine can handle unit train shipments of coal because load-out facilities are not set up to accommodate mile-long trains. No. 4, and in the case of Nebraska Public Power District, by law we are required to ship from one mine in Wyoming because of a Department of Environmental Control order in the State of Nebraska, which says that each and every ton of our coal has to be analyzed for sulphur content prior to the time it leaves the mine in Wyoming. Because of that order, the district had to construct at a cost of approximately $1.5 million special holding facilities, so NPPD's coal could be segregated to make sure that the sulphur content requirements were met. There is no other mine in the entire United States that can do that.

Now we bring the story up to the present. Railroads in the West in many recent ICC cases have refused to honor the agreements that were entered into and relied upon by the utilities. Our neighbors across the way in Iowa, Iowa Power & Light, have had that situation. In the reported ICC decision, the Commission found that the Western railroad in question there had reneged on its agreement. However, the ICC was powerless to do anything about that. In the reported decision, the ICC said the railroad had abused the negotiating process but there was no way to require the railroad to live up to its agreement. Here we are dealing with the present law where regulation is the byword.

Now, with the subcommittee's permission, I would like to make a couple of suggestions as to possible revisions to the pending bill.

Senator EXON. We did not think that we had to ask you for that. We have been asking every other witness. We have not had a chance to ask you yet. We welcome suggestions.

Mr. WRIGHT. I think there are two ways that the committee could approach this. If the railroads truly believe that competition makes regulation unnecessary, if they truly believe that, then this committee should support legislation whereby all carriers would have trackage rights out to the Western coal.

I think the argument and discussion I am presenting here would have application to other shippers, but by necessity, I am limiting this to the utility that I represent.

Now, trackage rights are a vital distinction between applying deregulation to a railroad, and trying to analogize to the motor carriers' situation or the air carriers' situation. Everyone knows that the air carriers have access to airspace. The motor carriers for all practical purposes have ready access to the Nation's highways. But that fact is not true with railroads. Save a few limited exceptions, no railroad but Burlington Northern, in NPPD's case, can pull the coal trains, 1,800,000 tons a year, from that mine in Wyoming to the plant near Sutherland, Nebr. BN owns the track.

Congress should consider opening up the track, pay the railroad fair market compensation and provide for users fees and maintenance and upgrading fees. One would then have competition and the district could support deregulation.

As a second alternative, less desirable than the real competition which we support, this committee should consider legislation which expands upon the contract rate authority which the pending bill has. First of all, providing a right to contract with the railroad on the surface looks like it is a step in the right direction.

Just recently in December, the ICC announced a change of policy, providing that contract rates are no longer illegal per se, and that the Commission will look at agreed contract rates right now. I think you will also note that no railroad has filed one to date, as far as I know. The railroads we deal with have not done so, nor are they inclined to do so at the present time.

But what you need when you are a captive shipper is more than a right to contract. To analogize for a moment, suppose a homeowner here in Omaha were told that he now has the right to contract with a public utility that supplies his electricity. Isn't that a fine right? The utility is not going to bargain with him or her. There is no competition. On the same hand, a railroad is not going to enter into a contract rate and bargain with a captive shipper because there is nothing that motivates a railroad to that.

There are many reasons for a lack of motivation. No. 1, in terms of coal contracts, the railroad knows that the utility is locked in for 20 or 30 years with one coal supplier. They have got you. There is no other way that you can put it. So what motivation is there to enter into a contract rate?

Legislation, I believe, could be enacted to get to the real problem. The real problem is not giving the captive shipper the mere right to negotiate for a contract, but laying the groundwork through legislation to, No. 1, require the carrier to negotiate when the

captive shipper requests it. There is no mandatory negotiation provisions in S. 796. The words of the proposed bill say the railroads may. That is not mandatory at all.

If the law required the carrier to negotiate when the utility or other captive shipper needs it, one could maintain whatever competitive advantage may exist prior to the time that the powerplant is constructed and prior to the time the utility has spent $300 or $400 million.

To maintain the competitive edge needed for bargaining the transportation agreement, we believe legislation should be enacted requiring the negotiation process to begin when the shipper needs it, 5 or 6 years inadvance of the coal deliveries, not a month or two ahead when the utility has no alternative but to go with a single railroad.

We would also submit that once that negotiated rate was reached between the carrier and the shipper, it would remain in effect, and could not be changed, except by an escalation that the parties agreed to.

Now the obvious question is, what if the parties don't agree? You obviously can't legislate people around feelings, emotions, diverse interests. You can't require people to contract.

We submit that if the parties do not agree, then the matter could be referred to the ICC. The ICC would go through its investigative role much as it does today with one exception. Today the ICC has the ability to prescribe the rate which it believes should be effected. We believe that the legislation should be changed to the extent that the ICC must accept either the rate proposed by the railroad or the rate proposed by the shipper. This would be a self-policing mechanism which require the horse trading aspect of rates to be taken out of the process. Under the present situation, it appears to me that it's advantageous for a railroad to go to the ICC with as high a figure as possible and the shipper to come in with a low figure, knowing that the ICC is going to compromise somewhere in between.

There is too much money and too much effort and expense being wasted in ICC investigations and studies. These could be avoided if we had legislation which would promote the negotiating process through the right to enter into contracts at the time the captive shipper requests it.

Two other comments, and I will answer any questions that you might have.

The district does not support the proposed bill with respect to the provision which would eliminate the right of the ICC to suspend rates. We think, based on our prior experience, that a no-suspend rule would be used as a club. If the Commission cannot suspend a rate, the economic burden, while the ICC is investigating the matter for a year or so, is on the shipper. That we think is an unnecessary club, and we think the ICC should have the ability to at least review the respective parties' positions and, if the Commission believes the rate should be suspended, allow that.

Finally, we think that the provision in proposed section 102 dealing with the condition precedent before an ICC investigation can be initiated must be removed as it applies to captive shippers.

The provision requires a utility to show that it has been competitively harmed by the proposed rate. This requirement cannot possibly be met when the shipper is a regulated monopoly such as a utility. The utility is not in competition. A utility can pass through rates. We submit that there would be no way any utility, public or private, could meet that test as set out in section 102 of the proposed legislation.

Obviously, we think that the direction that this subcommittee should take would be one of analyzing this maybe in two parts. One, where there is true competition, consider thoughtfully the advantages of deregulation. But where you have captive shippers, this subcommittee must take the lack of competition into account. Maybe the thoughts which we have offered here might help.

Thank you.

Senator EXON. Thank you, Mr. Wright. I am sure that the members of the subcommittee will be as delighted as I am to hear about a real-live captive shipper. They have been almost as scarce as whooping cranes, according to some testimony which we have received. I appreciate very much your excellent testimony and also your constructive suggestions as to how we might approach this problem of the rail industry, because I think that you probably have sensed the feeling of some of us that we have to do something to help rebuild our total railroad network in the United States.

I have just one question for you. Earlier today, I am sure you were here, we had an official of the Burlington Railroad who testified that there was no such thing in his opinion as a "captive shipper." You may remember that I specifically asked him about that, and he went on to explain that the reason that there is no captive shipper is that, for example, in Nebraska there are parallel lines owned by the Union Pacific Railroad and the Burlington Railroad which would eliminate the captive shippers at least in the areas of those two major carriers in Nebraska.

What is your answer to that explanation, as far as the plants to which you have referred are concerned in their dependence on Wyoming coal?

Mr. WRIGHT. In the case of the powerplant that I had in mind, that statement is inaccurate. The only line that can service that facility is the main line of the BN, of which the district has expended $7 or $8 million to connect up with vis-a-vis the spur line that I had reference to.

I think that the point here, and I hear this all the time, that you are free to go out and obtain coal from other suppliers that are served by other railroads, are refuted in two ways. No. 1, the National Coal Association has recently conducted a survey which indicated that of the coal producers in this country, 85 percent of them are captive to a single rail line. That is nationwide. In the West, which we are dealing with here, it's even worse. Fully 98 percent are captive to a single line. A utility is just not able, by law, by contracts and by geography, to shop around for coal after it has made the commitment to build the plant a certain way.

As I tried to explain, it takes 5 to 6 years to get one of these plants constructed. Once that commitment is made and that financial resource has resulted in a tangible plant sitting out there ready for operation, you are constrained by the EPA, as far as the

quality of the coal that you can use, you are constrained by the contractual obligation that the railroads ask you to enter into in the first place to get coal from a single supplier, you are constrained by the State regulatory authorities which has told NPPD that you have got to test your coal before it leaves that mine.

There is no way that you can, in midstream, shop around for a different coal supplier. You just can't do it.

Senator EXON. Let's say that the Burlington Railroad goes out of business and takes up its track. Are you saying that there is no way that you, by building a bridge across the river and building a new line in Wyoming, could get that Wyoming coal to your plant at Sutherland on a Union Pacific track?

Mr. WRIGHT. That's correct.

Senator EXON. Thank you. I have no further questions. Senator Pressler?

Senator PRESSLER. Thank you for some very excellent testimony and specific suggestions. I am glad to see someone who acknowledges a captive shipper. I think we have several.

But I do have a question regarding contract rates. Do you feel contract rates will provide a captive shipper the protection needed to guard against price gouging by the railroad? If not, what solution would you suggest to protect the captive shipper from possible discriminatory rate practices by the railroads?

Mr. WRIGHT. To answer your first question, no, I do not believe that the present legislation which proposes to allow contract rates goes far enough. As I mentioned in my opening comments, the key to this is bargaining position. The right to contract with a monopoly is no right at all. First of all, the railroads don't have to do it. No. 2, why should they do it when the railroad knows that under the proposed legislation there is no maximum rate authority given to the ICC.

The railroads know the utility is a captive shipper. There is absolutely no incentive on the railroad's part to provide anything but monopoly pricing.

What is necessary is some type of legislation which will equalize the bargaining positions.

Now this can be done two ways. One, through competition, which is a natural equalizer. Or, failing that, requiring the railroads to negotiate at the time the captive shipper requests it. Here's why that is important. Before you build the plant, you may have, as Mr. Lamphier referred to it, options.

You haven't contracted with a coal supplier. You haven't committed to one particular railroad. So there is some limited competition prior to the time that you build your plant.

Now if the railroads were required by law to negotiate at that time when the shipper needs it for financing and other purposes, then you have a somewhat equalized bargaining position which I believe is absolutely crucial. All of these factors would be taken into account. If the railroad contract were then consummated to be effective when the shipments of coal were needed 5 years down the road, then the contract rate would maintain that competitive balance. Hence, no need for regulation.

Senator PRESSLER. Thank you very much.

Senator EXON. Mr. Wright. Thank you very much. We certainly appreciate your testimony.

Mr. WRIGHT. Thank you.

[The statement follows:]

STATEMENT OF ROBERT S. KAMBER ON BEHALF OF NEBRASKA PUBLIC POWER DISTRICT

My name is Robert S. Kamber and I reside in Columbus, Nebraska and am an Assistant General Manager for Nebraska Public Power District (NPPD). I was graduated from Iowa State University in 1950 with degrees of B.S. in Mechanical Engineering and B.S. in Electrical Engineering. I am a registered professional engineer in Nebraska and Colorado and am a member of several professional and technical societies. I am in my twenty-first year of employment with NPPD and have been an Assistant General Manager for approximately six years. In this position I manage and direct the divisions of Power Supply, including power production and fuels management, Environmental Affairs, and Licensing and Quality Assurance.

I have previously testified before the former Federal Power Commission (now Federal Energy Regulatory Commission), the Nebraska Power Review Board, the Nebraska Department of Environmental Control and in state and federal court cases involving utility matters.

The purpose of my statement in this proceeding is to inform the subcommittee of NPPD's reliance upon, and the extreme importance of, western coal and the rail transportation thereof and to state why NPPD opposes certain provisions of Sen. Bill 796 proposed by the Administration.

NPPD is a public corporation and political subdivision of the State of Nebraska. Its management is vested in a Board of Directors consisting of 11 members who are popularly elected from districts comprising subdivisions of NPPD's chartered territory. These districts encompass 85 of Nebraska's 93 counties and portions of two other counties. NPPD operates an integrated electric utility system, including facilities for generation, transmission and distribution of electric power and energy at retail and wholesale.

NPPD presently serves approximately 105,000 customers at retail including retail service in 244 municipalities and communities, and supplies at wholesale the total requirements of 77 municipalities, public power districts and cooperatives. In addition, NPPD provides at wholesale part of the requirements of the City of Lincoln, Nebraska, and also has interconnection agreements with 23 self-generating municipalities pursuant to which such municipalities may purchase part of their requirements from NPPD.

NPPD, as part of its power supply resource program to serve present and future projected loads, has completed one western coal-fired generating unit and has another under construction at its Gerald Gentleman Station near the town of Sutherland in west central Nebraska. Each generating unit is nominally rated at 600 megawatts net. Gentlemen Station Unit No. 1 began commercial operation in April, 1979 and Unit No. 2 is scheduled for commercial operation May 1, 1981. In addition, NPPD is currently implementing plans to construct another 600 megawatt net coal-fired generating unit for commercial operation in 1986 at a new site near Comstock, Nebraska. The selection of and commitment to these plant sites and the design of the units are based, in large part, on the availability of a long term reliable supply of compliance quality low sulfur western coal and transportation of such coal to each power plant at economical costs. During each year of the 35 year estimated life of each generating unit of Gentleman Station the coal usage will be approximately 1.8 million tons per year, or 3.6 million tons per year for both units. It is anticipated that the planned generating unit near Comstock, Nebraska will also burn approximately 1.8 million tons annually.

Western coal for these power plants will be furnished under the provisions of long term contracts which obligate the District to buy coal from specific suppliers and from specific mines for periods which can exceed twenty years. The coal is "compliance coal" which has been purchased to meet EPA regulations.

Transportation of the western coal is and will be by unit trains with NPPD owning the unit train coal cars. Burlington Northern (BN) has agreed to provide the transportation service of approximately 515 miles from a mine in Campbell County, Wyoming to Gentleman Station near Sutherland, Nebraska, via a single line haul pursuant to a negotiated tariff rate adjusted by an agreed upon escalation formula.

The background of the negotiations with BN bears scrutiny and comment. In 1972, approximately six years before Gentleman Station Unit No. 1 was to be in commercial operation, NPPD conducted negotiations for transportation services

with BN and Union Pacific (UP) concurrently with its evaluation of various coal supply proposals and, later, during final negotiation of a coal supply agreement with Atlantic Richfield Company (Atlantic). The negotiations with BN and Atlantic resulted in the lowest delivered fuel cost of any of the alternative combined coal supply and transportation service arrangements. The transportation service negotiations with BN were consummated by a letter agreement between BN and NPPD in 1972 (the "Contract") which provided for a tariff rate(s) to be filed by BN prior to the commencement of the operation of Gentleman Station. The Contract also contained an escalation formula for the rate as well as other tariff provisions.

In reliance on the Contract, NPPD completed construction of Unit 1 of Gentleman Station at a cost of approximately $337,000,000. Unit No. 2 of Gentleman Station is now in the process of being completed at an estimated additional cost of $354,000,000. In order to permit delivery of coal to Gentleman Station, and in reliance on the Contract with the railroad, NPPD constructed approximately 19 miles of spur track connecting Gentleman Station to the railroad's main line near Wallace, Nebraska at a cost of approximately $7,851,000. Unit train coal cars suitable for use by BN were purchased for $7,855,000 and NPPD is purchasing additional unit train coal cars for Unit No. 2 at an approximate cost of $14,850,000. In further reliance upon its Contract with the railroad, NPPD caused to be constructed special facilities at Atlantic's mine to hold its coal at an approximate cost of $1,417,000.[1]

It should be evident that there is a very close relationship between the many diverse parts which function together to bring electricity to consumers. The integrated system consists of three components:

(a) The coal mining or production facilities;

(b) The coal transportation system; and

(c) A power generation unit(s) and transmission system.

It is obvious that the transportation segment is the key link between the coal producer and the utility. Approximately a year after NPPD commenced shipments under the negotiated tariff, BN stated its intention to request a 32-percent rate increase. Because NPPD did not believe that the rate increase was in accordance with the contract, suit was filed to enjoin BN from filing for a rate increase and to determine the parties' rights under the Contract. If BN were allowed to file for and did receive a 32-percent rate increase, the economic impact of the additional transportation costs would amount to something over $800,000,000 over the projected economic life of Unit No. 1 and Unit No. 2 of Gentleman Station.

The above is an example of the enormous advantage a market dominant carrier has over a captive shipper. Once having made the tremendous economic investment in a generating unit, and having contracted for a coal supply, a utility generally has no choice but to ship its coal over the routes of a single western railroad carrier. NPPD, through negotiations and the Contract with BN, tried to maintain the benefit of the limited competition which existed between BN and UP prior to construction of Gentleman Station. These efforts to maintain the benefits of the early competition are now being opposed by the carrier. Furthermore, no legislative relief is envisaged in S. 796.

S. 796 PROVIDES NO PROTECTION FOR CAPTIVE SHIPPERS

Although NPPD is in general agreement with the philosophy of deregulating railroads where competition exists, NPPD cannot support the administration's bill as the proposed legislation affects it and similarly situated utilities which depend upon western coal. It is axiomatic that competition is the best regulator of all; however, where no competition exists regulation is mandatory. In the June 11, 1979 issue of Coal Outlook, a National Coal Association survey reports that 85 percent of all the coal operators in the United States are captive to single rail carriers. As staggering as this figure is, western coal operators responding to the survey indicated that fully 98 percent were captive to single rail carriers. S. 796 completely ignores this problem. Section 102 of the Bill contemplates placing on the captive shipper the burden, and the tremendous expense, of proving that it will be competitively damaged by imposition of the rate complained of and that it is likely to prevail on the merits of any investigation. NPPD fails to understand how these "tests" could ever be met by any utility, public or private. Because for all practical purposes, utilities are regulated "monopolies", the concept of utilities competing

[1] Later in this statement, I discuss the impracticability of NPPD attempting to acquire coal from sources other than those presently contracted for. The special facilities at Atlantic's mine is a case in point. The Department of Environmental Control of Nebraska ordered that NPPD's coal be tested for sulfur content prior to shipment from the mine. As a result, there is no practical way NPPD could accept coal from another source.

with one another is not realistic. If S. 796 became law, one could predict with some certainty that railroads would maintain that a utility could not be competitively damaged within the purview of Section 102 because utilites can "pass through" any rail transportation cost increase to the consumers of electricity. Hence there is no competitive disadvantage. This argument erroneously assumes that the families and other customers of NPPD have virtually unlimited financial resources which they desire to dispose of to keep their lights on. In any event, this section prevents any utility from initiating any investigation from January 1, 1980 through December 31, 1984 with respect to any rate increase.

Correcting the misconception with respect to requiring a utility to prove it has been "competitively damaged" is not enough. Proposed Section 102(4) deals with certain guideposts upon which the Commission must make a specific finding in the event the Commission finds that an investigation of a rate increase is in order. Subsection (C) requires the Commission to determine whether there exist alternate markets or sources of the shipper's goods. This subsection is potentially harmful to utilities and their customers. John M. Sullivan, Federal Railroad Administrator, has been quoted as saying: "If one railroad charges too much for coal shipments, a utility can buy its coal from another supplier." [2]

The NPPD is apprehensive that the above suggestion might be seriously considered by the Interstate Commerce Commission as a ground for turning down a request by a utility to roll back rail rates. No utility can afford the luxury of remaining in the spot coal market. Anyone suggesting that a utility has the ability to drop one supplier in favor of another is uninformed. The District enters into long term coal supply agreements to insure a dependable source of coal which complies with EPA requirements. The District's generating stations are now designed to use a certain quality coal only. The District cannot ignore a long term coal supply contract in order to shop around for cheaper rail rates. Spot market prices for coal have traditionally been much higher than coal purchased under long term contract. In addition, and because of the size of the District's generating stations, larger quantities of coal are needed to keep up with peak season electrical demand. These quantities are not normally available in the spot market. In other words, there is no practical way in which a generating station initially planned and constructed with unit train shipments of western coal in mind can be switched abruptly to new coal suppliers.

If the western railroads are truly willing to achieve deregulation in favor of competition, NPPD respectfully requests that this Subcommittee consider the following. Unlike motor carriers who have general access to the highways and air carriers which may use air space, rail carriers are unable to use other carriers' trackage save a few limited exceptions. In order to achieve competition among western rail carriers, it is suggested that Congress enact legislation whereby all rail carriers may have trackage rights in track now owned by other carriers. Obviously, fair market compensation or user's fees would be due to present owners of the trackage and maintenance and upgrading costs would have to be borne by all users. If this type of legislation were enacted, competition could indeed replace regulation.

As a less desirable alternative to the above, legislation should be enacted requiring railroads and captive shippers to enter into negotiations for long term contract rates if requested by the shipper. S. 796 proposes to add Section 10701a. to the Act which allows carriers and shippers to enter into contracts; however, there are no mandatory provisions requiring the parties to negotiate.[3] Allowing a captive shipper to enter into a contract with a monopoly is no right at all. Where a carrier has market dominance, parameters for negotiations are necessary in order to keep a utility on a somewhat equal footing with a railroad to which the utility is captive. Bargaining on a more equal footing with a carrier might be achieved if legislation adopting the following were enacted:

(1) Carriers should be required to enter into negotiations for a contract rate agreement within a reasonable period after a request to do so by a shipper. This would permit negotiations with a carrier prior to the selection of a plant site while alternative route/carriers may still exist.

(2) The carrier should be required to submit relevant and appropriate cost data which forms the basis of the carrier's proposed negotiated rate. This data should be required on an industry standard basis.

(3) A negotiated rate should remain firm and be escalated by an agreed to formula until the tariff or contract rate is filed.

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[2] Coal Outlook, June 25, 1979.

[3] The Interstate Commerce Commission has recently announced a change of policy whereby "contract rates" are no longer considered to be unlawful per se. The Commissioin has determined to review individual contract rates on a case by case basis. This change of policy is not enough however.

(4) In the event that the shipper and the carrier do not reach an agreement as to the long term contract rate, the Commission should be empowered to select the rate for the subject movement. The Commission's selection would be limited to the rate proposed by the carrier or the rate proposed by the shipper. The Commission could not substitute its independent judgment for that of the carrier and the shipper.[4]

Legislation adopting the above principles would help to provide proper protection to equalize the negotiations between a market dominant carrier and captive shipper.

NPPD believes that the definition of market dominance set out in Section 202(c)(i) of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law No. 94-210 ("4R Act") is a suitable and flexible test which should not be disturbed.

In conclusion, it is incumbent upon this Subcommittee to understand that a precipitous passage of S. 796 would leave utilities situated like NPPD completely subject to monopoly pricing by the railroads. S. 796, while containing certain salutary provisions for needed deregulation of the railroads, falls short by completely omitting adequate protection for captive shippers. Passage of S. 796 would, I believe, result in tremendous inflation, and an undeserved additional economic burden on all of us who use and depend upon electricity.

Senator EXON. Next we will call on Mr. Raymond Cloutier, plant manager, Allied Chemical Co., Omaha.

Mr. Cloutier, would you come forward, please?

Welcome. Thank you. We appreciate your patience. You have been here a long time. We are very glad to have you.

Will you proceed at this time?

STATEMENT OF RAYMOND P. CLOUTIER, PLANT MANAGER, ALLIED CHEMICAL CORP., OMAHA, NEBR., ON BEHALF OF ALLIED CHEMICAL CORP.

Mr. CLOUTIER. Thank you. Mr. Chairman, members of the committee. My name is Raymond P. Cloutier. I am manager of Allied Chemical Corp.'s plant located at LaPlatte, Nebr., and appear before you to comment on the Department of Transportation's bill S. 796 to deregulate the railroads. At the outset I will briefly describe our plant operation. The plant produces some 350,000 tons of product consisting of anhydrous ammonia, urea, and nitrogen fertilizer solutions, et cetera. The Burlington Northern serves the plant exclusively and handles approximately 1,000 carloads of inbound and outbound products per year. The plant is dependent on rail service and must receive switching service daily in season.

To furnish an idea of the plant's importance to the economy in the State of Nebraska, the following data is furnished:

It employs 254 people;

It represents fixed capital investment of $55 million—this is on actual cost basis; not replacement costs;

It generates freight revenue of $1 million per year;

It maintains a payroll of $5 million per year;

It pays $500,000 in property and sales tax;

The plant purchases some $12.5 million in local goods and services.

Of further significance to this hearing is the fact that Allied is a member of the Committee of Railroad Shippers (CORS). The committee consists of 14 companies that are substantial rail shippers. In fact, the members of the committee represent some of the Nation's largest users of railroad freight services. They are dependent

[4] The Commission should retain its power to suspend a rate. S. 796 proposes to delete this important provision from § 10707 of the Interstate Commerce Act. A no-suspend rule could become a "club" to be used against a captive shipper during the negotiation process.

on an effective, economically healthy railroad industry, just as the railroads are dependent on the continued business and confidence of the committee's members and other substantial users of rail freight service.

The committee members also share the concerns and problems of smaller shippers, whether farmers or small businessmen. Many of the members have small facilities as well as large ones. Thus all of us—large and small shippers alike—are wholly dependent on the maintenance of a viable and economically healthy railroad system.

The committee offered a number of significant modifications to the legislative proposal submitted by the Department of Transportation (S. 796). It agrees with the Department in that reliance on market forces is required to enhance the railroads' competitive and financial position.

As a general rule, we support the notion that railroads should be treated like any other industry and that wherever possible competitive forces should be the primary factor in railroad service and pricing decisions.

This being said, however, we must stress that we do not favor total deregulation under all circumstances. We deliberately use the term "regulatory reform" rather than "deregulation." We believe there are circumstances where continued regulation of the railroad industry service and ratemaking decisions is necessary.

Where economically practical transportation alternatives for users of rail service are absent, some limits on railroad rate increases are necessary. In our opinion, there is no point in enacting legislation to bolster the railroads unless it results in a system responsive to the needs of existing and potential customers. We stress the need to protect the legitimate interest of the captive shipper.

Allied recently changed its distribution philosophy for shipping fertilizer. We are now attempting to establish inland terminals located on railroads closer to the user to develop better market penetration and to reduce the length of truck hauls.

For example, we recently established a fertilizer distribution terminal at Perry, Nebr., located exclusively on the Burlington Northern.

A special freight rate was negotiated with the BN which requires Allied to ship 10 jumbo tank cars at one time from LaPlatte, Nebr., to Perry, Nebr. Under annual volume requirements of the tariff we must ship 20,000 tons during the first year of operation, 30,000 tons in the second year and 40,000 tons during the third year. The economics of this arrangement permit Allied to ship rail to Perry, Nebr., for truck pickup by local customers. Thus the 300-mile truck move from LaPlatte is not necessary. This type of operation is also important to the conservation of fuel.

The initial establishment of the terminal is being followed by studies to investigate the possibility of establishing other rail terminals. The result will likely be more energy-efficient rail hauls and less truck. Rails average about 220 ton-miles of freight for every gallon of fuel compared with 70 ton-miles per gallon for common carrier truck.[1]

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[1] See Yearbook of Railroad Facts (861), 1979 edition.

A matter of concern, however, is that the movement to Perry, Nebr., is captive to the railroads. If the railroads are deregulated, as suggested in the DOT bill, we will need assurance that the freight rate will not be raised to an unreasonable level. Allied has invested $2 million in railroad tank cars and in the facilities at Perry, Nebr. Thus it will be difficult and expensive to change this operation to another mode. Maximum rate control over monopolistic pricing is essential.

In short, total deregulation of rates could make many captive plants and facilities noncompetitive and in the end destroy sources of carrier revenue. Therefore, Allied's position here today, and with the CORS group, has three principal objectives:

First, minimize Government regulation of railroad rates; with adequate maximum rate protection for captive shippers.

Second, stimulate the railroads and shippers to negotiate rates and enter into contract service agreements which give the railroads long-term traffic commitment and assure shippers of service at rates reached through arm's length bargaining; and

Third, reduce the number of captive users by fostering rail-to-rail competition through mandatory switching arrangements and open entry.

Thank you.

Senator EXON. Thank you very much for your testimony. We have found another captive shipper. They keep popping up on us all the time. We appreciate your constructive suggestions.

Once again, Raymond, I congratulate you for recognizing the need for some changes along the way, but again, you are back to the basic position which we have heard from the agricultural industry, from the power-generating industry, and now, a separate industry which is very important to Nebraska. Indeed there are captive shippers who must be given some consideration under any kind of a bill, and it is your opinion that the bill before us does not adequately address that legitimate concern.

Mr. CLOUTIER. That's correct.

Senator EXON. I have no further questions or statements.

Senator Pressler?

Senator PRESSLER. I believe now we have heard witnesses for 2 days. I don't think we have heard a single advocate of the rail deregulation bill as it presently stands, except from the administration. Is that right? Have you heard a single witness——

Senator EXON. No, I think we had a witness in South Dakota yesterday. What was his name? A wheatgrower?

Senator PRESSLER. Yes; that's right.

Senator EXON. From the western part who endorsed Carter's proposal, is that not right?

Senator PRESSLER. I guess so.

Senator EXON. We have only had those two of which I am aware.

Senator PRESSLER. I just wanted to compliment you on your testimony and say it's very consistent with what I have heard, in any event. Out in our part of the world, here in Nebraska and South Dakota, there are a lot of problems with this rail deregulation bill as it's now written. Your testimony illustrates it, and I think we have covered most of the areas that I have questions about.

So thank you very much.

Senator EXON. Thank you very much. We appreciate your coming.

The last witness whom we have for today is one whom we added very late at the request of Senator Kassebaum from Kansas. He is Mr. Don Jacka, assistant secretary of agriculture for the State of Kansas.

Mr. Jacka, would you come forth at this time and present your testimony? We are very glad to have you. Welcome.

STATEMENT OF DONALD L. JACKA, JR., ASSISTANT SECRETARY OF AGRICULTURE FOR THE STATE OF KANSAS; ACCOMPANIED BY VIC MOSER, DEPARTMENT OF TRANSPORTATION

Mr. JACKA. Thank you, Senators. My name is Don Jacka, assistant secretary of agriculture for the State of Kansas. With me is Vic Moser, who represents the Department of Transportation from the State of Kansas. We are here upon recommendation of the Governor of Kansas, John Carlin, and Senator Kassebaum, because of the great interest of the State of Kansas, our agricultural economy, and the economy of the State in this issue of deregulation.

In light of the time we have, I will forego the reading of my testimony.

Senator EXON. Without objection, the full testimony is accepted for the official record.

Mr. JACKA. I would like to also reiterate some of the comments that have been made here previously and also remind the committee that the Governor of Kansas, John Carlin, made some statements to this committee a month ago that we would like to reiterate.

Basically, I would like to leave the committee with a couple of thoughts. And I am sure that you are quite aware of those thoughts coming from the agricultural areas that both of you represent, those being that the economy of our States depend on agriculture.

In Kansas right now we are in the process of harvesting our wheat, which is the main product of the State of Kansas and is the backbone of our economy. Grain farming in Kansas involves the family farm unit. In a period of 60 to 90 days our family farm units will harvest approximately 780 to 790 million bushels of grain. Our storage capacity is not sufficient enough to handle that amount of grain, so it is necessary on a yearly basis for these warehouses, the country elevator points, to be cleared out.

The only way to move those vast numbers of bushels and the method that our agricultural industry has grown and become reliant upon is through the rail system.

The rail system has served agriculture well in the past. We hope that our rail system, which is composed of some of the finest railroads in Kansas, not be hurt, and that the agricultural system that we are familiar with not be degraded through a bill of deregulation such as proposed here. The elevator systems that I am speaking about are spread across the State of Kansas on all of the branch lines and all of the main lines of the railroad system.

Because of the formation of the railroads and their adequate service in the past, this elevator system has served as a main line

for the marketing of the agricultural products that are produced in Kansas.

Because it is that main line, we need to insure that the transportation of this product is completed, because the farmer is not going to receive anything for his product unless that product is transported.

As an aside, Kansas farmers are, at the present time, harvesting wheat. We have elevators across Kansas, in the southern portion of Kansas and central portion of Kansas, that are now closing their doors, because they can't get hopper cars to move their grain and they have no more storage available.

When that farmer has grain that needs to move out of the field, and that grain is selling for the highest prices that it's sold for in a number of years and that that price is dropping every day by 19 to 20 cents, that is a frustrated person. And that is not good for the economy of Kansas or the economy of the Nation. And the reason that grain is not moving is because it is just a glut on the transportation system. I am saying that with the traditional methods of agriculture in Kansas and in the Midwest we are not going to see the deregulation of this rail system, as proposed in the bill that is of concern here today, helping the glut that exists.

Part of the concern, and I think that it is very closely related to this bill, was discussed earlier, that being the subterminal concept.

The subterminal concept is very critical in the State of Kansas because we have such a widespread system of country elevators. We have very little onfarm storage in the State as compared to the commercial storage.

We rely on that commercial storage. The traditional patterns of harvest in Kansas require that the farmer harvest his crop at the same time he is transporting that crop to the country elevator, because he has limited onfarm storage. So he will make his swings through the field with his combine, filling up his truck at the same time. That truck will come back before the combine needs emptying again. If we increase the distance between that farm and the country elevator point or the subterminal, then we are going to disrupt his pattern of operation, requiring the farmer either to invest in onfarm storage of his own or requiring him to invest in a fleet of trucks to help him through that harvest operation.

I know that the subterminal bill is not a portion of your committee's purview at the present time, but many of the various factors of the deregulation bill would tend to implement a system of subterminal elevators. This is basically what I wanted to portray to you of our concerns in Kansas, along with all of the other concerns that you, I am sure, have heard in the last couple of days relative to agricultural industry and the transportation of grain.

Senator EXON. Mr. Jacka, thank you for your excellent summary of your testimony.

It is important that we talk about the mass movement of grain and what we can do to help facilitate it, although this hearing is basically on railroad deregulation. There is a close connection between the issues when it comes to moving grain, because if we cannot move by rail we have to move it as best as we can by truck.

I do not know whether or not you are prepared to comment on this, but I was wondering if you heard the testimony of the man

representing the Motor Carriers, who said that we should go into regulation of trucks for the hauling of grain. Do you have any position or any advice on that comment?

Mr. JACKA. Well, sir, it would, I believe, be out of my field to advise on the transportation issue. I would comment, however, that I feel that with the limited availability of the trucks and the inability of the trucking industry to move the vast quantities of grain which we are talking about, it is just not feasible at the present time.

Would you like to comment?

Mr. MOSER. Senator, I would appreciate your indulgence, so that I can comment on that. Kansas trucks are regulated. The State corporation commission does regulate trucks as to rates and entry. It, I think, has worked pretty well. It's ameliorated some of the conflicts, I think, between one system that is regulated and one that is not, at least in our State.

Senator EXON. In Kansas then, as I understand, you do have regulation of trucks which haul grain?

Mr. MOSER. That haul grain, right.

Senator EXON. And it works pretty well?

Mr. MOSER. I think it works well.

Senator EXON. The independent truckers have not objected to that? They are still hauling grain in Kansas?

Mr. MOSER. They are. They are hauling quite a bit right now. I think they are pretty satisfied with it, too.

Senator EXON. But they are regulated.

Mr. MOSER. That's right.

Senator EXON. Thank you.

Mr. MOSER. I would like to make one comment, that the railroads seem to feel that they are a standby source of transportation for grain and that is not true. In our State we have found 80 percent of the grain reaches the terminal elevator by rail. In our State the truck is standby transportation. When rail service is not available, then we go to truck.

Senator EXON. At issue a much higher rate per bushel?

Mr. MOSER. Yes.

Senator EXON. Thank you. I have no further questions.

Senator Pressler?

Senator PRESSLER. Yes. Well, we certainly appreciate getting this testimony from Kansas. I think you are first, our first witness, but your testimony falls pretty much in the same pattern as that from South Dakota and Nebraska.

I noted that you mentioned the subterminal concept, and I am a supporter of that. But we have to figure out one thing. If we deregulate rails or move in that direction, we are going to have a situation that essentially wipes out the small town elevator, I think. If you get the truck loaded and on the road you are going to the subterminal rather than your local elevator, although we may need those small town elevators for storage. Maybe there could be a system of zone rates or something.

Then we are getting back into more regulation. What about the small town elevator in this whole business?

Mr. JACKA. Sir, we have gone into a lot of discussion on this matter of business. We have a number of issues that seem to keep

cropping up relative to the abandonment of country elevator points. Initially, one would think that the country elevator point would not necessarily have to be abandoned, and that this storage position would be a logical place to store the grain during harvest, so that on-farm storage would not have to be increased and so that the farmer would not have to invest in fleets of trucks. However, you are going to have to move that grain from the country elevator point to the subterminal in any case. The time that that grain is sitting in that country elevator point, who is caring for that grain? What is going to happen to the quality of that grain when it's sitting there?

I think that because farmers in Kansas have not historically had great amounts of on-farm storage that there is going to be a problem with the quality of that grain. In addition to that, we have discussed problems relative to the cost and the availability of fuel to truck that grain from the country elevator points or from the on-farm storage to the subterminal point.

In Kansas we have had limited diesel fuel this year, even with agricultural priority. Now without the agricultural priority I don't know what the situation is going to be in the future, so that has to be considered.

[The statement follows:]

STATEMENT OF DONALD L. JACKA, JR., ASSISTANT SECRETARY OF AGRICULTURE, STATE OF KANSAS

Chairman Long, members of this subcommittee, my name is Donald L. Jacka, Jr. I am the Assistant Secretary of Agriculture for the State of Kansas, the heart of the breadbasket of the world. In that context I appreciate the opportunity to share with you some of the concerns which Kansas agriculture has with railroad deregulation as proposed in Senate Bill No. 796.

The economy of the State of Kansas is based on agricultural production. A major portion of that agricultural industry is the production of grain. The total market value of all grains produced in Kansas in 1978 is estimated in excess of 1.8 billion dollars. In order to maintain a viable agricultural economy, it is necessary to export approximately two-thirds of that grain to other domestic or foreign markets. Out movement of grain from Kansas is the lifeblood of the state's agricultural economy.

Grain farming in Kansas is primarily a local business of individual farm units operated by one or two family members. The grain farming system revolves around a wheat harvesting season which begins in the southern portion of Kansas in mid-June and then culminates in the northern tier of counties in middle July. The harvest of other small grains follows the wheat harvest by approximately a month. In the short period of approximately 60 to 90 days Kansas farmers harvest, on the average, more than 777 million bushels of small grains. One of the major parts of the small grain harvest involves transporting the grain by farm truck from the combine to the country elevator point for sale or for storage. This movement of the grain is necessary because of limited on-farm storage capacity compared to the total yield of the farm. All harvest activities are based on the timely accessibility to a country elevator which is able to store and further transport the grain. Any delay in trucking the grain to a collection and storage point will cause delays in harvest which will be very detrimental to the economy. With the total commercial storage capacity of elevators in the state set at 846 million bushels, it is evident that these country elevators must empty and refill their storage facilities on a yearly basis.

Because the vast quantities of grain which must move out of Kansas each year, our agricultural system, and thus the economy of the state, has become reliant on the ability of railroads to move grain out of the state at a reasonable cost to the industry. A viable alternative to the rail movement of grain has never existed or been entertained by the grain industry. As a result of the previous viability of the railroads in their hauling of grain, the grain industry has created a dependency on that transportation mode. Kansas agriculture does not have the alternative luxury of a barge system or a trucking system of sufficient magnitude to transport its grain.

Since 1887 the Interstate Commerce Commission has regulated the railroads to insure that shippers of grain have a reliable, effective and economical system of transporting grain. This assurance of regulated service has provided a secure environment in which the grain shippers have built their transportation system and based their industry. A comprehensive system of elevators, serving as collection, storage, marketing and shipping points, have been established throughout the state. These elevators and storage facilities are the key marketing channels for grain produced in Kansas. These elevators, being widely dispersed across Kansas and located along the trackage of the railroads in the state, provide a marketing network for grain which complements the structural necessities and harvest (farm to elevator) accessibility of Kansas grain production. When rail cars are sufficiently available and the rail transportation is adequately performing its mission of transporting grain, these 915 country elevators perform a fundamental role in the marketing and transporting of grain. In order to preserve and upgrade this system, elevators and the grain industry have made considerable investments in the past few years for additional trackage for spotting and loading cars and more rapid handling of grain within the elevators. Additional funds have been invested to improve environmental conditions and to meet the requirements of the Occupational Safety and Health Act (OSHA). The improvements to these elevators, the lifeblood of the grain industry in Kansas, have served to strengthen the sufficiency of the marketing network of Kansas grain. However, in recent years, with the shortage of grain hopper cars, poor rail service or no service at all, preferential service to other industries, degradation of rail lines and abandonment of branchlines, this marketing network of elevators and their ability to move the grain has been seriously abridged.

Due to an inability to maintain the levels of service upon which the railroads have built the grain industry's dependency, in recent years rail movement of grain has deteriorated. In efforts to revive the poor service which the railroads provide, Congress passed the 4 R's Act of 1976. The legislation, among other things, provided for the railroads to undergo restricted abandoning of inefficient branchlines and the limited ability of railroads to enforce "peak" or "seasonal" pricing. Both of these concessions were granted the railroads in response to their inabilities to provide quality service. In Kansas a small percentage of the railroad's branchlines were abandoned. However, the shortage of grain hopper cars and their inserviceability persisted and intensified to a point during the 1978 harvest year when there existed, in Kansas alone, a 30,000-plus rail car shortage.

At the same time as the shortage the unit train concept for hauling coal was intensifying, with the railroads realizing the efficiency of this mode of operation. The railroads, realizing the economy to be derived from unit loading and transporting have attempted, recently, to adapt the unit concept to the grain trade. It seems that the unit train concept of rail transportation is thought to be the panacea for future rail transportation efficiency. This unit train loading of multiple cars at one point has spawned in many peoples' eyes another panacea for the railroad's financial difficulty. This cure-all is based on the unit train concept, maximizing the single loading of multiple cars at a regionally based subterminal. Proponents, including the Department of Transportation, Interstate Commerce Commission, U.S. Department of Agriculture, several other states and many railroads believe that by concentrating all the grain in one area, easily accessible to rail systems, the unit train concept can more successfully be employed in the transportation of grain. This subterminal concept is firmly proposed through S. 261, the Agricultural Subterminal Facilities Act of 1979.

Also in an effort to aid the inability of railroads to profitably transport commodities, the deregulation of the rail industry is being considered. When the Interstate Commerce Commission was first charged with the responsibility of regulating the rail industry, such regulation was justified in order to save the captive shipper from the tyranny of a monopolistic service. Proponents of deregulation believe that now regulation of the rail industry is not necessary because there is competition to the railroads in the transport service provided by other modes of transportation. The "Rail Deregulation Act of 1979" has been introduced to allow increased rate flexibility, eased exit and entry, and improved equipment utilization for the rail industry. In this legislation, offered by the Carter Administration, there are various factors of deregulation of the rail industry proposed. Factors such as minimum and maximum rates to be charged within zones of reasonableness, contract rates, car service, and abandonments are major areas comprised in this concept of deregulation.

The deregulation of rates charged by the railroads is at the crux of the controversy over deregulation. The proposed legislation provides for competition to establish the maximum and minimum rates to be charged. Relative to the minimum rates charged, the bill contends that rates would be based on the cost of providing the

service and that these incrementally based costs would do away with predatory pricing. Competition, it is argued, will also prohibit the railroads from raising prices too high. If the railroads raised prices too high, other modes of transportation would take the market away by charging lower transport rates. This last contention is based on the questionable argument concerning captive shippers. It is the contention of proponents of this bill that because of the competitive nature of transportation there are no such captive shippers who must depend only upon one means of transport. Under this bill the captive shipper must prove that they have no alternative means of shipping or no other methods of sales or marketing of their product.

Closely aligned with the rate freedoms contained within this bill is the ability of railroads to formulate contracts with certain shippers. The rates charged in these contract situations would have no limits placed upon them. It has been proposed that contract rates would reduce the risk of certain investments to the railroads by means of guaranteed levels of traffic by the shipper. In return for fixed traffic levels, it is held that the shipper will receive desirable rates and service reliability.

The administration's bill would allow railroads to negotiate per diem and demurrage charges with other railroads and shippers. One of the causes of the chronic shortage of freight cars is the inability to price the use of cars in a manner that relates to demand. As a result railroads earn a rate of return insufficient to warrant an adequate level of investment. Theoretically, this provision offers an excellent opportunity for improving the flow of cars.

The bill attempts to further ease the railroad's ability to abandon lines. The traditional "public convenience and necessity" test for abandonment cases will be retained under this bill; however, if the railroads can prove a financial difficulty on the line, then the Interstate Commerce Commission must approve the abandonment. The bill has allowed in this profit/loss calculation an opportunity cost or profit to be derived by the railroads. By formally including opportunity costs in the determination of profit/loss the railroads will be able in the future to abandon not only losing lines but also marginally profitable lines.

The effects of deregulation of the railroads on agriculture and more specifically the grain industry in Kansas at this point in time are purely speculative. However, in interest of preserving the economy of Kansas a discourse of railroad deregulation's possible effects on the grain trade are timely and necessary. In relation to the specific provisions of the "Rail Deregulation Act of 1979", discussed above, and deregulation in general, I believe that various effects on the industry may be considered. In a discussion of these effects, for sake of simplicity, it would be desirable to first direct the discussion to rates established by the railroads following deregulation and then to the services provided.

Rates to be charged by railroads following deregulation is a very complex issue of controversy. If, as proposed, the competition from other modes of transportation will maintain a reasonable rate level there should be little impact on the grain industry following deregulation. However, if there is no viable alternative to rail shipment of grain, as is the case in Kansas, the rates charged could be extravagant. The previously discussed bill would allow the appeal of these rates to the Interstate Commerce Commission but in that appeal the shipper must be able to prove that he is a captive shipper and unable to ship his grain by alternate methods or that he cannot sell it, even at a discount to his return, in a different market. In the grain industry of Kansas, even though the shipper in Utica is a captive shipper, it would be difficult for him to prove that he cannot sell his grain to a feedlot, at a reduced cost, or that he could not secure transport by trucks. Thus, the captive shipper argument wouod not protect the grain shippers from inflated transport charges from their "remote" shipping points.

Also of concern relative to deregulated rates is the institution of contract rates. As noted previously, the railroads, by contracting for an insured volume of shipping, will establish guaranteed rates by contract with that shipper. This method of contracting for desirable rates is a very beneficial tool of marketing grain if it is made available for the "remote", smaller grain shippers. But if the railroads are free to select which shippers it will contract, concern should exist about the ability of a low-volume shipper located on a branchline to secure such beneficial contracts.

It seems that with the deregulated rate structure as povided by this legislation, the small, captive grain shipper located on a branchline in Kansas could be priced out of business.

Service provided by the railroads to the grain industry is of great concern in discussion of deregulation. I am certain, and it has been stated several times by many grain shippers, that if the rail transport service would be guaranteed on a timely basis consistent with their needs, the grain shippers would be unopposed to increased rates. However, with the recent trends in service and the prospects of

deregulation as set forth in the Administrator's bill, the expectation of improved service to the grain industry as we know it in Kansas is purely misguided.

The trend of thinking toward the establishment of a subterminal system of grain elevators to replace our present country elevator marketing network seems to complement the concept of abandonment as proposed in the Administrator's bill. Combining the idea of grain consolidated in one point (subterminal) from which to be shipped, with the ease of abandonment contained within the bill, it seems imminent that the high quality branchline system located in Kansas could likely be abandoned by the railroads. The railroads must simply, through various accounting methods, determine that a certain line is unprofitable and abandon it. Why should the railroads distribute cars up a branchline to one or more shipping points when it could much more efficiently collect all that grain at one, subterminal point? The subterminal concept is also enhanced by the proposed contract rate ability as proposed in the bill. The subterminal system would establish large grain shipping points which would be ideal parties with which the railroads could contract service. This abandonment process and the establishment of a subterminal system would also create large shipping entities with which the railroads could more productively negotiate per diem and demmurage charges.

The single car shipper of grains, which composes the country elevator marketing system located on mainlines and branchlines throughout Kansas, could suffer greatly as a result of economic benefits allowed the railroads through deregulation. It seems that ease of accessibility by the trains and insured quantity of load by contract will determine the economic viability and future existence of country elevators.

In general, deregulation of the railroads could result in the dissolution of the present country elevator grain marketing system, replacing it with a rail transportation system which would originate from a few very large subterminals located on major lines. After deregulation a situation would exist where the railroads would provide viable service only to the elevators which were large enough to allow them the efficiencies of unit train loading, guaranteed quantity of movement provided through contract, and favorable car per diem and demurrage rates. The large centrally located elevators would get larger and the smaller, more remotely located, elevator, which is based on providing local service to the grain producer, will be forced out of business because of its inability to secure rail transport.

Speculating a bit further, what would be the results of deregulation to the producers of grain in Kansas if the country elevator grain marketing system were replaced with a subterminal system? Who would indirectly pay the costs of constructing the additional handling and storage capacities located at the subterminal points? Would the storage at the existing country elevator points be wasted space? What would be the result to rural life of major businesses closing down? How would the producer cope with the continuous and immediate nature of harvest when the transportation distance to a subterminal storage facility is greatly increased? How would the producer transport his grain to the subterminal? At what cost would such transportation be and who would bear that cost? These are just a few of the questions which surround the proposition of deregulation. Although in most instances the answers to these questions seem obvious, for clarity sake and for purposes of discussion, I will address their inquiry.

It would seem that with the construction of subterminals at which railroads would provide transport service, the country elevators located on branchlines would have the option of staying in business and utilizing the trucking mode of transport or go out of business. In either case the cost of the trucking of the grain to the subterminal would be borne by the grain producer. In addition to that cost, there would in all likelihood be increased costs for handling grain at the subterminals. This increased handling cost would be necessary to the subterminal operator to defray the cost of constructing the vast amount of additional storage which a subterminal would need.

If the subterminals would be established and certain country elevators found it necessary to discontinue service, the impact would be felt not only by the grain industry but, indeed by all of rural Kansas. The elevator could, at a cost to producers in the area, be purchased for additional storage. But without having commercial services provided by the country elevator, many jobs and many of the businesses of small, rural Kansas towns may be jeopardized. Quality problems associated with the grain stored in these terminals might also arise without the full-time, professional elevator service.

In his harvest operations, the grain producer will be faced with certain alternatives as a result of the elimination of country elevator points. An increase in on-farm storage to hold the grain harvested at the time of harvest is one option. This option would provide the producer with the ability to harvest his entire acreage and

properly store that grain prior to trucking it over the increased distances to the subterminal. If the producer would not invest in additional on-farm storage, then he will face the necessity of exposing his grain to the environment until harvest is completed or the grain can be hauled to the subterminal. In either case the producer will incur the cost of transporting the grain to the subterminal. Whether this transportation is to be accomplished by the producer or by contract with trucking firms, it will ultimately be an additional expenditure by the producer in the production of grain. Of course the distance which the producer has to haul this grain to the subterminal will determine his final production costs, in an era where the margin on production costs and returns is inadequate, an additional production cost will decrease return to the producer.

In addition to these concerns, another issue that should be considered in light of the future shift of grain movement to the trucking industry is the efficiency and availability of fuel consumed. With the existence of shortages of diesel fuels and gasoline, will there be sufficient quantities and reasonable enough prices for the movement of grain from the farm to the subterminal or to its final destination? Will the shortage of fuels in future years disrupt the flow of grain or add tremendously to its production cost?

In observance of grain production and transportation in Kansas as it relates to the overall grain marketing and pricing system, how will a change in transportation methods and the creation of a multitude of flexible variances in railroad rate structure affect the pricing and trading of grain futures? Grain is predominantly priced based on transportation factors. If those factors are known, grain may be more accurately priced at a higher rate. If these transportation costs are unknown or are in a constant flux, in all probability grain will be priced at a lower rate for future delivery. This would provide the purchaser with a cushion with which he could predict transportation costs at a future date.

This discussion of the impact of railroad deregulation on agriculture in Kansas is speculative and has resulted in a somewhat pessimistic outlook. The gravity of this issue is such that although all possible benefits and deterrents of a deregulated rail system in Kansas must be considered, it is also an issue which definite answers cannot at this time be secured. It would be less than accurate decision-making to consider the issue of deregulation of railroads without considering the situation which would result if railroad deregulation was not implemented. The specter of continued or worsening grain hopper car shortages, car inserviceability, and branch-line deterioration and abandonment (formal or simply not providing services) in itself, does not provide an optimistic future for the grain industry of Kansas. However, if the grain industry is suffering from the services it receives presently from a highly regulated railroad industry, which is required to provide the very minimal services for which it is now responsible, how limited will those services become when the rail industry is no longer regulated?

We realize, however, that the regulatory system in itself has never been totally satisfactory. I have already spoken of the visible symptoms of rail movement in Kansas. The problems lie deeper than these symptoms. There can be no doubt that unreasonable regulatory restraints are a part of the problem. But, we must recognize that regulatory reform is only one step which needs to be taken in order to make the railroad industry financially healthy. One additional step is to ensure that no single mode receives unequal treatment through public subsidy. Another is to develop an environment in which labor and management can complement each other in the pursuit of mutually beneficial goals.

Kansas is fortunate to have an extensive well-developed system of railroads and highways available to move the freight generated by the agricultural and industrial sectors of the economy. Kansas ranks sixth among the states with its 7,500 miles of railroad. For the most part, the railroads that serve Kansas are healthy. Oftentimes it appears that they have more business than they can accommodate. Certainly this is not true in all regions of the country.

Nationally, the railroad industry is considered to be in financial difficulty. The railroads of this country have collectively earned less than a two percent rate of return on their investment for the past several years. We favor the concept that the providers of transportation services should not be subjected to unreasonable regulatory restraint. Regulations that are imposed at one point in time may become unnecessary as circumstances changes. Regulation must keep up with the changes. It must not keep an industry tied to practices which have become out of date.

The current deregulation efforts are aimed at allowing the railroad industry to complete with other modes in such a manner that its financial health will be improved. Under the current scheme of regulation, the railroads have attempted to increase their profitability be reducing the service which they have provided. Each of these reductions, including the elimination of less than carload traffic and elimi-

nation of passenger service, has been heralded as the means by which the rail industry would be saved. They have not worked to the extent anticipated. If the proposed deregulation allows further cuts in service in an attempt to improve profitability the results may be equally unsuccessful.

The railroads compete effectively for certain types of freight traffic under the current scheme of regulation. They are especially effective at moving large quantities of bulk commodities such as grain and coal. They are also competitive for the repetitive movement of manufactured products such as chemicals, automobile parts and automobiles. Deregulation is one means of extending the range in which they can compete with motor carriers and barges.

Kansas has an interest in seeing that modes of transportation are utilized to the fullest advantage. The state and local governments are directly responsible for providing a suitable right of way for the movement of motor carriers and automobiles. According to a recent study of Kansas' highway needs, the state is faced with a short-fall of 12.1 billions of dollars between identified highway needs and revenues through 1990. It is necessary that everything possible be done to close that large gap including the effort to increase highway revenues, making sure that our operations are efficient, and carrying out a program of managing and protecting the transportation system that we have. Because of the railroads' inherent efficiencies for bulk freight movement, it is in our interest, then, to maintain if not increase the current rail proportion of long-haul intercity freight traffic. Deregulation may or may not make this possible.

At the same time, however, that deregulation makes it possible for the railroads to compete with other modes, we must guard against the development of a system which will allow a return to the practices which created a need for regulation. The shippers of commodities must have freedom to make rational decisions concerning services to be used and provided based upon the econoic factors involved. Deregulation of the rail industry as proposed in Senate Bill 796 would practically remove common carrier responsiblities leaving only the concern for profit. These responsibilities assure that markets will not be bypassed, that ratemaking will not become discriminatory, and that marginally profitable branchlines will not be abandoned. The common carrier services that railroads provide are essential to the movement of grain, the viability of the Kansas agricultural industry and ultimately the vitality of the economy of Kansas.

Senator PRESSLER. Well, thank you very much. You have made a real contribution here.

That was the last witness, and I have a very short concluding statement.

Senator EXON. Certainly, why don't you proceed?

We will just excuse you now. Thank you very much, gentlemen. We appreciate your coming up with your good testimony.

Senator Pressler?

Senator PRESSLER. I wanted to thank the staff and everybody here who's participated. Of course, especially Senator Exon, who will have his own closing statement.

But this has been a real education for me in 2 days. I thought I knew many of the things, but I have learned a lot of new things. I want to thank your staff and the committee's staff and, you, the people of Nebraska very much.

Senator EXON. Senator Pressler, thank you very much. It has been a joy to spend the last 2 days with you listening to the people of South Dakota and the people from Nebraska on this key issue of railroad deregulation, which is obviously going to have an important effect on the economies of these two States.

I want to thank all who came to testify, the many who traveled great distances. I appreciate the fact that many of you have been in this room since we started at 9 o'clock this morning. That is perseverance, and I hope that you have learned as much as I am sure we did in listening to this testimony.

I too want to join in thanking the staff, and since we have not mentioned them for the record, I will now: Ed Hall, general coun-

sel for the full committee; Mr. Bill Johnson, chief counsel for the Surface Transportation Subcommittee; Linda Morgan, staff counsel for the Surface Transportation Subcommittee, Candy Vernetti, Surface Transportation Subcommittee; and Matt Scocozza, minority staff counsel, all of whom were very helpful in these hearings. We appreciate their time and the attention which they have given us.

Everything that has been said here and in Sioux Falls yesterday is a permanent part of the record, and we appreciate your kind attention and your excellent testimony. Thank you all very, very much.

With that, the hearing of the subcommittee is adjourned.

[Whereupon, at 2:04 p.m. the hearing was adjourned.]