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RAILROAD DEREGULATION ACT OF 1979

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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

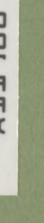
S. 796

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

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

PART 4

Serial No. 96–41



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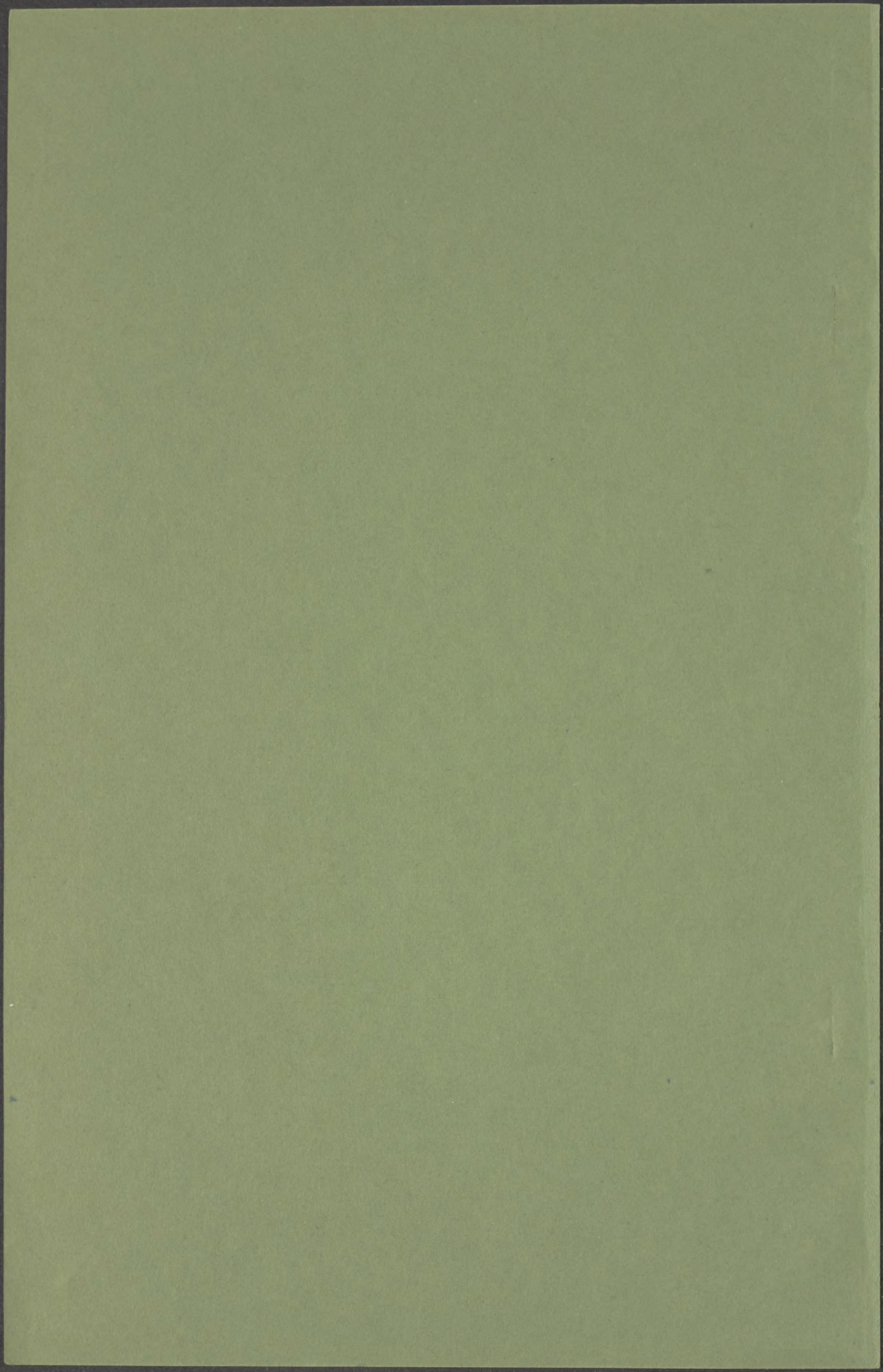

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ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

PRODUCERS GRAIN CORP.,
Amarillo, Tex., June 4, 1979.

Hon. RUSSELL LONG,
Chairman, Senate Subcommittee on Surface Transportation,
Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is indeed a personal honor and pleasure to present these comments for the record on S. 796, "Railroad Deregulation Act of 1979."

During my 31 years of traffic experience I have never been confronted with a subject which would have so profound an effect on rail transportation and the public in general. The bill creates many unjust and discriminatory characteristics for consideration. It would change the Nation's railroads from a common carrier system to a network of common and contract carrier railroads by substantially reducing, and in some cases eliminating entirely, regulatory controls over the railroad industry.

Briefly, Producers Grain Corporation is a regional grain marketing cooperative association which was organized by twenty-nine country elevators in April, 1938 with $1,900.00 borrowed money and a leased two million-bushel terminal elevator. Today it has about 187 affiliated stockholder/members, some handling only a few thousand, while others tens of thousands of bushels each crop year, representing an estimated 90,000 farm families. It owns an export elevator at Corpus Christi, Texas and terminal elevators at Amarillo, Fort Worth, Lubbock and Plainview in Texas with a combined rated capacity of over 37 million bushels.

Net sales of grains by Producers Grain Corporation during the past five years have amounted to over 1.5 billion dollars, with about 67 percent of the volume shipped from the Corpus Christi export elevator. Last year over 76 million bushels from the States of Arkansas, Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas were loaded onto 80 vessels through that Corpus Christi elevator for exportation to 16 foreign countries, requiring numerous railroads to transport. Most of the rail tonnage was subject to two-line through routes and single factor joint rates.

Since the historic business of Producers Grain Corporation is marketing and handling grains I address the issues to that commodity, although some comments surely encompass other commodities and products. In considering this bill, we believe one should bear in mind that (1) substantial grain tonnage is "captive" to the railroads; (2) grains are traded, all factors being equal, on fractions of a cent per bushel; (3) the cost for grain transportation is an essential element for the transaction of business; (4) vessel rates for grains are identical from all Texas ports to foreign countries; (5) grain exports are a vital component of the U.S. trade balance; and (6) known charges for rail services and the legal rates must be available for all interested persons if they are to effectively market grains competitively and foster the national economy.

Generally, the bill would enable a rail carrier to establish any rate and condition for transportation or other service and virtually eliminate all Interstate Commerce Commission jurisdiction over railroad rates after a five-year transition period. Of major concern to us are areas of rates, routes, service and discrimination, and we now address certain sections of the bill—

Section 102.—This section is predicated on the theory that competition will determine the mode of transportation and the rate railroads can exact for their service and practice. Realistically, it enables railroads to set their own rules for serving the public and places the "captive" shipper in a disastrous position.

If comparable motor carriage is available not in excess of 125 percent of the rail rate at issue, the Interstate Commerce Commission must find that the complaining purchaser (we prefer complainant) has a reasonable transportation alternative. Apparently no consideration was given to the extra energy necessary for truck shipments. No provision is made requiring railroads to maintain reasonable rates if the motor carriage rate is less, so long as the rail rate does not exceed seven percent annually, plus the inflation factor. Anytime railroad management desired to transport a more productive commodity or product, the railroad could set their rates in excess of motor rates for the explicit purpose of discouraging rail transportation on

any type or description of traffic, particularly in view of the amendment to Section 11101(a) of the Act.

In addition, one or more rail carriers may, by contract, agree with one or more purchasers (we prefer shippers) of rail services on specified rates and conditions. This provision enables rail management to restrict traffic to their own line or favored destination, even though the traffic is "captive" and and the "captive" shipper now has a competitive rate to destinations on other railroads. Conditions of the contract could prevent utilization of an originating railroad's car being used to an offline destination at a competitive rate. Our shipments to Corpus Christi, Texas by rail would be placed at a competitive rate and service disadvantage under this broad provision, even though prior decisions by the Interstate Commerce Commission in *Nueces County Navigation District No. 1* vs. *Atchison, Topeka, and Santa Fe Railway Company, et al,* 315 ICC 155–163, decided November 14, 1961, and *Nueces County Navigation District No. 1* vs. *Abilene & Southern Railway Co., et al,* 291 ICC 459–470, decided January 19, 1954, found the rates were, and for the future will be, unduly prejudicial to Corpus Christi, Texas where the rates to Corpus Christi exceeded, or may exceed, the rates to Houston, Texas, etc.

That provision in the bill leaves a complete void for protecting the public from unreasonable rates and could swing the regulatory pendelum from a system of common carriage to that of only contract carriage. The Interstate Commerce Commission adopted a policy in Ex Parte No. 358–F, "Change of Policy Railroad Contract Rates," on November 9, 1978 that potential benefits of contract rates should be weighed against any possible adverse consequences on a case-by-case basis. We hope this policy will be given complete exploration before any further changes are made in The Act which would permit railroads to establish contract rates, rules or services.

Last year about ninety-five percent of the wheat unloaded at the Producers' export elevator was shipped by rail. In view of car shortages, service problems and origin territory, it is entirely reasonable to consider that 95 percent was "captive" traffic for the railroads. With the new provisions proposed for 10701a of The Act, it is most likely that this traffic would be subjected to greater rates and elminate the competitive balance between ports. The elimination of competitive rail rates to ports most certainly appears in direct conflict with The White House Statement By The President, dated September 26, 1978: "It is important for this Nation's economic vitality that both the private sector and the Federal Government place a higher priority on exports * * *. Agricultural exports are a vital component of the U.S. trade balance * * *.

"Captive" traffic to other ports, places, areas and regions in this Nation would most surely be also effected, creating severe discriminatory and other economic hardships for the public.

Section 103.—Under this section investigations and orders setting rates would be substantially changed and leave many business firms in a "mayday" or worse situation by repealing the Commission's power to suspend a rate or the requirement of the Commission to consider rate relationships among ports, commodities, etc., and places tighter restraints on other Commission actions.

During past years we have participated in various investigation and suspension proceedings before the Interstate Commerce Commission. In each proceeding, we felt our position was necessary to protect our interest from unjust railroad actions. At no time did management consider them frivolous, and over the years has exerted much time, energy and spent most substantially for legal fees and otherwise. Incidentally, we suspect legal fees are more burdensome for our business than for railroads who maintain a staff of attorneys.

The Commission has not in each instance agreed with our suspension or position, but their authority to determine the facts and render just findings and orders under The Act is the best method we can envision for the protection of interested parties and the welfare of the Nation. To repeal the Commission's power to suspend rates will give railroads still more rights to destroy. If a market is eliminated by unjust rail rates, a party could be forced out of business even with present provisions of Section 10741 in The Act.

Rate relationships between commodities, ports, etc., are a very important factor in the Nation's economy and transportation system. Without Commission consideration on the effect a proposed increase or decrease in rail carrier rates will have on competing commodities, ports, places, regions, areas or other particular descriptions of traffic, the railroads may negate the movement of a particular commodity. Railroads would be in a better position to favor their preferred destinations at the direct expense of other destinations.

On Appendix (A) attached hereto is quoted language from the House Committee recommending passage of The Act which brought about an amendment in The

Interstate Commerce Act by adding "ports" and "port districts" to Section 3 (now codified in Section 10741(b)) of The Act in 1935. In view of the economic importance of exports and the vital role agriculture has in our trade balance, more emphasis should be placed on port relationships and rate equalization to competing ports. Railroad management and any other entity should be prohibited from circumventing the intent of Congress when it amended The Act (49 U.S.C. 543) on August 12, 1935. The valid reasons in 1935 are equally, if not more, appropriate for the Nation's present economy vitality.

Section 104.—The provisions of this section would prove to be most damaging by eliminating power of the Interstate Commerce Commission to set joint line rates and divisions of revenue, the Commission's authority to suspend or investigate a cancellation of a joint line railroad rate, and the permissive statutory authority for railroads to establish greater two-factor rates on joint routes without adequate safeguards for shippers.

Chairman O'Neal of the Interstate Commerce Commission recently stated that 70 percent of all rail traffic is interlined between at least two carriers, chiefly through joint rates. One can realistically visualize what would happen on rates for that 70 percent were it not for the Commission's authority to require reasonable joint rates on through routes. We believe they would "skyrocket" at the direct expense of the public who ultimately pay the cost for transportation. Most railroads would reap "windfall" profits to the detriment of the public in general.

A recent study showed that a total of 1,692 Texas stations were rail served, of which 1,482, or about 87 percent, were served by only one railroad. Traffic between Texas and other stations on railroads which do not operate in Texas originate and terminate at single line rail-served stations in Texas. Most substantial rate increases or cessation of rail service could develop without abandonment proceedings and without reasonable recourse by injured parties or municipalities. Every business and commodity requiring just and reasonable rail rates cannot be located or produced within a reasonable distance of every railroad serving this Nation, and reasonable joint line rates for that segment of the economy needs adequate regulatory protection.

To our knowledge the Commission rarely becomes entangled in divisional agreements between railroads as authorized in Section 10705 of the Act. The Commission apparently prefers, and rightfully so, that railroads work out their own divisions of revenue except in instances where the carriers need regulatory guidance. Time restraints are placed on the Commission for division proceedings in Section 10705(e)(1) of the Act and repeal of any Commission authority to begin a proceeding on it's own initiative or on complaint could create havoc for the general public.

We have been acutely concerned about divisions of revenue for quite some time, especially on joint route traffic to the Texas Gulf, and had it not been for recent Commission inquiry about divisions, the competitive balance necessary on export traffic may have been destroyed. In that instance, it appears a Commission inquiry caused the considered railroads to negotiate an agreement of divisions. Power of the Commission to investigate and set divisions deters potential adverse problems within the rail industry, and provides some degree of protection to shippers needing connecting railroads to transport their commodity. Maybe what the railroad industry really needs is an updating of old divisional agreements to conform with modern day transportation problems.

When one considers the highly competitive aspect in marketing, logic dictates that cancellation of a through route or joint-line rate would create severe consequences in distribution patterns and most severe hardships on affected parties. We most likely would not survive since an estimated 95 percent of our export rail tonnage moves on joint-line rates and through route service. It is a known fact that railroads prefer traffic confined between points on their own system. Our survival would be in absolute jeopardy. Needs for non-discriminatory rates are well documented in past proceedings before the Interstate Commerce Commission.

Section 106.—This section of the bill relates to the most important provisions in The Act and the Government's regulatory policy to prevent discrimination. In 49 U.S.C. 10741(b) of The Act, common carriers (including railroads) are prohibited from subjecting a person, place, port or type of traffic to unreasonable discrimination. Rail carriers would be deleted from that paragraph by the bill and the public would again be confronted with discrimination with no reasonable recourse to prove injury.

The bill would make it totally unrealistic, and in most instances impossible, for a complainant to justify damages. Section 10741(b)(1) of the bill would require an injured party to actually ship traffic under the discriminatory rate to prove damages. Competitive marketing will not justify shipments which may, or may not, be subsequently found discriminatory. A complaint, hearing and investiagation does

not assure a complainant of favorable findings or orders by the Commission. This section of the bill would favor railroads at the direct expense of the public by giving rail management more legal rights to rape parties who need railroad transportation: it would wreck small business. Rail practices caused enactment of The Interstate Commerce Act on February 4, 1887 and we are confident the Government does not want to "back-slide" and create more discrimination for the public in general.

Section 107.—The Commission now permits short notice publications under provisions of 49 U.S.C. 10762(d)(1) if cause exists. This enables rail carriers to establish changes in rates, classifications, rules and practices on less than the statutory 30 days' notice provided it is justified, and the Commission satisfied that no violation of The Act will occur. That provision tends to protect the public from rail abuses which could occur without appropriate notice and publication safeguards. Adequate notice and publication must be provided and is necessary to protect the public from discrimination of any character.

Section 109.—In an advance notice of proposed rule making, Ex Parte No. 346, "Rail General Exemption Authority," served May 31, 1978, the Commission contemplated adoption of rules for implementing the provisions of rail exemption authority in 49 U.S.C. 10505 of the Act. Subsequently they served their findings on December 6, 1978 and instituted Ex Parte No. 346 (Sub-No. 1), "Rail General Exemption Authority—Fresh Fruits and Vegetables." The Commission noted that the railroads' share of the grain market was extensive, in many cases the dominant mode of transportation, and not of "limited scope", as stated in 49 U.S.C. 10505. We understand railroads are progressing publication and handling of fresh fruits and vegetables contemplated in Ex Parte No. 346 (Sub-No. 1).

Before relinquishing regulatory powers on grains for the railroad industry, an appropriate study should be made on the "limited scope" fresh fruits and vegetables traffic. Given sufficient time and study, that traffic may provide the Nation with essential knowledge to determine how changes in present regulatory policies and law will effect the future well-being of the general public.

Section 140.—Probably the most danger in this section of the bill is allowing railroads to enter into separate agreements with selected parties on terms and conditions which differ from those established by the railroad industry as a whole. It would set a mechanism in motion where rail management could, and they most likely would, favor shippers who agreed to use cars only between stations on selected lines and points. It would enable rail management to discriminate among shippers, ports, and localities. Anytime that management concluded they wanted their cars retained on the road or a particulare group of railroads, they could set an exhorbitant charge for use of the cars to a station on any other carrier for whatever reason. Larger and multi-nation businesses using rail transportation would automatically benefit at the expense of small business.

An agreement between rail management and other business could establish substantially different demurrage than rates like business under substantially similar circumstances. Discrimination would unquestionably be practiced by the railroad industry in favoring business with substantial "clout". Big business would benefit at the expense of small business even though the smaller may be more proficient in releasing cars.

All business, even within the same industry, may not be treated fairly or equally under this section. Most likely, the disadvantaged business would be confronted with excessive charges, unreasonable railroad rules and poorer rail service. A shipper could be forced out of business and a port or locality severely damaged, causing the populous to move or seek Government welfare.

Section 141.—This section of the bill would change the obligation of common carrier railroads to that of contract carrier railroads and adversely effect an untold number of shippers. Shippers would be at the complete mercy of railroad management who could dictate, or refuse to provide, service. Disadvantaged shippers would have no protection from the willful intent by railroads to damage or destroy their business. Regardless of a shippers need for rail service, the railroad would not be obligated to provide just and reasonable prompt service, or any service, where cars were previously committed to other shippers for loading under a contract agreement. Small business in particular would be severely damaged, while the railroads favored the large and multi-nation business. We believe there would be a complete and absolute breakdown in providing needs for shippers who must rely on railroads. This would not be in the best interest of the National Transportation Policy or the general public.

The Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, amended The Interstate Commerce Act and rail management now has substantial statutory authority to adjust rates and meet competition. Safeguards are in the Act to protect against discriminatory rates and practices, and the Interstate Com-

merce Commission is studying and adopting new rules to maintain a just regulatory balance between all parties.

This bill would most certainly not be in our interest nor, in our judgment, that of the grain industry and public in general. At minimal, we believe provisions now contained in the Act should be retained, particularly on grains, without substantive change, and that the intent of Congress when it amended the Act in 1935 not be circumvented by emphasizing with an appropriate amendment to 49 U.S.C. 10711.

We ask that our comments and objections to S. 796 be given full and just consideration. Should the Committee or staff have any questions, we will be most happy to respond.

Yours very truly,

W. H. HOLLAN,
Vice President, Traffic.

Attachments.

APPENDIX A.—QUOTED LANGUAGE FROM THE HOUSE COMMITTEE REPORT RECOMMENDING PASSAGE OF THE BILL AND LATER ENACTED INTO LAW AT 49 U.S.C. 543 ON AUGUST 12, 1935

In recommending that this bill be passed, the committee does so with the idea in mind that by amending section 3 of the Interstate Commerce Act as thus contemplated it will encourage and promote the freedom of movement of export, import, and coastwise commerce through the ports of the country. The committee considers that it is to the interest of the public that such commerce be permitted to move freely through as many available ports as the governing circumstances will reasonably permit, and that no restrictions upon and impediments to the free movement thereof should be imposed that are not clearly shown to be sound or economically justified. The recommendation of the committee that this bill be enacted is intended to afford competing ports a forum in which to complain of rate adjustments which tend to concentrate the movement of the traffic through one port or a limited number of ports and to deprive other ports an opportunity to handle a part of such traffic. The committee believes that such a diffusion of the traffic which moves through the ports will redound to the benefit of the producer and consumer in the interior by whom in the last analysis the transportation charges levied both for the transportation thereof and for the use of the facilities at the ports are ultimately borne.

ACTRAN,
Pasadena, Calif., June 6, 1979.

Senator HOWARD W. CANNON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: This relates to hearings which you propose to hold on S. 796, the Railroad Deregulation Act of 1979.

We will not be participating in hearings in Washington, D.C. on this subject. However, we wish to offer the following information.

First, we are transportation consultants. We have a number of regular clients and approximately 500 clients whom we serve from time to time.

Second, I have a substantial amount of experience with the Interstate Commerce Act as it pertains to railroad regulation. I have been involved in railroad transportation since 1944, with the exception of a short time out for service in the United States Army. My credentials include a Bachelor of Arts degree in Business Administration specializing in transportation subjects. I graduated Cum Laude from Washington State University.

I am supporting a strengthening of Section 10701 of the Interstate Commerce Act so as to make it more meaningful to both shippers and carriers, supporting the retention of Section 10726, the long short haul clause and Section 10741 which deals with personal discrimination and other types of unreasonable discrimination. These Sections are contained in the Revised Interstate Commerce Act which was approved October 17, 1978.

Further, I have one very specific point to make. It appears that it is the position of the Administration to rely on competition as a regulator of the railroads. The Administration supports Laws which increase competition between railroads. This position must result in a wasteful expenditure of capital which is devoted to transportation. This is because competition in the railroad industry has historically been proven to be ruinous. Additionally, it leads to a surplus of transportation facilities. It was just this sort of policy that led to a proliferation of duplicating facilities in

the Midwest and Northwest. The railroad industry and the public must now bear the burden of trying to reduce the number of these facilities without injuring the shipping public. This is the principle problem confronting Congress and railroad management.

Deregulation will not assist carriers in solving this problem with the exception that it may speed abandonments of duplicating facilities. We would be more than happy to support these views with testimony relating to our experiences with types of problems like those which will result from the adoption of the Administration Bill.

Sincerely yours,

FRED D. PRESTON.

THE AMERICAN SHORT LINE RAILROAD ASSOCIATION,
Washington, D.C., June 18, 1979.

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

DEAR MR. CHAIRMAN: We are taking this opportunity to briefly present our views on S. 796, the "Railroad Deregulation Act of 1979," a bill on which you have conducted lengthy hearings for which reason we see little value at this time in appearing personally before you.

However, this bill is important and many of its provisions are worthwhile. A few of them, nevertheless, are harmful to short line railroads and we would certainly urge that the following provisions be eliminated from this bill if it is acted upon favorably: (1) The restriction in ICC authority over joint-rates and division; (2) opening rate bureau meetings to the public; (3) the phase-out of general rate increases within two-years; and (4) the revision in entry standards.

At such time as amendments to S. 796 may be proposed or other bills calling for deregulation of the railroads may be the subject of hearings, we would respectfully request the opportunity to testify.

We appreciate this opportunity to submit these comments and ask that this letter be made a part of the record of your current hearings.

Very truly yours,

P. H. CROFT, *President.*

GLASS PACKAGING INSTITUTE,
Washington, D.C., June 26, 1979.

SURFACE TRANSPORTATION SUBCOMMITTEE,
COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE,
Washington, D.C.

These comments are being submitted by the Glass Packaging Institute (GPI), a nonprofit trade association representing the glass container manufacturing industry to highlight the problem of the captive shipper under the provisions of S. 796, the "Railroad Deregulation Act of 1979".

The industry.—GPI represents 19 United States glass container manufacturers who produce approximately 85 percent of the glass containers shipped in interstate commerce. Glass containers are used for food, beverages, medicines, chemicals, cosmetics, and home canning. The industry manufactures containers in 129 plants located in 30 states. The glass container industry ships about 14 million tons of finished containers a year and receives at least as much raw materials transported to its plants.

The captive shipper.—Although the glass container industry has high interest in many facets of rail transportation, the most significant problem raised by S. 796 is the lack of consideration for the captive shipper—one which has no practical alternative to rail shipment. Captive shipper status has been forced upon the glass container industry in recent years by the disappearance of geographically dispersed synthetic soda ash plants which provided one of the three primary raw materials used in glass container manufacturing. The termination of the synthetic soda ash market, primarily for governmentally enforced environmental reasons, catapulted the glass container industry into a captive shipper status because most natural soda ash is mined in Wyoming. The Union Pacific Railroad is now the exclusive carrier for approximately 2.5 million tons of natural soda ash destined for eastern glass container plants. This carrier not only enjoys market dominance over this freight, it has a total monopoly over it.

Due to the length of haul and bulk nature of shipments, economically rational alternative modes of shipment from the Wyoming soda ash deposits do not exist. For example, competitive motor carrier transportation is both financially and logistically infeasible. The glass container industry is unquestionably a captive shipper under these circumstances.

Some provisions of S. 796 superficially appear to protect shippers from disruptive, confiscatory increases in rail rates during a five-year transitional period prior to complete deregulation. One such provision is the concept of a base rate from which the degree of permissible transitional period rate regulation by the Interstate Commerce Commission (ICC) would be predicated. The concept assumes that the current rates—soon to be "base" rates—are reasonable, but that is not the case at least with respect to Wyoming soda ash. As can be seen by this industry's participation in a recent ICC proceeding, Ex Parte 349, we do not accept the current Wyoming soda ash rate structure as being a reasonable one. The ICC didn't think the rates were reasonable either because the proposed increases on soda ash rates were partially denied as unnecessary and excessive fruits of a monopolistic position enjoyed on this captive freight.

Shippers haven't had time to use the remedies of the Railroad Revitalization and Regulatory Reform Act of 1976 because their resources are continually taxed in challenges to the torrent of rate increases proposed by the railroads. S. 796 would make sure they never get that chance. It cuts off effective market dominance challenges, and it stamps current rates with a Congressional imprimatur of reasonableness.

S. 796 aggravates the situation by permitting existing unreasonable rates to automatically become more unreasonable during the so-called transitional period. Rates are ratcheted upward by an automatic formula. Only if the rail carrier exceeds the automatic rate increase formula and the shipper can prove "competitive damage"—an undfined term—can some relief be obtained. In realistic terms, however, few shippers will be able to obtain any relief because of the heavy burden it bears just to have its day before the ICC.

We are strongly opposed to any deregulation measure which would enahance monopolistic condition that now exist against captive shippers. However, if any deregulation bill is passed it should provide for certification of the reasonableness of the base rate before it is permitted to become operative under the deregulated scheme. It is essential that this be done with regard to rates applicable to captive shippers, and S. 796 should be amended so as to accomplish this.

Most troublesome to the captive shipper, however, is the clear intent of S. 796's drafters to eliminate rate regulation after the five-year transitional period. That will be a monopolist's dream come true. No matter what the cost of the next most expensive alternative, that will be the benchmark for rates under the proposed "General Rule" irrespective of the rate of return to the carriers involved. That is monopoly to the captive shipper who doesn't have an alternate rail carrier or an alternative mode of transportation. Before Congress unleashes "market forces" on hapless captive shippers, it should establish a "market" by ensuring that a multiplicity of independent, competitive railroads run on the same track when there is no economically rational alternative to rail transportation.

Conclusion.—While there may be many situations in the nation where intermodal competiton warrants some degree of deregulation, these comments seek to point out one of the vast areas that have no economically rational alternative to the railroad—Wyoming soda ash freight rates on the Union Pacific. The consequences of absolute deregulation on captive shippers would be catastrophic. In short, S. 796 is inadequate as far as captive shippers are concerned. We respectfully request that the Subcommittee reexamine the plight of the captive shipper and amend S. 796 to provide protection against unreasonable rates.

Very truly yours,

WILLIAM W. SADD,
President and General Manager.

ARSHAM & KEENAN,
New York, N.Y., July 5, 1979.

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

DEAR SENATOR LONG: We represent the Gift Wrappings & Tyings Association, an association of rail shippers, and I attach a petition which GWTA has filed with the Interstate Commerce Commission requesting rulemaking addressed to the problem of the Conrail deficit in the Eastern District.

The enclosure invites attention to two fundamental propositions: (1) the impossibility of use of the freight rate payers as the source from which to defray the full running costs of the present undercapitalized Conrail system or to supply the funds necessary for the recapitalization of that system, and (2) the scandal created by the uniform escalation of rail rates in the Eastern District for all three of the principal systems, Conrail, the Chessie and the N&W, based on average statistics which include the Conrail deficits. The result is excessively high rate levels the proceeds of which, when paid to the Chessie and N&W, fail to defray a penny of the Conrail deficit, and, when paid to Conrail, supply only a fraction of Conrail's true revenue need.

The attachment proposes to the Commission a reconstitution and realignment both of the Commission's cost ascertainment and cost reporting practices and also of regulations governing tariff publication, so that the Congress, the commission and the shipping public can all understand the true net economic effect on the three principal Eastern District systems of the continual rate increases into which the Eastern District is being forced by use of averaged statistics which fail to differential Conrail from the other two systems.

The attachment proposes exercise of the Commission's control over maximum rail rates to force national recognition of the need either for public sector investment in Conrail of disinvestment of Conrail's enterprise in traffic lanes where such public sector financing will be unavailable.

We believe the regulatory rulemaking action sought by the attached petition illustrates vividly the potential which the Commission has to rationalize the rail transportation economy and the vital need for preservation of the Commission's jurisdiction to regulate maximum rail rates.

GWTA will be grateful if it can be afforded an opportunity to present testimony on this subject at a future Subcommittee hearing. In any event, GWTA requests that this letter and the attachment[1] be made part of the Subcommittee's record on S. 796.

Yours very truly,

William Q. Keenan,
Attorney.

Institute of Scrap Iron and Steel, Inc.,
Washington, D.C., July 9, 1979.

Hon. Howard Cannon,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, D.C.

Dear Senator Cannon: The Institute of Scrap Iron and Steel, Inc., is vitally concerned with the impact of S. 796. The Institute represents 1550 member firms engaged in processing and selling metallic scrap, as well as industry equipment and service suppliers; member firms process and ship approximately ninety to ninety-five percent of the ferrous scrap purchased in the United States. The transport mode used for moving the predominant portion of scrap iron to market is rail.

Because its member-shippers rely so heavily on the railroads, the Institute has an obvious interest in any plan to assure the financial health of the rail industry. We have never been and are not now opposed to railroad freight rate increases when they reflect legitimate railroad cost increases. We have only maintained that increased rates on scrap iron should not discriminate against that commodity while preferring the competitor, iron ore, which has been the practice.

The Institute cannot support the concept of deregulation embodied in S. 796 for the following reasons:

1. Railroad rate bureaus perform functions of mutual benefit to shippers and carriers yet S. 796 would permit the bureaus to do little more than operate as tariff publishing organizations. Under the regulatory framework affording antitrust immunity to rate bureaus, these organizations have made the regulatory process more efficient. Shippers and carriers use hearings at the bureau level to sort out issues, often precluding the need for the Interstate Commerce Commission to spend time acting as arbiter between customers and transportation suppliers.

A large portion of the bureau's work involves approval of rate reductions requested by shippers. The convenient forum where numerous carriers are assembled at one time permits shippers ready access to the essential parties responsible for rate changes. Without antitrust immunity for the bureau, shippers seeking rate changes involving many railroads would have to contact each company separately, trying to

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[1] The attachment is in the committee files.

get all to adopt the same set of changes. In the absence of the bureaus, shippers would spend an inordinate amount of time contacting individual carriers; it is likely that only the largest companies in the country would have the resources to support such staff activities.

While some refinements could remove the objectionable anti-competitive features of rate bureau activities, the Institute does not endorse removal of antitrust immunity for railroad rate bureaus in interstate and intrastate ratemaking.

Refinements might include "opening" rate bureau meetings by requiring that the ICC be provided with minutes and by removing the need for voting on single line rates.

2. Interstate Commerce Commission jurisdiction should not be curtailed, as proposed by S. 796 to eliminate ICC authority over car compensation, demurrage and revenue divisions. Neither should ICC authority to compel joint rates be eliminated. The very predictable result of these proposed incursions into ICC jurisdiction would be frontier-style chaos, rather than efficiency. The orderly resolution of issues arising in these areas is essential if the railroad industry is expected to function as a national system.

3. The proposed legislation promotes the erosion of the common carrier status. Under the bill, equipment availability may be assured by contract, giving customers with contracts priority access to freight cars. The Institute does not object to contract rates but only if carriers are still required to meet the common carrier obligation to furnish cars to all customers equitably.

The importance of guaranteeing equipment availability for all rail customers cannot be overstated in a period when the supply of freight cars of all types is inadequate to meet the nation's shipping needs and at a time when the energy outlook portends increasing demand for rail freight transportation. Removing the railroad's obligation to furnish rail cars is not the solution to the chronic car supply problem.

4. The rate freedom S. 796 proposes for the railroads is granted without adequate protection for the many shippers served only by a single railroad. The vast majority of scrap processors face this single supplier situation.

The bill's captive shipper criteria are too narrow, omitting the critically important factor of a scrap processor's lack of transportation alternatives to rail. Although motor carriers may have authority to haul scrap iron and competitive motor rates are published, the scrap processor, in most cases, ships by rail because the larger scrap buyers can and will accept rail delivery only. The single real supplier of transportation, the railroad, could demand in astronomical rate; under S. 796, the scrap processor would have no recourse to the ICC.

The requirement of "rail delivery only" is pervasive in scrap iron markets and a single railroad serving the ferrous processor is the rule. How many other industries are composed of shippers who are truly captive yet unprotected under S. 796 from abuses of railroad market power? The answer is not known by the drafters of the legislation. The Institute recommends that the proposal not be advanced without amendments addressing the true extent of single supplier markets.

While the objective of increasing the role of competition in regulating railroads' performance is desirable, attention must be focused on how it is done. Where there will continue to be opportunities for abuse of market power, protection for captive shippers and opportunities for rail-rail competition (e.g., trackage rights) must be provided. The real challenge is to redesign the regulatory scheme, not to plot ways to abandon it. The goal should be re-regulation, not de-regulation, in the public interest.

Sincerely,

HERSCHEL CUTLER,
Executive Director.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 9, 1979.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Technology,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your letter of May 9 enclosing the comments of the Sierra Pacific Power Company on the Administration's Proposed Railroad Deregulation Act of 1979, S. 796.

Sierra Pacific believes that as a public utility, it will be unable to successfully use the maximum rate regulation protections of the bill because it will be unable to demonstrate that it has been "competitively damaged" by a rail rate increase. Our proposed regulation was never intended to prevent a regulated utility from securing

maximum rate protection from the Interstate Commerce (ICC). We did not intend that such firms be denied protection afforded to other shippers and we will, if Sierra Pacific's concern proves to be correct, concur in adjustments necessary to assure that they can secure the same protection available to other firms.

It is important to note that at least for new coal supplies, the bill provides for long-term contracts for rates and services. Current law, as interpreted by the ICC, makes it almost impossible for any receiver of coal to enter into an enforceable contract with a railroad for both rates and service. The current regulatory system has resulted in promised rates being raised (although the ICC has reduced proposed increases, the rate approved has often been in excess of that promised). The bill, by making such promises enforceable, will give Sierra Pacific, as well as other companies in similar positions, significant protection that they do not now have.

Thank you for the opportunity to respond to Sierra Pacific's concerns.

Sincerely,

JOHN J. FEARNSIDES,
Deputy Under Secretary.

SIERRA PACIFIC POWER CO.,
Reno Nev., May 1, 1979.

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

DEAR SENATOR CANNON: On behalf of Sierra Pacific Power Company, I wish to thank you for the courtesies you extended our company at the Commerce Committee hearing held in Reno on April 20, 1979. The subject of railroad regulation is one that will have significant effect upon all of the people of this Country, and the people of Nevada owe you a great debt in your efforts to hold the hearing locally.

Enclosed are additional comments of Sierra Pacific Power Company on the proposed act to deregulate the nation's railroads. We would appreciate it if you would make these comments a part of the records of the Committee's hearings.

Thank you again for your efforts on behalf of the people of Nevada.

Sincerely yours,

JOHN SAIBINI,
Vice President,
Resources Development.

DOW CHEMICAL U.S.A.
Midland, Mich., July 24, 1979.

Mr. WILLIAM JOHNSON,
Senate Commerce Committee, Subcommittee on Surface Transportation, Russell Office Building, Washington, D.C.

DEAR MR. JOHNSON: In our discussions on July 9th we said we would confirm some of our thoughts regarding S. 796, Railroad Deregulation Act of 1979.

In general we liked most sections of the bill. Our views on various sections, that we would like to see changed, are attached.

We would like to thank you for taking time from your schedule to explore areas of S. 796 with us. We look forward to future discussions with you on areas of mutual interest.

Sincerely,

KEITH J. BUNTING,
General Traffic Manager.

Attachments.

MAXIMUM AND MINIMUM RATE REGULATION—SECTION 102

THE CAPTIVE SHIPPER

The so-called "captive shipper" problem has generated more discussion than any other provision of the Railroad Deregulation Act of 1979 (S. 796).

Everyone agrees that some rates are low because of the existence of competitive transportation alternatives. We offer the theory now that some rates are high because of the absence of competition. One of the primary tests for the existence of competition should be a comparsion between costs and rates for specific commodities when compared with the cost and rates paid by commodities in general. Certainly, the higher the cost, the higher the rates should be, but, when the cost for service for

two products are comparable and the rates vary significantly, it may be an indication of a discriminatory rate system because one group of products lacks modal alternatives.

While captive shippers exist, I am sure there are many more cases when some, but not all of a company's shipments are captive to the rails.

Almost all of our plants are served by only one railroad. We need an element of competition. In circumstances where a shipper serviced by one railroad cannot agree to a satisfactory rate with that railroad, a rate equal to, but not in excess of, fully allocated cost could be set for the movement from that plant to the junction with the nearest other railroad offering service in the direction of the consignee. The shipper should be free to negotiate a rate from the junction point to the destination with the second railroad.

Such a proposal gives the originating railroad an incentive to negotiate in good faith or face the possibility of losing the longer portion of the revenue haul. It would cause the shipper to bargain in good faith because the connecting rail carrier would not be likely to agree to an unreasonable request by shippers. It eliminates a take it or leave it proposal by the originating railroad.

ALTERNATIVE MARKETS TEST

Section 10701, Paragraph 4 provides a shipper must show it has no alternative markets for its product. We feel this test is impractical because the chemical industry is such a mature industry. Market share cannot be shifted from one area to another as rail rates increase. The business may be covered by a contract between seller and buyer which imposes an obligation on each. Certainly new markets are not readily open to suppliers because they desire to sell more. The U.S. Chemical industry has agressively been pursuing additional sales throughout the world. If any markets were available for additional sales, that market would have been thoroughly solicited because chemical plants have been operating at less than optimum rates for several years now and additional volume is highly prized by every producer. Yet, it can be almost impossible to show specifically why we have not increased market share in any geographic area. Certainly current suppliers will not yield them freely.

PRIVATE CARRIAGE TEST

Paragraph 4 also requires shippers to show why private carriage is not a suitable substitue for rail service.

We are a major manufacturer of basic industrial chemicals, plastics and consumer items. Our corporate plans and goals are tailored towards those fields. We have available a certain manpower level and our capital demands always exceed supply as is common in most businesses. We will not be in a position to go into private carriage based upon a sampling of selected pieces of business in the short term, which may not be available to us on a consistent basis. A corporate philosophy to concentrate on our basic manufacturing strengths cannot always be argued in terms of pure philosophy especially when a small piece of our business out of the total volume is examined. We believe this test of private carriage should be dropped completely.

NOTICE AND PUBLICATION OF RATES—SECTION 107

Current law requires rail carriers to give 30 days notice of rate changes. Paragraph G, Section 4, page 23 provides that rates may become effective upon publication of notice after the third anniversary of the effective date of this bill.

We strongly believe a reasonable notice period is appropriate for notification of normal changes in rail rates in order to conduct business in an orderly fashion. We believe a 10–14 day notification period is reasonable.

Many rate functions are computerized at central Dow locations with updated information being mailed to outlying plants and offices. It is not practical to revise potentially thousands of rates without proper program changes and then mail them to users throughout the country without receiving advance notice. Unless we can prepare our rate files in an orderly fashion, in will be impossible to verify freight charges promptly, pay freight bills within the legal time requirements or show proper freight charges on customer invoices.

Advance notification of pricing changes is a widely accepted business practice throughout American industry. It needs to be continued with rate changes so business can be conducted in a smooth fashion.

It may be necessary in some situations that railroads commit to a rate in order to be competitive and to capture spot business. Normal publishing delays can mean a loss of opportune business in these circumstances. We suggest that whenever a railroad needs to set a new rate immediately for a limited number of shippers to

obtain business, the new rate can become effective immediately and when the rate is published in a tariff, the item be noted that the rate became effective on one day's notice. Normal changes in rates, either up or down, can be effective on 14 days notice and the vast majority of rates would fall into this category.

This proposal enables the railroads to react immediately to enjoy business but allows an orderly transition when loss of business is not an issue.

ABANDONMENT AND DISCONTINUANCE OF SERVICE—SECTION 121

We believe railroad management should be allowed to make basic economic decisions including the right to abandonments. We would oppose the use of government funds to maintain unprofitable operations.

We do not believe railroads will be viable if they are forced to maintain unprofitable operations throughout the country. Railroads should not be expected to provide any service at a loss. If a shipper or group of shippers believe continued rail service is necessary, the financial burden should be borne by the shippers demanding continuation of the service. Use of government funds would simply continue an uneconomical situation indefinitely.

CAR SERVICE—SECTION 140

Paragraph A, page 45 allows the railroads, under a Commission grant of antitrust immunity, to set standard per diem and demurrage payments by consensus. In the event agreement cannot be reached between railroads, arbitration by the Commission is provided.

Paragraph A, page 47 prohibits standard payments by railroads to shippers for use of shipper-owned cars; they must be individually negotiated. The railroads would not be permitted to set a uniform figure for use of shipper-owned cars.

We believe the antitrust immunity proposed under Section 140 should be expanded to cover payments made to shippers for the use of shipper-owned cars so that uniform rates can be used throughout the industry. If agreement cannot be reached, arbitration should be provided by the Commission.

Under the sponsorship of two shipper organizations, one for tank cars and one for hopper cars, negotiations for reasonable cost compensation have been continuing between railroads and shippers for several years. Joint studies have been made and these studies covered such ownership costs items as purchase price, maintenance, empty mileage, purchase interest rates, depreciation and periodic escalation. Shippers working through the Chemical Manufacturers Association and railroads working through the American Association of Railroads have negotiated and agreed on all these areas. New mileage credit rules went into effect July 1, 1979.

We believe the present system which has been shown to be workable should continue. The alternative is to have every shipper negotiate separately with every railroad for every type of car. In our case, that's more than 75 different railroads. This would lead to needless clerical cost and great difficulty in auditing for railroads and shippers.

STATE OF NORTH DAKOTA,
EXECUTIVE OFFICE,
Bismarck, N. Dak., August 2, 1979.

Hon. RUSSELL B. LONG,
Chairman, Surface Transportation Subcommittee,
Washington, D.C.

DEAR CHAIRMAN LONG: Enclosed is a copy of a resolution adopted by the North Dakota State Intermodal Transportation Team (SITT) regarding deregulation of the nation's railroads as proposed in S. 796. The resolution points out deficiencies in this bill.

I know that the nation's railroads need money. North Dakota needs strong, viable railroads, especially since we are a land-locked state. However, our shippers and grain elevators are in a very real sense captive to rail transportation. Senate Bill 796, or any Congressional legislation, should not remove the protection of the Interstate Commerce Commission (ICC) over railroad rates. This is not to say that we are satisfied with the ICC's exercise of its powers, because we are not. The potential alternative to railroad deregulation, as the resolution points out, would be disastrous for our state and other areas of this country.

We sincerely believe a study is needed, and action begun to require the railroads to raise their tariffs on the three/fourths of the noncaptive traffic they move that is in a real sense being subsidized by farmers and grain shippers from our state.

We further believe that our state and the nation should have an integrated, intermodal transportation system which would give fair treatment to all modes. Many of the problems facing our railroads and the rest of our transportation system will be resolved if we can accomplish this goal.

Sincerely yours,

ARTHUR A. LINK,
Governor.

Enclosure.

RESOLUTION ADOPTED BY THE NORTH DAKOTA STATE INTERMODAL TRANSPORTATION TEAM ON JULY 23, 1979 AT FARGO, N. DAK., REGARDING S. 796, A BILL TO DEREGULATE THE NATION'S RAILROADS

Whereas, the United States Senate is now considering S. 796, generally known as the Administration's Deregulation Bill, and herein referred to as the Bill, and

Whereas, the agricultural production of North Dakota is totally dependent upon transportation to reach its markets and is, for various reasons, largely somewhat captive to rail transportation and is not the beneficiary of hard competition because of the cost characteristics of transportation by highway, the elimination of maximum rate controls by the Interstate Commerce Commission after a transition period of five years as provided by the Bill would be detrimental to the efficient and economical marketing of the state's agricultural production, and

Whereas, provisions of the Bill allowing railroads to reduce rates without notice and to increase rates on one day's notice in contrast to the thirty (30) day notice now required for rate changes will not only deny to the producer adequate knowledge on which to base pricing decisions but could allow dissemination of valuable advance knowledge to favored shippers or receivers, and

Whereas, provisions of the Bill requiring the maintenance of through routes between railroads but eliminating the present requirement of through rates and allowing combination rates to be applied at the discretion of individual railroads would tend to Balkanize the country as individual railroads strive to maximize their own revenues without regard to the commercial and transportation needs of the country as a whole, and

Whereas, the Bill's proposed elimination of the present law prohibiting the charging of higher rates for shorter distances over the same line or route would enhance the possibilities of discrimination against inland and non-competitive locations, and

Whereas, the Bill's elimination of present anti-trust exemptions under which railroads arrive at pricing decisions in unison is not in the best interest of either the railroads or the shipping public, and

Whereas, statutes enacted as the 4R Act in 1976 provide adequate relief to railroads seeking to abandon unprofitable lines with no further relief being necessary as proposed by the Bill, and

Whereas, the Bill's proposed elimination of Interstate Commerce Commission power to suspend car service rules in emergencies will militate against the return of cars to owning railroads in the west and particularly to North Dakota railroads in times of acute car shortages. Now, therefore, be it

Resolved, That S. 976 is deficient and does not adequately protect North Dakota's agricultural economy. North Dakota's position is that the Interstate Commerce Commission must retain rate control over the nation's railroads. Further provisions allowing reduced rates without notice, increased rates on one day's notice, elimination of the present requirement of through rates, and allowing combination rates to be applied at the discretion of individual railroads would tend to Balkanize the country as individual railroads strive to maximize their own revenues without regard to the commercial and transportation needs of the country as a whole. The prohibition of higher rates for a short haul and the elimination of the present anti-trust exemptions which apply to railroads are further deficiencies in the bill. Further, sections on abandonment and car service rules are deficient.

LONG ISLAND ASSOCIATION OF COMMERCE & INDUSTRY,
Long Island, N.Y., August 2, 1979.

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

DEAR HONORABLE CANNON: The Long Island Association of Commerce and Industry, Long Island's regional Chamber of Commerce representing nearly 1,000 firms, is very concerned over the administration's proposed Rail Deregulation Act of 1979.

The present form of the proposed Rail Deregulation Act actually will result in Long Island's further disadvantage over other parts of the country to retain and attract business. a viable transportation network and its costs are major factors for business retention and expansion on Long Island. Simply, being an Island is a handicap concerning transportation and the controls and guidance by the ICC has helped protect us. Rail deregulation will abolish ICC's authority to set joint and equalized rates and will lead to increased freight rates for Long Island firms. Increase freight rates will be as popular as high taxes on Long Island and will lead to further decay of our economic base by causing business to locate in other areas where they can be more competitive.

The LIA has always supported government deregulation proposals and encouraged the free market place as the vehicle to set prices. However, Rail Deregulation calls for special consideration. Long Island's unique geographic situation mandates initiative and special consideration on proposals and projects which other areas in the country would normally benefit from. For example, there are not many areas in the U.S. that need a bridge to support a viable economy in the future. similarly, with rail freight rates, the Island it unique. It can't read books and therefore doesn't realize the benefits of government deregulation as the theory says it should.

We firmly believe that deregulation proposals are good for the economy, however, provisions protecting Long Island and similar areas must be implemented if we are to survive.

Sincerely,

JOSEPH GIACALONE,
Vice President, Transportation.

SCM CORP.,
Cleveland, Ohio, August 7, 1979.

Hon. JOHN GLENN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR GLENN: This is in regard to the currently ongoing Congressional deliberations on the subject of rail regulatory reform.

Although, in my opinion, the Administration's Rail Deregulation Act of 1979—S. 796 would be an improvement over the status quo in this area, this bill, as I suspect you have already observed, contains a number of serious flaws. Since these flaws have been well documented in your hearings, it would serve no purpose for me to go into them in any detail here. In the minds and hearts of most people associated with the transportation activity of this nation, The Rail Deregulation Act of 1979 is clearly not acceptable as written.

By failing to enact any rail regulatory reform legislation at all, however, you would be performing a greater disservice to this nation than by passing S. 796. It would appear, therefore, that prompt action on alternative legislation would be most appropriate. The Chemical Manufacturer's Association (previously called Manufacturing Chemists Association, or MCA,) after a considerable amount of effort and realistic soul-searching, has come out with what I personally regard as the most acceptable comprehensive proposal covering the area of needed rail regulatory reform. I respectfully urge that you consider and take action on this proposal, copy attached, at your earliest opportunity in lieu of any further consideration of S. 796.

Sincerely,

FRANK J. YANACEK.

RAIL FREIGHT REGULATORY REFORM

DETAILED MCA PROPOSALS

I. Freight rates

A. Investigation and suspension.—The authority of the ICC to investigate and suspend rates on its own initiative should be terminated.

B. General or territory-wide increases.—No general or territory-wide increases should be permitted.

C. Maximum rates.—Where the ICC deems that no effective competition exists, the ICC will retain authority to establish just and reasonable maximum rates.

A shipper wishing to protest a rate must bear his petition to the ICC for remedy, setting forth the basis for complaint. The burden of proof would be on the shipper to establish that he has suffered injury. The ICC will give weight to evidence that the shipper may introduce concerning rail rates applicable to similar or competing commodities in situations where traffic is not captive to railroads.

The railroad would carry the burden of proof as to the reasonableness of the rate. If the ICC found the rate to be unreasonable, the ICC could set the maximum rate for the traffic.

Where the ICC determines effective competition exists, it will not intervene further.

D. Minimum rates.—Predatory practices should be prohibited.

E. Contract agreements.—Railroads and shippers should be permitted to make contractual agreements for rates and services—except that no carrier could agree to a contract which would in any way impair its ability to perform its common carrier obligations to those not covered by the contract. "A real carrier that has entered into a contract to provide a purchaser of rail services with specific services at specific rates shall publish and file with the Commission the essential terms of such contract, as required by the Commission. In setting the terms to be published, the Commission, to the maximum extent consistent with the purposes of this section, shall not require publication of the name or other identifying characteristics of the purchaser of rail services."

II. Collective ratemaking

A. Freight bureaus.—Railroads should have anti-trust immunity for the purpose of: (1) publishing tariffs, (2) establishing freight classifications and rules, (3) giving public notice of rate proposals, (4) the making of class rates, and (5) the establishment of demurrage charges and rules. All bureau meetings for establishing rates and charges should be open to the public, with provisions for valid shipper participation.

B. Antitrust immunity.—Should be removed as follows:

1. Single line rates.—Bureau action (discussion and agreeing) should be prohibited.

2. Joint line rates.—The railroads that cannot participate as provided in the proposal should not be allowed to discuss and vote.

C. Published rates.—All rates should be published and filed with the ICC. Any departure from the published rates would be a violation of law.

D. Car compensation.—Railroads' and shippers' antitrust immunity to continue car compensation activities with recourse to the ICC where agreement cannot be reached should be retained.

III. Joint rates and through routes

A. Joint rates.—The ICC should continue to have jurisdiction over the establishment of joint rates *if shipper and carrier cannot agree.*[1]

B. Through routes.—The ICC should continue to have jurisdiction over the establishment of joint routes *if shipper and carrier cannot agree.*[1]

IV. Abandonments

A. Time limit.—A set time should be provided in abandonment proceedings, of not less than 240 days notice with a provision that service must continue if the operation is fully subsidized, or the carrier must sell the line at net liquidation value to any financially able person or community who offers to use it to provide rail transportation.

B. Labor protection.—Railroad labor should be given no greater protection than other labor.

V. Mergers, acquisitions, market swaps, trackage agreements, and consolidations

A. Mergers and acquisitions.—ICC control should be significantly reduced and rail mergers and acquisitions be subject to the antitrust laws.

B. Market swaps, track agreements, and consolidations.—Should continue under jurisdiction of the ICC using expedited procedures and a test that balances benefits against anti-competitive effects. Due notice should be given to the public and to the ICC and on complaint the railroads must justify the proposed action.

VI. Discrimination

A. Discrimination prohibited.—The current antidiscrimination provisions of the Interstate Commerce Act should be continued.

B. Connecting carriers.—Present provisions of the Interstate Commerce Act prohibiting discrimination between connecting carriers should be retained, to assure that a railroad cannot refuse to cooperate on an equal basis with all feasible connecting carriers, subject only differences in cost.

C. Long and short haul provision.—The present provisions of long and short haul clause should be retained, except the requirement for the railroads to obtain relief on each rate. However, the rate must be made available to intermediate shippers upon request.

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[1] Believe italicized portion should read: "if the carriers involved cannot agree."

VII. Common carrier obligation

A. Providing service.—Present provisions of the Interstate Commerce Act requiring railroads to provide service upon reasonable request should be retained, with the ICC the enforcing agency.

B. Publication of rates.—Rates should continue to be published in tariffs.

VIII. Service regulations

A. Per diem and rate divisions.—The inter-railroad relationships should not be under ICC authority but subject to public arbitration proceedings when issues are deadlocked between the railroads.

B. Car service orders.—The authority of the ICC should be markedly restricted. Car service orders should be issued but only in cases of a proclaimed national emergency or in cases of bankruptcies.

IX. Other issues

A. Rights-of-way.—Railroad rights-of-way were acquired and are held in the public interest. A railroad should have no right to unreasonably withhold the crossing of that right-of-way by any mode, public or private.

B. Intermodal ownership.—ICC regulations should be eliminated which restrict the ability of the railroad to merge with or acquire motor carriers or water carriers, with such mergers or acquisitions subject only to the same standards and laws now applying to other industries. In acquisitions the railroad must demonstrate that such actions will not impair its ability to perform its common carrier obligations. Current laws preventing monopolization and restraint of trade could be used to prevent discrimination in favor of the motor or water carrier affiliate or subsidiary.

C. Rates on Government traffic.—Government traffic should be subject to the same provisions as regular commercial traffic.

D. A rail carrier providing service within a given Standard Metropolitan Statistical Area (SMSA), as defined by the Department of Commerce, shall provide switching service in a non-discriminatory manner, at the charge not to exceed the fully-allocated cost of providing such service to all carriers originating or terminating traffic within the SMSA.

X. The foregoing positions apply to both interstate and intra-state traffic

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MINNEAPOLIS, MINN., *September 12, 1979.*

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

DEAR SENATOR LONG: Enclosed are answers on behalf of the Minneapolis Grain Exchange to questions subsequent to our testimony regarding S. 796, The Railroad Deregulation Act of 1979.

Question 1 asks how various representatives of the same agricultural industry come to divergent views regarding S. 796. Since no one can say for sure what might happen if the law should be changed, it is perhaps not unlikely that different groups might come to different conclusions. Also involved in this context might be differences in viewpoint regarding the status quo and whether certain reforms might be either needed or not objectionable.

Question 2 regards the captive shipper concept and asks if a shipper is truly a captive, why it should be a burden to require him to ship by rail when he has no alternative. The difficulty we see with this lies in the fact that being a captive is not necessarily an everlasting thing. For example, grain shippers in the Minneapolis area attempting to reach their market at the Gulf Ports might find themselves captive to rail shipments during the wintertime months when the Mississippi River system above St. Louis is closed to navigation, but having alternatives as between rail and water during the period of time when navigation is open. Similarly a shipper in a remote area in North Dakota may find that trucks are only willing to deal with him when there is a low overall demand for transportation service, and not when the demand is high. He would be a part-time captive under such circumstances. Few grain shippers, we think, would undertake to quess into the future as to when they might or might not be captive for such a thing would vary with seasons, markets, and other unknown factors. To whatever extent protection is afforded a captive shipper, it should remain in effect more than the five year period proposed in S. 796.

Question 3 asks how we as shippers could favor removing ICC suspension powers when such protects shippers from experiencing rate increases which are later found to be unreasonably high. This certainty is a controversial matter as to which many

shippers differ. Our position is based upon the notion that at this time suspension as an extraordinary remedy by the Commission, and in fact rarely exercised by it during these times, is inappropriate to allowing the railroads to find their own remedies as free from regulatory interference as public policy might allow. In this context, we would ask that the law still contain provisions for investigation of proposals for rate changes which the Commission may feel would be unlawful and for complaints against unlawful rate situations.

Question 4 asks how we propose to balance the needs of shippers in having adequate advance notice of rate changes with the needs of railroads in being able to respond quickly to market conditions. The difficulty we have with shorter notice provisions than the current 30-day requirement is that many country grain shippers have their commodities sold in advance priced on existing freight rates, and would be subject to undue risk should the rates be increased before the shipment could be completed. Country grain shippers can protect themselves against such a situation with respect to truck shipments by booking truck freight in advance to cover their commitments. Such a thing is not currently possible by rail. It would seem that railroads could anticipate their market situation well enough to provide 30 days notice to shippers under these circumstances. As we understand it, the ICC currently allows rates to go into effect on short notice under unusual circumstances, and perhaps this is one avenue of relief that railroads should seek more often.

Question 5 asks us to explain our position that burden of proof in ICC rate investigation cases should be on the party in the best position to bear the burden. It is our understanding that generally speaking the burden of going forward with proof in an investigation usually should lie with the party attempting to justify a change in the exisiting status. Aside from this, it would appear to us that as a practical matter certain things are more appropriate for one side of the case to prove than the other. For example, it is hard for anyone other than a railroad to prove what the railroad's costs are. On the other hand, it would be difficult for anyone other than a shipper to show what his competitive situation is. When issues such as these are pertinent, we think the person best in position to furnish the proof should be the one required to do so.

An additional question from Senator Pressler asks whether we would be willing to accept as a concept a zone within which carriers could raise their rates provided that the additional operating revenues generated would be dedicated to improving railroad plant. Such plans have been disappointing to us in the past. One of the Ex Parte increases authorized by the Commission some years ago was supposed to be earmarked for plant improvements but we doubt whether anything happened under that program that would not have happened anyway. The railroads able to do so financially put their money into the sort of improvements that they probably would have made in any event. The railroads not able to do so asked for and frequently obtained from the Commission permission to spend the money for other purposes such as to meet payrolls. This would be a very difficult concept to use effectively since the needs for improvement and the ability to expend monies for improvement vary a great deal from one line to another.

I hope that these answers have been of some help.

Very truly yours,

James R. Scoggin,
Vice President, Transportation.

Federal Trade Commission,
Bureau of Competition,
Washington, D.C., September 19, 1979.

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

Dear Mr. Chairman: Enclosed are my answers to the questions you and Senator Kassebaum submitted in connection with my June 6 testimony before your Subcommittee on the rate regulation provisions of the Railroad Deregulation Act of 1979. These answers are my own only, and are not intended to be construed as representative of an official Commission policy.

Linda Morgan of your staff has assured me that the slight delay involved in preparing and submitting my answers would not hinder the Committee's work on the Railroad Deregulation Act.

I hope that my testimony and the attached answers to your questions will be helpful to the Subcommittee and Committee in considering the Act. Please do not hesitate to call me, 202/376–2069, if you have any further questions.

Sincerely,

DAVID I. WILSON,
Assistant Director,
Bureau of Competition.

Question 1. It has been claimed that under the antidiscrimination provisions and minimum rate regulation provisions of S. 796 rail carriers would be allowed to meet and beat competition. There is some confusion as to how these provisions correspond to the antitrust laws. (a) Can competition be met and beaten under the antitrust laws? (b) What needs to be shown in order to find a violation under the antitrust laws? (c) Can a competitor go as low as his incremental cost without violating the antitrust laws? (d) Can he go below cost? (e) Must it be shown that a competitor intended to eliminate competition in order to show predatory pricing?

Answer 1. (a) The antitrust laws not only allow but seek to encourage competitors to both meet and beat their competition. Meeting and beating the price offered by one's competitors is competition, which the antitrust laws are meant to foster. For example, Sherman Act § 1 prohibits contracts, combinations and conspiracies that restrain trade, i.e., that discourage competition. Sherman Act § 2 proscribes monopolization and attempts and conspiracies to monopolize. Clayton Act § 3 prevents a seller from conditioning the sale of a product on the buyer's agreement not to buy the same product from the seller's competitors, and Clayton Act § 7 prohibits mergers that may substantially lessen competition.[1] The purpose of these laws is to allow competition—rather than a single firm with market power, a conspiracy among several firms, or a regulatory agency—to determine the price at which goods will be sold. The process of competition in workably competitive markets necessarily means competitors meeting and beating each other's competition until each competitor produces the output and charges the price at which his price equals his cost, including the cost of capital, his own and others.

The Robinson-Patman Act, which is primarily an amendment to the Clayton Act and thus technically an antitrust act, does not prohibit a competitor from meeting or beating his competition. It does prohibit a competitor from discriminating in price where the discrimination may substantially lessen competition, if the discrimination is not cost justified and if the discriminatory price is not offered in good faith to meet an equally low price of a competitor. Robinson-Patman thus roughly corresponds to § 10741 of S. 796.[2] S. 796 would allow a railroad to charge different prices to competing purchasers as long as both prices are above the railroad's cost, regardless of whether the lower price meets or beats the price offered by the railroad's competition. As a practical matter, this is exactly what the Robinson-Patman Act as it is presently interpreted in many primary line cases[3] would allow. For courts reason that the injury requirement of the Robinson-Patman Act—that a reasonable possibility exist that competition may be substantially lessened—is met if the seller is shown to have predatory intent, and predatory intent is generally shown by sales below cost. See, e.g., *Utah Pie Co.* v. *Continental Baking Co.,* 386 U.S. 685, 696 n.12 (1967); *Continental Baking Co.* v. *Old Homestead Bread Co.,* 476 F.2d 97, 104 (10th Cir. 1973); see also *Pacific Engineering and Production Co. of Nevada* v. *Kerr-McGee Corp.,* 551 F.2d 790, 798 (10th Cir. 1977).[4] Thus, as a practical matter, under the Robinson-Patman Act a discriminatory price is unlawful if it is below cost; converse-

[1] Under § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the FTC may prohibit not only those practices that violate the Sherman and Clayton Acts but also "practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate these laws." *FTC* v. *Brown Shoe Co.,* 384 U.S. 316, 321 (1966). Moreover, the FTC may, "like a court of equity, consider [ ] public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws." *FTC* v. *Sperry and Hutchinson Co.,* 405 U.S. 233, 244 (1972).

[2] For ease of reference, citations to S. 796 are given to sections of the interstate Commerce Act as it would be amended by S. 796, rather than to the bill itself.

[3] The Robinson-Patman Act is interpreted slightly differently in secondary line cases. See answer to Question 2(b), infra. Although on its face proposed § 10741 reads as a secondary line statute (i.e., dealing with competition between purchasers), it is my understanding that the similar language in existing § 10741 has been construed to cover primary line injury. Accordingly, we address both the primary line and secondary line implications of present law.

[4] Of course, it is also permissible to prove by other means, such as market analysis, that there is a reasonable probability that competition may be lessened. *National Dairy Products Corp.* v. *FTC,* 412 F.2d 605 (7th Cir. 1969). And predatory intent can be proved by means other than sales below cost. *Utah Pie Co.* v. *Continental Baking Co., supra,* 386 U.S. at 696 n.12 (1967). However, in the ordinary case the issue is resolved by proof of sales below cost.

ly, the practical consequence of sales above cost in primary line cases is commonly that there is no finding of injury and thus that the discrimination is lawful.

Finally, I should emphasize that the railroads are not now nor have they ever been immune from prosecution for predatory pricing under the antitrust laws. It is true that railroads may not be charged with violation of the Robinson-Patman Act, since that Act applies only to commodities, and transportation is not a commodity. However, a railroad which has monopoly power—and only a railroad which both has such power and is in a situation where there are high barriers to entry could possibly think it profitable to price predatorily [5]—is subject to Sherman Act § 2. It has long been clear that the proscription in Sherman Act § 2 of monopolization or attempts to monopolize includes within it a proscription of predatory pricing. See, e.g., *U.S.* v. *American Tobacco Co.*, 221 U.S. 106, 182 (1911); *Standard Oil Co.* v. *U.S.*, 221 U.S. 1, 43 (1911). It is equally clear that under Sherman Act § 2 the use of monopoly power to foreclose competition, to gain a competitive advantage, or to destroy a competitor is unlawful. *Otter Tail Power Co.* v. *U.S.*, 410 U.S. 366 (1973); *U.S.* v. *Griffith*, 334 U.S. 100, 107 (1948).[6] The barge operators may thus rest assured that § 2 of the Sherman Act is fully applicable to the railroads in both the "price squeezing" and "sharpshooting" situations, and that under Sherman Act § 2 a railroad would be unable either to "price squeeze" or "sharpshoot" a water carrier out of business.

(b) In order to prove a predatory pricing violation of the antitrust laws, predatory intent needs to be shown. Sales below cost are evidence of predatory intent. See, e.g., *Utah Pie Co.* v. *Continental Baking Co., supra; Continental Baking Co.* v. *Old Homestead Bread Co., supra.*

(c) A competitor arguably can go as low as (though no lower than) his incremental cost without violating the antitrust laws. Incremental cost is similar to marginal cost—the added cost of making and selling the last unit. See, e.g., *Borden, Inc.*, 92 F.T.C. ——, slip op., at 27 n. 30 (Nov. 7, 1978). (Or, in the language of §10102(11) of S. 796, incremental cost is "that amount by which a firm's costs change as a result of a change in the quantity of a specific service or movement provided."). The law on this question is in a state of flux. However, some courts recently have held, in accordance with an influential law review article by Professors Phillip Areeda and Donald Turner, that a price generally is lawful so long as it is at or above marginal cost or average variable cost, whichever is greater.[7] See, e.g., *California Computer Products, Inc.* v. *IBM*, 921 BNA Antitrust and Trade Reg. Rep. E–1 (9th Cir., June 21, 1979); *Pacific Engineering and Production Co. of Nevada* v. *Kerr-McGee Corp.*, 551 F.2d 790 (10th Cir. 1977); *Janich Bros., Inc.* v. *American Distilling Co.*, 570 F.2d 848, 858 (9th Cir. 1977); *Hanson* v. *Shell Oil Co.*, 541 F.2d 1352 (9th Cir. 1976); *International Air Industries, Inc.* v. *American Excelsior Co.*, 517 F. 2d 714, 724 (5th Cir. 1975); See also Areeda and Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 697 (1975). But see *Utah Pie Co.* v. *Continental Baking Co.*, 386 U.S. 685 (1967) (sales below a level of cost which includes an allocation of overhead may imply predatory intent). The most recent cases on the subject have retrenched slightly, suggesting that predatory intent is not necessarily inconsistent with sales above even average variable cost. *California Computer Products, Inc., supra*, at E–8; *Borden, Inc., supra*, slip op. at 34–36. Moreover, Professors Areeda and Turner are not without their critics within the economics profession. See, e.g., Scherer, "Predatory Pricing and the Sherman Act: A Comment," 89 Harv. L. Rev. 869 (1976); Williamson, "Predatory Pricing: A Strategic and Welfare Analysis," 87 Yale L. J. 284 (1977); Williamson, "Williamson on Predatory Pricing II," 88 Yale L. J. 1183 (1979); Posner, "Antitrust Law: An Economic Perspective" 191–92 (1976). Because marginal cost is in practice so difficult to measure, Areeda and Turner suggest that "reasonably anticipated average variable cost" is a reasonably accurate and measurable surrogate for marginal cost, and some courts

[5] See P. Areeda, Antitrust Analysis 669–73 (2d ed. 1974).

[6] As one antitrust expert has explained: "A firm which holds a lawful monopoly by virtue of ownership of a unique resource is guilty of monopolization if it exploits that resource in ways which exclude or disadvantage customers arbitrarily or invidiously. For the purpose of assuring reasonable access, this rule treats scarce resource or natural advantage monopolies the way regulatory law treats a public utility." L. Sullivan, Antitrust, § 48 (1977).

[7] The distinction between these two measures of cost is important. Over most ranges of output short run marginal cost (the increment to cost of one additional unit, considered in isolation) is at or below average variable cost (the variable cost of all output to that point divided by total units of output). But short run marginal cost is above average variable cost at some levels of output. Neither marginal cost nor average variable cost—as economists use those terms—tracks conventional accounting records very well. They have therefore been criticized as too imprecise for practical use. See, e.g., Williamson, "Predatory Pricing: A Strategic and Welfare Analysis," 87 Yale L. J. 284, 305 (1977).

have followed this suggestion, too. See, e.g., *Hanson, supra; International Air Industries, Inc., supra; California Computer Products, Inc., supra.*

(d) For the reasons explained above, a competitor may not price below cost, either under the antitrust laws or § 10701(c) of S. 796.

(e) In order to show a predatory pricing violation under the antitrust laws, one must usually show that the defendant had an intent to eliminate competition;[8] intent, however, is today generally proved by showing sales below cost. See, e.g., *Utah Pie Co., supra; Old Homestead Bread Co., supra.* Thus, once one shows below-cost pricing, he need not independently demonstrate predatory intent.

Section 10701(c) of S. 796 is confusing with respect to the question of predatory intent. Although under the antitrust laws sales below cost imply predatory intent and an independent showing of predatory intent is therefore unnecessary, § 10701(c) arguably would require not only a showing of a rate below cost but also an independent showing of predatory intent. That section provides:

(c) Rate Decreases. No rail carrier shall, with the intent to eliminate a competitor, set a rate below a level that contributes to the establishing carrier's going concern value. Any rate that covers incremental cost in section 10102 of this title, shall be found to contribute to going concern value.

To clear up any confusion, and to make S. 796 consistent with the antitrust laws, the phrase "with the intent to eliminate a competitor" should be deleted from § 10701 (c).

Question 2.(a) Under the antitrust laws, how are competitive differences shown as justifications for cost differences? (b) How do parties claiming discrimination show competitie harm? (c) How are the burdens of proof allocated?

Answer 2. (a) Under the "cost justification" defense of the Robinson-Patman Act, a firm may discriminate in price if the lower price "make[s] only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered." 15 U.S.C. § 13(a). The Supreme Court has held that to establish a cost justification defense a seller need not prove that his price to each customer is entirely cost-justified, but may establish that his price to a class of customers is cost-justified. *U.S.* v. *Borden Co.,* 370 U.S. 460, 464 (1962). This class, however, must be "composed of members of such selfsameness as to make the averaging of the cost of dealing with the group a valid and reasonable indicium of the cost of dealing with any specific group member." Id. at 469. Thus, a cost justification based on the difference between an estimated average cost of selling to one or two large customers and an average cost of selling to all other customers cannot be accepted as a defense. *Champion Spark Plug Co.,* 50 FTC 30, 43 (1953).

(b) Under the Robinson-Patman Act, there are two different kinds of discrimination cases: primary line cases, in which a competitor of the seller is injured by a lower price charged by the seller, and secondary line cases, in which a buyer is injured by a lower price charged to another buyer by the seller. How parties claiming discrimination show competitive harm may depend on whether they are sellers—victims of primary line discrimination—or buyers—victims of secondary line discrimination.

In primary line cases, the complaining seller alleging injury typically must show a general injury to competitive conditions in the market. *Foremost Dairies, Inc.* v. *FTC,* 348 F.2d 674, 678 (5th Cir. 1965). This requirement may be met by proving predatory intent. Predatory intent is most commonly proved by showing sales below cost. See, e.g., *Utah Pie Co., supra; Old Homestead Bread Co., supra.*

In secondary line cases, on the other hand, all a buyer need do to show competitive harm is to show a significant discrimination in price. Once such a discrimination is shown, injury may be presumed. See *FTC* v. *Morton Salt Co.,* 334 U.S. 37 (1948). Moreover, the buyer need not prove that the discrimination actually harmed competition, but only that there is a reasonable possibility that the discrimination may injure competition. Id. at 46; *Corn Products Refining Co.* v. *FTC,* 324 U.S. 726, 742 (1945).

(c) There is a conflict among the circuits as to who has the burden of proving competitive injury in price discrimination cases. The Second Circuit has expressly stated that the burden is on the defendant to prove that there has been no competitive injury. E.G., *FTC* v. *Standard Brands, Inc.,* 189 F.2d 510 (2d Cir. 1951).

Although the Second Circuit's view was, in effect, adopted by the Supreme Court in *Morton Salt,* the Seventh and Tenth Circuits have placed the burden of proof of

[8] As explained at page 3, supra, the Robinson-Patman Act requires proof of injury to competition. In primary line cases this element can be and often is satisfied by proof of predatory intent. Predatory intent, however, is not an independent element in a Robinson-Patman Act case. In Sherman Act attempt to monopolize cases, on the other hand, intent is an element, *Swift & Co.* v. *United States,* 196 U.S. 375 (1905), but intent is commonly proved from conduct.

competitive harm on the complaining party. *Anheuser-Busch, Inc.* v. *FTC*, 289 F.2d 835 (7th Cir. 1961); *Atlas Building Products Co.* v. *Diamond Block and Gravel Co.*, 269 F.2d 950 (10th Cir. 1959).

Question 3. In your testimony, you suggest that to avoid exposure to antitrust investigations in discussions of joint-line rates without full antitrust immunity, the industry could obviate the need for joint rates by a system of combination rates or a system of brokers who would negotiate rates between carriers for shippers. (a) What is your response to the argument that joint rates are, in many cases, lower than combination rates over the same line? (b) Would not a system of brokers add complexity to the pricing system?

Answer 3. (a) My response to the argument that joint rates are, in many cases, lower than combination rates is as follows:

1. Railroads can set joint rates without antitrust immunity. See my testimony at 12–13.

2. In lieu of combination rates, the railroads could establish a system of proportional rates which would apply on a railroad's line only where that line is part of a joint-line route. These proportional rates would be lower than the rates applying for single-line, local travel. See my testimony at 14. Thus, the sum of the proportional rates would be lower than the sum of the locals, and could be as low as or even lower than joint rates.

(a) Even if the railroads chose not to set joint rates and not to establish proportional rates but rather simply adopted "sum of the locals" pricing, which resulted in slightly higher rates for joint-line service than do joint-line rates, the benefits of abolishing the general rate increase and withdrawing antitrust immunity far outweigh any disadvantages sum-of-the-locals pricing might bring.

(b) It is difficult to see how the pricing system could be any more complex than it is already. In fact, a system of brokers could simplify and streamline the system, by encouraging carriers to tailor their tariffs to the needs of shippers whose traffic they actually carry. Under the existing system, on the other hand, there are pages and pages of complex tariffs, none of which may meet the precise needs of any given carrier and shipper. It should also be emphasized that brokers are just one of the ways in which railroads can set their rates. After 30 years of legalized price-fixing, any new system—joint rates absent antitrust immunity, combination or proportional rates, or brokers—will take some adjustment. The fact that a new system may take some getting accustomed to, however, is certainly not a valid reason to continue with the existing system.

Question 4. In your testimony, you state that mere discussion of joint-line rates would not infer unlawful discussion of single-line rates, which would not have the protection of antitrust immunity under S. 796. Would there be any instance when such a discussion would give cause for an investigation into possible price-fixing and serve as evidence supporting a finding of price-fixing? What would need to be shown?

Answer 4. Discussing the joint-line rate that should apply between two points would not, without more, give cause for an investigation into possible price-fixing, nor, a fortiori, would it be sufficient evidence to support a finding of price-fixing. Although there need not be an express agreement to support a finding of price-fixing, there must be sufficient facts from which to infer that the parties had agreed to fix their prices. Discussion between competitors about a joint venture is simply not sufficient to imply that these competitors have agreed to fix their prices on competing ventures. The mere possibility that cooperation in a joint venture might carry over into competitive ventures has never been held to violate the antitrust laws. (Otherwise, of course, the many joint ventures between competitors which are today undertaken would all be unlawful.)

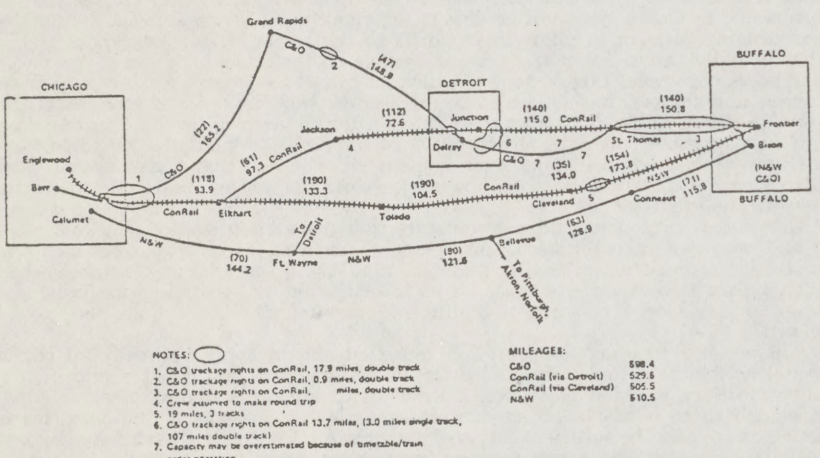
On the other hand, if there were evidence that discussion between competitors about their joint venture—setting a joint-line rate—had in fact carried over into their competing ventures—setting their single-line rates—it could justify an investigation into possible price-fixing and could serve as evidence supporting a finding of price-fixing. Such evidence typically would be exclusionary conduct or "hot" documents. See, e.g., *Norfolk Monument Co., Inc.* v. *Woodlawn Memorial Gardens, Inc.*, 394 U.S. 700 (1969) (conspiracy inferred from facts that cemetery owners prohibited plaintiff from installing gravestones in their cemeteries and tried to dissuade customers from buying from plaintiff); *Volasco Products Co.* v. *Lloyd A. Fry Roofing Co.*, 308 F.2d 383 (6th Cir. 1962) (documents stipulating that entire industry had adopted a zone pricing plan and that all manufacturers are "in line" and quote on the same basis may be evidence of price-fixing agreement).

In addition, the Supreme Court has emphasized that valid business explanations can negate the inference of an illegal agreement. *U.S.* v. *Citizens & Southern National Bank,* 422 U.S. 86 (1975).

Moreover, railroad pricing would be unlikely to be the sort of lock-step pricing which might invite a price-fixing investigation, since absent antitrust immunity rates for alternate routes between any two cities would often be different. This is because those alternate routes differ so significantly in quality of service and cost. for example, alternate routes differ with respect to their on-time performance, their time in transit, and their loss and damage performance. See, e.g., U.S. Dept. of Transportation, "A Prospectus for Change in the Freight Railroad Industry ('Prospectus')" 14–21 (1978); R.L. Banks & Associates, Inc., "Study of Merger Alternatives: Run-through Trains" 34–38 (1977). Clearly, one would not expect a shipper to pay the same price for service which arrives three days late with 35 percent damage as for ontime and damage-free service.

Moreover, as this diagram indicates there is a substantial difference in the length of the various routes between Buffalo and Chicago. One would not expect the rate between Buffalo and Chicago via grand Rapids, for example, to be the same as that for the route via Cleveland and Toledo, since the route via Grand Rapids is 92 miles longer and, presumably, would provide much slower service. In short, with antitrust immunity removed, and the railroads thus forced to compete, the inherent differences among alternate routes indicate that the rates for these routes could often differ. Since rates for these alternate routes could differ, the railroads would seldom need to worry about a price-fixing investigation. In other words, the probability of tacit collusion and hence of nonconspiratorial rate uniformity diminishes as the probability of diversity among the different routes increases.

CHICAGO—BUFFALO CORRIDOR



Question 5. In your statement, you refer to excess trackage as being one of the undesired results of rate bureaus. Please explain in more detail.

Answer 5. Collective ratemaking through rate bureaus causes and maintains excess capacity in the following way:

Through the rate bureaus, a single rate is set that applies for all the different routes between two points, regardless of the different cost characteristics of those routes. The rate is thus set high enough to allow even high-cost routes, which could not profitably compete for the traffic in a competitive environment, to continue to operate. This may well be the reason there are, for example, eight parallel mainline routes between Chicago and Kansas City. If antitrust immunity were withdrawn, and the railroads could no longer set a single rate for all the different routes between two points but were forced to set their rates competitively, the low-cost railroads would set a rate lower than the high-cost railroads. Shippers would then ship their traffic over the low-cost railroads, at the lower rates, and the high-cost routes would cease to operate, thus eliminating the excess trackage that legalized price-fixing through the rate bureaus had preserved.

As I pointed out in my testimony, each mile of excess trackage eliminated would result in an annual saving of $4,600.

Question 6. In your statement, you claim that prices are inflated through rate bureaus. How do you account for the fact that shippers do not seem to complain about rate bureaus and the prices resulting therefrom?

Answer 6. I account for the fact that shippers do not seem to complain about rate bureaus and the prices resulting therefrom by the fact that most shippers, for very practical reasons, complain privately rather than publicly.

There are many shippers, however, who do complain publicly about rate bureaus and the prices resulting therefrom. Among these shippers are the members of CURRENT—the Committee Urging Regulatory Reform for Efficient National Trucking. Among the members of CURRENT are City Products Corporation, Ore-Ida Foods, Super-Valu Stores, General Mills, the National Independent Meat Packers Association, and International Minerals and Chemicals. Quaker Oats and Continental Grain Company have also complained publicly about rate bureaus, as have many small shippers.

Of those shippers who do their complaining in private, many keep their complaints private because they are worried about retaliation from the railroads, and their monolithic pricing structure, if they do complain. If a business is dependent on railroads and the railroads act as one in pricing, it is more vulnerable than if the various railroads competed in price amongst themselves for its traffic.

But the single most significant reason many shippers keep their complaints private is that they have been accustomed to doing business in the same way for 30 years. As one experienced transportation lawyer recently told me, "Shippers know they're getting 'ripped off' by the present system, and they constantly complain about it among themselves and to the railroads, but they don't want to change the system because they know the system." Traffic managers and traffic vice-presidents have built up, over many years, a great deal of knowledge about how the existing system works. They depend upon the existing system for their livelihood. Thus, although they dislike the way the present system works, they fear change.

In addition, it should be emphasized that shippers can pass on high rates to the consumer. What shippers are concerned with is not so much the absolute level of the rate they pay as much as the relation of the rate they pay to the rate competing shippers pay. As long as they are assured that no competing shipper pays less than they do—an assurance they get from the rate bureaus' legalized price-fixing—they can pass the entire inflated rate on to consumers.

Question From Senator Kassebaum

In your testimony, you state that "collective ratemaking has resulted in . . . high costs . . . poor and . . . deteriorating service." How do you account for the fact that several of our Nation's rail carriers have a reputation for excellent service and roadbeds that are in the highest classification by Federal Railroad Administration standards? Why are all railroads not in the same deteriorated shape as you suggest the necessary result of collective ratemaking is?

Answer. Collective ratemaking has resulted in poor and deteriorating service. Of course, some railroads are in better condition than others, and those in the best condition naturally are in the Federal Railroad Administration's ("FRA") highest classification. But the FRA's high rating does not mean that a railroad is in good condition either in an absolute sense or as compared to other industries.

For example, even the railroads which are commonly thought of as being in the best condition and being the most profitable—Southern Railway and Missouri Pacific, for example—still only make 8 percent on investment. See *Prospectus, supra,* at 12. To put this in perspective, the 100 largest trucking companies average an 18.5 percent return on equity. ICC Bureau of Accounts, "Large Class I Motor Carriers of Property Selected Earnings Data" (Dec. 1978). By trucking standards, even a healthy railroad is in poor economic condition.

The two major reasons some railroads are in poorer condition than others are that (1) there is more excess capacity in some sections of the country than in others, and (2) some railroad managements are more efficient than others. Excess capacity, for example, is more prevalent in the Midwest and Northeast than in the South and West. See, e.g., *Prospectus, supra,* at 86–87. As a result, a number of railroads whose route systems are predominantly in the South or West—Southern Railway, Norfolk and Western, Missouri Pacific, and Union Pacific—are making between 6 and 8 percent on investment. In the Midwest and Northeast, on the other hand, the Rock Island, Milwaukee, and Boston and Maine are now in bankruptcy, as were the Penn Central and the other railroads which became Conrail. There was greater excess capacity to begin with in the Midwest and Northeast than in the South and West because many more parallel rail lines were originally built in the Midwest and Northeast. See *Prospectus, supra,* at 86. However, it is collective ratemaking which has insured that the excess capactiy which was originally built is maintained, since

collective ratemaking insures that a rate will be set at a level high enough to keep inefficient routes in effect and that the more efficient routes will not realize economies of traffic density. See my testimony at 5–7.

Similarly, the relative efficiencies and imaginations of railroad managements differ. Southern Railway, for example, has a reputation for particularly good management, and has been willing to experiment with new ideas, including ratemaking without antitrust immunity. See "ICC Section 5b Application No. 5, Southern Railroads—Agreement," Verified Statement of R. S. Hamilton (Nov. 20, 1978). Many other railroads, on the other hand, have been doing business in the same way for 30 years and have shown no willingness whatever to change. Rather, as DOT emphasizes, they tend to focus their efforts on pricing to protect their existing market shares, rather than trying to expand that market share or expand into new markets. *Prospectus, supra,* at 53. By setting a price high enough to keep inefficient railroads in business, collective ratemaking ensures that railroads, regardless of efficiency, will tend to retain their existing market shares, and thus that railroad managers, regardless of their efficiency, will tend to remain at the helm of their railroads. If collective ratemaking were abolished, both inefficient railroads and inefficient managers would be forced to become more efficient in order to survive.

In sum, although collective ratemaking is not the only cause of the railroads' problems, it is itself a very important cause of these problems and also eliminates the problems caused by such other factors as excess capacity and poor management. If collective ratemaking were abolished and our free enterprise system were given a chance to work, conditions in the railroad industry could only improve.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 27, 1979.

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

DEAR CHAIRMAN LONG: Thank you for your letter of July 17, enclosing questions relating to my testimony on May 22 before the Surface Transportation Subcommittee on the rate regulation provisions of S. 796. Attached are the Commission's responses to those questions, as well as a separate expression by Commissioner Gresham.

If you can be of any further assistance, Please contact me.

Sincerely yours,

A. DANIEL O'NEAL,
Chairman.

Enclosure.

Question 1. In your statement, you mention the problems of labor and management. How do we legislate improvements in these areas? To what extent would a world where market forces dictate promote management initiative? How can we encourage the railroads to compete more effectively through regulation?

Answer. The labor/management problem has traditionally been a difficult and delicate subject. Labor has understandably been concerned with the large decrease in the rail labor work force over the last 20 years. Rail management has expressed concern over the high percentage of labor costs to total costs. The collective bargaining framework, however, is beyond the scope of the Commission's jurisdiction. The contractual results are considered by the Commission just as any other cost factors. Our concern centers on the reasonableness of prices charged and the inflationary impact of general rate increases, which indirectly raise issues of efficient and economic management, and not on how or at what level labor and management reach agreement on contracts.

The apparent legal limitations on the Commission's authority to review working rules and practices [1] are consistent with our belief that working conditions and practices are matters to be resolved by private collective bargaining procedures even though these practices may have a serious impact on the costs of rail transportation. Although it may be possible to provide through legislation for direct federal intervention in the rail collective bargaining process, it may be preferable for the parties to provide incentives to improve transportation efficiencies through devices such as profit sharing or productivity sharing. Through these devices the traditional private negotiations without government intervention could continue, while productivity should increase.

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[1] Please see *Burlington Truck Lines* v. *United States,* 371 U.S. 156 (1962), which discusses the Commission's jurisdiction with regard to labor law issues.

Some members of the Commission feel that the problems of labor and management can be addressed most effectively by placing greater reliance on market forces in the setting of rates. It is felt that this reliance will increase the incentive for both labor and management to bargain with greater intensity.

The second portion of your question is being effectively answered in part by the improved response of rail management to the flexibility afforded it by the Commission. For example, both traffic volumes and revenues for the movement of fresh fruits and vegetables have increased sharply since the exemption of these commodities from regulation. It should be noted that the exemption includes removal of mandatory requirements for divisions and joint rates and through routes, and that rail management has been able to adjust to this situation. This appears to reflect the ability of management to adjust to changes in the regulatory environment.

In addition to the use of this exemption, there is also evidence that rail management is beginning to respond to the Commission's repeated statements that cancellation of noncompensatory services will be favorably received.

The third part of the first question is closely related to question 4. Removal of perceived or actual administrative barriers could create incentives to make the many incremental changes that are required for effective competition in a dynamic market. We believe the retention of limited but well-defined administrative controls in less competitive transportation markets is necessary to limit the ability of rail management simply to increase profit margins on less competitive traffic, a practice which requires less refined and perceptive marketing practices. An integrated and refined program of regulation could thereby create incentives to focus on competitive markets by creating rewards for imagination and hard work.

Question 2. In your prepared statement, you note that railroads rely primarily on general rate increases and have proposed very few innovative rates. You indicate that the carriers have "misread the rules", and that if they would only file innovative rates—such as peak-period rates and separate rates for distinct services—they would discover the Commission's willingness to let them develop new marketing techniques. If the problem is one of perception, why do you think that misperception continues to exist?

Answer. We believe that the so-called "perception" problem in the rates area is slowly decreasing. As was indicated in the first answer, more novel rate proposals are being filed, including cancellation of costly and inefficient ancillary practices such as transit and noncompensatory services. We are continuing to review our regulations to ensure that they do not reinforce any false impressions the rail industry may have of the Commission's position on the underlying substantive issues of transportation regulation.

Another factor which may affect the railroads' willingness to avail themselves of opportunities for more innovative ratemaking presented by the 4R Act and Commission initiatives is the fear that the first carrier to file a new type of rate may be involved in extended court proceedings resulting from challenges to the innovative rate. This occurred in the first seasonal rate filing under 49 U.S.C. 10728. The tariff involved a 20 percent peak-period increase in rates for shipments of grain. The proposal was protested, but the Commission declined either to suspend or investigate. This decision was appealed in the courts. A ruling by a Circuit Court adverse to the Commission's position was eventually reversed by the Supreme Court, but this court case does illustrate the problems that may be faced by a rail carrier filing an innovative rate. With regard to court challenges, the problem may be eased somewhat for individual railroads by the Commission's issuance of guidelines in advance of the filing of specific cases. If as is normally the case—the decision establishing the guidelines is itself appealed to the courts, the validity of the general principles can be established in advance of an individual rate proposal. This, of course, sharply reduces the ability of a protestant to raise similar issues in individual cases, after general principles have been judicially approved. At the same time, however, this process of issuing guidelines and defending those guidelines in court may also contribute to delay in the effective use of new statutory provisions.

Question 3. Your prepared statement indicates that over 90 percent of railroad rate increase revenues are secured through the general increase process and recognizes the need for railroads to engage in more selective ratemaking. The Administration's proposed legislation would eliminate general increases after 2 years. You have questioned whether the 2-year period gives the railroads enough time for adjustment. Do you believe that general rate increases should ultimately be eliminated, and if so, how much lead time do you feel the railroads need?

Answer. The Administration's proposal to eliminate general increases is one that the Commission supports in principle. The continued use of the general increase procedure is, in our view, inconsistent with the need for the railroads to engage in more selective ratemaking. Some progress has been made in this regard with the

increase in "Yo-Yo"filings. For instance, we are presently considering such filings by the Eastern railroads on 175 commodity categories. Progress has been made in other areas as well. However, as stated in the prepared testimony, continued reliance on general increases has probably inhibited the carriers' use of more innovative ratemaking techniques.

The problem with eliminating general increases after only two years is the fact that, at present, over 90 percent of rail rate increase revenues are derived through this procedure. And, in a time of rapid inflation, we must assume that rate increases to keep up with increased costs will continue to be needed in the foreseeable future. If the general increase were to be entirely eliminated, another or several other mechanisms would have to be developed and experimented with to replace it, and two years may be too short a period to provide a smooth adjustment. One possible suggestion is the possibility that an "inflation index" might be established, and all railroads permitted an automatic increase in all their rates up to a certain percentage of the inflation amount. This would decrease the importance of the general increase as an inflation-adjustment mechanism, and might make it more feasible to consider phasing out the general increase altogether. We are currently studying this problem and expect to have further recommendations to Congress in the near future.

Vice Chairman Stafford and Commissioner Clapp do not support the elimination of general increases. They feel the Commission has taken certain actions which make general increases less important, but that in some cases they remain the only practical means of recouping inflationary cost increases.

Commissioner Gaskins has the following separate expression:

I am not opposed to the filing of a rate increase by a single carrier applicable to all the traffic it carries. This mechanism would permit a carrier to keep up with the rapid rate of inflation. However, I am opposed to collectively set general rate increases and believe they can be quickly phased out.

Commissioner Alexis has the following separate expression:

Collective general rate increases should be replaced by single carrier general rate increases based on the cost experience of individual carriers.

Question 4. In your statement, you express your opposition to the proposed rate regulation in S. 796, as you believe that railroads would use the resulting freedom to rapidly raise rates on non-competitive traffic. How does this square with the fact that the railroads were apparently given pricing flexibility under the 4R Act, yet 90 percent of their revenue increases have come from general rate increases, rather than from selective rate increases on captive shippers?

Answer. The 4R Act expressly retained controls over rate increases on captive shippers. Maximum pricing flexibility was only granted on competitive traffic where market forces were strong enough to protect the public interest. This continued regulatory control over rates imposed on captive shippers, coupled with high inflation and the carriers' familiarity and the ease of using the general rate increase, explains why under the 4R Act 90 percent of revenue increases have come from general rate increases rather than from selective rate increases on captive shippers. Also, the administrative costs of imposing general rate increases on less competitive traffic are lower than individual increases directed at the same shippers.

Other factors mitigating against increased use of selective rate increases include regional economic considerations (Southern timber in competition with Northwestern timber, for example) and fear of raising rates to a level where diversion to other carriers or modes would become a realistic possibility. Nevertheless, carriers do appear to be making increased use of selective rate increases. We continue to believe that the best way to encourage use of selective price increases while protecting noncompetitive traffic from unduly large rate increases is the retention of maximum reasonable rate regulation on noncompetitive traffic. This should encourage rail management to increase its efforts to eliminate non-compensatory traffic and attract competitive traffic by improved price/service options.

The critical issue, therefore, in S. 796 is in its elimination of all maximum rate regulation after five years. In addition, all carriers could be compensated automatically for all increases in inflation plus a seven percent increase on top of the inflation factor. At current inflation rates this would mean a twenty percent compounded annual rate increase for each year over a five-year period culminating in the removal of all maximum rate regulation. Increases of this magnitude can generally be levied only on traffic over which the carrier possesses a substantial amount of market power.

It should be noted that recent general rate increases have utilized more discrete pricing in that significantly different increases are taken on different commodity groups and, in some cases, actual reductions have occurred. These include, for example, the carriers' proposed reduction of 17 percent on TOFC/COFC rates in Ex

Parte No. 358. While these adjustments are based on industry wide collective ratemaking the Commission hopes they are indications of a gradual movement on the part of the industry to more direct forms of rail pricing.

Question 5. In your prepared testimony, you suggest the possibility of a "zone of reasonableness" for gradually eliminating joint rates. Do you believe that mandatory joint rates should ultimately be eliminated, and if so, how and when?

Answer. The Commission staff is presently reviewing the issue of through routes and joint rates. The continued movement of fresh fruits and vegetables after an exemption was granted indicates that movement of rail traffic without the presence of through routes and joint rates is technically feasible. It is our understanding that the carriers involved in these movements utilize the existing division arrangements with negotiated changes to cover any individual pricing and revenue problems of the individual carriers. However, it should be noted that fresh fruits and vegetables represent a very small portion of rail traffic. While our actions therefore serve as a useful prototype, any additional exemptions will be implemented taking into account individual traffic characteristics.

Another device involving through routes and joint rates is the use of surcharges by particular rail carriers on particular types of traffic. As indicated in our letter to the Senate Appropriations Committee (copy attached) this represents a carefully controlled device designed to redress the revenue shortfall requirements. We are requesting that basic cost and revenue information be submitted at the time the tariff is filed. This will enable the Commission's staff to monitor closely the effectively of these changes.

We believe that modifications to the existing through route and joint rate structure are feasible and that this issue can be integrated into our overall approach to rail regulation. In order to permit all parties an opportunity to adjust we propose to pursue all implications of eliminating through routes and joint rates. We do not support an abrupt elimination of mandatory joint rates at this time.

Question 6. The Commission has issued a policy statement approving the concept of railroad contract rates. Do you expect the Commission to take further action to place limitations on contract rates?

Answer. The Commission issued a policy statement specifically authorizing contract rates on November 9, 1978 (Ex Parte No. 358–F). Interested parties have questioned the relationship of contract rates to the common carrier obligations and its enforcement. The Commission therefore has instructed its staff to further explore these matters and I understand the staff recommendations should be completed by the end of September.

Question 7. In your testimony, you express your opposition to the notice provisions in S. 796. Please explain in more detail your opposition. To what extent should the present notice provisions be altered to allow railroads more opportunity to respond to market changes?

Answer. The notice provisions of S. 796 attempt to give carriers greater ability to file tariffs on short notice and thus put into effect changed rates. We agree that flexibility in this area is desirable, but the bill as drafted would introduce an unnecessary amount of confusion. If rate changes could routinely go into effect on no notice or only one day's notice, shippers would find it extremely difficult to be sure of the current rate applicable to a given movement at any one time. The effect on captive shippers could be particularly severe. The new notice provisions would also seriously complicate the Commisssion's task of fulfilling its responsibilities, to the extent those would remain under the bill.

The Commission can already grant relief from existing statutory notice requirements through operation of its Special Permission Board. Applications to waive statutory notice requirements can be filed with the Board and are granted where a good reason exists. Special permission matters are usually handled on a case-by-case basis, but the Commission can also provide broader relief where this is desirable. A good example is the recent blanket special permission granted in Ex Parte No. 311, Expedited Procedures for Recovery of Fuel Costs. The Commission there initially authorized rate increases in response to increase fuel costs on 10 working days' notice. Recent decisions have responded to the worsening of the fuel situation by authorizing the filing of fuel-based surcharges on one day's notice. In Special Permission and Special Tariff Authority No. 79–2300, the Commission on May 2, 1979, identified certain recurring emergency situations that form the basis for requests for waiver of statutory notice provisions. It then authorized procedures for the filing of tariffs establishing rates on 5 days' notice where these emergency situations are present.

We support the concept of flexibility in notice requirements where appropriate. We are currently considering authorization of a zone within which seasonal rates could fluctuate upon the occurrence of specified triggering events. This zone, howev-

er, would appear in a tariff filed on statutory notice. We think that Commission initiatives such as this, together with adaptive use of the special permission procedure, can adequately meet the need for flexibility in notice requirements without the reduction and even elimination of notice as proposed in S. 796.

Commissioner Gaskins has the following separate expression:

I believe that the recent experience with the total exemption of fresh fruits and vegetables from economic regulation is strong evidence that rail management and shippers, like sellers and customers in unregulated sectors of the economy, can adapt to price changes on short notice and that the public can benefit from the competition fostered by the ability to adjust prices on short notice.

Question 8. In your statement, you comment that the antidiscrimination provisions in S. 796 generally reflect current Commission practices and that although the Commission does not see the need for these changes, you are not opposed to them. Does this mean that the provisions of S. 796 merely represent cosmetic, rather than substantive changes? Many have expressed concern over the changes made under S. 796 because the feel that confusion will ensue. It is safe to say that such confusion would be eliminated by using the legal interpretations under the present law on discriminatory pricing? How does the long-haul/short-haul clause fit into these interpretations?

Answer. Discrimination issues are addressed at two separate points in S. 796. Proposed section 10701a(c) (section 102 of the bill) addresses rate decreases and the issue of predatory pricing. Under this provision rates may be reduced below incremental value if there is no intent to eliminate a competitor. The provision requiring proof of iniquitous intent would make allegations of predatory pricing more difficult to prove than is the case under existing law. At present rates are presumed reasonable if they meet incremental costs in a manner that contributes to going concern value. While intent and injury are often issues in discrimination cases, the Commission has not always prohibited rates from being below incremental costs. However, we do not generally believe that rates should be set at less than this statutory definition of a compensatory level. Generally, while there may be little practical impact from subsection (c) because of the cost or service advantages possessed by other modes, there appears to be a somewhat greater opportunity for predatory price discrimination under this subsection of S. 796.

Section 106 of S. 796 governs traditional issues of discrimination under former sections 2 and 3(1) (49 U.S.C. 10741 (a) and (b)), and would repeal the long-haul—short-haul clause contained in section 10726.

The provisions of section 106 of S. 796 incorporate the provisions of existing law and practice with two exceptions. First, the draft language of section 10741(a)(2) as revised by the bill (page 18, lines 14–17) appears to permit differences in competitive relationships among rail carriers to justify differences in rates in cases alleging undue preference or prejudice, the concept of discrimination contained in former section 3(1). This broadens the current administrative definition of competitive relationships which are generally limited to competitive relationships of differing transportation modes. Subsection (a)(1) (page 19, lines 3–9) would also limit issues of discrimination to actual rather than actual or potential injury. Both limitations are rational but they do narrow the traditional range of complaints that are possible under traditional discrimination doctrines. For example, a shipper not acutally shipping a particular commodity can now protest a rate change as potentially injurious if it would affect his competitive position on movements that will be initiated in the near future. The DOT bill would limit complaints to actual movements by the complainant at the time the rate is changed, and require proof of actual injury. Thus, while the Commission generally provides remedies only if some injury is or has occurred, the Department's bill would reduce the breadth of the arguments a shipper could advance and would make evidentiary requirements heavier than is the present administrative practice.

Section 106(e) of S. 796 would repeal the applicability of the long-haul—short-haul clause to rail common carriers. The long-haul—short-haul clause was enacted as an absolute bar to charging intermediate points a higher rate for movements between the two end points. Relief from this provision is now routinely granted in recognition of:

(1) The presence of generally pervasive competition at most intermediate points, and

(2) That volume movements between major producing and consuming areas generally have lower costs.

The exceptions enable the rail carriers to take advantage of lower unit costs for the volume movers and to more effectively meet intermodal competition between the end points. Any residual problems of discrimination could be handled under the provisions of section 10471. The Commission on a number of occasions has recom-

mended repeal of the long-haul—short-haul clause on grounds of administrative practicality.

Question 9. Under the antidiscrimination provisions in S. 796, to what extent could the Commission hold down railroad rates as being discriminatory, even if its power over maximum rates were entirely removed? To what extent are the corresponding provisions in the present law applied now by the Commission?

Answer. The provisions contained in section 106 of S. 796 would permit the Commission to hold down rates under circumstances where cost competitive factors did not justify differences between contemporary users (in the same time frame) who were direct competitors. This would reduce the scope of former section 3(1) (49 U.S.C. 10741(a)) which addresses equitable considerations and rate relationships based on geographic and product competition among differing regions. The legal ability of the Commission to address issues of rate relationships would therefore be narrowed. However, the practical difference would not appear to be great because differences in transportation conditions are present in most cases where a disparity in rates is found to be justified.

Question From Senator Kassebaum

Question 1. Recently, you testified before this Committee on the status of the ex parte decision on recyclable commodities hauled by the railroads, which were remanded back to the Commission for revision. What is the status of this proceeding? In this regard, what action has been taken by the Commission with regard to tariffs published on recyclable rates? Have any rates been revised or changed in any way?

Answer. This Commission served its decision in the recyclable commodities proceedings (Ex Parte No. 319, Investigation of Freight Rates for the Transportation of Recyclable or Recycled Commodities) on April 16, 1979. Various parties filed appeals and the Commission responded to these apppeals in a decision served July 27, 1979. Appeals are now pending before the Court of Appeals for the District of Columbia Circuit.

In its decision the Commission ordered the railroads to eliminate discrimination in the freight rates between recyclable commodities and their corresponding virgin commodities. The Commission also established a standard of maximum reasonableness for recyclable rates and ordered the railroads to reduce rates where this maximum is exceeded. The railroads are required to make all of these changes within 60 days of the July 27 decision.

Commissioner Gresham's Separate Expression

As indicated on page 30 in footnote number 9 of Chairman O'Neal's statement of May 22, 1979, to this subcommittee, I believe that in order to keep pace with the rapid dynamics of the marketplace, railroads must possess the ability to change their rates with spontaneity. It is for this reason that my views differ somewhat from those expressed in the Commission's response to question number 7. In my opinion, Section 107 of S. 796 is, for the most part, conceptually sound. However, I do feel there is one serious flaw in that section. It fails to provide any safeguards whatsoever for the protection of truly captive shippers.

Interstate Commerce Commission,
Washington, D.C., September 28, 1979.

Hon. Russell B. Long,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, D.C.

Dear Chairman Long: Thank you for your letter of July 19, enclosing questions relating to my testimony on June 21 before the Surface Transportation Subcommittee on the non-rate regulation provisions of S. 796. Attached are the Commission's responses to these questions, as well as separate expressions by Commissioners Gresham, Trantum and Gaskins.

If I can be of any further assistance, please contact me.

Sincerely yours,

A. Daniel O'Neal,
Chairman.

Enclosure.

Question 1. How frequently do carriers file applications for consolidations? In your opinion, how effective is this type of restructuring in helping to rationalize rail plant, as compared to mergers? In this regard, S. 796 proposes to remove mergers

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from under the jurisdiction of the ICC but to retain its power over consolidations. Under S. 796, do you envision that the railroads would apply for more consolidations because of their hesitancy to enter into merger agreements?

Answer. Since February 1976 there have been 159 consolidation applications (including mergers) filed with the Commission. I should point out that the Commission uses the term "consolidation" somewhat differently than do some other parties. In a policy statement released in December 1978, the Commission first used the term "consolidation" generically to cover merger transactions as well as lesser restructuring efforts such as trackage rights, market swaps, etc. By "merger" we mean major restructurings, which include control, acquisition of assets, and purchases of major lines.

The breakdown of the consolidation applications is as follows:

Year:	
1976	33
1977	32
1978	59
1979 (through July)	35

Of the applications filed in 1978, 20 related to one merger and in 1979, 22 applications related to merger applications. Most of the consolidation applications not involving mergers involved trackage rights, sometimes filed in conjunction with abandonment applications. Such consolidations permit improved efficiencies such as increased traffic density as well as continued service to shippers while a corresponding line may be either downgraded or abandoned.

Consolidation transactions short of mergers are useful and certainly have a place in rationalizing a rail plant; however, lesser consolidations often have different goals than large mergers. Also, the smaller transactions involve fewer risks of operating dislocations and are easier for carriers to implement.

Most major mergers now under consideration are oriented toward improvements in service and marketing opportunities rather than cost savings. Lesser consolidations are usually directed at cost savings. Lesser consolidations may be viewed as a method of fine tuning the railroad industry to respond to local problems. Therefore, smaller transactions would generally have no significant impact on rationalizing the overall rail plant.

It is difficult to predict whether enactment of S. 796 would cause more smaller consolidations and a hesitation by carriers to enter into mergers. Certainly, the policies of the Justice Department would be crucial in determining the answer to that question, but this is not something we are in a position to answer at this time.

Question 2. The railroads state that if mergers remain under ICC jurisdiction, they would not be in favor of allowing the ICC to bring other railroads into the consideration of a merger proposal, a power which the ICC now has. What is your reaction to this position?

Answer. To some extent we must agree that the consideration of other nonparticipating railroads in merger proceedings can work against the original objectives of the merger. In fact, the Commission stated in its December 1978 rail policy statement on consolidations that inclusion is an extreme measure that would only be used to preserve essential services. In addition, the Commission is reeaxamining the use of other forms of protective conditions. We seek to commit as much discretion to rail management as is possible and at the same time continue to oversee the public interest.

The issue addressed by this question is the power of inclusion and of attaching protective conditions to cushion the impact of a merger or consolidation on the competitive position of other carriers. We feel that flexibility in viewing mergers is needed in order to protect essential service which may be provided by competitive carriers. Thus, even though protective conditions are not favored, we believe it would be unwise to prohibit them entirely where they are really needed in the public interest.

Question 3. In your testimony, you state that under S. 796, a carrier still could apply for an abandonment under "traditional procedures." Please explain this statement in more detail.

Answer. Section 121(a)(3) of S. 796 would simply prescribe four sets of conditions which automatically meet the public convenience and necessity test. There is a possibility that a proposed abandonment may not meet those criteria. In that case, the Commission could reach a decision based on the traditional public convenience and necessity criteria contained in 49 U.S.C. 10903(a). The criteria that the Commission presently applies in abandonment cases are set out in some detail in the response to question 5.

Question 4. You mention that in an abandonment proceeding, future alternatives to abandonment, such as rate increases and community development, should be considered in determining whether a line should be abandoned or not. Would not these additional considerations burden an already complex proceeding?

Answer. The additional considerations raised in this question are already considered by the Commission in abandonment cases. The issue that future alternatives addresses is the potential for continuing a line in service if both the carrier and shippers are willing to make some adjustments to enable continued operations by the carrier. We believe there is a danger that reliance solely on a cost test would remove the incentive for the carrier to explore alternative solutions with the shipping public.

The Commission discussed the subject of alternatives to abandonment at an open conference on Tuesday, September 18, 1979. A number of the members noted that they would be receptive to pricing innovations by the railroads designed to make service profitable on currently unprofitable lines. The Commission has recently given carriers the freedom to propose surcharges on traffic, a tool which could be used to increase revenue on individual carrier's portions of interline traffic.

Question 5. You support the discretion to consider various factors which the ICC currently has in present abandonment proceedings. S. 796 is an attempt to narrow that discretion and specify the considerations. You have mentioned your concern over some of these provisions in S. 796. Are there criteria which could be more clearly defined, as proposed in S. 796?

Answer. We do feel that the criteria which the Commission applies to abandonments could be more clearly defined. This could be beneficial to carriers, shippers and the Commission alike. Further definition of those criteria must proceed carefully, however, in order to preserve the necessary flexibility while at the same time permit applicants and potential protestants to determine more readily their chances of success. Thus, we would be very cautious in suggesting specific statutory standards although we recognize that some further definition may be desirable.

The use of rebuttable presumptions would be a possible means to develop specific criteria while leaving the Commission discretion to approve or disapprove an abandonment.

One rebuttable presumption, similar to that in S. 796, would apply when the line is losing money. The burden would be on the parties opposing the abandonment to show that (1) the line is not losing money, or (2) there is some overriding reason not to permit the abandonment. It is this second showing which is not permissible under S. 796.

The factors we presently consider in determining whether or not to permit abandonment could be used as the basis for arguments against abandonment. In addition to the profitability of a line, the Commission generally considers the national defense; historical and future traffic levels; the mobility of traffic (including alternative transportation modes, the ability of a plant to relocate, and the type of traffic involved); the economic impact on the areas served by the railroad line (including whether or not industry will leave the area or be deterred from entering the area, and if jobs rely on a rail dependent industry); the adequacy, availability and frequency of service; the impact on rural and community development, the environment, energy consumption, and railroad employees; the financial condition of the carrier; the condition of the track (including the rehabilitation costs, deferred maintenance costs, maintenance costs, and new construction costs), the availability of equipment to service the line; and the interrelationship of these factors.

Other factors might be used to create rebuttable presumptions that abandonment should be permitted. These could include (1) the absence of any service over the line for some length of time (for example, 6 months or more), or (2) the physical condition of the track having fallen below FRA Class I Standards and thus not being operable.

As an example, prior to the 4R Act the Commission used a rebuttable presumption known as the "34-carload rule." Under the "34-carload rule" a presumption was created that the public convenience and necessity permitted abandonment if fewer than 34 carloads of freight per mile were carried over the line during the 12 months before the abandonment application was filed. This presumption was superseded by the passage of the 4R Act.

Commissioners Trantum and Gaskins wish to be shown as expressing support for section 121(a)(2)(A) of S. 796.

Question 6. The railroads argue that car service be controlled by rail management. What is your response to this argument? Do you believe that shippers could be protected by contracts for car service? Would the marketplace provide incentive to the railroads to provide improved car service?

Answer. We should point out initially that car service rules (an important part of the Commission's car service powers) were for many years promulgated and enforced almost exclusively by the Association of American Railroads. However, in the 1950's internal disputes within the rail industry created obstacles to the effective private use of car service rules. In response to the impasse within the industry, the Commission began to assume greater responsibility for car service rules. We are concerned that similar disputes might arise again in the future.

The Commission's present powers over car service are an attempt to introduce equitable considerations into car distribution issues. The reason for these powers is to attain social goals which would not otherwise be achieved by the strict functioning of the marketplace. The Commission does not believe that equitable considerations should be completely eliminated from car distribution decisions.

Many shippers, especially large shippers, could undoubtedly protect themselves through the use of car service contracts. By contracting in advance for cars, the shipper can assure a supply or collect damages from carriers for nonperformance. It is also true that not all shippers would be able to protect themselves with contracts (particularly those with irregular demand or small shippers) and that under a parity market situation some shippers would have to pay "spot prices" for cars, if available at all. In some cases the cost could be prohibitive for those individuals.

Reliance on a parity market situation might improve the opportunities of some railroads to improve car service to some shippers. It certainly would not result in improved service by all railroads to all shippers. To our knowledge no research has been performed that would evaluate these impacts. This limited information is the basis for our belief that any regulatory change in this area should occur at a moderate and controlled pace. This matter is being evaluated by Commission staff at present, with an eye toward modifying our regulations in such a way as to assure maximum carrier initiatives which are at the same time consistent with the consensus of shippers—particularly smaller shippers.

Commissioners Trantum and Gaskins believe that it is inadvisable to answer this question until the staff report on car service is complete.

Commissioners Trantum and Gaskins are not convinced that efficient car service rules cannot be set without Commission interference.

Commissioner Gresham has the following separate expression:

I disagree to some extent with the majority's position on abandonments. In determining whether an abandonment should be permitted, more weight must be given to the need of railroads to rationalize their systems. Realistic rail rationalization must be encouraged 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.

My views on car service orders also differ somewhat from those of the majority. In my opinion the Commission's authority to issue car service orders should be very narrow in scope statutorily. Further, this authority should be exercised very sparingly.

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION,
Sacramento, Calif., October 1, 1979.

Hon. RUSSELL B. LONG,
Chairman, Commerce Committee, Subcommittee on Surface Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: California Energy Commission (CEC) staff recently reviewed the Railroad Deregulation Bill (S. 796) which is under consideration by your Sub-Committee on Surface Transportation. One concern identified is with the adverse impacts that this regulation will have on transporting coal from the western states to California. Please include this letter in the record stating the CEC staff position that some form of regulation be retained for coal unit trains.

Complete deregulation of the railroads would put California coal markets in a difficult situation for two reasons: (1) because of a limited and noncompetitive railroad network in the west; and (2) due to the absence of an alternative mode of transportation. The findings of an August 1979 Radian Corporation study, titled "Assessment of Advanced Coal Based Technologies for Use in California," indicated that railroad competition is almost nonexistent between the coal fields in the western states and the California market. Of the thirty coal fields identified to potentially supply California: Twenty fields have access to only one railroad company; seven fields have more than one company which could supply service, although in some cases the two railroads serve different parts of the fields, or are on opposite sides of the Great Divide; and, three fields lack railroad service completely. With this existing situation it is very feasible that a utility or industrial plant interested

in a specific coal deposit would be restricted to contracting with only one railroad, thereby eliminating a competitive price market. The coal fields of Central Utah, which are considered to be the least expensive and best source of coal for California coal utility plants, are in the position of receiving service from only the Denver-Rio Grande Railroad. A similar situation exists in shipping coal from other parts of Utah, Colorado, or Wyoming to Southern California with the Union Pacific line controlling the most direct and practical route.

The only plausible alternative to railroad travel for western coal is the construction of a coal slurry pipeline. This is currently not a viable option due to the difficulties in acquiring water supplies, rights-of-way across railroad tracks, and a market for the large volume of coal required to make a coal pipeline economically competitive. The Office of Technology Assessments completed a study in March 1978 titled, "A technology Assessment of Coal Slurry Pipelines." This study indicated that in order for a coal slurry pipeline to compete with the existing railroads, it would be required to carry over fifteen million tons of coal per year. At this time, it is difficult to project when California will be using fifteen million tons of coal per year.

Another major concern regarding the Bill is the suggestion by the Interstate Commerce Commission (ICC) that rail rates be allowed to rise until the delivery costs for coal equals the delivery costs for other forms of energy. It is unreasonable to assume that energy forms have equal qualities and therefore should have equal delivery rates. For example, the use of coal in an environmentally acceptable manner in California under the Clean Air Act is more costly than the use of other energy forms due to the substantial investment and expense in pollution control equipment. This is one of the factors which makes coal a more expensive energy resource to use. Additionally, there in no economic justification to allow the rate to increase so significantly. In August 1977, Michael Reiber and Michael Soo of the University of Illinois completed an eight volume study titled, "Comparative Coal Transportation Costs." The second volume of the study on Unit Trains indicated that current rail rates for unit trains were far above costs. In effect, the utility and industry customers would be subsidizing the railroads.

The use of coal in California historically has been limited to a small number of industrial applications. With the President's goal to decrease foreign oil dependence and the enactment of the Powerplant and Industrial Fuel Use Act (FIFUA), coal utilization for powerplants and industrial use in expected to increase in the future. The CEC has given preliminary approval through the powerplant siting process to Pacific Gas and Electric Utility to build a coalfired powerplant. in the Fossil I and II Notice of Intention, PG&E estimated the completion date to be 1987 with the plant using approximately four million tons of coal per year. It is projected that over one-third, and as high as two-thirds, of the total cost of coal to be used in California utilities will be for transportaion. Increasing the rail rates will discourage industry and others who are not legally required to convert to coal, but may consider the option marginally attractive. Providing disincentives to coal use by increasing the rail rates seems inconsistant with the national policy on increasing our energy independence by converting to coal.

As a result of the issues examined in this letter, the CEC recommends that some form of regulation, either through ICC review or some other regulatory mechanism, be retained to insure fair and reasonable rail rates. Thank you for the opportunity to comment on the Railroad Deregulation Bill (S 796).

Sincerely,

JOHN L. GEESMAN,
Acting Executive Director.

ENVIRONMENTAL DEFENSE FUND,
New York, N.Y., October 2, 1979.

MS. LINDA MORGAN,
Committee on Commerce, Science and Transportation, Surface Transportation Subcommittee, U.S. Senate, Washington, D.C.

DEAR MS. MORGAN: As you may recall, following the completion of my oral testimony on behalf of the National Coal Policy Project before Senator Long, Chairman of the Senate Surface Transportation Subcommittee in June on the Administration's Rail Deregulation Bill, we were requested to furnish more detailed comments on individual sections of that Bill. Although we realize that that Bill is now in the process of being redrafted, I enclose, on behalf of the National Coal Policy Project, a copy of our section by section comments. We hope that you will find these comments to be of use.

We also hope that these comments address in substance the questions which Senator Long raised in his letter following the hearings dated July 26, 1979. The National Coal Policy Project generally supports much greater rail rate flexibility, substantial reductions in minimum and maximum rate regulation, rail contracting power, curtailment of rate bureaus and greater freedom of exit and entry.

From the testimony given in June by the other members of the panel on which I served, the National Coal Association, the Western Coal League and the Celanese Corporation, we have to recognize that situations may arise where little effective competition to rail service exists for certain producers of coal or consumers of coal. This is what those spokesmen referred to as the "captive shipper" problem. In terms of the basic rail regulatory principles adopted by the Project, it is essential that most such monopoly situations be recognized as the result of long-term regulation of the railroads. Therefore, these situations should be treated primarily as temporary in nature requiring a transitional remedy. Any such problem should not thwart the larger regulatory reform effort. Once the railroads are provided with contracting power and rate flexibility and the anti-competitive effects of the rate bureau are eliminated, those situations where individual railroads can perhaps exploit an unfair monopolist situation should decrease significantly. Use of long-term contracts, by new utilities, for example, intending to burn coal or coal mines which intend to use rail for transportation, should provide all parties with contractually satisfactory rates.

Yours very truly,

James T. B. Tripp, *Counsel.*

Comments on S. 796, The Railroad Deregulation Act of 1979

Section 102

Section 102 establishes a five-year transition period toward the abolition of maximum rate regulation, prohibits rates below incremental cost, and specifically allows contract and demand-sensitive rates. Contract rates would not be subject to any rate regulation. During transition, maximum rate regulation would apply only to increases in excess of 7%/year plus inflation, and would apply to the average over 150 days of a demand sensitive rate.

We strongly support all of the provisions of this section.

Section 103

This section abolishes the requirement that the ICC consider competitive effects on ports, commodities and shippers in determining if a rate is lawful. It also removes the ICC's power to initiate rate investigations on its own, and the ICC's power to suspend a rate pending investigation.

All of these changes are essential to freeing railroad pricing decisions from burdensome scrutiny. We strongly support this section.

Section 104

This section repeals the authority of the ICC to establish joint-line rates, or suspend or investigate the cancellation of a joint line rate by a participating carrier. It retains the authority of the ICC to designate through routes, but the rates on such routes would be the sum of the local rates, unless the carriers involved agree to a joint line rate themselves.

Neither establishment of joint-line rates by the ICC, nor investigation of carriers' decisions to opt out of such rates are consistent with competition. We strongly support the provisions of this section.

Section 105

This section deals with rate bureaus. It would (a) define "practicably participate" to limit discussion and voting on joint-line rates to carriers that actually carried traffic under the rate in the last 12 months or, for a new rate, agree to do so in the future; (b) make explicit the right of rate bureaus to compile and publish rates without anti-trust liability; (c) require rate bureau meetings to be open and a transcript kept; (d) prohibit discussion of single-line rates, and (e) remove, after two years, the Commission's authority to grant anti-trust immunity for general rate increases.

We strongly support the elimination of immunity for discussion of single-line rates and general rate increases. Both of these practices are inherently anti-competitive. We also support the clarification of the right to compile and publish rates and the open meeting requirement.

The definition of "practicably participate in that movement" is an improvement over the current lack of any definition. It would still, however, allow significant collusion in the setting of rates, since it would appear to allow all the participants in the various joint routes between particular points to collectively agree on a single rate between those points. Such cartel behavior is not consistent with maximizing competition as the alternative to regulation of rates.

This situation should be remedied by making it clear that "that movement" means the movement of traffic by way of a particular combination of carriers over a single route.

SECTION 106

This section limits the basis for a charge of discriminatory rail pricing to refusals to provide like and contemporaneous service, and establishes differences in cost or competitive circumstances as adequate defenses to the charge. We support this section.

SECTION 107

This section requires publication of the essential terms of contracts, prohibits the ICC from prescribing the form of rate publication and reduces notice requirements over three years to no advance notice for decreases and one day for increases. We support all of these provisions.

SECTION 120

This section eliminates the "public convenience and necessity" requirement with respect to new rail lines, requires easements where new lines need to cross existing ones, and requires switching of cars of other carriers at a standard charge.

SECTION 121

This section governs abandonments. It would define the conditions under which the ICC must find that the "public convenience and necessity" allow abandonments, and would impose specific time limits on abandonment proceedings. While these changes would be an improvement over existing requirements, they would still leave the abandonment decision with the ICC, which is simply not capable of determining whether the demand for the service justifies its cost. The best test of the public convenience and necessity is whether or not the users of the line are willing to produce sufficient traffic at sufficient rates to convince the railroad that it will profit from continued operation.

The only restriction on abandonment should be a requirement for adequate advance public notice.

SECTION 140

This section abolishes the ICC's authority to issue car service orders, and continues anti-trust immunity for the railroads to agree to standard per diem and demurrage payments. We support these provisions.

SECTION 141

This section limits the railroads common carrier obligations, particularly by allowing contract obligations to take precedence over common carrier obligations. We strongly support this provision.

SUPPLEMENTAL INFORMATION ON SECRETARY OF TRANSPORTATION BROCK ADAMS' TESTIMONY OF APRIL 12, 1979

Further investigation confirms the response given by the Secretary during the hearing. Although it is true that there were at one time penalty payments imposed under Teamster contracts for the loading and unloading of trailers and containers on flat cars, all such provisions were removed from the national master freight agreement during the 1976 negotiations. In the succeeding negotiation of supplemental agreements by the Teamsters' regional conferences, references to piggyback (TOFC and COFC) penalty payments were also removed from these contracts.

Since Teamster local cartage contracts tend to follow the patterns of the national and regional agreements, there is every indication that penalty payments have now been removed from these contracts as well.

In the case of private carriers using TOFC or COFC service, that is, a private company which does its own transporting and which contracts with a railroad for such piggyback service, it is most unlikely that any penalty payments would be involved. Such intermodal arrangements would be part of the company's transportation system; if the drivers for the private company were organized, their contract would of necessity accommodate to the system and the transportation methods selected by the company.

In short, the option is now with the shipper as to where and when he utilizes piggyback service; he no longer has to pay a premium (above regular shipping charges) for exercising that option.

U.S. Department of Justice,
Antitrust Division,
Washington, D.C., October 29, 1979.

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

Dear Mr. Chairman: I appreciate the opportunity to answer your additional questions concerning the discrimination, market dominance and rate bureau provisions of S. 796, the Railroad Deregulation Act of 1979. Comprehensive reform of the existing railroad regulatory framework is desperately needed; we believe it can most effectively be achieved through maximum use of competitive market forces.

You will find my answers to your questions enclosed. Please contact me if I may be of further assistance.

Sincerely yours,

Donald L. Flexner,
Deputy Assistant Attorney General.

Enclosures.

Question 1. You are in favor of S. 796. In general, you feel that competition more effectively controls rates than regulation. You further state that the rail industry faces strong competition from other modes and the various markets where goods transported by rail could be distributed. To what extent do shippers exist who are "captive" to the rail industry?

Answer 1. While intramodal competition and intermodal competition in transportation services is prevalent, captive shippers do exist in some areas for certain commodities.

The commodities which have the highest potential for being captive are those which have little or no intermodal competition: metallic ores, grain and automobiles shipped over long distances. Although a shipper of one of these commodities may only be served by one railroad, on some routes significant competitive conditions may still limit the ability of a railroad to extract exorbitant rates. The ability to engage in long term contracts, the amount of leverage possessed by a shipper, the ability of a shipper to change its traffic patterns and source competition all mitigate a railroad's monopoly power. Thus, in devising legislation tailored to provide relief for truly captive shippers, it is necessary to view the captive shipper problem not as a yes or no proposition but rather as a continuum; at one extreme there are strong competitive pressures while at the other extreme there are only weak or ineffective competitive pressures. Providing maximum rate regulation for shippers that have either viable shipping alternatives or effective leverage with the railroads fosters undue reliance on administrative regulation, and preempts effective competitive forces. Such regulation is unnecessary, anticompetitive and, in the long term, counterproductive.

Even for those commodities which may be "captive," competitive forces do limit the price of transportation. For example, although a Kentucky coal field may be served by only one railroad, the rate for hauling coal to a utility is limited by the price of coal, including transportation charges, delivered to the utility by other railroads from other coal producing regions. There is evidence that source competition has been effective in putting downward pressure on rail rates for flour milled in the midwest and shipped to the east coast.

As for a specific figure estimating the extent to which shippers are captive, the most recent study in this area of which we are aware is the April 10, 1979, interim report prepared by Kearney Management Consultants for the Interstate Commerce Commission. The Kearney study estimated that 10 to 15 percent of rail traffic appears presently to be truly market dominant, but that in the long term, this figure would drop to five percent. Since the Kearney figure may not sufficiently take into account the impact of long-term contracts, which are encouraged by S.

796, we believe the study's estimate of shippers that are captive may be somewhat overstated.

Question 2. In your testimony, you make reference to the concept of market dominance under the present law. Please compare the evidentiary burdens which must be met under this test with those to be met by the shipper under the proposed maximum rate provisions in S. 796.

Answer. 2. The final procedures for finding market dominance by the ICC were arrived at after three years of rulemaking and appeals. Although the Commission originally proposed seven presumptions which would enable the ICC to regulate maximum rail rates, the final rule contained three presumptions: the 160 percent over variable cost test, the substantial shipper investment test and the 70 percent market share test.

These three presumptions of market dominance snare an estimated 50 percent of all rail traffic within the ICC's regulatory grasp. Under these presumptions, a shipper need only allege and substantiate that one of the three presumptions is applicable. Once this is established, the ICC may then investigate, suspend or review the rate. No specific burden of proof is required of the shipper.

Under section 102(b) of the Administration's bill, a shipper initially faces an explicit burden of proof. A purchaser of rail services or purchaser organization must "demonstrate on the record" that it has been or will be "competitively damaged." It must also show that it is "likely to prevail on the merits of any investigation actually undertaken." The complaining purchaser must also demonstrate by clear and convincing evidence that it has "no reasonable transportation alternative." Finally, if the shipper meets its burden, the railroad must then show its rate is reasonable.

The initial burden of proof for shippers has been raised in S. 796 in an effort to prevent frivolous litigation. Under the present system shippers are able to use threats of litigation as one tool in bargaining with the railroads over rates. Requiring a shipper to show that initially it is being competitively harmed and is likely to prevail should reduce unreasonable challenges to rail rates. In most American industries, rates are set by negotiation without administrative interference. Since shippers are given the privilege of invoking administrative review to reduce railroad rates, it is appropriate that they be required initially to demonstrate a need for such review.

The second procedural provision of proving "no reasonable transportation alternative" will eliminate from bureaucratic review challenges of rail rates where a shipper has other viable choices. Since shippers have a thorough knowledge of their transportation alternatives as a result of their normal business practices, this requirement should not impose an undue burden. These burdens of proof for the shipper are consistent with the bill's purpose to rely first and foremost on the marketplace, and then, only as a last resort, on administrative review.

Question 3. Under S. 796, it would be unlawful for a carrier to set a rate below going concern value with the intent to eliminate a competitor. It has been claimed that this provision goes beyond the antitrust prohibition against predatory pricing by requiring proof of the intent to eliminate competition. Please comment. Does the need to show intent make the protection which this provision would afford hard to obtain? How would this provision interrelate with the antidiscrimination provisions?

Answer 3. Predatory pricing may be a violation of section 2 of the Sherman Act, as an attempt to monopolize. Under the prevailing view courts require three elements to establish a prima facie case: (1) existence of predatory conduct; (2) specific intent to control prices to gain monopoly power or destroy competition; and (3) proof of a dangerous probability that monopoly power will be achieved in a relevant market. A minority view would regard an attempt to monopolize as requiring only (1) proof of conduct that is predatory; and (2) that it is specifically intended to eliminate competitors from a substantial amount of a market. Under this view, predatory pricing intended to eliminate a particular significant competitor may be sufficient to violate section 2 of the Sherman Act. See *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459 (9th Cir. 1964).

Under either view, proof of predatory conduct is generally viewed as more difficult to prove than specific intent since specific intent is found more readily when a firm has significant market power. In some jurisdictions specific intent can be inferred from predatory conduct.

Requiring proof that a railroad intended to eliminate a competitor would make the minimum rate provision, section 102(c), more difficult to prove than a provision without such a requirement. The courts have required intent in antitrust prosecutions because, at least in criminal prosecutions, some proof of knowledge or state of

mind has been deemed essential. Such a requirement may not be necessary in a civil proceeding.

The predatory pricing provision and the discrimination provision in the Administration's bill are two distinct provisions. A railroad may discriminate between shippers in similar circumstances and still have each rate be above its going concern value. Likewise, a rail carrier could set a rate below going concern value and charge that rate to all shippers in an area. The victims of predatory pricing are a railroad's competitors: other rail, water or motor carriers. The perceived victims of discrimination violations are shippers, usually those without leverage. The provisions in the bill have been narrowly drawn to avoid needless litigation and they should therefore be strictly interpreted.

Question 4. In your testimony, you state that one of the 4-R Act's inherent problems was its failure to change existing antidiscrimination provisions. In this regard, you mention the ICC's confused interpretation of the law in this area. Please elaborate on the problems with present antidiscrimination law under the Interstate Commerce Act and the extent to which S. 796 is a statutory remedy.

Answer 4. The present antidiscrimination provisions, 49 U.S.C. §§ 10726 and 10741, prohibit discrimination by railroads in "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances." They also forbid subjecting a "person, place, port or type of traffic to unreasonable discrimination" as well as charging more for a shorter than for a longer haul over the same line in the same direction. The problems with ICC interpretations of these statutes do not necessarily lie in the lack of logic in any particular decision but rather are created by the necessity of applying the extremely vague and inherently imprecise statutory terms to specific business conditions. The provisions effectively give the ICC broad discretion to interfere in the ratemaking process and thus indirectly negate deregulation of maximum rates.

It is important to note that agricultural trucking, which is a major competitor of the railroads, is not subjected to any antidiscrimination provision. Thus, rail carriers are forced to bear the costs of discrimination proceedings before the ICC that are not also borne by their competitors. Furthermore, since the statutes discourage innovative rate experimentation, they inhibit the rail carriers from effectively competing with motor carriers and barges and have contributed to the declining profitability of the industry as a whole.

The Administration's discrimination provision, section 106, reflects the need for a statute which is clear, yet capable of preventing a railroad from making distinctions in its rates that are not based on economic considerations, if such arbitrary actions do occur. Since the bill requires a petitioner to demonstrate by clear and convincing evidence that it has been competitively damaged and that it would have been ready, willing, and able to accept similar rates, shippers will be discouraged from filing or threatening to file frivolous lawsuits before the Commission. If competitive injury were shown, however, the shipper would be protected by the Commission from unlawful discriminations.

Thus, the new provision is intended to be used only in truly egregious circumstances and is not an authorization for the Commission to second guess a railroad's rate structure.

Question 5. Under the antidiscrimination provision in S. 796, to what extent do the tests included therein correspond to those under the Robinson-Patman Act, which prohibits price discrimination in the sale of goods?

Answer 5. The Robinson-Patman Act prohibits price discrimination by a seller of commodities of like grade and quality in interstate commerce. Discrimination has been interpreted to denote simply a price difference. The prohibition applies where the effect may be to substantially lessen competition and is subject to three defenses: a cost justification defense, an obsolete goods defense and a meeting competition defense.

The defenses to the Act have proven difficult to establish. The cost justification defense is difficult to establish because of the burden of gathering data for each price charged and certain costs under the Federal Trade Commission's de minimis rule are not considered significant. See *Thompson Products Inc.,* 55 F.T.C. 1252 (1959). The meeting competition defense requires that a seller must "in good faith" match a lower offer which it is seeking to meet, and generally applies only to efforts to meet rather than beat competition.

The general framework of the antidiscrimination provision, section 106, and the Robinson-Patman Act are similar. For both, a prima facie case requires some proof of rate differences for similar purchases and of some competitive injury. Both allow a defendant to justify its actions because of differing costs or competitive circumstances.

A significant difference between the Robinson-Patman Act and section 106 is that section 106 requires a petitioner to prove by "clear and convincing evidence" that it has been damaged by the alleged discrimination. The standard of proof for establishing competitive injury under the Robinson-Patman Act is not as rigorous, see *FTC* v. *Morton Salt Co.,* 334 U.S. 37, 47 (1948) (secondary line of business); *Utah Pie Co.* v. *Continental Baking Co.,* 386 U.S. 685 (1967) (primary line of business). Thus, the more rigorous standard of the bill should limit ICC rate interference to cases of clearly harmful rate differences.

Similarly, the burden of proof for the rail carriers' defenses of cost justification and differing degrees of competition is specified as "clear and convincing," whereas the standard for establishing Robinson-Patman Act defenses are not specified and is often subject to changing FTC or judicial interpretation.

Furthermore, the defense of differing competitive circumstances in the Administration's bill should enable a firm to respond effectively to competitive forces in varying situations, such as perhaps, to offer more attractive terms and conditions to retain present customers or to offer competitive rates in an effort to secure new ones. Thus, while many of the benefits of the Robinson-Patman Act approach would be retained, certain doctrines which may unduly restrain legitimate competitive behavior would not be adopted.

Rational business behavior dictates that rate differences reflect either cost differences or differences in competitive circumstances. If either the antidiscrimination provision or the minimum rate provision is drawn too broadly, specific shippers or carriers will benefit at the expense of consumers. Moreover, a railroad may forego a selective rate decrease, although it is justified, because the possibility of costly administrative challenge is too high.

Question 6. It has been claimed that removal of the antitrust immunity over rate bureau activity in the discussion of single-line rates would expose interlining carriers to possible antitrust suits from their discussion of joint-line rate where one or the other has a competitive single-line route over the same territory. To what extent could such carriers be vulnerable to an investigation for price-fixing?

Answer 6. The 4–R Act and the Administration's bill allow antitrust immunity for joint-line rate setting for those carriers that "practicably participate" in a movement. Section 105(a). With respect to single-line rates, the bill continues the ban on collective voting on single-line rates found in the 4–R Act and extends this prohibition to discussion of single-line rates. Voting on a joint-line rate or discussing a joint-line rate even by a carrier that operates a competing single-line rate would fall within the immunity provision of the bill, provided that the carrier truly "practicably participated" in the joint-line route.

Question 7. It has been claimed that the provision under S. 796 which would require all rate bureau meetings be open would have an anticompetitive effect on the activities in those meetings by allowing disclosure of railroad data to other modes. Please comment.

Answer 7. Public attendance at rate bureau meetings is necessary to assure that restrictions on rate bureau discussion and voting are enforced. Neither the ICC nor the Department of Justice has sufficient personnel to monitor rate bureau meetings and there is a significant potential for unauthorized anticompetitive conduct at unmonitored meetings.

On balance, the potential for anticompetitive conduct arising from open rather than closed rate bureau meetings appears to be minimal. If representatives from other modes, such as water and motor carriers, were present at such meetings they would surely have access to final votes on rate proposals and to the final rates themselves. Since tariffs are published shortly after a vote and since dissenting carriers which take independent action must also publish their rates, the water and motor carriers will gain little by witnessing the actual vote on a rate.

With respect to discussion, we do not foresee any significant anticompetitive problems. Cost data for most, if not all, rail systems are already extensively reported by the rail carriers to the Commssion and are available to the public. Further cost data are publicly disclosed in rate hearings before the Commission.

Moreover, even if previously undisclosed data for a specific movement were disclosed in a rate bureau, access to such data would not be a particularly useful competitive weapon in the hands of motor carriers or water carriers for two reasons. First, such data are not susceptible to precise formulation and are therefore inherently unreliable. In addition, in a rate bureau debate, the data would tend to be inflated, as each carrier would be relying on the data in part to secure a more favorable revenue division. In these circumstances, motor and water carriers learning of these data could not be confident that they were in the possession of the railroad's real cost situation, and they would therefore be unable to establish a pricing strategy based on these data.

Second, motor carrier and barge rates respond primarily to competing intramodal and intermodal rates, not costs. To the extent that rail cost data are disclosed to these carriers it would not prove to be as valuable as knowing the rail rates that are to be charged. As stated above, these rates can easily be found in a tariff. For these reasons, it is extremely unlikely that open rate bureau meetings will have an anitcompetitive effect on rail ratemaking.

Public rate bureau meetings are necessary to limit anticompetitive discussion and voting within the rate bureau. Without this essential tool, enforcement of any restrictions on rate bureau behavior will be jeopardized. On the other hand, we cannot identify significant competitive risks that might attend open meetings.

Statement of Joseph R. Galassi, for the Green Bay and Western Railroad

My name is Joseph R. Galassi and I am President of the Green Bay and Western Railroad Company (GB&W) which has its main offices at Green Bay, Wisconsin.

GB&W operates 255 miles of railroad between Winona, Minnesota and Kewaunee, Wisconsin. It is a regional railroad serving the principal industrial cities in Northern Wisconsin. GB&W employs 375 people and its annual system revenue in 1978 was $13 million. It is a key railroad in terms of providing the service and car supply to maintain and develop industries in Northern Wisconsin. This company has been and is operated at a profit and, given a favorable regulatory climate, is not among the railroads on the "endangered species" list.

GB&W supports the effort to enact a substantial regulatory reform in the groundrules under which railroads operate. In that vein, it supports most of the changes proposed in the Administration's deregulation bill. However, complete deregulation could well be fatal to the GB&W and other small railroads which do not have the leverage to deal with their large connecting railroads. The purpose of my testimony is to identify certain provisions in the bill which would have a serious adverse impact on GB&W.

Our concern as to the proposed bill is with three major changes which, if adopted, could put GB&W on the endangered list:

1. The repeal of the Commission's power to require joint rates for connecting railroads and of its power to suspend unilateral cancellations of existing rates.
2. The abolition of the Commission's power to resolve divisions of revenue disputes among railroads.
3. The adoption of a standard for abandonments which would be based strictly on the profitability of the line to the operating railroad, without regard to the ultimate impact upon connecting railroads.

1. The Commission's power to require joint rates and routes is essential

Today GB&W is able to provide the shipping public with alternative East-West routes through its connection at Kewaunee with the cross-Lake Michigan car ferries. Specifically, we are able to provide an alternative to the relatively congested Chicago gateway.

In many instances these cross-lake routes make up the shortest routes and thereby afford shippers, particularly between Wisconsin and Michigan, Lower rates than those which would otherwise result from the mileages via the Chicago gateway. It is well recognized that the existence and preservation of these cross-lake routes is saving the shipping public millions of dollars per year. The value of these cross-lake routes to the public was graphically illustrated during the past winter. For several weeks the Chicago gateway was closed by heavy snows and the congested terminals which ensued. The shippers then turned in large numbers to cross-lake routes, as they were able to continually operate notwithstanding the snow.

One of the provisions in the proposed bill would take away the Commission's power to require the continuation or establishment of joint rates. Removal of this power over joint rates would render the Commission's power to require through routes virtually meaningless. Any railroad could close a through route by unilaterally publishing a rate over its portion of the route so high that no traffic would be tendered. Since less than 1 percent of GB&W's traffic is local, in the sense of both originating and terminating on our railroad, it is completely at the mercy of connecting lines to cooperate in providing through routes and rates.

What makes our situation so critically dependent upon the statute which requires joint rates and through routes is that the cross-lake routes are disfavored by the very railroads which are essential to such through routes. Within the past few months, the Canadian railroads published tariffs to close our routes with the Ann Arbor's cross-lake ferry. If the Commission had not acted to use its power to suspend the proposed cancellation of routes and rates, we would have been com-

pletely shut out of the opportunity to handle traffic between Canada and the United States for movement via the Ann Arbor ferry. Recently, CONRAIL also initiated an attempt to cancel joint routes and rates with the Ann Arbor via cross-lake routes on a substantial number of commodities. While that action was designed as a retaliatory step against Ann Arbor, GB&W was also the prospective victim of that action because it, too would be out of the routing. Here, again, the Commission has been able to take action to resolve the issue of the lawfulness of closing those routes. But if the proposed bill were adopted in its present form, including the provision to take away the Commission's joint rate powers, and thus render the remaining power over through routes meaningless, GB&W would be left helpless in these situations.

The traffic which moves cross-lake amounts to about one-half of GB&W's total business. While Ann Arbor itself is a friendly connection of GB&W, in the sense that it cooperates in and promotes cross-lake rates and routes, Ann Arbor only goes as far as Toledo and it is dependent upon CONRAIL to reach the important Eastern markets. Since CONRAIL has already vividly demonstrated its preference for the Chicago gateway and its desire to close the cross-lake routes, the removal of the Commission's joint rate powers would turn CONRAIL loose to close existing routes with Ann Arbor and GB&W.

The other cross-lake ferry with which we connect is operated by the C&O Railroad. C&O has widely publicized its preference for the Chicago gateway and its desire to get out of the ferry business. It is, therefore, obvious that, if the I.C.C.'s powers to protect shippers and connecting railroads against unilateral cancellation of joint routes and rates were removed, the half of our business which depends on cross-lake routes would be immediately jeopardized.

2. THE COMMISSION'S JURISDICTION TO RESOLVE DIVISIONS DISPUTES IS ESSENTIAL FOR SMALL RAILROADS

As has been indicated by my testimony up to this point, GB&W is a relatively small railroad as compared with the other railroads with which it participates in through routes and rates. As matters stand today, the division of revenue which each railroad receives has been worked out equitably by the railroad community, but with resort to the Commission where an impasse develops. Obviously, a small railroad such as the GB&W has relatively little bargaining power in setting divisions, particularly on bridge traffic where it neither originates nor terminates the shipment. Under these circumstances, there is a continuing need for an "umpire," in the form of the Commission, to which resort can be had to resolve disputes.

We recognize that some statutory improvements should be made to expedite the resolution of those divisions disputes which are placed before the Commission. A few years ago, GB&W was part of a group of Midwestern railroads which were awarded more equitable divisions on transcontinental traffic by the Commission. Since it took almost a decade to accomplish that result, it would be preferable to adopt legislation or procedures which would mandate the completion of divisions cases within a reasonable period, e.g., one year. But it would be a serious mistake and an extreme hardship upon smaller railroads, such as GB&W, to remove the auspices of the Commission to decide unresolved divisions disputes.

3. THE IMPACT ON CONNECTING CARRIERS OF ANY PROSPECTIVE ABANDONMENT MUST BE CONSIDERED

Under the existing law, the test by which prospective abandonments are gauged is the public interest. This includes an evaluation and balancing of such factors as the economic burden to the railroad operating the segment proposed to be abandoned, the impact upon the shippers and communities served, the effect which the abandonment would have upon connecting carriers, the availability and funding of an alternative operator, etc. But the proposal in the bill is that the line can be abandoned if it can be demonstrated that the revenues attributable to the line do not meet the full cost of operating the line.

There must be taken into consideration the impact of a prospective abandonment upon connecting carriers. As I mentioned earlier, 50 percent of GB&W's system revenue comes from the two cross-lake ferry routes, viz, Ann Arbor and C&O. If either of those lines should cease, it would have an immediate and serious impact on GB&W. Yet, the proposal in the bill would not even allow the Commission to take a look at the question of whether the financial impact on the abandoning railroad from continuing operation is relatively slight as compared with the impact on a connecting carrier. Perhaps an answer could be found by providing that whenever it is shown that substantial and adverse financial impact would result for a connecting carrier, then the continuing operation of the line will be subsidized.

Statement of George F. Mohr, President, Eastern Industrial Traffic League, Inc.

The Eastern Industrial Traffic League (E.I.T.L.) is a voluntary organization of approximately 120 members representing manufacturing and distribution companies, industry associations, and port development organizations. Its members, operations and interests are located primarily in the eastern part of the United States. Its members are shippers of all types of shipments from small LTL lots to many carload movements. The E.I.T.L. seeks to promote a better transportation climate for its members and, in so doing, believes that it also serves the best interests of the general public. To accomplish its goals, its activities are directed toward carrier actions, legislative proposals and regulatory practices that have an impact on its members' interests as well as the pursuit of a national transportation policy that will provide adequate service at reasonable cost, by a privately owned and operated system, at a reasonable profit.

The Eastern Industrial Traffic League has formulated a series of transportation policies which have been approved by its Board of Directors. These policies represent the broad range of interests of its members. S. 796 has been examined in the light of those policies and the E.I.T.L. hereby expresses its interest and position with respect to the proposed legislation.

The E.I.T.L. supports regulatory reform and the principle of competition in all forms of business activity. The E.I.T.L. emphasizes the need for improved legislation and, to that end, it supports the provisions of Section 101, enunciating a Railroad Transportation Policy. However, it does not support the degree of deregulation of the railroads envisioned in this specific bill.

Section 102 provides for maximum and minimum rate regulation as well as contract rates. The E.I.T.L. supports the concept of contract rates as a means of encouraging innovative rate-making and flexible marketing strategies. This support is subject to the proviso that a contracting railroad must offer the same terms to any other similarly situated shipper and that the rates are published in tariff form and on file with the Interstate Commerce Commission. Furthermore, nothing should impair the common carrier obligation of the carrier with respect to those shipper/receivers not covered by such contractual agreements.

This section also provides that for a five year period, rates may be increased "freely" by 7 percent per year plus inflation and that all rate control would be eliminated after the five year period. The E.I.T.L. believes that railroads should be free to set reasonable rates and that the I.C.C. should be prohibited from prescribing exact rates that carriers may apply. However, the E.I.T.L. vigorously opposes the eventual complete freedom from rate regulation proposed in this bill.

In the distribution of their products, many E.I.T.L. members are "captive shippers" in varying degrees. While motor carrier service is available, many shippers are served by only one railroad and have no alternative rail service. Furthermore, most of their more distant market movements are exclusively by railroad. On the other hand, many members are "captive receivers." Some are on branch lines with limited service by one railroad and/or are located at considerable distance from the shipper's factory which precludes other than rail shipment. With the on-going energy crisis, the "captive" issue will become more acute. Some members are currently experiencing the perils of being a captive shipper in that the origin rail carrier has inadequate equipment availability under the premise that the traffic is not sufficiently remunerative.

In a climate of massive deregulation, rail traffic would be subject to drastic freight cost increases for which there would be no relief. This would eventually show up in the price paid for virtually all commodities purchased by the housewife. Consequently, in the final analysis, the cost of deregulation would show up on the dinner table of every consumer.

Those fostering deregulation foresee substantial decreases in transportation costs. Nothing could be further from the truth. Conrail has been losing nearly 10 cents of every revenue dollar. Virtually all manufactured goods are viewed as marginally profitable. The railroads are presently processing a proposal to increase almost all rail rates from, to, or within Eastern Railroads territory by 7 percent under the provisions of the 4R Act of 1976. This "yo-yo" increase applies on a very substantial list of goods identified by Conrail as falling in the marginal category. Without the 7 percent limit on their freedom, this increase would surely be much greater than what has been proposed. The 4R Act provides substantial rate-making freedom, but it does preserve most of the safeguards for shippers who believe there is inadequate justification for unreasonable rate increases. The innovative rate-making provisions of the 4R Act have been little used by the railroads. They should be encouraged to take advantage of this legislation rather than to provide unbridled rate freedom that will result in a return to the monopolistic practices on much of the marginal,

captive traffic. While there have been substantial changes in transportation since the inception of the Interstate Commerce Act in 1887, adoption of the changes proposed in S. 796 would result in reverting to the predatory pricing of captive traffic that necessitated the I.C. Act many years ago.

Further, with respect to Section 102, the E.I.T.L. supports the provisions that rates may not be set below incremental costs and tariffs may contain both minimum and maximum rates. This provides rate flexibility that would permit railroads to compete with other modes for traffic which fluctuate according to volume or seasonal demand.

Section 103 eliminates the Commission's power to suspend rates and limits its power to investigate those situations in which an injured party requests an investigation. The E.I.T.L. opposes these provisions on the basis that this would be a serious step backward. The I.C.C. has proven itself as a forum where the shipping public can seek redress for what they allege to be unreasonably high or discriminating rates. If a shipper can demonstrate his grievance, the Commission can suspend the rate(s) in question while an investigation is made. Without suspension power, the shipper must pay the rate complained of until such time as a Commission decision is made. Furthermore, he must bear the burden of proof that the rate is unreasonable. In the absence of I.C.C. authority over rates, the shipper's only recourse is in the courts under the anti-trust laws. This is an extremely time-consuming and costly procedure that would preclude most of the relatively small shippers from seeking relief. The E.I.T.L. opposes these provisions on the basis that the present system works and that there is no demonstrable need for a change that would produce such a chaotic alternative. On the other hand, we support legislation that would result in expedited procedures so that matters before the Commission may be resolved more promptly.

Section 104 confirms the Commission's power to establish through routes, but it eliminates its power to set joint line rates. This would increase transportation cost appreciably. Carriers would set rates for traffic moving over their own property. This would result in multi-factor rates that would produce greatly increased charges. Presently, joint rates can not be changed without concurrence of all participating railroads. This protects existing rate structure and prevents a chaotic rate situation. However, the E.I.T.L. recognizes that there are very real inequities in the division of interterritorial revenues that are extremely harmful to the eastern railroads. In all cases, the eastern lines receive a disproportionately small share of the revenue. The ratio of revenue to variable costs shows that western and southern lines receive a much greater proportion of the revenue than they are entitled to. The E.I.T.L. would like to see the Commission empowered to adjust the division of revenue among carriers and that such matters must be settled within a prescribed time frame. We believe that the division issue contributes significantly to the financial plight of the eastern railroads.

Section 105 deals with rate bureaus and to all intents and purposes would effectively emasculate them. The concept of collective rate-making and the anti-trust immunity granted under 1948 Reed-Bulwinkle Act, is fundamental to the orderly process of conducting the business of transportation; subject to the right of independent action by an individual carrier.

The E.I.T.L. holds that the rate bureau process, equally applicable to rail and motor carrier rate-making, should be subject to the following conditions:

That rate bureau meetings, except public hearings, be open only to the I.C.C.

That minutes and voting records be filed with the I.C.C. and not subject to public scrutiny.

That single line rates should be docketed and discussed by any rate bureau carrier.

That voting and agreement on single line rates should be limited to the single line carrier.

That member carriers may discuss, but can only vote on matters in which they may practicably participate.

That no rate bureau employee may initiate any changes in rates, rules, or regulations.

That no rate bureau may protest a tariff change of an individual rate bureau member or group of members.

That all rate bureau agreements which authorize rate bureau activity must be approved by the I.C.C. with safeguards to protect the public.

That anti-trust immunity should cover intrastate as well as interstate commerce.

The E.I.T.L. opposes the provisions that would prohibit general freight rate increases by rate bureaus. The concept of properly documented and cost-justified, general increases that will best serve the industry as a whole must be permitted in

order to cope with inflationary costs. However, general increases may not be published that are intended only to improve profitability.

Section 106 proposes elimination of present anti-discriminatory provisions of the I.C.C. Act. Sections 2, 3 and 4 of the Act—recodified as 10726, 10741 and 10742—were made into law to protect the public from predatory practices. The need of such protection still exists. These provisions are time-tested and, in their absence, the only recourse would be through the courts (a time-consuming and costly process). Not only do shippers need reasonable rates and charges, but they should be nondiscriminatory as well. The E.I.T.L. strongly opposes elimination of anti-discriminatory regulations. Furthermore, S. 796 (in this section) makes frequent reference to "purchaser of transportation." This is undefined and in commercial practice this is a factor of the terms of sale. The actual purchaser of transportation could be a third party not involved in any way in the shipping, receiving, or movement of the goods.

Section 107 would reduce the notification period for rate and rule changes from the present 30 days to one day. The E.I.T.L. opposes this change on the basis that shippers need adequate notice of change because of the impact on the marketing of its products; competitive relationships; computerization of rate data. This would produce an unwarranted hardship on most shippers.

Section 108 contains miscellaneous rate provisions. The E.I.T.L. supports the elimination of "Section 22" depressed rates on Government traffic (now Section 10721) on the basis that the Government should purchase transportation on the same basis and at the same rates as those paid by other shippers for the same service, except under wartime conditions. The E.I.T.L. favors agreements between shippers and carriers that permit reduced rates where carriers shift a part of the burden of loss and damage liability to the shipper. Furthermore, the E.I.T.L. supports cancellation of certain obsolete provisions which were designed to use economic regulation to achieve various social goals.

Section 120 would ease entry requirements and would permit any person to construct a new line across an existing line as long as there is no unreasonable interference and a fair price is paid. Furthermore, this section would provide for an expansion of reciprocal switching provisions to all parts of the country. This would require a railroad to pick up and deliver cars on behalf of another carrier. The E.I.T.L. supports these provisions in the hope that it would produce improvements in service and car supply and would encourage competition for traffic through an expansion in service and market accessibility.

Section 121 contains provisions for easing railroad abandonments and service discontinuation. The E.I.T.L. takes the position that there is a need to make it easier to abandon unprofitable or excess rail lines. Branch line service has a critical impact on the line of business of several of our members due to the rural nature of their customers' activities and locations. However, this does not blind us to the fact that many such lines do not handle the volume of traffic to warrant continued service. We find that the proposed legislation does not provide adequate standards for evaluating the economic viability of such lines. Therefore, we submit that abandonment legislation should insure that:

1. Procedures for abandonment would be expedited.
2. Adequate notice of not less than 180 days should be given to all interested parties—communities, firms, or others.
3. Realistic financial data should be supplied by the carrier to show a period of three years of continuing loss and the net liquidated value, if abandoned.
4. Users of the line could purchase the line for the net liquidated value provided that assurance of service could be demonstrated for a minimum of 3 years.

Section 122 proposes removal of the I.C.C.'s jurisdiction over mergers and large scale transactions, making them subject to the anti-trust and securities laws of the United States. The E.I.T.L. has no doubt that soundly conceived mergers and acquisitions which will strengthen the railroads, provide better service at reduced cost and establish or continue adequate competition is in the long-range public interest. The public interest would best be served by having the Interstate Commerce Commission retain control over these matters under expedited procedures. Their expertise in this area makes their control of these matters more logical than being in the hands of the Justice Department.

The E.I.T.L. opposes this section of S.796 as being contrary to the best interests of the shipping public. The 4R Act of 1976 established criteria and expedited procedures. These provisions should be given an opportunity to be implemented. The current Chessie Systems/Family Lines and the Southern Railway/Norfolk and Western merger proposals should be observed to assess the I.C.C.'s examination of the issues and the degree of dispatch with which they are concluded.

The E.I.T.L. would also like to comment on several other issues which it believes to be of significance that should be included in any railroad reregulation legislation:

(a) The Uniform Accounts system prescribed by the I.C.C. in 1914 should be eliminated and replaced with generally accepted accounting principles. The former method provides for Betterment Accounting. An asset maintains a constant value and if it needs to be repaired or replaced, such expense is considered to be assigned to the current year's operations. Therefore, the asset is maintained at its original value. Under Depreciation Accounting, it is assumed that an asset has a normal life expectancy. Therefore, depreciation (taken over the life of the asset) is used in offsetting the cost of replacing the asset. The use of Betterment Accounting results in distortions of the railroads' rate of return and in the operating expense. Consequently, the rate of return on investment can not be compared with other industries. It will generally be understated.

(b) The I.C.C.'s car service directives have proven to be ineffective and, in many cases, have resulted in poorer car utilization. Such matters should be left to the discretion of rail management, except in times of national or regional emergencies.

(c) Railroads should not be used as an instrument to achieve goals of a sociopolitical nature. "Social costs" of railroading through taxation of rights of way, yards and terminals we well as the compulsion to provide unwarranted branch line service and cross-subsidization of competing modes of transportation have taken a heavy toll on railroad costs and competitive capabilities. There has been a continuing trend to transfer more and more responsibility to the Department of Transportation. As this is an arm of the Executive branch, it becomes more susceptible to the political pressures of the party in power. The I.C.C. had historically maintained a balance between the legislative and executive branches with its decisions subject to review of the judicial branch. An independent regulatory body has a more objective perspective than one that is politically oriented. This political independence of the Interstate Commerce Commission should be reaffirmed.

In conclusion, Mr. Chairman, the Eastern Industrial Traffic League strongly supports improved regulation of the railroad industry. We believe that there have long been regulatory inequities that have mitigated against the viability of this industry. However, in correcting these ills, we urge that consideration be given to the needs of the shipper who finds himself, to a large degree, to be a captive of the serving railroad. Under this legislation, his position would be in serious jeopardy should his captor opt to capitalize on his monopolistic powers to charge substantially more than the traffic can bear. The Interstate Commerce Commission has provided that protection for 90-some years. We need that forum in the future.

Statement of Emmett Barker, President Farm & Industrial Equipment Institute

The Farm and Industrial Equipment Institute (F.I.E.I.) is a trade association representing more than 225 manufacturers of farm and industrial equipment. Its active members account for over 90 per cent of the agricultural tractors and farm machinery produced within the United States. The F.I.E.I., through its membership, seeks to promote a better business climate for its members while serving the best interests of its customers and the general public. To accomplish its goals, its activities are directed toward engineering, environmental development, international trade, legislative and governmental affairs, materials and energy, safety, and transportation to name a few.

Through its Transportation Policy Advisory Committee, the Farm and Industrial Equipment Institute has formulated a body of transportation policy which has been approved by its Board of Directors, that represents the broad range of interests of its members. S.796 has been examined in the light of those policies and the F.I.E.I. hereby expresses its interest and position with respect to the proposed legislation.

The F.I.E.I. supports regulatory reform and the principle of competition in all forms of business activity. The F.I.E.I. emphasizes the need for improved legislation and, to that end, it supports the provisions of Section 101, enunciating a Railroad Transportation Policy. However, it does not support the degree of deregulation of the railroads envisioned in this specific bill.

Section 102 provides for maximum and minimum rate regulation as well as contract rates. The F.I.E.I. supports the concept of contract rates as a means of encouraging innovative rate-making and flexible marketing strategies. This support is subject to the provison that a contracting railroad must offer the same terms to any other similarly situated shipper and that the rates are published in tariff form and on file with the Interstate Commerce Commission.

This section also provides that for a five year period, rates may be increased "freely" by 7 percent per year plus inflation and that all rate control would be eliminated after the five year period. The F.I.E.I. believes that railroads should be free to set reasonable rates and that the I.C.C. should be prohibited from prescribing

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exact rates that carriers may apply. However, the F.I.E.I. vigorously opposes the complete freedom from rate regulation proposed in this bill.

In the distribution of farm machinery a great many F.I.E.I. members are "captive shippers" in varying degrees. While motor carrier service is available to a limited extent, many shippers are served by only one railroad and have no alternative rail service. Furthermore, most of their more distant market movements are exclusively by railroad. On the other hand, farm machinery dealers, by their very nature, are rurally located and are "captive receivers." A great many are on branch lines with limited service by one railroad and/or are located at considerable distance from the shipper's factory which precludes other than rail shipment. With the on-going energy crisis, the "captive" issue will only become more acute. Some of our members are currently experiencing the perils of being a captive shipper in that the origin rail carrier has inadequate equipment availablility under the premise that the traffic is not sufficiently remunerative.

In a climate of massive deregulation, agricultural machinery traffic would be subject to drastic freight cost increases for which there would be no relief. This would eventually show up in the price paid for the agricultural commodities purchased by the housewife. Consequently, in the final analysis, the cost of deregulation would show up on the dinner table of every consumer.

Those fostering deregulation forsee substantial decreases in transportation costs. Nothing could be further from the truth. Farm machinery is a relatively light loading commodity that is construed by all railroads to be at best marginally profitable. The railroads are presently processing a proposal to increase all rail rates from, to, or within Eastern Railroads territory by 7 percent under the provisions of the 4R Act of 1976. Without the 7 percent limit on their freedom, this increase would surely be much greater than what they have proposed. The 4R Act provides substantial rate-making freedom, but preserves most of the safeguards for shippers who believe there is inadequate justification for unreasonable rate increases. The innovative rate-making provisions of the 4R Act have been little used by the railroads. They should be encouraged to take advantage of this legislation rather than to provide unbridled rate freedom that will result in a return to the monopolistic practices on much of the marginal, captive traffic. While there have been substantial changes in transportation since the inception of the Interstate Commerce Act in 1887, adoption of the changes proposed in S. 796 would result in reverting to the predatory pricing of captive traffic that necessitated the I.C. Act many years ago.

Further, with respect to Section 102, the F.I.E.I. supports the provisions that rates may not be set below incremental costs and tariffs may contain both minimum and maximum rates. This provides rate flexibility that would permit railroads to compete with other modes for traffic which fluctuates according to volume or seasonal demand.

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Section 104 confirms the Commission's power to establish through routes, but it eliminates its power to set joint line rates. This would increase transportation costs appreciably. Carriers would set rates for traffic moving over their own property. This would result in multi-factor rates that would produce greatly increased charges. Presently, joint rates can not be changed without concurrence of all participating railroads. This protects existing rate structure and prevents a chaotic rate situation. However, the F.I.E.I. recognizes that there are very real inequities in the division of interterritorial revenues that are extremely harmful to the eastern railroads. In all cases, the eastern lines receive a disproportionately small share of the revenue. The ratio of revenue to variable costs shows that western and southern lines receive a much greater proportion of the revenue than they are entitled to.

The F.I.E.I. would like to see the Commission empowered to adjust the division of revenue among carriers and that such matters must be settled within a prescribed time frame. We believe that the division issue contributes significantly to the financial plight of the eastern railroads.

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Section 107 would reduce the notification period for rate and rule changes from the present 30 days to one day. The F.I.E.I. opposes this change on the basis that shippers need adequate notice of change because of the impact on the marketing of its products; competitive relationships; computerization of rate data. This would produce an unwarranted hardship on most shippers.

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Section 120 would ease entry requirements and would permit any person to construct a new line across an existing line as long as there is no unreasonable interference and a fair price is paid. Furthermore, this section would provide for an expansion of reciprocal switching provisions to all parts of the country. This would require a railroad to pick up and deliver cars on behalf of another carrier. The F.I.E.I. supports these provisions in the hope that it would produce improvements in service and car supply and would encourage competition for traffic through an expansion in service and market accessibility.

Section 121 contains provisions for easing railroad abandonments and service discontinuation. The F.I.E.I. takes the position that there is a need to make it easier to abandon unprofitable or excess rail lines. Branch line service has a critical impact on our line of business due to the rural nature of our dealer locations. However, this does not blind us to the fact that many such lines do not handle the volume of traffic to warrant continued service. We find that the proposed legislation

does not provide adequate standards for evaluating the economic viability of such lines. Therefore, we submit that abandonment legislation should insure that:

1. Procedures for abandonment would be expedited.

2. Adequate notice of not less than 180 days should be given to all interested parties—communities, firms, or others.

3. Realisitic financial data should be supplied by the carrier to show a period of three years of continuing loss and the net liquidation value, if abandoned.

4. Users of the line could purchase the line for the net liquidated value provided that assurances of service could be demonstrated for a minimum of 3 years.

Section 122 proposes removal of the I.C.C.'s jurisdiction over mergers and large scale transactions, making them subject to the anti-trust and securities laws of the United States. the F.I.E.I. has no doubt that soundly conceived mergers and acquisitions which will strengthen the railroads, provide better service at reduced cost and establish or continue adequate competition is the long-range public interest. The public interest would best be served by having the Interstate Commerce Commission retain control over these matters under expedited procedures. Their expertise in this area makes their control of these matters more logical than being in the hands of the Justice Department.

The F.I.E.I. opposes this section of S. 796 as being contrary to the best interests of the shipping public. The 4R Act of 1976 established criteria and expedited procedures. These provisions should be given an opportunity to be implemented. The current Chessie Systems/Family Lines and the Southern Railway/Norfolk and Western merger proposals should be observed to assess the I.C.C.'s examination of the issues and the degree of dispatch with which they are concluded.

The F.I.E.I. would also like to comment on several other issues which it believes to be of significance that should be included in any railroad reregulation legislation:

(a) The Unform Accounts system prescribed by the I.C.C. in 1914 should be eliminated and replaced with generally accepted accounting principles. The former method provides for Betterment Accounting. An asset maintains a constant value and if it needs to be repaired or replaced, such expense is considered to be assigned to the current year's operations. Therefore, the asset is maintained at its original value. Under Depreciation Accounting, it is assumed that an asset has a normal life expectancy. Therefore, depreciation (taken over the life of the asset) is used in offsetting the cost of replacing the asset. The use of Betterment Accounting results in distortions of the railroad's rate of return and in the operating expense. Consequently, the rate of return on investment can not be compared with other industries. It will be generally understated.

(b) The I.C.C.'s car service directives have proven to be ineffective and, in many cases, have resulted in poorer car utilization. Such matters should be left to the discretion of rail management, except in times of national or regional emergencies.

(c) Railroads should not be used as an instrument to achieve goals of a sociopolitical nature. "Social costs" of railroading through taxation of rights of way, yards and terminals as well as the compulsion to provide unwarranted branch line service and cross-subsidization of competing modes of transportation have taken a heavy toll on railroad costs and competitive capabilities. There has been a continuing trend to transfer more and more responsibility to the Department of Transportation. As this is an arm of the Executive branch, it becomes more susceptible to the political pressures of the party in power. The I.C.C. had historically maintained a balance between the leigislative and executive branches with its decisions subject to the review of the judicial branch. An independent regulatory body has a more objective perspective than one that is politically oriented. This political independence of the Interstate Commerce Commission should be reaffirmed.

In conclusion, Mr. Chairman, the Farm and Industrial Equipment Institute strongly supports improved regulation of the railroad industry. We believe that there have long been regulatory inequities that have mitigated against the viability of this industry. However, in correcting these ills, we urge that consideration be given to the needs of the shipper who finds himself, to a large degree, to be a captive of the serving railroad. Under this legislation, his position would be in serious jeopardy should his captor opt to capitalize on his monopolistic powers to charge substantially more than the traffic can bear. The Interstate Commerce Commission has provided that protection for 90-some years. We need that forum in the future.

Respectively submitted.

EMMETT BARKER,
President.

Statement of Harold Dildine, President, Ohio Grain, Feed & Fertilizer Association

The Ohio Grain, Feed & Fertilizer Association represents approximately 1000 grain and fertilizer facility locations in the State of Ohio. Our members are vitally interested in the transportation of agricultural inputs such as fertilizer, chemicals and other products provided to the farmers in the State of Ohio, as well as the movement of agricultural products transported from farm to domestic and foreign markets.

I. GENERAL

The real issue presented by deregulation is whether the United States as a nation will retain a rail common carrier system insuring each shipper or community, large or small, the right to fair and equitable treatment under our transportation laws, or whether our current system shall be abandoned in favor of a system enabling railroads to arbitrarily select those movements they choose to prefer to move and reject those movements they prefer not to move, based solely on their perceived self interest.

If our nation refuses to continue legal protection of the interests of small shippers and communities today, large shippers and large communities will suffer from this lack of legal protection in the future.

While railroads complain of the current level of regulation, The Railroad Revitalization and Regulatory Reform Act of 1976 gave railroads great freedom to innovate to meet motor and water competition. In recent years the commission has modified many of its stringent rules and allowed railroads to increase their rates with justification, introduce new profit making concepts and encouraged innovative pricing concepts.

The removal of all regulatory constraints would subject the shipping public to severe economic hardship and endanger our vitally important railroad service through massive abandonments and rate discrimination. The destruction of the authority of the Interstate Commerce Commission and the repeal of the laws that have protected the shippers since 1887 must be thoroughly examined and evaluated before DOT sponsored legislation is enacted. DOT and rail proponents of deregulation would have us believe that freedom from regulation would solve our transportation problems and provide financial health to rail carriers. Our nation should have had sufficient experience with unregulated railroads during the robber baron era of the 1800's to enable us to evaluate these statements. That unregulated system yielded a combination of ruinous inter-railroad competition between carriers at directly competitive points coupled with exorbitantly high rail rates at non-competitive points.

The fact that agriculture was particularly damaged by the rail carriers' actions led them to the forefront of the fight for carrier regulation. The resultant Interstate Commerce Act was designed to halt existing blatant abuses, protect the small shippers and communities from price gouging and requiring rail carriers to establish and maintain freight rates, charges and practices. Our members still need these protections of the law.

II. COUNTRY ELEVATORS

Even with today's level of regulation our country elevator members face discriminatory rates, service and car supply in attempting to compete with larger shippers and communities. If the railroads are given further freedom from regulation our members would see ever increasing spreads in rates between large and small shippers.

The proposed changes in discrimination laws would permit discrimination in rates if different levels of competition exist. This proposed change in regulatory rules is an invitation to the railroads to return to the exorbitant charges at country shipping points precluded by the present Interstate Commerce Act. If this set of changes is enacted into law, our members cannot survive.

Grain elevators need, and are entitled to, equitable rates and services under current transportation law. The laws in effect relating to rate relationships, car supply service, equitable rates and abandonment procedures cannot be changed without severely damaging a large segment of our grain marketing system. The existing body of law developed slowly and gradually to meet the needs of the shippers and carriers alike. Deregulation would destroy this body of law and much of our transportation system in rural areas. Congress must recognize that deregulation would destroy the orderly transportation system in our country.

III. MAXIMUM RATES

S. 796 proposes to end maximum rate regulation after 5 years, and end the ICC power to suspend any rate or to initiate its own investigation. The termination of maximum rate regulation would be a disaster. It is reasonable to believe that during the transition period shippers without reasonable competitive alternatives would bear the 7 percent increases each year, while little or no increase would be assessed competitive traffic. The ease of exploitation of non-competitive traffic could suppress innovative marketing and pricing by railroads.

IV. CAPTIVE SHIPPER

Our Ohio grain elevators that have managed to retain their rail services are captive to these railroads to important segments of their grain markets, and are captive for most of their fertilizer needs as well. Some of our members have alternative outlets for portions of their crops or for portions of the year, such as processors, river terminals, lake terminals and train loading elevators that can be reached by truck. These markets do draw a portion of the country elevator grain at competitive prices so long as the elevators maintain alternative rail markets. As these rail markets become inaccessible through decline in service, severe car shortage or line abandonment, they experience a drop in relative grain prices at the local delivery points. There is no viable trucking alternative at competitive rates or adequate volume to the distant markets such as New York and New England mills and feeders, southeastern mills and feeders, and Gulf and Atlantic export elevators. As our country elevators gradually lose equitable and competitive rail rates our elevator members suffer declines in market prices available and are forced to reduce prices offered to the farmers patronizing their elevators. The delince in prices offered results in volume declines and consequent profit losses to both the elevators and their farm customers.

During periods of no rail service due to lack of rail cars, our elevator members are forced to choose between holding grain at high interest rates or delivering grain by motor carriers to area processors, river shipping points, lake shipping points or trainloading stations that have water or rail transportation available to them. During times of car availability our elevator members have the entire range of rail and truck delivery markets available and are able to sell to the highest priced markets. Even at these car fluid periods they have rate disadvantages, but do have the full range of their markets open. During extreme car shortages the prices offered at local markets accessible by truck generally fall in relation to the bids available for rail delivery to distant markets. The lower market price available to the country elevator must be reflected in a drop in the elevator bids to farmers, resulting in reduced farm prices or diversion of grain from the local elevators to elevators or processors having access to rail cars or water outlets for the movement of their grain.

Grain shippers have an obvious and vital economic interest in the cost of transportation. Agricultural commodities all move heavily by rail and transportation costs can radically affect the competitive position of shippers. Rail transportation is a decisive factor influencing the location of economic activity, and grain rate structures have exerted great influence on the location of the industry. The cost and quality of available transportation is critical to the competitive position of agricultural industries in different regions. The relationship of rail rates for raw materials and processed products has major implications for the economic health and the development of this country. Rate levels, rate relationships, and rate stability are of vital importance to grain rail shippers. Total deregulation will cause pricing chaos. The terminal elevator, the miller or processor, the farmer, and the producer of raw materials all have located their businesses subject to rates constructed with the framework of regulation that has required rates to be fairly and reasonably related. Any sudden shifts or proposals as suggested herein, which will result in a widespread disappearance of the existing grain rail rate structure, will produce general economic harm on a national basis. Possibly only the strongest shippers who can negotiate advantageous rates by promises of large movements of traffic will survive.

A shipper's only defense is to claim "captive shipper" and prove competitive damage. The railroads' top management commented at the National Freight Traffic Association meeting on June 5, 1979, that there isn't any possible way to prove a shipper to be a "captive" as there is always some mode of transportation available. This may be true that a shipper is not captive; however, the shipper's traffic involved is "captive". If you are shipping grain via rail 800 miles for export, and the truck rates are six times greater than the export rail rates, the traffic is captive to the railroads. If an elevator is shipping from Ohio to feeders in New England and the southeastern States, that traffic is captive.

The attempt to establish a two class society based on captive and non-captive shippers must be abandoned. Movements are captive or non-captive based on rates and costs. Rail carriers could and should be the dominant force in moving grain when their only competition is motor carriers, assuming reasonably equal distances between points. Archaic work rules interfere with economics in short haul markets, but rail carriers continued to dominate motor carriers in long haul movements.

The shipping public would not be up in arms over deregulation if there were economically viable transportation alternatives that would enable shippers to reach their markets and continue to do business. A major change in direction of thinking is needed in the captive shipper concept. The flaw of "captive shipper" is that no one has been able to define one to the satisfaction of the shipping public. Traffic that moves rail today is captive to the railroads. This traffic requires the present protection of the transportation laws of our nation.

V. ABANDONMENT

The members of this committee are aware of the long standing car shortage problems of the grain industry. Our Association, other State associations, and the railroads have wrestled with this problem for years. These car shortage problems have worsened—we are now experiencing severe car shortages almost year around.

At the same time that country elevators are denied the cars needed to ship their grain, they are faced with threats of massive line abandonments. Railroads tell us these lines do not develop sufficient revenue to justify their continuance. The business is there! The missing ingredients have been cars and service to yield the revenue to assist the rail finance problems.

Abandonment has been cautiously approved by the ICC. Public interest is weighed against the railroad interest. Factors of past deferred maintenance, poor service and car supply have been taken into consideration along with the costs and revenue of the line involved.

We could support a shortening of the time factors, but a 30-day time limit for objection on such a critically important issue is intolerable. The switching of burden of proof from carrier to shipper is also intolerable.

The transfer of authority to DOT to determine the legality of abandonment, at least when a DOT recommended reorganization is involved, will not be an acceptable alternative to present rules.

Our nation is facing a long term energy shortage which threatens our industrial development, our economic health and the life style of our private citizens. At the same time DOT and the railroads are recommending massive abandonment of branch lines which will dramatically increase the energy consumption to move goods to and from farm land. One of our members surveyed the energy costs of trucking grain from farm to train-loading stations versus delivering grain to the elevator located on a branch line. The increase in energy consumption in his survey ranged from 300 percent to 600 percent. Other elevators have experienced similar increases in energy use. If these preliminary surveys are representative we need immediate research into the energy implications of proposed branch line abandonments and consideration of the impact of centralization of shipping and receiving points for agriculture. In the meantime, until research yields conclusive results we should treat our branch lines as a valued national energy conservation resource during these energy starved times. Wholesale abandonment of branch lines may well be a fuel inefficient luxury that we can ill afford at this time.

Railroad efficiency cannot be dramatically improved without massive capital infusion to provide upgrading of main and branch lines of the underfinanced railroads. Capital is also needed to provide repair of existing motive power and cars and the acquisition of needed new equipment. Our nation provided water and highway right of ways and it now becomes apparent that similar assistance must be accorded our financially troubled railroads.

In addition to capital assistance it appears that governmental assistance is necessary to develop realistic work rules and to encourage rail managements and unions to attack the problem of rail productivity. It seems ludicrous that a two-man truck crew can move nearly non-stop from coast to coast over crowded highways while rail union rules yield a system in which many three and four man crews cannot complete a scheduled daily run if congestion or weather interfere. When a rail crew "dies on the line" prior to completion of their scheduled run, desperately needed cars and engines are delayed, interfering with the orderly flow of goods and services. New and innovative rules are needed in addition to capital investment if rail service is to improve.

We support the free enterprise philosophy, but feel strongly that rail transportation is at the core of our nation's economic health and consequently believe the government must begin immediately to assist the rail carriers by providing them, as

they have already done for motor and water carriers, with an excellent road bed and right of way.

VI. DISCONTINUANCE OF JOINT-LINE RATES—ELIMINATION OF DIVISIONS

Presently most rail traffic is forwarded by more than one line-haul carrier between origin and destination. Practically every interline movement is assessed a single-factor through rate where the various railroads have agreed on set divisions of revenue. The freight charges are paid generally to the delivering line railroad, who distributes portions of revenues to the other participating carriers based on agreed-upon divisions. Under this concept, weak railroads or bridge railroads who may not originate or terminate shipments, can participate competitively with other carriers. The Commission, under the law today, can make divisional adjustments whenever it considers it desirable in the public interest.

Under this Proposal, joint-line rates will not be necessary and an interline movement can be calculated by adding the rates of each carrier on its portion of the route thereby avoiding the division issue. Railroads will still be permitted to set joint rates and divisions. We believe that rate flexibility and rate innovations are keys to part of the solutions of the rail problem, but also feel that the Congress should reconsider the Commission's role in joint rate-making, since elimination of many small carriers necessary for service routes could evolve through large carrier pricing techniques. In other words, the ability of a large carrier to raise rates on inter line traffice may divert the traffic, thereby affecting the revenue of the interline carrier or undermining the financial structure of connecting lines with whom they compete for other traffic. This could also eliminate an excellent service (direct) route in favor of a more circuitous route to produce higher revenues for that carrier.

With every carrier publishing its own rates, shippers may have need to substantially expand their rate departments, plus an extensive tariff file, thereby increasig shippers' cost in time and money. Opportunity for rate errors would increase. If your company has the misfortune to be locate on a railroad who charges a rate much greater than a competitive railroad, it may be impossible to merchandise your grain to that given market. Shippers should not be penalized for the inability of the railroads to amicably agree on a basis for determining interline divisions.

A frightening aspect of the elimination of the requirement of through routes and joint rates is the possibility of sudden withdrawal from rates by one or more carrers. Our memebers enter into contracts to deliver grain at fixed prices that involve a commitment to move a set number of cars per week for a period of time. If their movement involves two carriers that develop divison problems one of the carriers could simply withdraw from the rates if S.796 were enacted. If this happened our member simply could not fulfill his contract and would be subject to a variety of penalties.

The grain trade as well as other industries, require a reasonably stable climate to establish and maintain orderly marketing of products.

Perhaps the ICC should be directed to set a new basis for divsions for all railroads superceding all present divisions agreements, the power and responsibility of setting a reasonable divisions formula and end the confusion that exists today in railroad interline settlements.

VII. CAR SERVICE

The Commission presently has the authority to set rules and regulations for the handling of carrier's rail cars and approve and determine the charges (per diem) each railroad makes for the use of its cars by another railroad and for demurrage assessed the shipper/receiver for the delay of railroad cars. Standard mileage payments are paid the private car owner for shipper-owned cars forwarded over rail lines.

Proposal S.796 would allow railroads to set standard per diem and demurrage payment by agreement with any two railroads agreeing on different rates and terms if they so desire. Payments by railroads to shippers for use of shipper-owned cars would be individually negotiated and no standard charge would be permitted. The Commission could not issue Car Service Orders except in national transportation emergencies.

Railroad service and efficient handling of equipment is influenced by per diem and demurrage charges. If per diem charges are too low, there is less incentive for the carrier to purchase sufficient rail cars or to return other railroad cars expeditiously. If per diem is too high, the opposite effect develops in that railroads are discouraged from using cars owned by other lines, causing car shortages and inefficient use of equipment.

If demurrage charges are too excessive, shippers are penalized for poor railroad service, and if too low, the shippers' tendency is to use cars for storage.

There is an obvious conflict between shippers and carriers and between individual rail carriers in control of cars. This conflict must have an independent control or chaos will follow. The ICC has that control today and must retain control. Their staff is experienced, capable and independent. The ICC has made erros in judgement at times, but overall have performed well in handling the complex problems involved in car service.

VIII. CAR SUPPLY

The fleet of rail cars dedicated to grain service is becoming more and more inadequate to meet the increasig grain transportation needs of our country elevators. Our elevator members and their farmer patrons have increased loading capacity, storage capacity, juggled shipping schedules and made a valiant effort to work around inadequate rail service and car supply. We are simply not provided sufficient rail cars to market our grain to our rail markets.

The lack of cars is caused by a combination of insufficient ownership of cars by railroads and a diversion of the existing jumbo hopper cars to other bulk service. Only 30 percent of the railroad ownership of jumbo hopper cars is dedicated to grain service. The balance of rail ownership is utilized by fertilizer, minerals, chemicals and other bulk commodities.[1]

USDA estimates that if railroads continue to move their current market share of U.S. grain at current transit times, 17,000 additional jumbo hopper grain cars will be needed by 1985 for grain movement alone. If the requirements of other commodities keep pace with the increased need for grain cars the increased need will be nearly 17,000 divided by .3 or 57,000 jumbo hopper cars. Our position is that the railroads are not nearly meeting their shippers' current needs and the 17,000 additional car need is understated. Our elevator members face an ever deteriorating car supply problem. The common carrier concept requiring furnishing of service upon reasonable request is failing miserably due to the totally inadequate supply of jumbo hopper cars for moving grain.

We recommend that the federal government assist in the establishment of at least 10,000 jumbo hopper cars as a fleet dedicated to the movement of grain. This pool of cars should be modeled upon the lines of Railbox. Such a pool of cars would assist in meeting the car needs of country elevator operators. The additional revenue would assist the financial well-being of the rail carriers. This 10,000 car pool would not solve the long range problem, but such a program would assit shippers in this nation served by rail carriers that consistently undersupply the car needs of their shippers. Per diem rates on this fleet should be set at levels yielding a return on investment sufficiently high to not only pay the costs of the fleet, but also high enough to permit future expanision to meet the car needs of the grain trade. Small shippers do not have the diverse interests to individually provide sufficient cars to meet their own needs. We strongly feel that this national fleet is essential.

IX. NOTICE AND PUBLICATION

Deregulation commentators discuss changes in publication requirements eventually permitting changes of rates with no notice to the public. The extent of this change is of much greater magnitude than perceived by the DOT. Today's process usually involves proposals before rate committees, consideration by the committee, approval or announcing the rate change and then publication—a process that provides the public adequate notice of change. A General Rate Increase involves discussion among carriers, public notice of proposal and a procedure of gaining approval by the ICC. In short, a lengthy process the trade to adjust to impending changes follows. S.796 would eventually lead to a chaotic system of rates, changed on such short notice that a car loaded today and billed after midnight may well move on rates making the shipment a financial disaster. We require a minimum of 30 days' notice. Our agricultural industry needs a stable, dependable rail system and rate structure. Such a system must include reasonably predictable freight rates, equitable freight rate relationships, reasonably adequate car supply, dependable service and the locomotive power necessary to move the grain to market and the empty cars back to the loading area.

Many of our elevators are buying and selling grain for deliver 6 to 9 months in advance. They are experiencing difficulty marketing their grain due to unstable rail rates and plans. Instability yields difficulty in advance planning. It is becoming increasingly apparent that our attempts to plan will be less and less successful as railroads are permitted greater freedom in varying, on short notice, their freight

[1] "Future Railcar Needs for U.S. Grain Movements" USDA publication November, 1978.

rates. The larger the possibility of change the greater the reduction in advance commitment. If carriers are eventually free to drastically increase freight rates on short notice, to distribute cars as they wish, to cancel freight rates or participation in joint line rates-chaos will follow in our grain marketing system. Our domestic customers, as well as foreign buyers will lose confidence in our ability to commit to deliveries at pre-agreed prices or on agreed dates of shipments in such an uncertain future.

The stability and predictability the railroads seek from their grain shippers is indeed threatened by these same railroads' requests to be permitted to create total instability in railroad pricing and practices.

CONCLUSION

We have found no satisfactory substitute for the legal process to settle disputes between railroads and shippers equitably. The Interstate Commerce Act provides the means for resolution of these differences. We cannot accept expediency as a substitute for equitable treatment of shippers and carriers. The grain trade is particularly bound to the railroads as captives. There seems to be an assumption that trucks can fully meet the movement needs of rural America. This is not true. Trucks simply cannot meet the volume requirements if the distance of movement is increased . . . they are less efficient than rail in long haul movement and are consequently not price competitive. If we attempt to meet these needs by motor carrier the increased costs to farmers and elevator would far exceed the economic costs of making the needed improvements in our present rail system.

We must place service to the nation's shippers and total transportation costs to the nation's shippers and receivers in the place of transportation expenditures alone, as the major criteria in developing a national transportation policy. Some of our major needs are as follows:

1. Fair and equitable treatment of country elevators, assured by an Interstate Commerce Commission which acts responsibly on behalf of the nation.

2. An increase in grain shipments by 1985 will require at least 17,000 additional jumbo hopper cars assigned to grain service. We urge the immediate establishment of a government assisted fleet of at least 10,000 grain cars. System to be modeled after Railbox.

3. We support the free enterprise philosophy, but feel strongly that rail transportation is at the core of our nation's economic health and believe our government must begin immediately to assist the rail carriers by providing them, as they already have done for motor and water carriers, with an excellent road bed and right of way.

4. The total energy utilized in transporting fertilizer and other inputs to the farm and in transporting grain to domestic and foreign markets must be considered. Estimates of energy wasted by moving grain longer distances to train loading stations vary from 200 percent to 600 percent. Further study is required in this area before we permit drastic changes in our energy efficient rail network.

5. Congressional proposals such as S.796 would return our nation to the transportation abuses of the late 1800's. Our membership has already experienced declining service and increased rates. We do not want a return to price gouging and/or wholesale line and service abandonment by unfettered railroads. The needs and products of a disperse agriculture are particularly susceptible to rate abuses by carriers due to the very fact that they are small and scattered and lack negotiating leverage with the rail carriers. We ask that this committee note their objections and needs and reognize the special needs of agriculture in the coming years.

Statement of the National Association of Cement Shippers

RAILROAD REGULATORY GOALS

The National Association of Cement Shippers is sympathetic with the goals of the Railroad Deregulation Act of 1979. Representing producers and marketers of cement, the Association is very much aware of the need for a sound and prosperous railroad industry. It, accordingly, endorses such legislative changes as will safeguard the survival of a strong, privately owned system of railroad lines. It favors the establishment of an environment that will encourage management to be innovative and responsive to the cement industry's service requirements and that will permit the requisite investment in plant and facilities sufficient to meet the producers' and marketers' rail transportation needs.

Generally speaking, the Association shares the view that Government restraints have been too restrictive and that the railroads should be afforded the opportunity

to be the masters of their own destinies, with as little interference as market conditions warrant. At the same time, however, the Association submits that the railroads frequently render services, whether it be on the movements of fuels or raw materials to production facilities or the transportation of products there manufactured, for which no practicable alternatives are available and that the shippers dependent upon such services require some sort of protection against extortionate pricing by railroads that would exploit their monopoly positions.

The Association supports a diminishing role for the Interstate Commerce Commission as the regulator of the Nation's railroads, but it believes that the need for some residual regulatory authority, whether it be in the I.C.C. or elsewhere, persists.

Rates.—With respect to rates, generally the Association favors railroad pricing freedom, except that it would like to see the retention of some measure of regulatory jurisdiction on captive or market dominant traffic. The Association takes this position even though it recognizes the difficulties of defining captive or market dominant traffic or the regulatory jurisdiction that should be continued.

The Interstate Commerce Commission in appropriate rulemaking proceedings should identify and periodically review what traffic is captive to a railroad, or the traffic on which it has market dominance. The rates on such captive or market dominant traffic should not be allowed to exceed a just and reasonable level.

1. Railroads should have the freedom to price their services as they determine, except on captive or market dominant traffic, and it should extend to intrastate, as well as interstate, movements.

2. There needs to be an appropriate transition period, not to exceed five years' time, in which the changes would be implemented.

3. Shippers should have recourse for discriminatory common carrier rates, including remedies against rates that are unduly preferential or unduly prejudicial.

4. Railroad rates should be published, and increased only upon 20 days' notice.

5. Railroads should be held to have an obligation to maintain through routes and joint rates, enforceable by arbitration or otherwise.

6. The ability of railroads to negotiate contract rates should be confirmed by legislative enactment.

7. Consistent with the philosophy of increased competition that the legislative enactment would manifest, all industries should be declared open to reciprocal switching.

8. Railroad rate proposals should not be suspended pending I.C.C. investigation of their lawfulness, absent a complaining shipper's demonstration of discrimination or market dominance and evidence that the complainant is likely to prevail.

9. General freight rate increases should be allowed only to recover labor, fuel and similar costs.

10. Unnecessary statutory provisions, such as the so-called Fourth Section, should be repealed.

Rate bureaus.—There should be no antitrust immunity for the collective pricing of railroad service, except for the establishment of joint rates. However, cooperation in the publication of railroad rates should be encouraged.

Abandonments.—Railroads should be free to abandon their unprofitable lines, subject to the lines being continued in service if subsidized sufficiently to recover costs or, alternatively, their being sold at liquidation value. No abandonment should be authorized except after 240 days' notice.

Common carrier obligations.—Railroads should be held to have a common carrier obligation to render service upon reasonable request therefor, without discrimination, undue preference or undue prejudice. Railroads should be held to have an obligation to maintain an adequate supply of general-purpose and special equipment cars to meet their shippers' transportation needs.

Mergers.—End to end mergers of railroads should be encouraged as a matter of public policy, but Interstate Commerce Commission jurisdiction to approve such transactions should be eliminated.

Antitrust immunity.—The Association favors the amendment of the antitrust laws to include railroad service, their provisions to be administered by the Federal Trade Commission and/or the Department of Justice, rather than the Interstate Commerce Commission.

Statement of Charles J. LaFountaine, General Traffic Manager, The Andersons

Mr. Chairman and members of the subcommittee: The Andersons, a limited partnership, with headquarters at 507 Illinois Avenue, Maumee, Ohio 43537 is an agricultural oriented company that operates and owns: A 7 million bushel grain elevator at Toledo, Ohio; a 17 million bushel grain elevator at Maumee, Ohio; a 4

million bushel grain elevator at Delphi, Indiana; and a 12 million bushel grain elevator at Champaign, Illinois.

The Andersons also own and operate a feed mill, corn cob processing plant, fertilizer storage and blending plants, lawn fertilizer plant, seed and chemical distribution facilities, general merchandise stores, tire stores and a gasoline station.

These facilities serve agriculture and adequate transportation is the backbone of these operations. In its marketing of agricultural commodities, The Andersons utilize practically all modes of transportation; rail (single cars, multiple cars, unit trains, round trip trains), water (barge, lake vessel, and ocean vessels), motor carrier (the independents, exempt trucking, private, contract, and common). The annual cost of transportation to The Andersons and its customers runs into the millions of dollars. Rail transportation accounts for a large portion of these transportation dollars.

We indeed appreciate this opportunity to comment and share with you our views of the ratemaking provisions, Section 102 through 109, of the Railroad Deregulation Act of 1979 (S. 796).

Under the Commission's regulatory powers and the Railroad Revitalization and Regulatory Reform Act of 1976, the railroads have the freedom to operate in any manner that they so desire to meet competition. The Commission, in the past four years, modified its stringent rules and regulations to allow railroads to increase their rates with justification, introduce new profit-making concepts, and meet water and motor carrier competition through innovative rate pricing. The Commission has approved and given the railroads and the shipping public an opportunity to negotiate contract rates and capital incentive rates—concepts that have not been approved by the Commission in the past. A stable rate structure that is maintained in accordance with existing standards of rate reasonableness, rate fairness and based upon continued rail service is vitally needed to continue the railroads' competitive positions. The removal of regulatory constraints on the railroad industry could produce significant economic hardships in producing these desired results. The Andersons feel that improvement and better enforcement of the present regulatory laws are the best options for strengthening the railroad industry for the benefit of the shipper and the public.

The dismantling of the authority of the Interstate Commerce Commission and the repeal of the laws that have protected the shippers and public for nearly a century, must be thoroughly analyzed before such a proposal as suggested by the Department of Transportation is implemented. Rates must be required by law to be non-discriminatory and reasonable, abandonments and mergers must be supervised, rate bureaus must be continued, and the transport laws must be administered by a regulatory agency with prescriptive power and a real understanding of the shippers' and railroads' needs. We feel, that removal of all rate regulations, would not contribute significantly to solving of the problems of the currently bankrupt or marginal railroads, but instead, would tend to contribute to a monopolistic form of railroad system with a few major railroads and the demise of the many small carriers.

The argument suggests that deregulation would effect a beneficial redistribution of traffic towards railroads. However, this rationale conflicts significantly with recent evidence concerning the competitive relationship between rail and motor carriers. Competition encompasses not just rate differentials, but also differences in the quality of service. A rate comparison alone might show that rail service is priced at a level lower than that of motor carriers. However, in choosing between rail or truck, shippers also consider such indirect expenses as comparative loading costs, inventory financing, equipment availability, transit time, loss and damages in transit, service flexibility, convenience, availability of service, etc., as cost factors. When these factors are included, the total perceived "cost" of using motor carrier services has been viewed quite often as the least expensive alternative.

Grain from the farm or to/from the country elevator to the terminal elevator virtually all moves via motor carrier. The inherent advantages of grain moving short distances by motor carriage cannot competitively be met by the railroads. The railroads 6-car grain rates today compete, price-wise, with the motor carrier industry. However, the indirect expenses as stated above prohibit rail movement.

Railroads can and do meet motor carriage competition on the long-haul. The Andersons handle approximately 170 million bushels of grain that virtually all moves to their elevators by motor carriage. However, it is doubtful that 50,000 bushels move beyond via motor carrier. We feel the railroads have been able to compete with trucks on the long-haul effectively under regulation.

Of the 170 million bushels handled at all four locations, approximately 90 million bushels move out of Toledo, Ohio via water. Water also has some inherent advantages difficult to compete with by the rail industry. Unit trains will compete during the close of navigation, but few trains move from competitive water points during

navigation. The Commission has been sympathetic to the railroads trying to compete and have not been against the railroads meeting this competition through unit train movements. We doubt if deregulation would cause the railroads to reduce their rates accordingly, as they have repeatedly indicated that their profits were marginal on train movement.

Barge lines and motor carriers that are exempt from regulation (bulk agricultural commodities) have the advantage of being able to service *all* origins and destinations along the water/highway systems. Shippers have intra-modal competition via these systems. If the railroads were deregulated, the rail systems are such that the shippers would soon find themselves with "one" railroad. A major railroad servicing both origin and destination could price other carriers out of competition. Reciprocal switching rates could increase beyond reasonable levels and small connecting line carriers would soon be bankrupt.

It is unlikely that the overall rates of railroads would be significantly reduced as a whole with deregulation as proposed. The updated rail demand equation shows railroad demand to be very inelastic with respect to changes in rates; hence, the railroads are likely to face reduced profits if they reduce their rates. In such an environment, deregulation would not result in bargain freight rates and a subsequent mass of availability of additional freight. Consequently, there can be no economic loss due to "traffic-not-carried". Chances are freight rates would certainly increase especially in a situation such as prevailed last fall and this spring with more freight traffic then the railroads could handle.

Stable rates tend to reduce risk and thus exert a positive influence on business activity. Regulation provides certain guidelines which assure general stability of rates over time, modifiable only on the basis of proper justification.

This tends to create a relatively stable and reliable rate climate with rate adjustments occuring in increments, which allow the economy to anticipate and adjust to change with limited difficulty. The element of stability would certainly be lost should regulation be removed. Rates would fluctuate rather would substantially with demand cycles with the possible results of exerting destablizing pressure on general business cycles, as well as increasing the level of risk of conducting business.

MAXIMUM RATE REGULATION

It is proposed to end maximum rate regulation after five years, and end the Interstate Commerce Commission's power to suspend any rate or to initiate it's own investigation. No future general rate increases would be allowed.

The termination of maximum rate regulation is one of the most objectionable portions of Proposal S. 796. In noncompetitive markets, it would be grossly unfair to shippers as it would reinforce the railroads' practice of increasing rates in markets where competition is weak and neglecting to compete aggressively in markets where they face motor carrier and water competition. It seems reasonable to believe that during the transition period, shippers without reasonable competitive alternatives would bear the 7 percent increases each year, while little or no increase would be assessed competitive traffic. The Andersons fear that the relative ease which noncompetitive traffic could be exploited would suppress innovative marketing and pricing by railroads. If railroads could easily raise rates on non-competitive traffic, there would be little incentive to be innovative on competitive traffic.

Today, there is no maximum rate regulation where competition exists, consequently, the Proposal will have no effect on competitive traffic and will only effect traffic that faces no effective competition.

Grain shippers have an obvious and vital economic interest in the cost of transportation. Agricultural commodities all move heavily by rail and transportation costs can radically affect the competitive position of shippers. Rail transportation is a decisive factor influencing the location of economic activity, and grain rate structures have exerted great influence on the location of the industry. The cost and quality of available transportation is critical to the competitive position of agricultural industries in different regions. The relationship of rail rates for raw materials and procesed products has major implications for the economic health and the development of this country. Rate levels, rate relationships, and rate stability are of vital importance to grain rail shippers. Total deregulation will cause pricing chaos. The terminal elevator, the miller or processor, the farmer, and the producer of raw materials all have located their businesses subject to rates constructed within the frame work of regulation that has required rates to be fairly and reasonably related. Any sudden shifts or proposals as suggested herein, which will result in a widespread disappearance of the existing grain rail rate structure, will produce general economic harm on a national basis. Possibly only the strongest shippers who can negotiate advantageous rates by promises of large movements of traffic will survive.

A shipper's only defense is to claim "captive shipper" and prove competitive damage. The railroads' top management commented at the National Freight Traffic Association meeting on June 5, 1979, that there isn't any possible way to prove a shipper to be "captive" as there is always some mode of transportation available. This may be true that a shipper is not captive, however, the shipper's traffic involved is "captive". If you are shipping grain via rail 800 miles for export, and the truck rates are six times greater than the export rail rates, the traffic is captive to the railroads. The Anderson's Delphi, Indiana and Champaign, Illinois elevators ship approximately 99 percent of their grain via railroads. Approximately 100,000 carloads from each elevator move to export destinations via the unit train concept. This traffic is "captive" to railroads as no other mode can economically or efficiently transport this volume of tonnage.

DISCONTINUANCE OF JOINT-LINE RATES—ELIMINATION OF DIVISIONS

Presently most rail traffic is forwarded by more than one line-haul carrier between origin and destination. Practically every interline movement is assessed a single-factor through rate where the various railroads have agreed on set divisions of revenue. The freight charges are paid generally to the delivering line railroad, who distributes portions of revenues to the other participating carriers based on agreed-upon divisions. Under this concept, weak railroads or bridge railroads who may not originate or terminate shipments, can participate competitively with other carriers. The Commission, under the law today, can make divisional adjustments whenever it considers it desirable in the public interest.

Under this Proposal, joint-line rates will not be necessary and an interline movement can be calculated by adding the rates of each carrier on its portion of the route thereby avoiding the division issue. Railroads will still be permitted to set joint rates and divisions. We believe that rate flexibility and rate innovations are keys to part of the solutions of the rail problem, but also feel that the Congress should reconsider the Commission's role in joint rate-making, since elimination of many small carriers necessary for service routes could evolve through large carrier pricing techniques. In other words, the ability of a large carrier to raise rates on interline traffic may divert the traffic, thereby affecting the revenue of the interline carrier or undermining the financial structure of connecting lines with whom they compete for other traffic. This could also eliminate an excellent service (direct) route in favor of a more circuitous route to produce higher revenues for that carrier.

With every carrier publishing its own rates, shippers may have need to substantially expand their rate departments, plus an extensive tariff file, thereby, increasing shippers' cost in time and money. Opportunity for rate errors would increase. If your company has the misfortune to be located on a railroad who charges a rate much greater than a competitive railroad, it may be impossible to merchandise your grain to that given market. Shippers should not be penalized for the inability of the railroads to amicably agree on a basis for determining interline divisions.

CAR SERVICE

The Commission presently has the authority to set rules and regulations for the handling of carrier's rail cars and approve and determine the charges (per diem) each railroad makes for the use of its cars by another railroad and for demurrage assessed the shipper/receiver for the delay of railroad cars. Standard mileage payments are paid the private car owner for shipper-owned cars forwarded over rail lines.

Proposal S. 796 would allow railroads to set standard per diem and demurrage payment by agreement with any two railroads agreeing on different rates and terms if they so desire. Payments by railroads to shippers for use of shipper-owned cars would be individually negotiated and no standard charge would be permitted. The Commission could not issue Car Service Orders except in national transportation emergencies.

Railroad service and efficient handling of equipment is influenced by per diem and demurrage charges. If per diem charges are too low, there is less incentive for the carrier to purchase sufficient rail cars or to return other railroad cars expeditiously. If per diem is too high, the opposite effect develops in that railroads are discouraged from holding cars owned by other lines, causing car shortages and inefficient use of equipment.

If demurrage charges are excessive, shippers are penalized for poor railroad service, and if too low, the shippers tendency is to use rail cars for storage.

The Andersons feel that setting of per diem charges, and other factors effecting equipment investment could be managed best by the railroad industry. However, we

feel that the Commission should keep their involvement in the assessment of demurrage charges that should be assessed uniformly nationwide except in cases of special rate innovations, such as unit trains. The railroads would be in a much better position to determine their own car service problems and methods to solve them. S. 796 proposes to remove the ICC from the role of arbiter as to what is fair compensation for the use of private equipment. If the ICC's jurisdiction is removed, private car owners would have to go through the laborious process of the courts to determine what compensation they would be entitled to. The shippers have contributed to approximately 35 percent of the nation's covered hopper car fleet (1979—Railroad owned covered hopper cars were 165,312 versus shipper-owned covered hopper cars of 80,775),[1] and have been informed that the majority of new car construction is being supplied by the shippers. S. 796 could penalize the private car owner and would be detrimental to future private car ownership.

CONCLUSION

The Andersons feel that it is not in the public interest to exempt rail transportation from all aspects of economic regulations. We do feel, however, that partial exemption of certain commodity pricing could accomplish a means for the railroads to obtain traffic and increase revenue levels. The Commission in Ex Parte No. 346 (Sub. No. 1) "Rail General Exemption Authority—Fresh Fruits and Vegetables," granted an exemption to rail carriers from regulation in the transportation of fresh fruits and vegetables on May 28, 1979. Already serious questions have arisen as to how these commodities will be handled under deregulation. The Andersons feel this exemption is an excellent "testing ground" for the railroads to gain experience in an unregulated situation before deregulation of any further commodities are contemplated. A period of a year should enable the railroads and the Commission to acquire the necessary experience to evaluate the full impact of the exemption granted to the Railroads in the Sub. No. 1 Proceeding.

We believe that the concept of regulating an industry by means of an independent regulatory agency has contributed to the advancement of our transportation system. Under regulation, we feel it fosters competition among carriers and shippers. Industry, such as our company, can choose to locate anywhere with assurance that there already exists, or will soon exist, the stable transportation services necessary to our immediate and growth requirements. We believe RE-regulation or regulatory reform is needed and not total deregulation today. At stake is the destiny of transportation—perhaps this country's largest industry, and the ripple effect could jolt every other industry, should transportation and distribution undergo what is referred to as "deregulation". As we consider regulatory changes, Congress must be sure that they are doing it in a manner that will be genuinely beneficial to the carriers, the shippers, but above all to the consumer. New transportation regulation should be as simple and clear as possible. They should achieve legislative goals effectively and efficiently and should not impose unnecessary burdens on the economy, on individuals, or public or private organizations or on state and local governments.

The Andersons recommend that a more balanced approach should be followed than that suggested in Proposal S. 796, and that railroad rate and service regulation be continued and improved to meet the needs of both the public and the railroads.

STATEMENT OF WILLIAM C. HENNESSY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF TRANSPORTATION

I am pleased to have this opportunity today to give my views on government regulation and the proposed "Railroad Deregulation Act of 1979."

Let me begin by stating that I am a transportation regulator.

In 1971 the rail and motor carier transportation regulatory function of New York State's Public Service Commission was transferred to the State's Transportation Department. As Commissioner of Transportation I regulate over 3,000 transportation companies with total annual revenue in excess of $800 million. I have responsibility and authority relative to railroading in the State ranging from general common carrier obligations of annual report filing and certificates of convenience and necessity, to corporate reorganization and relationships between carriers, to car distribution, tariffs and schedules.

In addition to certain practical and contemporary authority such as the investigation of service problems, I am currently required by law to oversee such matters as the free transportation of soldiers and sailors in uniform on municipally-owned ferries and to set operating capacities for street cars. For my railroad economic

[1] Source: Car Service Divisions of the Association of American Railroads.

regulatory role alone it takes over 100 pages of the State Transportation Law, not counting Railroad Law and Transportation Corporation Law, plus 100 pages of the Department's Rules and Regulations.

But let me also make it clear that I am determined to be a transportation deregulatory.

Although I have already taken initiative in review of my transportation regulatory role—particularly relative to railroads—it is impractical for New York to revise its statutes until the federal interstate re-regulation issue is resolved. The wisdom of the eventual federal statutes and the proven determination of Congress will go a long way in overcoming skepticism and inertia at the state level.

As a final introductory remark, let me note that in addition to my inherited role of transportation regular as State Transportation Commissioner, I am also heavily regulated.

Indeed, some federal programs cause me to wonder whether we can afford the assistance. All too often the intent of Congress in new or modified programs is frustrated or entirely negated in practice because of federal agency regulations. Increasingly, each dollar authorized achieves less than a dollar's worth of final objective, due to both the cost of administering the program and the losses to inflation during this prolonged process of administrative regulation.

I'd like to be deregulated too!

In the context of the rail deregulation bill being considered today, I therefore suggest that Congress be as precise as possible in terminology and clearly set forth the limits of any federal agency involvement in future economic regulation of railroads and any related assistance programs. I fear piles of deregulation regulations and more frustration with local rail assistance programs. One thing Congress can do to avoid this problem is to specifically limit agency involvement and not to include the all-too-familiar clause "* * * such other rules and regulations as may be required * * *" in the language of the final bill.

I strongly support the deregulation movement and generally support the bill offered by the Administration and currently being considered by this Committee. I have a few concerns I'll elaborate on a little today and offer some suggestions. As this and possible other railroad deregulation bills move through Congress, we will be watching closely and offering further views and assistance.

Policy

The statement of policy that heads the bill is noticeably absent of an important recognition. I think the policy should specifically recognize that the current role of railroads in freight movement and the individual carriers and the inter-relationships are, to a significant extent, the product of regulation. Government, in solving an old problem—rampant expansionism and associated abuses of many decades ago—in the longer run helped create a weak and unstable railroading industry. It would be unfair and irresponsible for government now to just walk away from the situation.

It's always easier for government to get into private sector affairs than to get out again. The bill itself recognizes some responsibility in providing for a phased rate freedom and certain other safeguards—and I will be suggesting at least one more in a few moments. Beyond these, however, I feel that Congress should make a specific policy recognition of regulation as a cause for current railroading problems, and that the solution is economic deregulation of the industry couple with expanded financial assistance at least in the near term—without regulation of the states. For this later purpose, the role of the federal agencies must be carefully limited and some programs, such as assistance for local rail services, should be administered entirely at the state level.

Ratemaking

With regard to the ratemaking provision of the bill, I strongly support the contract rate concept but I have a legitimate concern with the maximum rate guidelines. Seven percent per year on top of possibly double-digit inflation is just too rapid a transition. I suggest that the bill guarantee a non-contestable level of seven percent or the inflation rate, whichever is greater.

I also have suggestions for the captive shipper provision and the joint rate provision that will improve considerably on the acceptability of the bill without detrimental effect on its concept.

As the bill now reads, once a shipper has taken the initiative to prove his captivity and the Commission has confirmed that the shipper has no reasonable transportation alternative and his rail rate is unreasonable, the Commission may order that specific rate reduced. The bill, however, would limit the reduction to a level necessary to cover costs and provide an adequate return on capital.

I recommend that this reduction be to the level of the non-contestable limit of all rate increases as I suggested earlier. It just isn't worth all the effort to disaggregate and fine tune railroad costs when such a captive shipper provision would expire with all maximum rate limits at the end of 1984. And it certainly isn't fair to the captive shipper if this fine tuning causes the Commission to miss the proposed four month deadline and the shipper to thereby lose by default.

To further simplify the captive shipper provision one could avoid all the need for making the case for captivity by simply designating all shippers with annual rail freight transportation bills of less than one million dollars as eligible for recourse. The longer term objective is complete rate freedom. Let's not get bogged down in a complex regulated transition.

Allowing the concellation of current joint-rates on through-routes and their replacement by the sum of individual local rates without recourse for railroads which rely primarily on interline traffic movement is the most important feature of the bill to me. The bill must recognize the special needs of captive railroads. I recommend that the bill continue all existing joint-rates through 1984 which include involvement of any carrier of annual freight reveune of $50 million or less. Overall rate adjustments would be allowed as suggested earlier, and upon failure of participating carrier to agree to divisions, binding arbitration would be called to divide added revenue. In brief, we must ensure that captive shortlines and smaller railroads are not harmed by the deregulation process.

As noted earlier, I am a little concerned that in providing certain benchmarks or guidelines in the proposal we must utilize such illusive numbers as incremental cost, opportunity cost, variable cost, avoidable cost, etc. Our experience with Conrail in developing good cost information—even in a relatively simple branchline context—has been discouraging.

The proposed rate bureau, antidiscrimination, and notice provisions are good. However, in view of the recent FRA performance in studies, I strongly recommend that any study funds be allocated to the states, and that the Secretary and Congress draw from the states' findings in monitoring and evaluating the effects of the bill.

Entry

The entry proposal now covers the right to construct and operate line extensions including the crossing of another carrier's lines under proper compensation. It also includes the requirement of carriers operating within SMSA to participate in reciprocal switching at a charge not to exceed fully-allocated cost. I would recommend that Congress go one step further and allow any railroad the use of any other railroad's lines with appropriate and reasonable compensation. This would enhance the freight transportation system by allowing rationalization of lines and better maintenance of strategic lines, and would provide improved responsiveness to the public need for rail freight services.

Abandonment

Two of my primary concerns with existing abandonment/subsidy provisions are in regard to the assurances of good faith bargaining by the carrier in the development of a price for facilities and/or service continuation and, as I mentioned earlier, the reliability of Conrail cost information for these purposes. The bill provision for binding arbitration in branchline abandonments takes care of the good faith bargaining question, but poor cost information remain a serious problem.

Summary

In summary, I support the concept and intent of S. 796. I think, however, the technicians got a little carried away relative to some of the benchmarks and guidelines on rates and exceptions. The regulation writers are probably sitting back wringing their hands, anxious to reregulate.

Such can be avoided by more extensive use of my "seven percent or inflation rate" proposal for non-contestable transition limits. Captive shippers and captive carriers both need interim recourse to provisions which will afford reasonable time for adjustment while the marketplace is established. Government cannot walk away from economic regulation of the railroad industry without assuming some responsibility for the painful re-adjustments which will be necessary. The federal government must be prepared with a new or expanded local rail assistance commitment and practice what it preaches in delivering it in a deregulated manner.

Thank you.

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STATEMENT OF PETER J. SOLOMON, DEPUTY MAYOR FOR ECONOMIC POLICY AND DEVELOPMENT, CITY OF NEW YORK AND ANTHONY D. GLIEDMAN, COMMISSIONER, DEPARTMENT OF PORTS AND TERMINALS

The City of New York, although supportive of the concept of deregulation in general, has serious concerns with aspects of the Administration's Railroad Deregulation Bill. The City fully understands and appreciates the sentiment that stands behind the Deregulation Bill. Arbitrary regulations and unnecessary restrictions have clearly been deleterious to the economic health of many of our nation's industries. In this regard the City supports the elimination of arbitrary and unnecessary regulations. However, there are many problems associated with the Railroad Deregulation Bill as it relates to ports, foreign trade, and monopolies. If these problems, outlined below, are not resolved, then the Railroad Deregulation Bill may not achieve its intended results.

The Administration has produced reports on the financial situation of the railroad industry, on airlines, on the maritime industry. What is lacking is a report or an analysis on the transportation industry of the United States and how the various modes compete with and complement each other. The analytical basis for the Railroad Deregulation Bill, a report titled "A Prospectus for Change in the Freight Railroad Industry," did not address the impact of rail deregulation on foreign trade and maritime industry. The deregulation of the railroad industry has not been placed in the context of the nation's economy and employment situation. Without such an analysis, the foundations of the Railroad Deregulation Bill are very weak and its conclusions are contrary to national policy with respect to foreign trade development.

GENERAL OBSERVATIONS

The Railroad Deregulation Bill contains the following statement: "This legislation is part of a continuing effort to promote more competition in America's transportation system, and to reduce the burden of federal regulation on the nation's economy. It follows last year's successful laws deregulating air freight and passenger service. Later this spring I will submit proposals addressing motor carriers and intercity passenger buses." (P. 1 of President Carter's message to the Congress).

There are a number of assumptions in this statement that are not entirely correct with respect to freight transportation for import or export.

1. Rail deregulation versus air passenger deregulation

The Bill contains a baseless assumption that air passenger deregulation is a model for rail freight deregulation. The price elasticity situation for air passenger traffic is vastly different than that for the transportation of freight—both truck and rail. It has been clearly demonstrated that air fare reduction resulted in creating new markets of potential passengers. The increase in passenger traffic was from individuals who would not have made an airline trip at all if fares remained at a high level.

If the result of airline passenger deregulation had been a sharp increase in fares, then the new markets would not have been created. The airlines cut rates to fill an excess capacity. No such maneuvers are possible in the long term for surface freight transportation. It is clear that if the airlines did raise their fares drastically, then no one would cite airline deregulation as the model.

There is a competition between and within surface freight transportation modes for the movement of cargo. The total cargo moved by the nation's surface transportation system is not primarily a function of freight rates. Freight rates are only one variable in the total production/distribution costs of a commodity. Included among these factors are the general state of the economy (both national and international), interest rates,, labor and fuel. In airline passenger traffic, the most important variable that determines the level of passenger traffic is the rate.

Given that total freight moved by surface carriers is a function of a number of variables, what can be reasonably expected under deregulation? Without proper safeguards, deregulation of the rail freight industry could cause a reduction in service in urban centers where a main line railroad has a monopoly position. Terminal and small connecting carriers may require protection from such a monopoly railroad in the area of rate increases, rate-sharing ratios and access to through routes.

Leaving aside the false analogy, we can expect that total freight tonnage moved by surface carriers will not increase under deregulation. Sharp rate increases will have the opposite effect: marginal producers will simply go out of business as transportation costs rise to the point where the marginal commodities will not move. A still greater effect can be expected for service reductions which will force manufacturers out of business. The captive shipper—or port or city—is discussed in

some detail below; but it is sufficient to state now that deregulation means substantial economic harm for many captive shippers, ports and cities.

As for import/export cargo, higher freight rates to ports will mean that some producers will shift from foreign trade to the domestic markets. Hence, the United States will face an ever expanding trade deficit—and this is clearly contrary to the intent and spirit of the recently concluded Multilateral Trade Negotiations (MTN).

As a consequence of this projected diversion of traffic internally, the United States may find itself with an increasing problem of over-capacity in port facilities. Unnatural cargo flows will develop and many marginal ports may become devastated; and captive ports may also decline. Clearly, a policy which could cause such dislocations is contrary to the historic policy of port development.

In summary, the use of the false analogy of airline passenger deregulation has led to a belief that new markets (i.e., new cargo) would be generated through deregulation of surface modes. If anything, freight tonnage can be expected to decrease under deregulation. Therefore, rail and trucks will be competing for a dwindling amount of cargo. Rates, at the same time, will rise, not fall, thus spreading and intensifying inflation. Diversions of cargo from import/export to strictly domestic trade can result in under-utilization of ports. Finally, the railroads will institute service reductions which would harm many small cities, captive shippers and ports.

2. The Nation's transportation system and port parity

The analysis in the previous section brought out the problem of using an incorrect analogy. That analysis also showed that the nation's port system could be adversely affected by deregulation schemes that are not based on a complete understanding of the nation's transportation system.

The Deregulation Bill does not address all aspects of the nation's transportation system. A key element missing is the role of ocean transportation. Railroads carry a significant portion of the nation's import/export cargo; and the impact deregulation would have on foreign trade and the maritime industry has not been gauged.

Foreign trade insofar as transportation is concerned is the continuous movement of cargo from an inland point, through a port facility and eventually to a port of call overseas. A shipment from Chicago through the Port of New York to Rotterdam is such an example. The Deregulation Bill considers only one aspect, the movement of cargo from Chicago to New York. The ocean-borne movement—even in the stated plans of the Administration—is not even considered.

The Bill's failure to consider the maritime industry in its overall deregulation plans will exacerbate the existing anomolies on freight rate structures between ocean and land modes.

Simply stated, the Federal Maritime Commission (FMC) mandates ocean freight rate parity for the North Atlantic range. Container traffic to or from any North Atlantic port must receive the same freight rate. On the land side only general cargo and Unit Trains now receive equalized rates. There is no equalization principle for general container traffic on the land side. With Railroad Deregulation there will be complete elimination of the limited rate parity in place. Furthermore, the trucking industry has not been required to give equal rates to ports.

The impact on the Port of New York is quite clear. New York is almost 200 miles closer to Europe—our single largest trading area—than other ports. Yet other ports enjoy—and will continue to enjoy under all rail deregulation—the same ocean freight rate as New York. On the land side the last vestiges of rate parity for ports will disappear under deregulation. The Port of New York presumably will be assessed a higher rate on all freight traffic. Clearly, the impact of the Deregulation Bill will be to give some ports a distinct rail rate advantage over the Port of New York. Where this Port has the natural advantage—shorter sailing times—it is denied the benefits. Clearly this is an unfair situation which grows worse with inflation. The rate differential per container already is close to $100 between Baltimore and New York. With inflation the absolute dollar difference grows. For shippers this can tip the balance in their choice of ports. There must be provisions in any comprehensive legislation to give equal treatment to all ports.

Port facilities are investments worth billions of dollars, investments financed by cities, states and port authorities and a handful of private steamship companies. In the Port of New York alone the investment in marine terminals and infrastructure supporting them exceed one billion dollars. Such investments were made under a given framework of rate parity. The move to deregulate rail alone without consideration of the ocean freight regulations will create vast uncertainties in port economies. Some ports, such as New York, will be adversely affected as the rate structure is thrown into an even greater imbalance as outlined above.

The Deregulation Bill has virtually no safeguards for ports; yet ports are crucial elements of the nation's transportation system. They must be able to sustain themselves. If some ports are allowed to suffer at the expense of others, then the free

flow of cargo is interrupted. The potential for under-utilization at some ports and congestion in others is real under deregulation. This will cause delays in the movement of cargo. This interruption will occur at a time when the Administration seeks to improve the free flow of cargo through the recently concluded Multilateral Trade Negotiations (MTN). It appears that unless safeguards for ports are built into the Deregulation Bill, then the Administration will be creating new obstacles to foreign trade.

3. Monopoly railroads

The Consolidated Rail Corporation (Con Rail), created by the Federal Government in 1976, is a monopoly railroad for the Port of New York. There is no way, short of splitting Con Rail into several smaller companies, to guarantee intramodal competition with Con Rail. This contradicts one of the avowed goals in the Administration: competition. Since such competition is impossible to achieve, then there must be safeguards built into any Railroad Deregulation Bill for Captive ports such as New York.

Without such provisions, monopoly railroads are free to abandon service, raise rates or simply reduce service regardless of the consequences. The only competition Con Rail faces in the Port of New York is truck competition. It is unlikely that Con Rail will attempt to meet the truck competition in New York; rather, Con Rail would focus its resources in other ports where it faces competition from the Chessie System and other railroads.

This reduction in service will have a cascading effect in New York City. Not only will the maritime industry suffer a loss in cargo, the entire economy of New York City will suffer. Many manufacturers and the City's wholesale food markets will suffer from a reduction in service. Once the maritime tonnage declines, the continued withdrawal of service becomes a self-fulfilling prophecy. Further reductions will be warranted since tonnage will have dropped. These new reductions, in turn, cause a further drop in tonnage.

The monopoly nature of Con Rail manifested itself in New York City when it took the federally-subsidized rail company almost two years to reach a rate agreement with the Chessie System and New York Dock Railway. For several years Con Rail prevented rail service from being operable in the City's two operating marine terminals, Howland Hook in Staten Island and Northeast Marine in Brooklyn; and this occurred with the government having the power to regulate.

What is needed are provisons, safeguards and exemptions that apply in such monopolistic situations. The Port of New York is the largest such case; but hundreds of smaller cities, ports and shippers are held captive. They cannot be allowed to take the brunt of the combination of sharp rate increases and service reductions.

Several specific problems arise with respect to the monopoly nature of Con Rail. Specific protections must be given to small railroads (e.g., New York Dock Railway, the Brooklyn Eastern District Terminal, the Long Island Railroad) so that joint line rates remain at the same relative percentage and the rate sharing rations remain the same. This is necessary since the Deregulation Bill provides for "contract rates" and eliminates the role of the ICC in setting joint line rates. The City of New York wishes to express its concern that the monopoly character of Con Rail raises serious problems with a contract rate setting mechanism.

These same railroads must be guaranteed access to through routes. Clearly, if the monopoly railroad in New York, Con Rail, created an obstacle to such access, much harm would fall upon the local economy and to suburban Nassau and Suffolk counties.

The rate increase proposal of seven percent plus an inflation adjustment may be too large for the small railroads and small shippers. This would tend to reduce their competitive advantage since they would not pass along all of these increases. This would force their cargo into trucks—or not to move at all.

The appeals process outlined in the Bill for captive shippers may be too cumbersome. The process should be streamlined and specific safeguards must be built in for all entities held captive by a monopoly railroad: Ports, shippers, cities, smaller railroads, etc.

The intent of the comments in this section were to highlight the possible abuses that a monopoly railroad could generate. This situation could easily exist in the Port of New York. Even with the State of New York spending some $50 million to refurbish the mainline from Selkirk, New York to the Brooklyn Waterfront—thus relieving Con Rail of the entire cost of this capital expenditure—it took Con Rail two years to enter into a rate agreement with New York Dock Railway. Under deregulation, there might have been no agreement. And if there were no agreement, then there would be no direct rail access to the midwest for the Brooklyn Waterfront and the investment of many millions of dollars in marine terminals would be

lost for lack of will by Con Rail. These are the stakes for the city when faced with a monopoly railroad.

4. The energy crisis and abandonments

The recent and dramatic increase in fuel costs have brought home a clear message: transportation must become energy efficient. For land carriers the most energy efficient on a ton-mile basis are the railroads. The statistics for 1977 indicate that railroads averaged 220 ton-mile per gallon of diesel fuel compared to only 70 ton-miles for trucks. Rails are over three times as energy efficient as trucks in the energy per ton-mile column.

With the cost of fuel rising rapidly—and never to drop again—it is worth noting that the cost added per ton-mile of freight will be only one-third as much for railroads as it will be for trucks. Railroads will be a tremendous asset in the fight against inflation, whereas trucks—regulated or deregulated—will continue to consume three times as much fuel per ton-mile.

Therefore, any Deregulation Bill which allows for quick and simple abandonments must be modified. Once track is eliminated, it seldom reappears. Once track is eliminated, vast amounts of a dwindling resource—fuel—will be consumed to move a given amount of freight the same distance. It is time that we resisted the urge to eliminate track. Just a week ago the Secretary of Transportation softened the massive cuts he had proposed for the AMTRAK system. As time goes on and energy continues to climb in cost, the nation will need all the rail track it has.

SUMMARY—GENERAL OBSERVATIONS

The City's concerns about rail deregulation focus on its impact on foreign trade, the role of the port industry in transportation, the potential abuse by the monopoly railroads, and the developing energy crisis. These concerns are based on the concept that a complete picture of the nation's transportation industry would have taken into account the above mentioned elements. If these elements had entered into the calculation of the Administration, then the Deregulation Bill for Railroads would have been drafted differently.

Finally, the role of foreign trade in the nation's economy must be made clear. According to the U.S. State Department fully one-sixth of all agricultural and manufacturing activity in this country is done for export. This incredible volume of cargo requires a coherent transportation system involving all modes: rail, water, air and truck. Adjustments in one or two modes without an analysis of the impact on the other modes or on foreign trade is a course that is fraught with uncertainty.

CONCLUDING REMARKS

The City of New York has attempted to highlight its areas of concern. This should not be misconstrued as a position against deregulation. The City supports a rational and reasoned approach to deregulation so that both the railroads and the nation's cities, ports and shippers benefit. This rational and reasoned approach necessarily includes those elements outlined above: the role of ports and foreign trade in the transportation system, monopoly railroads and their abuses, energy efficiency of the railroads, and a clearer understanding of the differences between the surface transportation industries and the air passenger industries. If such considerations can be built into the Railroad Deregulation Bill, then we will have made great progress. If such considerations and safeguards cannot be built into the Railroad Deregulation Bill, then the City of New York would not be able to support its passage.

Statement of Dr. Bruce A. Melaas on Behalf of the Western Coal Traffic League

I. INTRODUCTION

Mr. Chairman and members of the subcommittee: My name is Bruce A. Melaas and I am Director of Energy Affairs for Celanese Chemical Company, Inc. ("Celanese"), 1250 Mockingbird Lane, Dallas, Texas 75247. Celanese is a wholly owned subsidiary of Celanese Corporation. Since obtaining my doctorate in Chemistry from the University of Kansas in 1958, I have been in the continuous employ of Celanese in positions involving responsibilities over research, technical evaluation, planning, and production. As Director of Energy Affairs, I oversee and coordinate Celanese's continuing efforts to conserve energy consumption.

I am submitting this statement on behalf of the Western Coal Traffic League ("W.C.T.L."), of which Celanese is a member. The purpose of my testimony is to acquaint the Subcommittee with the severe problems which Celanese, a captive coal

shipper, has had in trying to deal with railroads that have already been quasi-deregulated by the I.C.C. under the 4-R Act. Those problems, which have stopped Celanese's coal conversion program in its tracks, are, I submit, an ominous portent of what would happen if the Administration's deregulation bill were enacted.

II. THE CELANESE ENERGY CONSERVATION PROGRAM

Celanese is a leader in the technology of direct oxidation of hydrocarbons for production of oxygenated aliphatic chemicals, producing and selling more than 40 petrochemicals used in the manufacture of a wide variety of industrial and consumer goods. Production of Celanese products is carried out at four Texas plant sites: Bishop, Clear Lake, Bay City and Kings Mill (Pampa). Each of these larte facilities was designed to consume natural gas in the production of the process heat and steam needed for Celanese's vast pretrochemical operations.

Up until the advent of the nation's energy crisis in the early part of this decade, Celanese chemical plants were able to obtain steady and inexpensive supplies of natural gas from domestic suppliers. However, over the past six years Celanese plants have not been able to depend entirely upon natural gas, due to availability and resulting curtailment programs affecting this fuel.

Given the uncertain nature of natural gas as a boiler fuel, Celanese embarked on a three tier program to achieve energy efficiency and to employ alternate fuels. Initially, Celanese adapted its boilers at Pampa to fire oil as well as gas. This stop-gas measure was necessary to provide a temporary back-up system in times of gas shortages, but given the equally ominous future of fuel oil, the oil measures were never viewed as more than a short term "finger in the dike" resolution of Celanese energy supply problems.

Even before the oil program, Celanese embarked upon a substantial intra-corporate effort to become more energy efficient. This program continues to be highly successful. In fact, by 1978, Celanese Corporation had reduced its energy consumption by 34.8 percent in comparison with the base year of 1972, a minimization that far exceeded the target reduction of 14 percent by calendar year 1980 established for the chemical industry by the Federal Energy Administration's Voluntary Conservation Program.

Finally, and most important, Celanese made the decision to convert the Pampa boilers from the existing gas and oil fueled steam generating systems to coal firing systems and initiated studies which would lead to similar replacements at its other three plants. Subsequently, the gas fired boilers at Bishop, Bay City and Clear Lake plants would be replaced by coal-fired substituties. A total of about 50 billion cubic feet of natural gas or its equivalent in barrels of oil would be conserved annually by this massive conversion project.

Implementation of this conversion program commenced in 1976 when engineering and construction teams began work at the Pampa, Texas facility. The conversion plan entailed the replacement of the eight existing natural gas fueled steam generators with two new pulverized coal-fired boilers. In addition, Celanese, in cooperation with the Southwestern Public Service, Co., Inc., designed its coal boiler operation to provide the heat and pressure necessary to cogenerate both process steam and electrical power. The mechanics of the cogeneration venture allow steam produced from the Celanese boilers to be fed into a 30 megawatt Southwestern turbine generator, where it is converted into electricity; the resulting heat exhausted from this electrical conversion process is then returned to Celanese for use in its manufacturing activities.[1]

Celanese is very pleased to inform the committee that this pioneering coal conversion construction at Pampa is fast approaching its completion date and that the facility will be able to commence coal-fired generation this year. To the best knowledge of Celanese, its Pampa conversion is the first major coal conversion project undertaken and completed by a private non-utility corporation in the United States. While the combined cost of the coal conversion and cogeneration facilities will exceed seventy million dollars ($70,000,000), the effect of these actions will be the conservation of approximately ten billion cubic feet of natural gas per year, thereby freeing this precious natural resource for higher priority uses than boiler fuel. In addition to making this significant contribution to our nation's energy wellbeing, Celanese will benefit from having a stable supply of coal and also derive the reduced energy costs which go hand-in-hand with energy efficient cogeneration projects.

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[1] Attached as an Addendum to this Statement is an excerpt from an American Enterprise Institute for Public Policy Research pamphlet which briefly outlines the technology of cogeneration, pp. 9–13.

Despite the significant benefits to both Celanese and the nation that will be derived from its Pampa conversion, Celanese must unfortunately inform the Committee that it has suspended plans to make conversions at its Bay City, Bishop and Clear Lake plants. One of the major reasons for this conversion moratorium lies with the unconscionably high freight rates which western rail carriers, with approval from the ICC have exacted from us under provisions of the 4-R Act for the transportation of our coal.

III. THE IMPACT OF THE 4-R ACT ON CELANESE COAL CONVERSION EFFORTS

A. Intent of the 4-R Act

In 1976, Congress enacted comprehensive legislation in the 4-R Act designed to improve the financial and competitive situation of our nation's rail carriers. Centrally featured in Title II of the 4-R Act are various provisions intended to allow rail carriers to establish traffic rates free from burdensome ICC regulation. One provision that was not enacted, though lobbied for with great intensity by the railroad industry, was a law allowing the railroads to increase rates as they saw fit in markets where the rail carriers did not face effective intermodal competition. In rejecting the upside pricing freedom sought by the rail industry, Congress made abundantly clear, in our view, that the rate making flexibility accorded to the railroads in the 4-R Act was to be used only in competitive, not rail monopolized, markets. As stated in the Senate Report on its version of the 4-R Act: "if railroads are to regain lost traffic, or even to retain present traffic, they must be able to lower their rates, innovate new services, and respond to new and changing circumstances. If the railroads are to increase their revenues and attract the resources necessary to revitalize the industry, they must be able to raise their rates in a timely fashion, free from regulation in markets sufficiently competitive to prevent abuses of monopoly power * * *" (S. Rep. No. 94-499, 94th Cong., 1st sess. at 11, 1975.)

Similarly, the House Report stated: "Underlying the regulatory reform provisions of the entire bill is a conviction that competitive market forces, rather than regulation, should be used to set price and service levels where effective market competition exists. Where effective competition does not exist, regulation to protect against abuse of marketpower must be and is retained."

B. Abuse of the 4-R Act

Despite the clear admonition by Congress that 4-R Act pricing freedoms should not be used by carriers to reap excessive profits in rail dominated markets, Celanese found that western rail carriers were attempting to use their newly acquired rate freedoms to gouge excessive profits at the expense of the rail captive Pampa conversion process.

Pampa, is located in the Texas panhandle near Amarillo, and there is no question that Pampa is rail capitive so far as coal deliveries are concerned. All actively mined low sulfur coal reserves are located in deposits hundreds of miles from Pampa with the only feasible method of transporting these coals from mine to plant being rail service.

When Celanese began to contact western rail carriers concerning rates for the transportation of coal to its Pampa plant, it did not anticipate any major problems in obtaining an equitable rail rate. For years Celanese plants have shipped in raw materials and shipped out chemical products by rail and Celenese traffic department personnel had enjoyed a cooperative relationship with various western carriers in designing mutually acceptable rate structures for the movement of Celanese's goods. However, when it came time to negotiate captive coal rates the western railroads contacted by Celanese simply did not want to negotiate; these carriers consistently quoted rates which were far out of any reasonable relationship to the cost of the service to be provided or to the rates in force for other similar movements. When asked to articulate the methodology used to arrive at quoted prices, these carriers completely refused to explain to Celanese what, if any, theory was being used.

Faced with the need to commence its actual coal shipments in early 1979 and unable to negotiate an acceptable rate structure, Celanese filed on March 17, 1978, a formal complaint with the ICC seeking that Commission's prescription of just and reasonable coal rates. Subsequently, two carriers, the Denver & Rio Grande Western Railroad Company (origin carrier) and the Atchison, Topeka and Santa Fe Railway Company (destination carrier), whose combined trackage linked our coal mine in Colorado with Pampa, filed a proposed "capital incentive rate schedule pursuant to § 15(19) of the Interstate Commerce Act (now 49 U.S.C. § 19729), calling for a 550,000 ton annual unit train of $10.56 per ton in shipper-supplied cars with a fall-back rate

of $17.27 should the annual tonnage figure not be obtained. Section 15(19) was added to the Interstate Commerce Act by Section 206 of the 4–R Act.

Celanese challenged the carriers' capital incentive filing before the Commission, and based upon the heretofore generally accepted criteria employed by the Commission in evaluating the reasonableness of rates, we were confident that the carriers' proposal would be rejected and that the Commission would then proceed to establish a reasonable rate in the separate proceeding which we had initiated. To our dismay and bewilderment, the Commission issued a one-page decision on the statutory 180 day deadline for its decision which approved the railroads' proposal. Months later, the Commission published a report which provided the basis for its decision. Docket No. 36936, Incentive Rate On Coal—Hayden, Colorado to Kings Mill, Texas (January 17, 1979).

Despite an unequivocal holding that Celanese was rail captive, the Commission proceeding to rubber-stamp the $10.56 rate proposed by the carriers primarily on the rationale that the 4–R Act mandates higher profits for the railroads. With the addition of a Commission sanctioned "general rate increase" the Pampa unit train rate now stands at $11.14 per ton.

In allowing the railroads to gouge Celanese, the Commission, in its Docket No. 36936 decision simply ignored existing rate levels, ignored traditional costing concepts and, essentially allowed the carriers to do what the 4–R Act attempted to prevent—profits at the expense of captive shippers.[2] It also refused to acknowledge or discuss the serious issues which the case raised concerning the adverse implications of such ratemaking for national policy objectives for coal conversion.

With a freight rate of $11.14 per ton, Celanese faces an expenditure of approximately $6.5 million in first year freight charges. In addition to paying this $6.5 million in annual charges, under the effective tariff Celanese has had to purchase over $3,280,000 worth of coal cars (which Celanese must maintain) and expend $10,000,000 on a rapid coal loading facility located on Celanese industrial tracks. Thus the total cost of simply moving the coal (disregarding expenses relating the loading and unloading) for Celanese first year of train service will be in the neighborhood of ten milion dollars ($10,000,000). And, if past experience is prelude, the annual freight rate of $6.5 million dollars plus, will be subject to numerous "general increases" pushing Celanese's freight bill continuously higher.

While Celanese anticipated the cost of conversion and cogeneration facilities and can grudgingly accept the cost of purchasing and maintaining a railroad freight car fleet, the clearly excessive, unfair freight rates which it will be fored to pay for coal transportation have radically altered the entire economics of its conversion program. What is even more disconcerting than the facile manner in which the carriers ran their rate proposal through the Commission on this occasion is the fact on that the basis of the Commission's reasoning, there hardly appears to be an upper limit to the coal rates which the railroads will be permitted to charge. It should hardly come as a surprise to this committee that Celanese or any other company for that matter will be extremely reluctant to place itself at the mercy of the coal hauling railroads by committing to coal fuels at other plants. Celanese simply cannot afford to be a pocket which western railroads pick in order to excessively aggrandize their earnings.

III. THE DESTRUCTIVE EFFECTS OF HIGHER COAL RATES PROMULGATED UNDER THE 4–R ACT ON THE NATION'S GOAL OF ENERGY SECURITY

A. Encouragement of coal conversion and cogeneration

Just recently, in his nationally televised Energy Address, President Carter reaffirmed the Administration's firm commitment to implement energy security policies contained in its National Energy Plan. Two of the cornerstones of the Administration's National Energy Plan as unveiled in April of 1977 are its Coal Conversion Regulatory Policy, which seeks the greatest possible conversion to coal by utilities and industrial installations currently using oil and natural gas in their production processes, and its Cogeneration of Electricity and Steam Heat conservation program.

Portions of the President's programs concerning coal conversion and cogeneration were incorporated into the recently enacted Powerplant and Industrial Fuel Use Act of 1978, Public Law 95–620. While this Fuel Use Act contains provisions calling for mandatory coal conversions by major industrial and utility companies, these provisions contain numerous exceptions and provisos. It is clear to anyone familiar with the energy field that a major portion of the current potential for coal utilization in this country lies in the area of voluntary conversion actions as major oil and

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[2] Celanese has appealed this decision to the Fifth Circuit Court of Appeals.

gas users. And, of course, for voluntary action to occur in our economy these companies must believe that conversion can be accomplised at acceptable cost levels.

B. Adverse impacts

When Celanese made its decision to convert to coal, it believed that in the long run the start-up costs involved would be recovered and that coal fired operations would prove to be economical in light of the cost of alternative fuels. However, as detailed in Part II of this Statement, Celanese has been forced to abort its planned coal conversion activities in light of the Commission's action in Docket No. 36936. This result was dramatically brought to the Commission's attention in that proceeding in testimony by Celanese President Bartley: "Of one thing I am certain, if the rate level the carriers have proposed is allowed to become effective, it will have a direct and immediate impact upon our company insofar as our future planning is concerned. We have already suspended plans for coal-fired boiler replacement and cogeneration projects at several other plants due in part to the transportation difficulties which have arisen at Kings Mill. If we are going to be forced to pay the rate level proposed by the railroads in this proceeding, these and other contemplated coal conversion projects may well be indefinitely postponed if not scrapped altogether."

In this same proceeding, I testified concerning the adverse impact that high coal rates can have on coal conversion projects: "Excessive transportation rates on coal such as that proposed in this case will seriously retard decisions by industry to convert to that energy source. Potential users of coal must make substantial long term financial commitments for plant and equipment to use coal; and such decisions must be made years in advance of implementation. As a result, some assurance must be provided by this Commission that unreasonable rate demands will not go unchecked. Otherwise prudent management must postpone decisions regarding coal conversions, if not actually decide against them. Simply stated, predatory rates on coal will have a chilling effect on conversion to coal by industries."

The moratorium on further coal conversions by Celanese means that in each year the suspension continues, about 40 billion cubic feet of gas will be burned. These volumes, though in our opinion significant, are miniscule compared to the volumes consumed as boiler fuel throughout industry, much of which could be replaced by coal.

I think it is important to note also that the extent to which cogeneration projects will be implemented by industry is closely related to the incidence of conversion to coal. The reason for this is simply that a cogeneration project is much more feasible in the context of a major conversion prospect than as an add-on to existing capacities.

My testimony concerning the detrimental effects that high coal rates have on conversion activities has been corroborated by the Department of Energy (DOE). DOE has become active lately in western coal proceedings and the Department is a firm believer that: "Higher coal tariffs can have a pervasive chilling effect on decisions by utilities to replace existing oil and gas-fired capacity with coal-fired capacity." United States Department of Energy Opening Statement of Fact and Argument, Ex Parte No. 347, Western Coal Investigation—Guidelines for Railroad Rate Structure at 18 (Aug. 4, 1978).

Even with the desperate efforts by Celanese, DOE and a host of electric utilities to bring to the ICC's attention the fact that its coal pricing policies are inhibiting much needed conversion efforts on the part of industry and utilities, the ICC appears to be blindly pursuing a regulatory path whose only goal is maximization of carrier revenues at the expense of captive coal traffic.

V. COMMISSION ABILITY TO PRICE COAL MOVEMENTS TO PROMOTE ENERGY CONSERVATION

As described in Part II of this Statement, the purpose of the 4-R Act ratemaking reforms was not to increase rates on captive traffic. Furthermore, the Congress made clear that regulation of railroad rates required the ICC to "balance the needs of carriers, shippers, and the public." 4-R Act § 101(b)(1).

It is my understanding that traditionally, the ICC has balanced interests in favor of the general public where rail rates were shown to directly affect "the health and well being of the nation." See Baltimore & O R.R. v. *United States,* 345 U.S. 146, 150 (1953).

Applying this doctrine in cases involving the use of fertilizer for agricultural purposes, the Commission stated in a 1926 decision: "The need for continued progress in the use of fertilizer is so great and the degree of its use . . . is so dependent upon financial conditions that all burdens associated with its use should be made as light as possible." Fertilizers Between Southern Points, 113 I.C.C. 389, 421 (1926).

Similar treatment was afforded coal in a World War II price increase case because the proposed price increases would "effect upon the national defense" and adversely impact "the use of fuel as a primary necessity of life." Increased Railway Rates, Fares and Charges, 1942 248 I.C.C. 545, 610 (1942).

In fact, the ICC has looked to broad national interests in numerous cases. See cases collected in the ICC's Value of Service in Ratemaking (Statement No. 5912), (1959) and Arpaia, Drift in the Economics of Transportation 102 U. Pa. L. Rev. 80 (1953).

Despite the ICC's history of defining transportation policy within the broader framework of national needs, the agency has abandoned this traditionally accepted approach to ratemaking at a time when the nation most desperately needs its support. President Carter stated in his first major energy address that the United States must declare "the moral equivalent of war" on its energy problems. In his energy address of several weeks ago, President Carter again pleaded with Americans to conserve energy and stated emphatically that the "future of our country is at stake" if conservation efforts are not accomplished.

Based upon the treatment which it has received from the ICC, it is apparent to Celanese that national energy considerations are of little concern to the Commission in its ratemaking policies for coal rates.

VI. CONCLUSION

Industries like Celanese are not public utilities and have no fuel adjustment clauses or other means of directly passing on transportation cost increases to their customers. Celanese chemical products face stiff competition in the marketplace and there is a very distinct limit to the amount of price increases on transportation/fuel related items that it can absorb. However, despite the uncertainties associated with a major project of this magnitude, Celanese expended many millions of dollars to convert and cogenerate, only to be faced with greedy railroads and an ICC willing to give this carriers whatever they want apparently in an effort to preserve its own continued existence. High freight rates have smashed the Celanese conversion program and since Celanese was the first major industry in the southwest to implement coal conversion, there is no doubt in my mind that the shock waves emanating from this closely watched affair have and will spread to industries throughout this region and the rest of the country.

W.C.T.L. believes that the ICC's interpretation of the 4-R Act hurts Celanese, hurts coal conversion efforts by industrial and utility ventures, hurts cogeneration efforts, hurts the nation's much needed plan to reach energy security, and for all of these reasons is striking a severe, and unnecessary blow to the best interests of this nation. Enactment of the Administration's deregulation bill would compound the problem created by the ICC's abdication of regulatory responsibility. It would remove the last vestiges of regulatory control over the railroads' monopolistic behavior, and would thereby disable the Commission from correcting its mistakes. The bill is a step in the wrong direction, insofar as it applies to captive coal traffic. W.C.T.L. urges this Subcommittee to reject the Administration's simplistic approach to rail deregulation, and instead consider remedial legislation that would prohibit the ICC's misguided application of the 4-R Act, and would reiterate the true policies underlining the 4-R Act in the area of captive coal rates.

ADDENDUM

2. Technical and Industrial Considerations

At the turn of the century, most industrial plants generated their own electric power and their own steam. Although a high percentage of plants still produce their own steam, industry generated only 16.8 percent of its power needs in 1968 and only an estimated 14.2 percent in 1974.[16]

Behind this decline are certain economic factors, including utility rate structures designed to discourage industrial power generation and the reluctance of industries to become involved in a highly regulated activity. Moreover, the trend in industrial equipment has been from field-assembled, coal-fired boilers that are easily adapted for power generation to lower-cost oil or gas-fired "package boilers" that are suitable only for the production of steam and that are generally incapable of high fuel and operating efficiencies. Simultaneously, the development of more efficient central-power-station boilers, which can run economically only when steam condensate is recovered and reused, has led to a decline in the utilities' practice of selling steam for industrial use. These parallel trends have encouraged the evolution of two large and relatively independent steam systems. These systems could be integrated and resultant economies obtained through industrial power generation and through the creation of dual-purpose central power stations that would sell steam for industrial use.

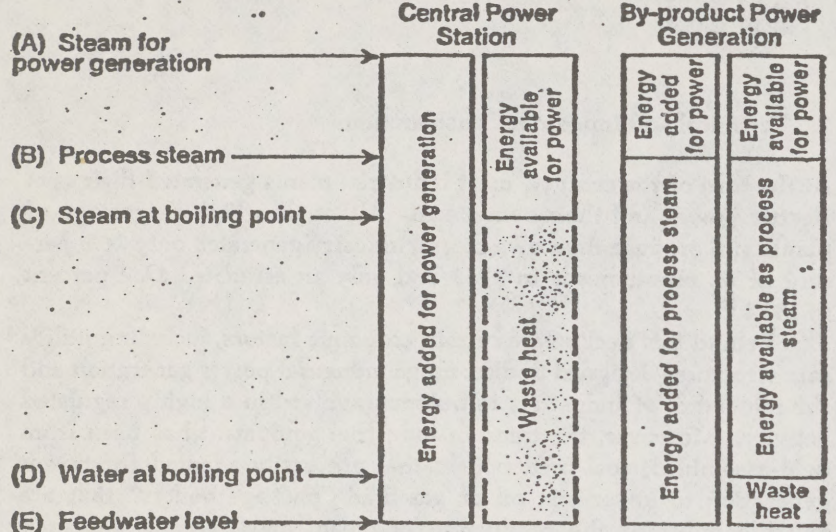
Industrial By-product Power Generation. By-product power is electricity produced from steam that is required for industrial application and that is still suitable for the production of power after passing through a generating turbine. The most common process employs an extraction or back-pressure turbine that drives the generator.

The basic principle that makes by-product generation potentially attractive in comparison with central station power is illustrated

16 *Energy Industrial Center Study*, p. 23.

Figure 2

RELATIVE WASTE HEAT PRODUCED IN CENTRAL POWER STATION AND BY-PRODUCT POWER GENERATION



Note: In the central power station, sufficient energy must be added in the boiler to bring the temperature of the feedwater up to point (A). However, the condensing turbines that drive the generators can only utilize the amount of energy between points (A) and (C) to make electricity, leaving the large amount of energy between point (C) and the feedwater level (E) to be rejected into the environment. In by-product power generation, the energy between the feedwater level and point (B) is already needed for the generation of steam for process and other industrial needs. Energy is added to this to bring the steam up to point (A). Thus, the energy from (A) to (B) is available for power generation, that from (B) to (D) can be used for steam production, and only a small amount remains as waste heat.

in Figure 2. In the conventional central power station, much of the energy required for power generation is expelled into the environment as waste heat. In the generation of by-product power, the energy below the increment needed for power generation is used in the production of process steam. This has two clear advantages: (1) it greatly reduces consumption of fuel per kilowatt hour of electricity and (2) it alleviates the problem of so-called thermal pollution in power generation. Moreover, as will be seen, if adopted in operations of sufficient scale, by-product power generation should be an attractive investment for many industries. This should be especially true as continuing high fuel costs cause a reversal of the trend toward package boilers. It is likely that fuel costs alone will furnish a strong incentive for a general return to coal-fired boilers by 1980.

Statement of Arthur von Rosenberg on Behalf of the Western Coal Traffic League

My name is Arthur von Rosenberg and I am employed as Manager of Planning and Development for the City Public Service Board of San Antonio, Texas. I am submitting this statement on behalf of the Western Coal Traffic League ("W.C.T.L.").

W.C.T.L. appreciates this opportunity to comment on current proposals for railroad deregulation, a subject of vital interest to us. We intend to participate actively in this Committee's forthcoming hearings on the details of the Administration's Deregulation Bill.

By way of background, W.C.T.L. is a voluntary association formed in 1976 by western coal shippers to serve and further their common objectives. Each member of W.C.T.L. is a major consumer or prospective consumer of coals mined in the West, and each member moves, or will move, all of its coals by rail. The total coal requirements of our members exceed 19 million tons per year.

W.C.T.L. strongly opposes the Administration's poorly-thought-out proposal to deregulate rail rates on captive traffic such as coal. As I discuss below, such deregulation will funnel large amounts of money into the coffers of the wealthy railroads, but will provide very little help to the weak lines that need it. The nation's energy and anti-inflation policies—and ultimately, its transportation policies—will pay a heavy price for such unnecessary generosity.

The members of W.C.T.L. are captive shippers of the railroads in the truest sense of the term. In the first place, rail is the only presently available mode that is capable of transporting our coal; coal cannot be shipped economically over long distances by truck, and none of our members are located close enough to navigable waterways to make coal shipment by barge feasible. Our dependence on rail transportation is stengthened by the tens of millions of dollars of capital investment we have made in rail-related facilities, such as coal cars and unloading facilities.

Not only are we dependent on the railroads in general; as I discuss below, we must obtain our coal supplies by means of long-term purchase contracts with mine operators, and once we sign such contracts we are for all practical purposes restricted to dealing with a single railroad (or the railroads comprising a single route.)

Since our members are so completely depenedent upon railroad service, we recognize the necessity of preserving a financially healthy rail system, and wholeheartedly endorse the railroads' right to earn reasonable profits on all of their traffic, including coal traffic. What we object to, and what the nation cannot afford to permit, is the railroads' looking to captive coal traffic as virtually the sole source of their hoped-for additional profits. Coal traffic can and should pay its own way; it should not be forced to cross-subsidize other, marginal traffic.

Coal traffic has always bee profitable traffic for the railroads, even at relatively low freight rates, because of the low cost of handling it. Coal traffic has long been the salvation of eastern railroads like the Chessie System and the Norfolk and Western. It is profitable, steady traffic that tides them over fluctuations in other traffic and ensures their continuing prosperity and stability. As an Association of American Railroads' spokesman recently put it, speaking for the rail industry as a whole: "Coal is the industry's most important commodity today. Revenues from greatly increased coal traffic can help the railroads improve themselves—on their own—without resorting to taxpayer money."—(Remarks of General John Murray before the Fourth Annual Conference on Coal Production and Transportation, Houston, Texas, April 1978.)

The growth of the western coal market presents a tremendous opportunity for rail carriers in the west to obtain the financial benefits the traditional coal-hauling railroads have long enjoyed. The western railroads can have these financial benefits for years to come, if only they will content themselves with charging reasonable, cost-based rates that are fair to carrier and shipper alike. Almost everyone professes to recognize these fundamental facts of the marketplace. For example, a senior Burlington Northern officer remarked less than two years ago that: "* * * raising the rail rate [on coal] to an excessive level could cause the utility to change its source of supply, institute alternative transportation arrangements, or reduce the level of dependence on the facility at issue. Further, excessive rate levels can have an adverse impact on future decisions concerning the type of fuel or location of the facilities to be used in meeting expanding requirements. The railroad must consider all of these factors in developing its rate/service package."—(Remarks of Gerald K. Davies, BN Senior Economist, before the Railroad Transportation Seminar, National Conference of State Railway Officials, University of Tennessee, October 1977.)

Based on comments such as the foregoing, one might reasonably expect that the railroads' enlightened sell-interest would induce them to restrain their greed and charge reasonable rates on their captive coal traffic. Unfortunately, nothing could

be further from the truth. Many western railroads including Economist Davies' own Burlington Northern, have demonstrated incredible short-sightedness in recent rate cases. They have repeatedly opted to reap huge short-run windfall profits on coal traffic through the most blatant exploitation of their monopoly power—a policy which we believe seriously jeopardizes their prospects for the generous, but reasonable, profits which should otherwise be anticipated on a long term basis. In a separate statement submitted to this Subcommittee on behalf of the W.C.T.L., Dr. Bruce A. Melaas of the Celanes Chemical Company, Inc. ("Celanese") describes the most recent such case, in which the railroads—with I.C.C. sanction—set such an exorbitant rate on Celanese's new coal traffic that transportation costs became a major factor leading Celanese to cancel plans to convert additional facilities to coal. In a moment I shall describe another of those cases involving my employer, the City Public Service Board of San Antonio, Texas. I submit that such cases merit close study, as they present a valuable object lesson on what we might expect from the railroads if the Administration's Deregulation Bill passes.

Before getting to specifies, I would like to observe that the railroads' coal pricing behavior may not be quite so irrational, from their perspective, as it first appears. In the first place, it has frequently been noted that railroad management in recent years has tended to focus entirely on the problems of today, leaving tomorrow for its successors (or the Government) to worry about. A notorious example of this is the willingness of many railroads to inflate short-run profitability and cash-flow artificially, by deferring maintenance of their physical plants. I sometimes suspect that the eagerness of many western railroads to gouge coal shippers today, even at the cost of stunting the future growth of such traffic, is a reflection of this same attitude. I think it is interesting to note in this regard that there are no holding company laws similar to those in the banking and utility areas governing the railroad industry.

With that background, I would like to recount for the Committee the treatment the City of San Antonio has received at the hands of the railroads.

San Antonio began converting to coal a little ahead of many of its colleagues because of some special fuel supply problems in our area. As a consequence of being a few steps ahead of the pack in its coal conversion program, San Antonio was the first major new coal receiver in the west to challenge the attempted monopolistic pricing and service practices of the railroads who alone could bring coal to our J. T. Deely Station in Elmendorf, Texas.

Even an accelerated program of conversion to coal-fired electric power, such as the one undertaken by San Antonio, involves years of planning during which a series of irrevocable commitments must be made. These commitments include the location of the plant; the sources of capital; the source of coal and the method of delivery. Naturally, these decisions are interrelated. For example, without a firm source of long-term coal supply at reasonable prices, it is not possible to raise the hundreds of millions of dollars required to construct a coal-fired plant. With this background in mind, I come to the point; namely that in 1973, San Antonio had what it thought were firm commitments or fuel and fuel transportation. The railroads had given San Antonio a proposed transportation price of $7.90 per ton which price we confirmed to be fully consistent with other going prices, at the time, for high-volume, long-haul movements of western coal.

Prior to the commencement of our coal traffice, however, and following the OPEC oil crisis, the railroads abruptly changed their coal transportation price by increasing it 40 percent or a full $3.19 per net ton to $11.09 per ton. In the context of our 3,000,000 ton annual movement, this was truly a staggering price increase and one for which we sought some explanation and substantiation from the carriers in light of the fact that the fuel transportation costs are directly borne by our ratepayers. Beyond the bare statement that the $3.19 per ton rate hike was caused by "unprecedented cost increases." The railroads simply refused to reveal any data to substantiate these "unprecedented cost increases." I would add that to this day and despite two separate hearings before the I.C.C., they have yet to be revealed. Not only did the railroads adamantly refuse to justify their $3.19 price hike, but despite repeated requests, they refused to reconsider or modify it. San Antonio, by this time, was locked in to the railroads for its coal transportation requirements and was left with no choice but to seek a determination of a just and fair rate by the I.C.C.

Before the I.C.C., San Antonio requested that, as of July 1, 1976, a rate of $9 be set. This request took into account the cost increases since 1973 when San Antonio was assured of its $7.90 rate. The railroads sought a rate of $12.70 per ton. In late 1976, the full I.C.C. reached its decision and set a rate of $10.16 per ton. In reaching its judgment, the I.C.C. relied primarily on the level of rates for similar movements to such destinations as Amarillo, Texas and Pueblo, Colorado. It flatly rejected the many novel theories pressed by the railroads to inflate their costs and thus make

their predatory price proposal of $12.70 seem more cost-oriented. Because our rate of $10.16 was set before our trains began to move, the I.C.C. offered to reexamine its decision at a later time and "fine-tune" the rate as cost of service refinements based upon actual train operations might warrant.

Although the 4-R Act was enacted into law nearly a year before our rate was first set by the I.C.C., it was not pressed before the Commission by the railroads in support of their exorbitant rate request. With the benefit of hindsight, this is rather astounding since the I.C.C., in October 1978, relying upon the same facts and circumstances it had previously considered in 1976, raised our rate by $3.70 per ton or $11.1 million annually solely on the basis of claimed 4-R Act requirements.

Our coal movement is thus unique in the sense that, as interpreted by the I.C.C., the enactment of the 4-R Act, or better stated, a belated realization of its part of the claimed goals of the 4-R Act, was deemed to require a massive increase in our coal rates. I stress that the mandates in the 4-R Act which were so compelling to the I.C.C. in 1978 were not even apparent to it in 1976.

I am at a total loss to find anything in the 4-R Act which justifies increasing the net profit of the railroads on our coal movement from the generous $6 million initially allowed by the I.C.C. to the $17 million allowed in its decision in late 1978. The enrichment of already financially sound railroads serving San Antonio with an additional 11 million dollars in profits annually has been accomplished at the direct expense of our electric customers.

Now the Administration proposes to remove what little protection captive shippers still have against exploitation by the railroads. The Administration's professed rationale for doing this is: (a) That it will help to restore the financial health of the railroad industry; and (b) that the interest of shippers can be protected by the competitive forces of the marketplace. Both premises are demonstrably false as applied to western coal traffic.

Allowing the western railroads to charge "what the traffic will bear" on coal shipments, will not help to solve the financial problems of the rail industry. Such a step would indeed increase dramatically the revenues of the coal-hauling western railroads, for a period of time. But the railroads that will benefit from such increased revenues will not be the poor railroads, such as Milwaukee Road and Rock Island. Rather, the beneficiaries will be railroads like the Denver and Rio Grande Western, Southern Pacific, Santa Fe, Union Pacific, and Burlington Northern, which are already prosperous. (At the same time that I read where the Secretary of Transportation has announced that the railroads are in "critical" financial condition and are "struggling for survival," I also see in Fortune magazine that Southern Pacific, the railroad serving San Antonio's coal station, has acquired an insurance company for $238 million and is looking for additional acquisitions.) Funneling additional monopoly profits to wealthy railroads will not alleviate the financial problems of the weak railroads.

Competitive market forces would not protect captive coal users from unreasonably high rail rates, for as I have already noted, no such forces apply to our coal traffic, over which the railroads have a complete monopoly. Indeed, once we have invested the substantial sums necessary to construct new or converted coal-burning facilities, our coal requirements become quite inflexible: we must continue to receive the amounts needed to keep our plants operating, almost regardless of how high freight rates go. Thus the railroads possess monopoly power in a market with a demand curve which is almost completely inelastic in the short-run. It is elementary economics that under such circumstances market forces alone are no restraint at all on the monopolist's price determinations.

The Adminstration suggests that captive shippers use "contract rates" to hold down rate increases. Just how we are to persuade the railroads to contract for reasonable rates when they are already assured of our existing coal traffic, the Administration does not explain. Alternatively, the Administration suggests, we should "amortize (our) existing investments" during the "five-year transition to maximum rate deregulation." Here again, the protection is illusory. Five years would scarcely be enough time to amortize the enormous investments we have made in coal-burning facilities with useful lives in excess of 30 years, or the coal-supply contracts with terms as long as 20–30 years. Moreover, the "transition period" is itself a mirage: the Administration bill interposes so many preconditions in the way of I.C.C. rejection of rail rate increases, even during the transition period, that for all practical purposes the bill would deregulate maximum rates immediately.

The railroads once had monopoly power with respect to virtually all transportation. Regulation of their rates was then deemed necessary in order to protect shippers from monopolistic exploitation. The railroads still retain that same monopoly power with respect to western coal transportation; accordingly, western coal shippers remain in need of regulatory protection. To my knowledge, no one is

seriously considering allowing AT&T to charge whatever it wishes for long distance telephone calls. We in the electric power industry would be laughed out of court if we suggested that the prices we charge our customers should be free from regulation. How then can anyone seriously suggest giving the railroad carte blanche to exploit the markets in which they possess monopoly power?

The nation would pay a very heavy price for the Administration's proposed nonsolution of the "railroad problem." Judging from the railroads' actions to date, the deregulation of their freight rates on western coal would cause them to increase such rates dramatically. Transportation costs already constitute more than half of the delivered cost of coal to our members, and thus such rate increases would have a major impact on the cost of our fuel. Such increases would significantly increase electric utility bills, and as Dr. Melaas demonstrates, would slow down or even halt voluntary coal conversions. Such results would be manifestly contrary to the Nation's energy and anti-inflation programs. Moreover, exorbitant rail rates on coal would encourage the development of institutional transportation alternatives such as coal slurry pipelines, mine-head generation, and coal gasification. Obviously, such developments would be a serious blow to the very railroad industry the Administration seeks to help.

We wish to thank this Committee for the opportunity to voice our concerns about the Administration's myopic rail deregulation bill. We look forward to the opportunity to submit more detailed comments on specific provisions of the bill, during this Committee's subsequent hearings.

STATEMENT OF B. J. MALUSKY, PRESIDENT, GRAIN TERMINAL ASSOCIATION ("GTA"), ST. PAUL, MINN.

Mr. Chairman: On behalf of the 200,000 farmers in Minnesota, Montana, North and South Dakota who own this association, GTA submits that S. 796 is unacceptable to agriculture in these four states.

As marketing agency for 600 country elevators, and therefore the single largest grain shipper in this region, GTA agrees that S. 796 appears undesirably to strengthen conditions of monopoly in transportation.

These four states of ours are the most distant in North America from world markets. Their need for a steadily increasing supply of fairly priced transportation is therefore critical, but this bill unfortunately does nothing, in my opinion, to meet that very urgent requirement.

Our association will continue ready to contribute as usefully as possible to discussions of this problem with the several agencies or individuals in both branches of the federal government that are searching for a practical means of (1) increasing the supply of transportation and (2) obtaining fair and reasonable freight rates for our grain.

STATEMENT OF RAYMOND L. SANFORD, GENERAL TRAFFIC MANAGER AND ANNA ARICER, TRAFFIC MANAGER, RAIL OF SLAUGHTER BROS., INC., DALLAS, TEX.

Slaughter Brothers, Inc. is a publicly owned company, headquartered at Dallas, Texas, mailing address, P.O. Box 38670, Dallas, Texas 75238. Slaughter Brothers, Inc. is one of the nation's leading independent distributors of lumber and building products to the home improvement and construction industries. It is also one of the nation's largest independent distributors of prefinished mouldings, redwood and cedar shakes and shingles. Our net sales for the fiscal year 1978 were $146,138,046, and rail freight and assessorial charges totaled approximately $16,000,000 for the calendar year 1978.

Senate Bill S. 796, Railroad Deregulation Act of 1979, proposes sweeping changes in regulatory requirements for railroads. We agree that certain provisions in Title 49 and the Interstate Commerce Act, as well as other regulations affecting railroads, are archaic and should be changed. However, there are several points in Bill S. 796 which are objectionable in whole, or in part, and could be catastrophic, not only to Slaughter Brothers and the lumber and construction industry, but to the nation's railroads and the national economy as well. We are outlining below the various sections of this bill which we find objectionable, stating our reasons for objection and any alternate proposal we feel is equitable to both the shipping public and the railroads. We are making no comment on those sections of the Bill which we feel will not be detrimental to the shipping public, or on which we have no opinion, pro or con.

RATEMAKING

Section 102. Maximum and minimum rate regulation

Our objection centers on certain changes that would be made by the addition of Section 10701a, "Standards for Rates and Conditions of Service for Rail Carriers."

We find the last two sentences under paragraph (a) to be objectionable, in part. We feel that contract rates are good and could be advantageous to both the shipping public and the rail industry; however, we do feel that contract rates and agreements should be published in the same tariff as normal rates for the same commodity. Contract rates should also be subject to the same basic rules and conditions as any other rate. Shippers should be allowed to file complaints opposing contract rates under the same terms and conditions as any other rates. In addition, carriers' rate increases and/or reduction in contract rates should be subject to the same rules as any other rate.

Paragraph (c), "Rate Decreases," of proposed Section 10701a to Title 49, specifically prohibits carriers from deliberately reducing a rate to a level below actual operating costs with the intent of eliminating a competitor. By not subjecting contract rates to Section (b) and (c) of Section 10701a, Congress would be giving rail carriers and industry giants permission to make contracts with each other to eliminate competing rail carriers as well as competing shippers, simply by setting rates at a level below operating costs. Shippers would have no recourse to protest a rate specifically designed to eliminate them from market place competition, nor would competing carriers have any recourse to stop other carriers from deliberately pricing them out of the market using contract rates. The final sentence of paragraph (a) of Section 10701a should be struck, in our opinion.

Paragraph (b)(1) and (b)(2) of Section 10701a is somewhat confusing in what rate increases would be allowed. We think that any rate increase should be justified by the carriers showing increased costs. The average shipper or receiver in the United States is not familiar with the GNP deflator. The formula outlined in these two paragraphs is extremely difficult for even a seasoned transportation specialist to interpret. Every industry in the country, would have to add a staff of transportation specialists, and add an economist in order to find out whether or not the increase was falling within the guidelines outlined in this section. While we realize that there will be increases in the basic cost of service due to inflation, we feel a simpler formula would be helpful, not only to the shipping public, but to the rail carriers as well.

We are utterly opposed to any provision which would eliminate the shipping public's right to file a complaint on rate level due to discrimination. In this respect, we are also opposed to the five-year time limit for phased-out deregulation.

Provisions as outlined in paragraph (b)(3) through (b)(8) of item 10701a are totally objectionable. These sub-paragraphs would nullify Sections 2 and 3 of the Interstate Commerce Act. Any reference to sub-paragraph (4) through (8) of this sub-section should be stricken from sub-paragraph (3). Any purchaser of transportation services should be allowed to enter a complaint as to rate level whether or not he is a captive shipper. The "captive shipper" provision outlined in this section are thoroughly and wholly objectionable.

How many shippers would actually be able to prove that:

1. There were no other rail carriers available, or service by carriers of other modes or combinations of modes;
2. That they could not afford to put on at least one truck;
3. That they had done an exhaustive survey of all alternative markets for their goods, and/or alternate sources of supply.

Under subparagraph (4) or this subsection, the Commission would rule there was reasonable alternative transportation if the current rail rate was $3 per hundredweight, the carriers proposed a 33⅓ percent increase, to $4 per hundredweight, as long as the common carrier truckline rate did not exceed $5. This is absolutely outrageous.

Again, conditions set forth in subparagraph (7) of the subsection are objectionable. Reducing the portion of the rate to the nearest interchange point with a water carrier or with another rail carrier, if such point of interchange is within 50 miles of origin or destination, is ridiculous since charges could still be as great, or greater than those being assailed. This does not give any remedy to the captive shipper. In addition, the requiring of the rate reduction to apply only to the complaining purchaser is discriminatory to the shipper without the money, or the transportation know-how to protest. Surely, if a rate on any given commodity via any specified route between a given origin or destination is unreasonable, it would be unreasonable for all shippers who move their commodities between those two points. Again, the wording which is shown in the last sentence of sub-paragraph (7) would have the

effect of increasing all rates to the higher proposed level if the shipper were able to secure even one over-the-road truck. In fact, if a supplier or customer sent their own truck to haul a load between the two points in question, rates would revert to the higher level on the grounds that it was no longer a captive movement.

Sub-paragraph (8) is confusing in stating that reductions under "captive shipper" protest are to remain in effect for a minimum of 12 months. If the captive shipper does develop other transportation alternatives within that period of time, does this rule apply, or is the intent merely to prohibit increases for added labor costs, etc., during the first 12 months shipper remains captive and ships on rate ordered by the Commission?

Sub-paragraph (9) would nullify the excellent transportation work done by the National Industrial Traffic League as well as numerous specialized shipper organizations in protesting discriminatory rate practices for the shipping public or a specialized segment thereof. Under current laws, these shipper associations can gather pertinent data from various members and file in behalf of all members. Sub-paragraph (9) would require every shipper to prove its own case and would force each shipper to establish and support a full staff of transportation specialists in order to protect themselves against predatory pricing procedures by rail carriers.

Paragraph (d), "Demand Sensitive Rates," is objectionable only because of the time limit being imposed for any one rate level to remain in effect. It is not possible to legislate a time period on demand for service. Rate level on demand sensitive rates should be allowed to fluctuate with demand regardless of time frame involved.

Section 103. Investigation of rates and order setting rates

Although in reading the Bill, it would appear that only a "few minor wording changes were being made," this in fact, is not the case. Again the addition of "phrase" subject to the provision of Section 10701a, would nullify all rights the shipping public now enjoys in filing complaints regarding discrimination, preference or prejudice in rate making.

The Interstate Commerce Commission was organized by Congress to provide impartial regulation of all modes of transportation subject to Title 49, and as stated in sub-paragraph (a)(4) of Section 10101, National Transportation Policy, "to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair destructive competitive practice." The Interstate Commerce Commission should have the right to begin an investigation of rail rates on the Commission's own initiative whenever they feel it is in the public interest and consistent with the National Transportation Policy.

We feel that no amendments should be made to Section 10704 of Title 49, the wording as currently published is fair to both carriers and the shipping public. Proposed changes, referring to Section 10701a are objectionable in that it would only allow complaints to be filed by captive shippers, and would not allow the Commission to begin an investigation under its own initiative. We feel no time limit should be established whereby the Interstate Commerce Commission would no longer be able to entertain a complaint. The Interstate Commerce Commission is composed of professionals and specialists in the field of transportation and the Commission is far better qualified to handle a complaint and judge the merits of the complaint than any court having jurisdiction.

Sub-paragraph (c)(2) of Section 10707 definitely needs to remain in effect and should not be cancelled. We are well aware that the Interstate Commerce Commission only suspends a small percentage of rates assailed; however, we feel that the Commission should definitely have the right to suspend any rate, rule, or practice that it finds unreasonable while an investigation is being held. Without the Interstate Commerce Commission's suspension powers, carriers could deliberately set unreasonable rates in order to secure the use of the shippers' money until such time as the rates were proved unreasonable and excess monies ordered refunded. We do not feel it is the intent of Congress to deliberately set up this situation. It was our impression that changes in transportation regulation were being proposed in order to allow rail carriers to compete more effectively in the transportation market place.

Section 10707(e) of Title 49 should remain in effect as currently worded. In addition all reference to renumbering sub-paragraphs of Section 10707 should be eliminated.

Section 104. Joint-line rates and through routes

The one item in Section 104 of Senate Bill 796 that is not totally unacceptable is the sentence which would appear as subsection (b)(4) "nothing in this subsection shall be deemed to require the cancellation of any jointlined rates or division of revenue in effect on the effective date of this subsection." Section 10703 of Title 49 requires rail carriers to establish through routes, and rates and classifications

applicable to those routes. Throughout history this has been interpreted as requiring the establishment of through rates for any through routes. The changes proposed under Section 104 of Senate Bill 796 would nullify the requirement to establish joint through rate, and in fact, proposed change shown as subsection (e)(2) would, by its last sentence, specifically grant carriers authority to pull out of any joint line rate. The wording proposed to be added as Subsection (b)(2) would specifically allow carriers to refuse to establish joint-lines through rates and instead, assess the sum of local or proportional rates as established by each participating carrier for this portion of the route.

Due to route protection given because of mergers over the years, and rail carriers desire to participate in all routes that are practicable and profitable to them, there are many cases where there may be as many as two or three hundred different possible routes available, especially on lumber and forest products, our specific commodities. In order to check the lowest charges applicable to a shipment, if carriers were to cancel out of joint-line through rates, it would be necessary to first check every route and possible combination of carriers between the two points involved, and then check the local rates via each carrier, in each route, totaling up charges for every individual route. This would be extremely expensive and time consuming to the shipping public, requiring them to hire and train numerous personnel to check rates and routes. In addition rail carriers would have to hire numerous additional rate clerks to check the rates via all possible routes in order to protect the carriers if shipment were tendered to them unrouted. Carriers are obligated to transport shipments via the lowest rated route which includes their line as origin road. In addition, proposed subparagraph (b)(3) would allow the carriers to require the prepayment of all freight charges, i.e., the collection of freight charges by origin road. In order for origin carrier to collect proper charges, it would again be necessary to have numerous additional rate clerks to check the combination of local rates via route of movement in order to collect lowest published combination rates.

The prepaying of freight charges as a mandatory rule is objectionable. The shipping public should not be required to pay in advance for a service that has not as yet been rendered. The movement of freight on a prepared or a collect basis should be at the option of the shipper involved, as long as destination is not a prepay station.

Proponents of rule as outlined in this section may try to claim that Section 10703 of Title 49 would not be cancelled. This is true. However, the wording as shown under proposed subsection (e)(2) which states that "unless participating carriers agree otherwise, a joint-line rate shall be increased or decreased by the absolute amount of any increase or decrease in the rate of any participating carrier for its portion of the traffic, and the amount of the increase or decrease shall be added to or subtracted from the share of the revenue the carrier establishing the new rate. Any participating carrier may, however, elect to cancel the joint line rate in such event." Any carrier or carriers desiring to cancel out of joint-line through rates would merely have to take exception to increase or reduction published by another party to the route over which the joint-line rate was applicable.

Section 104, in its entirety, should be stricken from this Bill since it is not consistent with the public interest, the National Transportation Policy as currently published, the Rail Transportation Policy as proposed by this Bill, and the best interest of the railroads.

Section 105. Rate bureaus

Paragraph (c) of this section proposes that subsection (a)(3)(A) to Section 10706(a), be amended, opening all meetings to the public, allowing transcripts to be made available to the public and that votes and agreements will be open and recorded, not secret. While we personally would like the privilege of sitting behind our favorite railroad rate officer, whispering our opinions in his ear as he voted on any specific rate, we do not feel that opening Rate Bureau meetings to the public would be wise. Carriers would be reluctant to discuss any rates at a Rate Bureau meeting since the information would be available to the public. Large shippers, may and undoubtedly would, take retailiatory action against individual carriers. We would be back in the early 1880's where industry giants controlled all railroad ratemaking, and the average shipper was at their mercy.

The rail industry is unique in the transportation of merchandise. The majority of all rail traffic involves a haul of at least two carriers, and frequently more. This is not true in the airline business where the majority of travel is on a single carrier. Again truck lines do not move the largest preponderance of their business on a joint line route. Rate Bureaus should, and must, be given full antitrust immunity to set rates.

Railroads, and jointly set joint-line through rates, are mandatory to the nation's economy. Statistics published by the Association of American Railroads show that the nations' railroads hauled 17.9 billion ton-miles of freight during the week ending April 21, 1979, and had hauled approximately 255.4 billion ton-miles of freight for the period January 1, 1979 through April 21, 1979. Although it is claimed there are alternate means of transportation available, i.e., motor carriers, it is not possible to put that much additional tonnage on our nation's highways and streets. There are not enough trucks in existance to physically handle the additional freight. There is a tremendous need for both rail and motor carrier service.

We feel that the use of the words joint-line rates should be explained by adding a new subsection to read "A Joint-Line Rate, for the purpose of this section, is a rate between any two points, when at least one of those points is served by more than one rail carrier, regardless of the fact that one of the carriers involved does serve both points." We feel this needs to be explained in the section since there could be confusion as to the interpretation of a single-line rate and a joint-line rate.

A good example of this would be a freight rate between Dallas, Texas, and St. Louis, Missouri. Dallas is served by eight rail carriers, five of whom would have single line routes available between Dallas and St. Louis. If one were to apply a strict interpretation to this rule as proposed, the only carriers who would be allowed to discuss joint-line rates between Dallas and St. Louis would be the ATSF, the LSA and the SP out of Dallas; the N&W, ICG, Chessie System, Conrail, Southern L&N, BN, and CNW as delivering road haul carriers at St. Louis. The MP, SSW, RI, MKT and SLSF could not be present at the Rate Bureau Meeting since they would have the possibility of single line rates. This would further present complications in that each of these carriers would not be allowed to discuss their rates with each other or with the carriers who were allowed to set joint-line rates. This could result in the publication of five different single line rates and at least one joint-line rate between the points. If any two rates happened to be the same, all parties involved could be subjected to anti-trust action.

Section 106. Antidiscrimination

There are several objectionable points in this section. One is the proposed wording of paragraph (b) to Section 10741, which would have the effect of voiding any complaints for discrimination. Under current laws a carrier can be guilty of discrimination by publishing rates that are higher or lower than rates of other carriers, serving the same town. This new proposal would only allow complaints if one carrier was charging different rates for like and contemporaneous service under similar transportation conditions. Provisions proposed under subparagraph (b)(1) (in order to obtain relief damaged by discrimination, not simply by the rates charged. This would indicate that petitioner must prove a monetary loss or damage. Yet, the only remedy the proposed rule provides is that the carrier pay shipper the difference in rate plus interest, without any regard to actual monetary damages suffered due to such discrimination.

Section (c) which this bill proposes to add, provides that a carrier can be found in violation of discrimination in a joint-line rate only if the carrier is an indispensable party to the route covered by the joint-line rate and has refused to provide service on its portion of the route at a non-discriminatory rate. This would, in effect, state that only origin or destination carriers could be found guilty of discrimination, and only if such carrier did not cancel their participation in the joint-line through rate.

With the proposed changes, the only parties who could file complaints alleging discrimination, or against proposed rate levels, would be shippers at local stations on a railroad, who could qualify under captive shipper provisions.

Paragraph (e) to Section 106 of Senate Bill 796 is totally objectionable in that it proposes to eliminate rail carriers from long and short haul provisions as published in Section 10726 of Title 49. Section 10726 is, in our opinion, a very fair and just section, for both rail carriers and the shipping public. It provides that carrier may not charge more for a shorter distance than a longer distance, over the same line or route, in the same direction, when the shorter distance is included in the greater distance. An exception is made that if a carrier publishes a rate via a circuitous route between two points, to meet competition, relief is granted for that route and carriers are not required to publish the lower rates from intermediate points in the route. For example, the MKT or SLSF routes between Dallas and St. Louis are greater mileage than the MP or SSW routes for the same movement. The exception would allow the carriers with the longer route relief from having to publish the same rates from intermediate points along their route. Since the mileage from Dennison, Texas to St. Louis, Missouri, via MKT direct may be greater than the mileage from Dallas, Texas to St. Louis, Missouri via SSW direct, the MKT would not be required to publish the same rate or lower rate from Dennison to St. Louis, than the rate published from Dallas, Texas to St. Louis, Missouri. If amendment

were made to Section 10726 eliminating railroads from this provision, carriers would be allowed to price certain movements out of existance. If traffic between Ft. Worth, Texas and St. Louis, Missouri were more desirable to the Missouri Pacific Railroad than the traffic between Ft. Worth, Texas and Dallas, Texas, a distance of approximately 30 miles, a higher rate could be charged from Ft. Worth to Dallas, than from Ft. Worth to St. Louis. For the purpose of this example we are ignoring the fact that Ft. Worth to Dallas is an intrastate movement governed by the Texas Railroad Commission rather than the ICC. Any two interstate points could be mentioned.

The point we wish to emphasize is that the shipping public would have no recourse against rail carriers unless they were captive shippers. Their only option would be to motor carriers for the majority of their shipments. Recently published statistics state that railroads use approximately 670 BTU's of energy per ton mile transported versus approximately 2,400 BTU's of energy per ton-mile transported for trucks. Because of the current energy situation, it defies common sense to require a shipper to use a form of transport which is only one-fourth as fuel efficient per ton mile as the rail system. This is definitely against the better judgment of the country in its efforts to conserve fuel and reduce air pollution.

Section 107. Notice and publication

This section would amend Section 10762 of Title, by changing wording in section 1(a) to add provisions that contracts rates merely have to be filed with the interstate Commerce Commission and not published in tariffs available to the general public. Large shippers or industry giants, with increased leverage, could neogotiate contracts with carrier in order to quote delivered prices lower than any competitor, and price all competition out of the market place. This, again, is definitely against everything the free enterprise system stands for. The Interstate Commerce Act and Title 49 of the U.S. Coast would be giving approval to cartels and conglomerates who, when they had priced competition out of the market place, would again raise their prices to an even higher level than those previously in effect.

Amendment proposed by Section 107 in paragraphs (b), (c), and (d) would only give the Commission the authority to prescribe the information to be included in the tariff. They would no longer have the authority to prescibe format. This would cause a lack of uniformity in tariffs. At present certain item numbers are uniform in all rate tariffs. Under the new rules there would not be any requirements from common formats. Shippers and carriers would have to read the entire tariff to find a special rule. A uniform index would not be required. In theory a tariff could be published without an index, and it would be necessary to check several hundred pages looking to see whether or not a rule or restriction was published. 2603 FINK—Gordon 9-10-79 J. 46-578—F. 4789-94—A578A.023

Paragraph (g) to Section 107 of the Bill proposed the addition of a paragraph (c)(4) to Section 10762 of Title 49. This new paragraph would shorten the notice time between publication and effective date of a rail rate. Three years after the effective date of the Rail Transportation (Deregulation) Act of 1979, a rate could be published and become effective on the same day. This would result in "midnight tariff bureaus," large shippers could negotiate and have rates published by the carriers, before the general shipping public was aware of the change. In the lumber industry it is common practice to quote prices for delivery at some future date, as we are sure is common practice in many other industries. With no notice period between publication and effective date of rate, accuracy would be impossible for current or future delivery since there would be no certainty as to current or future rates.

Section 108. Miscellaneous rate provisions, including rates on Government traffic, released value rates, and the commodities clause

Paragraph (e) of Section 108 of S. 796 suggests changes in Section 10730 of Title 49. Under Section 10730 carrier may, with permission of the Interstate Commerce Commission, establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or written agreement, when the value would be reasonable, under the circumstances surrounding the transportation. Proposed amendment eliminates the phrase which reads "when the value would be reasonable under circumstances surrounding transportation." Proposed amendment would allow certain commodities to be singled out, without regard to value, and subjected to two rate levels, one giving full insurance coverage and the other limited coverage. We are not opposed to released value rates per se, merely the change in wording which would allow unscrupulous carriers to take advantage of the shipping public who would have no recourse under discrimination rules as proposed under S. 796.

Section 109. Studies

We fully agree that if some form or rail deregulation is passed, the Secretary of Transportation, or some other responsible party, should conduct studies as to the effect on carriers, the economy, and the shipping public in general. The one item that we find objectionable in this section is that the Secretary of Transportation would be allowed to require any company to reveal any information the Secretary so desired, including trade secrets, processes, etc. It is stated that identifying characteristics shall be deleted to the maximum extent possible; however, there are certain occasions where identifying characteristics could not be deleted to make confidential information unrecognizable to competitors. If the power to require information were used unwisely, there could be serious repercussions. Under this section, the most guarded trade secret in the world, the Coca Cola formula, could be requested and be required to be furnished to the Secretary of Transportation if he claimed it related to his studies. When publishing the information the attempt to disguise the information could merely say a soft drink, rather than a cola; however, the information would be such that competitors would immediately recognize it for what it was. This is an exageration; however, there are trade secrets and confidential information in various industries that is, or could be related to transportation, and this information should not be required by the Secretary of Transportation on a mandatory basis from shippers. It should be on a voluntary basis only.

STRUCTURE

Section 121. Abandonment and discontinuance of service

We are in full agreement that the current rules covering abandonment and discontinuance of service are archaic and should be revised. The only areas we wish to register objection against are those providing for action after the expiration of certain time limits. Under paragraph (b) of this Section, proposal is offered to amend Section 10904 of Title 49, paragraph (c)(2) to contain a sentence reading in part, "*Provided, however,* that if the investigation is not completed with 150 days of the date the application is filed the Commission shall issue a certificate approving the application." A good attorney can draw any proceeding out more than 150 days. We feel that the colon after the word "completed" should be changed to a period. Wording beginning with "*Provided, however,............*", through the end of the paragraph should be eliminated.

Paragraph (c) proposes amendments to Section 10905 of Title 49. Subsection (b) would be amended, again sentence in the proposed amendment contains objectional wording. The last part of the sentence reads "*Provided, however,* if an offer of subsidy or sale is made and the sale or subsidy agreement is not consummated within 100 days after notice is published under subsection (b) of this section, the Commission shall issue a new certificate authorizing the abandonment or discontinuance. If prices and conditions required for the continued operation of the line are met, abandonment should not be allowed merely because a team of attorneys were able to drag the negotiations out more than 100 days. If serious negotiations are being conducted, no specific time limit should be set whereby abandonment was authorized merely because a certain period of time had elasped. Proposed subsection (e)(4), to Section 10905 of Title 49 would contain the objectionable phrase requiring the consummation of sale within 100 days, we feel this should be changed to read "must be consummated within a reasonable period of time and must be subjected to arbitration by the Commission if there is any disagreement in terms of sale. The Commission's decision shall be binding."

Our major concern is that abandonment could be forced by carriers attorneys taking more than the prescribed time in the hearing, exceeding the 150 day time limit or the 100 day time limit as outlined in proposed changes to these sections. Or they could, under matters submitted for arbitration, spend the entire time allotted to the Commission for making their decision, in carriers arguments, not allowing other parties an opportunity to offer testimony. The Commission would be forced to make a premature or improper decision. Abandonments and discontinuances should not become a procedure that drags out over several years; however, it is unfair to impose time limits that provide for the arbitrary or mandatory abandonment if the railroads' attorneys can beat the 150 or 100 day time limits.

OPERATIONS

Section 141. Common carrier obligation

This section proposes certain amendments to Section 11101 which presently requires a carrier to provide service "on reasonable request." Reasonable request would be explained under the new rule as a "request for service not found unlawful

under Section 10701a." The only rates that can be found unlawful under Section 10701a are those affecting the mythical captive shipper.

We feel that the provision stating that the rail carrier cannot be found to have violated this section soley because it provides different frequencies or qualities of service at different prices, etc., is exceedingly unfair and detrimental to the public interest and the National Transportation Policy. The part of the sentence reading "or fails to provide prompt service during periods of peak demand, where such failure is due to prior commitment of equipment," is most objectionable. A time limit should be set requiring carriers to furnish equipment to any shipper who so requests it during peak demand periods, or at any time for that matter. A carrier should not be able to commit all of its available equipment to a shipper or group of shippers who have signed a specific contract with the carrier; equipment should be furnished to any shipper needing it.

We feel current provisions are not strong enough, and a specific time limit, for example 10 or 14 days, should be established during which the carrier must furnish some of the equipment ordered, if equipment is furnished to any shipper whatsoever. In addition, once again, the only parties who would appear to have any right to complain would be the mythical captive shipper.

IN SUMMATION

We do wish to emphasize that we are not against free enterprise, or carriers making a reasonable return on their investment. As businessmen we definitely feel no one should be forced to maintain a service or product that is non-profitable; however, by the same token we do not feel that the laws should be rewitten in such a manner that the carriers could charge extortionate rates, or set conditions that would be detrimental to the shipping public, the national economy, and the carriers themselves in the long run. Legislation should be fair to all parties concerned and should be consistent with the public interest, and the National Transportation Policy.

Statement of John I. Finsness, Transportation Counsel, North Dakota State Wheat Commission

Kicked out in the 1890's by regulation, the Old Iron Horse is again huffing and puffing to stand foursquare in the grainery. The farmer of old had to feed his horses and feed them well, but he wasn't also expected to feed the horses of the delivery man in the big towns.

But this is exactly what is intended in Senate Bill 796, Railroad Deregulation Act of 1979, because it proposes to cure the ills of the industry by a massive cross-subsidization from already profitable traffic to make up for unprofitability on three-fourths of the traffic now carried.

Farmers should consider a few facts when evaluating this legislation.

No one argues with the fact that the railroads must cover their costs if they want to continue to operate. Thus, in order to understand rail problems it is necessary to have a basic understanding of rail costs. Variable costs are those costs incurred in hauling the traffic as distinguished from constant or fixed costs incurred whether the traffic is hauled or not.

Three-fourths of the railroad traffic today produces revenues of about 130 percent of variable costs whereas to cover full cost plus a 10 percent profit the traffic would have to produce revenue at 143 percent variable costs. The railroads claim that a ratio of 165 is necessary on all traffic to attain a profit of 12.5 percent.

No one has to take my word for it. A railroad witness, Richard J. Barber in Ex Parte 357 where the railroads sought a 10 percent increase on grain and only 8 percent on most other commodities, said it very well: "The key point is that not all traffic can sustain the increases which are necessary * * * if the carriers are to achieve a fair return on their investment commensurate with the current cost of capital they require substantial additional revenue. This increment in revenue must come from traffic which can sustain the requisite freight levels." (Ex Parte 357, Richard Barber's Verified Statement No. 8 at 28).

This witness goes on to state that in 1975 about three-fourths of total rail tonnage moved at rates yielding revenue below 160 percent of variable cost and that if this traffic were assumed to have an average ratio of 130, the other twenty-five percent would have to produce an average ratio of 250 so as to provide adequate revenue equal to 160 percent of total embedded variable costs.

The railroads now earn 392 million dollars per year for hauling wheat intra-district single line within the west at a variable cost of 212 million dollars or a revenue/variable cost ratio of 184, a very profitable business. To achieve a 250 ratio

would cost farmers another 109 million dollars. In this connection the North Dakota wheat farmer now pays revenues equal to a ratio of 212 on a weighted average to Minneapolis with some ratios as high as 276. (The I.C.C. has found ratios of 172 on coal to be clearly unreasonably high).

Senate Bill 796 provides for an unquestioned increase of 7 percent per year in constant 1980 dollars during a five-year interim period before complete deregulation is achieved. Assuming a 7 percent inflation factor this could amount to 70 percent increase in five years. This would translate into an additional 274 million dollars in addition to the 392 million now paid by wheat producers for wheat movements by rail within the west on single line hauls.

But there is more! During the five-year interim period the railroads can raise their rates even above the 7 percent no-questions-asked-automatic-increase. Increases above 7 percent may be the subject of an investigation by the Interstate Commerce Commission, however, in order to get such increases investigated the shipper must surmount almost impossible burdens of proof, one of these burdens being proof that no alternative means of transport exists. In this connection, a truck rate of 125 percent of the proposed rail rate will constitute available alternative transport.

If the burden of proof is met, the I.C.C. may then set a rate but a level no lower than twice the level of a rate which will provide full cost recoupment plus a profit on the over-all operation of the railroad. This indicates a rate producing revenue/variable cost ratio of 286 by the Commission's standard and 330 on the railroad's standard. If the current wheat rates were set at this level, this would almost double the farmers' current freight bill on wheat movements within the West.

Finally, after the five-year interim period, the Administration's bill allows the railroads complete freedom to raise their rates to any level they wish.

TRUCK COMPETITION

Unless a farmer has a navigable, nine foot river channel running through his back forty the only alternative to exorbitant rail rates will be truck transportation. Unfortunately, for anything but short hauls, trucks are the high cost mode of transportation having implications of high energy use, highway congestion and wear and limited capacity in terms of the grain crop. If rail rates are high enough the trucks will emerge from the trees, but along with unlimited ability to raise rates, the railroads will also have unlimited authority to reduce rates thus running the trucks off the highways. This has been done even under regulation, and a few of these maneuvers will drive even the most gung-ho truck jockey to despair, at least until a new unburnt generation arrives on the scene. While no affair of the farmer unless he wants a piece of the action, these very real possibilities should be noted by those participating in the financing of over-the-road equipment.

RATE PUBLICATION

The bill provides that after a three-year period the railroads be allowed to reduce rates without notice and to increase rates on one day's notice. Aside from the implications of this type of notice on the orderly marketing of grain, whoever has advance notice of changes will have a decided advantage in the market place. It may be possible for the farmer to install a computer terminal in the tractor, but the "perfect knowledge between buyers and sellers", so dear to the hearts of economists, will be somewhat less than perfect on the part of the farmer as seller.

THROUGH ROUTES BUT NOT THROUGH RATES

This country is unique in that it does not have a national system of railroads but a number of fiercely competitive individual enterprises bent on the maximization of individual profits. The power of the I.C.C. to require through routes and through rates is the only power that provides some semblance of a national system. Removal of this authority from the I.C.C. will only Balkanize the country as each railroad strives to enhance and protect its own industrial base.

The Department of Transportation's comments on this section of the bill exhibit a bias toward the northeastern part of the country when the comment is made that it has suffered by reason of divisions of through revenues as set by the I.C.C. As an example, if the bill is adopted as law, Conrail could deny access to and from the Northeast except on extortionate divisions of through rates or equally extortionate combinations of local rates. Transcontinental mergers would become a necessity, shippers on regional railroads would be disadvantaged and New York City could become a town provincial to the Northeast, and at the sufferance of Conrail.

Shippers and railroads both now have difficulty ascertaining freight rates with accuracy. Publication of combination rates will compound the problem.

THE LONG AND SHORT HAUL CLAUSE

The bill proposes removing Section 4 from the Act to Regulate Commerce. This provision prohibits, except under permission of the I.C.C., the charging of higher rates for shorter hauls than for longer hauls over the same line or route.

North Dakota has had a rather unique experience with Section 4. With relief granted by the Commission, western North Dakota, for 10 years, shipped wheat westbound to Portland at rates higher than rates for longer hauls from the eastern part of the state. This "inverse rate adjustment" was constructed by applying eastbound rates to Minneapolis plus a constant barge cost to New Orleans and applying the result westbound. This structure deprived the western farmer of the benefits of his geographical location when shipping west (his rates were the eastbound rates described above where he had a locational disadvantage) and deprived him of the benefits of a second market. Portland had only to bid against Minneapolis plus the barge cost to New Orleans.

The inverse rate structure was ended in 1975 and a flat rate covering the whole state was instituted. At least now, with a flat rate, Portland has to bid against the locational advantage of Minneapolis with a resulting benefit to the western North Dakota shipper.

The intriguing point to understand about North Dakota's former inverse rate structure is that there was no transportation cost reason for charging the closer shipper higher rates. Thus, it must be remembered that railroads make rates for reasons and under economic pressures having nothing to do with transportation cost characteristics. With this in mind, under deregulation it is easy to imagine a very large shipper telling a railroad that in return for arranging rates in such and such a manner westbound it will receive the shipper's traffic eastbound. Anyone who disputes this had better read the Congressional Cullum Report of the 1880's.

RATE BUREAUS

No matter that the subject has been debated ad nauseam and that large shippers and prestigious associations of shippers assert the necessity of rate bureaus, DOT and the Department of Justice seek to curb rail exemptions from the anti-trust laws. The very first case brought under the Sherman Act involved railroad rate conference activity.

The controversy continues. Action on freight rates would be simpler if we had a national railroad system, but we don't, and chaos will result especially if provisions of the bill prohibiting general increase agreements are adopted. It will only result in price leadership in any case with monumental uncertainty on the part of the shipping public as to applicable prices.

ABANDONMENT

The Administration seeks to make it easier to abandon branch lines defining adequate subsidy as including the avoidable costs of the line plus a reasonable return on capital attributable to the line.

This kind of a test should perhaps also be placed on that investment in track, yards and equipment devoted to the three-fourths of railroad traffic which does not now recompense the railroads for full costs, let alone a profit. This business of granting loss leaders on the theory that at least some contribution to constant cost results, falls on its face—as it obviously has—when in view of staggering investment in fixed facilities loss leaders extend to three-fourths of the traffic. The plant cannot be said to be underutilized when an integral part (rolling stock) is insufficient to meet the demand.

Canada has both a policy as to certain lines which should be abandoned and a policy to declare certain lines permanent for a period of time, the latter to encourage investment in grain handling facilities, etc. Perhaps this country can learn something from the Canadian abandonment process.

CAR SERVICE

The Administration proposes to eliminate the I.C.C. power to suspend car service rules in emergencies, to promote service in the interest of the public.

The Commission is criticized for ordering reductions of cars in unit train service in order to provide some cars to small shippers because the unit train is more efficient than single car service. How grain could be assembled for unit train service without single car service into an assembly point is not explained, but the central point in the legislation is the elimination of any concern for the "interest of the public", i.e. the small shipper. Indeed the entire legislation is geared to the needs of the railroads and the economic power of large concerns.

Any knowledgeable traffic manager is aware of the futility of industry policed car service rules. A case in point—a large auto manufacturer gives his Seattle business in railroad owned cars to railroad X telling X to return them empty even though X could haul return loads of autos from Seattle. Railroad X knows that if it refuses, railroad Y will be glad to do it. If anyone thinks that this sort of thing in hundreds of variations is not pervasive in the transportation industry, he is naive in the extreme and should take time out to read the Cullum Report of the 1880's.

With a perennial car shortage and under voluntary industry policing, western shippers will see cars owned by their railroads shuttling back and forth on the east coast with western ownership on line of 50 percent and eastern ownership on line at 150 percent, a not unusual occurrence in the past. They will see this happen provided they can obtain access to figures which the industry now refuses to disclose.

CONCLUSION

The Administration does not know or else ignores the economic power of large industry in securing rate and service advantages not accorded the general run of shippers and proposes to abandon the common carriage or public purpose concept as developed in the common law decades ago.

A plaintive but illuminating cry was heard at about the time of the Penn Central debacle, as reported by "Traffic World" when a Penn Central official pleaded that if the I.C.C. would only aid it in increasing its low rates the situation of the railroad would be vastly improved.

An immediate reaction would be, "Why don't they raise their own rates?" The answer is not that they are stupid but that intramodal competition will not allow them to. This happens under regulation—pervasively as demonstrated by the fact that three-fourths of the traffic moves at below full cost rates.

The legislation sets a floor below which the I.C.C. cannot go when prescribing rates in the five-year transition period, that floor being a rate necessary to cover costs and provide an adequate return on capital when considered in the context of other revenues. There is no apparent attempt to set a floor on railroad made rates as distinguished from I.C.C. made rates, thus sanctioning railroad rates which do not cover costs plus an adequate return on capital.

It may be easy to identify potentially abandonable branch lines, but consideration should be given to the vast amount of investment in tracks, yards, switches, rolling stock, etc. now devoted to handling traffic at a loss. If the plant needs to be pared, shrink it where the loss is!

The farmer should now begin to grasp the proportions of this attempt to cure the ills of the railroad industry by massive infusions of revenues from captive traffic, especially when his freight bill now runs from 14 percent to 25 percent of his cost of production.

Contrary to the usual situation where transportation costs are passed on to the suffering consumer, the buck stops at the farmer's door and he must absorb these increased costs.

The prognosis for the farmer already burdened by unreasonably high freight rates and inadequate service, if this legislation becomes law, is more of the same only much, much worse.

STATEMENT OF THE AMERICAN WATERWAYS OPERATORS, INC.

The American Wateways Operators, Inc. is the national trade association of the inland and coastal barge and towing industry. The membership includes over 225 barge and towing companies and over 50 shipyards and ship repair facilities which support the inland and coastal fleets. The Association, founded in 1944, is headquartered in Arlington, Virginia and maintains field offices in New Orleans, New York and St. Louis.

AWO appreciates the opportunity to present its views on S. 796, the Railroad Deregulation Act of 1979, now pending before the Committee on Commerce, Science and Transportation's Subcommittee on Surface Transportation.

First, The American Waterways Operators would like to associate itself fully with the joint statement presented to the Subcommittee on May 22, 1979 by John A. Creedy, President, and Robert A. Kyle, Chairman, The Water Transport Association, New York City.

Secondly, we would like to highlight two of our objections to S. 796 with some observations:

(1) The failure of S. 796 to return the railroads "to the natural regulation of competition". Though promised as a goal of S. 796 by the Secretary of Transportation, Brock Adams, when he unveiled the Administration's proposal, it is our

Association's opinion that S. 796 does not accomplish its "goal" in fact. Indeed, in our opinion, safeguards against now prohibited anti-competitve practices would be virtually swept away. Indeed, the standing of other transportation modes to complain and seek redress from such practices is specifically taken away by the language of section 106 of the bill. The non-rail competitor is limited to proving a railroad's actual "intent" to eliminate the water carrier from business, which may be a very difficult case to prove prior to actual bankruptcy.

(2) Nowhere in the bill is intermodal cooperation encouraged. Indeed, the opposite, existing safeguards assuring shipper access to the alternative of water-rail service, are severely weakened. Nowhere do we find that there has been taken into account by the drafters of the Administration's proposal shipper cost savings and fuel efficiency savings which could be realized by the use of alternative rail-water transportation of goods. It is a wellknown fact that water transportation consumes less energy per ton-mile than other surface modes of transportation. Indeed, one ton can be shipped over 400 miles by water and only about 200 miles by rail for the same gallon of diesel fuel. Rail-water cooperation would extend the benefits of water transportation savings to a wider swath of America than now can so benefit.

An example of such cooperation was brought to the attention of the Senate by the Honorable John Culver in the Congressional Record of November 9, 1978 at page S 19667. The Senator noted the savings in costs for Iowa farmers in joint rail-barge tariffs for the movement of export corn and soybeans to New Orleans. Also noted was the more efficient use of rail cars allowing three more trips from gathering point to river in the same time an all-rail movement to New Orleans and return would take. The assistance in assuaging the traditional harvest time rail car shortage also was emphasized.

In conclusion, The American Waterways Operators, Inc. understands the need for providing for flexibility in railroad pricing, but urges that this should not become a screen for flagrant anti-competitive abuses such as the "sharpshooting" and "price squeeze" tactics. The bill should contain specific prohibitions against these practices and should outlaw railroad pricing which frustrates railwater coordination.

As noted by Mr. Creedy, traditional antitrust legislation has not been aimed at the transportation industry. His observation that by virtue of geographic structure, railroads "would be an illegal monopoly on its face", leads one to concur in Mr. Creedy's suggestion that it is more simple and proper to "conform the ICC machinery to the principles and concepts of antitrust" rather than amend the antitrust laws themselves.

Statment of A. Morris Downey, Jr., National Association of Brick Distributors

My name is A. Morris Downey, Jr. My address is 218 West Adams Street, Jacksonville, FL 32202. I am senior partner in the firm of Downey and Company, Transportation Consultants.

I am employed by the National Association of Brick Distributors (NABD), with headquarters at 1750 Old Meadow Road, McLean, VA, 22102. Walter E. Galanty, Jr., Executive Director of NABD, and I have collaborated in the assemblage of the views of our membership and the preparation of this statement.

NABD is comprised of over 200 members located at various strategic points throughout the United States and most are engaged in the acquisition and distribution of face and/or building brick in their localized areas. A great percentage of the transportation is by rail, and the distributors usually pay the freight charges. We thus have a vital stake in these proceedings.

From the outset, it must be recognized that since our industry is so reliant on rail transportation, we favor a strong and viable railroad industry. We are not so naive as to believe that they can exist and prosper in the future under current regulations, but after conceding the need for a change, we must quickly assert also that the Administration's proposal, as enunciated, is not totally acceptable to our industry.

Of course, the proposed rate-making provisions (Sec. 102) are of greatest concern. By the terms of the proposed statute, the I.C.C. would be stripped of most of its powers to set rates except those outside either a minimum or maximum level for the next five years and then practically none at all; withdraw their suspension powers; and require captive shippers to petition for relief and offer proof before the initiation of an investigation that they have been competitively damaged and that they are likely to prevail on the merits.

In the latter, the Commission must find that the purchaser of transportation has no reasonable alternative, including private or other purchased transportation.

We are informed that this requirement is patterned after one in effect in Canada, and that after several years, no shipper there has yet met the "captive shipper" test. It would appear an impossibility to prevail under the circumstances.

Of the two major rail systems in Canada, one is nationalized. I hope we may avoid that here.

During a 5-year period, the carriers may increase rates (without fear of suspension) by 7 percent and that may obtain cost-inflation related general rate increases over a 2-year period. After expiration of the 5-year period, the freight paying public would have no forum for relief and there would be none but market restraints on the rate-making capabilities of the carriers.

The brick distributors in this country are doing their best to try to hold prices down. They are trying to keep a vital part of the building industry competitive with other products, but in many cases these transportation costs increase the price of the product up to 40 percent.

Powerful (by virtue of massive tonnages) shippers could negotiate rate contracts not available to others and thus inflict fatal damages on less-favored shippers. Small businesses would suffer and perhaps fail to survive. These contract rates are being encouraged by the railroads and the I.C.C., but out in the field they are not being offered to us as small receivers.

Elimination of the rail-sponsored rate bureaus for collective rate making is seriously objectionable, as many of our members have reported to their legislative delegations. These are forums which afford shippers free intercourse with the carriers and provide a necessary medium for the development and publication of rates and rules.

New trackage may be constructed at random by new entries in the rail transportation field, while the new law would permit wholesale abandonment of tracks without appropriate restraints. Deregulation in the air-freight transport field has resulted in the unforeseen dimunition of service to communities and whole areas, as well as drastic increases in transportation charges. Stern steps must be taken to see that this does not happen under rail deregulation.

It is predicted that under motor carrier deregulation, the some 16,000 regulated truckers will be joined by a great many others not now certificated, causing extreme competition for the existing traffic (deregulation will certainly induce no new flow of goods, but rather, the economy and movement of materials will continue to slow) and uniquely, a reduction in rates under the stress of the extreme competition. This, in turn, will serve to divert substantial segments of traffic to truck which are now moving by rail. The railroads, with their established and continually increasing revenue needs, will be unable to meet such competitive pricing demands, but will be forced to continue to apply their existing or increased rates to a diminishing base of the marketable goods.

The railroads and the I.C.C. have admitted to us publicly that shipments of brick are on the low end of their profit scale. We are very concerned that what this means is that the price of transporting brick will rise dramatically in relation to other products. Brick needs to be kept in the marketplace for everyone. It should not be a building material only the rich can afford, but if transporting prices continue to rise it very well may end up that way.

The "notice" provisions of proposed Sec. 107 are objectionable. Permission to reduce rates without prior notice and to increase them on one day's notice can cause chaos in today's marketing concepts.

It is alleged that "some of the railroads' most important competitors—motor carriers carrying raw agricultural products such as grain and water carriers carrying bulk commodities including grain and coal—do not have to give notice or publish rates." True. But, there is an awesome amount of commerce not so delegated, including our brick. In addition, most of our nation's commerce is not subject to the price fluctuation of perishable commodities.

Today's business does not function on a day-to-day basis and thus cannot be responsive to the application of rail freight rates susceptible to change daily. The ability to contract for rates in advance will prove of little benefit to any but the giant shippers with unlimited tonnages to transport.

The justification statement alleges that "it is not necessary for the Commission to continue to require joint-line rates", but that it is desirable to require joint-line routes.

The determination of any rate, whether single or joint-line, is difficult now. Can you imagine the agonizing difficulty many transportation users will have in attempting to determine the amount of freight charges if each segment of the movement must be computed separately? Will each participant render separate billing? What rates will apply when there are two or more available junctions?

Our nation's railroads must be preserved. Their ability to convert fuel usage into maximum transportation haulage is an extremely important factor in today's energy crisis.

While reform is necessary, deregulation to the extent and in the manner attempted in the Railroad Deregulation Act of 1979 is not the answer, in our opinion.

Our industry is one of the cornerstones on which this country was actually built. Brick is one of the oldest structures in this country and one of the newest. It serves as both a beautifying element and an energy saver. Its appearance and low maintenance make it a natural building material. We don't want any special treatment but just a fair chance to sell our product in the open market. Complete deregulation as proposed, would bring substantial harm to the brick industry, and many of our members would have to close their doors. Some sort of railroad reregulation, we feel, is the key.

We hope you will consider our opinion and act according to your best judgment. Thank you for your time.

Statement of Frank E. Polom, Executive Director of Transportation, Board of Trade, City of Chicago

My name is Frank E. Polom, Executive Director of Transportation of the Board of Trade of the City of Chicago, 141 West Jackson Boulevard, Chicago, Illinois, 60604. I am a full-time employee of the Board of Trade and I am a registered I.C.C. practitioner.

I have been employed in the Transportation Department of the Board of Trade since January of 1959 and my duties are and have been primarily in the field of grain freight rate analysis and research, and in preparing exhibits and testimony for proceedings before the Interstate Commerce Commission and various ratemaking organizations of the rail carriers, including such matters pertinent to the movement of grain and grain products. Prior to my association with the Board of Trade, I was employed with a major midwestern flour and feed mill; a midwestern railroad; and the Federal Government. My experience in transportation and transportation related matters spans 32 years.

I. Interest of the Board of Trade

The Board of Trade of the City of Chicago (CBT) is a corporation created by an act of the Illinois Legislature, with its principal place of business in the City of Chicago, Illinois. It now maintains, and has maintained for more than 130 years, a commodity exchange where its members meet daily for the purpose of buying and selling grain and grain products and non-agricultural commodities. Among its members are terminal and sub-terminal storage operators, grain merchandisers, cash grain merchants, processors, millers, exporters, farmers, small, medium and large, who operate and maintain facilities, including operations, within the switching limits of Chicago and elsewhere and who ship and receive grain and grain products in interstate and foreign commerce. Members make use of rail, motor carrier, and water transportation and freight rates and charges, including transportation services, play a most important role in the marketing of these commodities.

II. Introduction

Senate Bill 796 is an outgrowth of a preliminary report developed by the Department of Transportation and circulated among the shipping public under the title "A Prospectus for Change in the Freight Railroad Industry". Although hearings were held in various locations throughout the country to receive the comments of users of rail transportation, the bill in its final form as presented to Congress contains nothing in the way of safeguards for the shipping public, particularly the grain industry. The Chicago Board of Trade (CBT) was represented at such a public hearing in Chicago and expressed deep concern that no mention was made of the need of the present and future users of rail transportation. The bill dwells entirely on the erroneous assumption that complete deregulation of the railroad industry as outlined in its various sections it the only answer to the railroads' problems. The main thrust of this legislation is centered in the removal of the Interstate Commerce Commission's power over railroad rates and practices, allowing the rail carriers complete freedom to increase rates without fear of suspension. Nothing in the bill sets a mandate for the railroads to provide adequate transportation service consistent with increased productivity and better car utilization, two important factors in returning to the industry a reasonable profit.

It is CBT's that S. 796 as written would not only do harm to the rail industry but would have a serious adverse effect on users of rail transportation upon whom the railroads depend for their very existence.

CBT supports retention of the Interstate Commerce Commission as a totally separate administrative agency subject only to the Congress. Our support extends to the retention by the Commission of its adjudicatory and rule making powers and functions presently entrusted to it. Rather than abolish regulation as proposed in S. 796, CBT takes the position that a more reliable course of action would be an improvement and better enforcement of existing regulatory laws is needed to strengthen the railroad industry. We believe this would benefit the grain industry which is dependent upon a stable rate structure and upon dependable rail services. The orderly marketing of grains and products thereof still requires a rail rate system which preserves a reasonable balance between the area where the grain is produced and the areas where it is consumed.

In general, CBT believes the grain trade needs reliable and dependable rail service consistent with reasonable rates and charges for such services without unjust discrimination and undue preference or advantage. The grain trade needs a competitive climate in which it can select the transportation modes and carriers to reach the various markets. For such transportation service, CBT believes the grain trade has a right to pay reasonable freight rates and charges produced by honest economical and efficient rail management.

III. RATEMAKING

CBT's primary objection to S. 796 is directed to the proposed complete elimination of ICC authority over railroad rate making. Of considerable concern is the uncertainty that is found in section 102. This provides the railroads with almost total freedom to fix rates in part by creating a zone of reasonableness. It limits the ICC's rate power to rates falling outside that zone. The captive shipper test is extremely rigid and should the measure become law, it will be very difficult for a shipper to prove he has no reasonable alternative to rail services.

Another provision of deep concern is the elimination of virtually all of the ICC's present power to investigate or suspend rail rates. The bill gives the railroads the freedom to raise or lower rates by 7% a year immune from investigation or suspension. It establishes a two year period (ending December 31, 1981) during which general rate increases will be permitted providing they cover only cost inflation. At the end of the five year period, railroads would be removed from the general rate making provisions of the IC Act and ICC's authority over rail rates would be limited to captive shipper investigations.

The administration insists that the railroads must have and need the freedom to set rates determined by competitive economic market forces and that I.C.C. regulation is at fault for their present financial condition. It should be pointed out that at least one railroad has revealed that its prices are set by the competitive economic market place and not by railroad costs. In a sworn statement (V.S. No. 23, pp. 5, 6, 7), I.C.C. Docket No. Ex Parte 357, Increased Rates and Charges—Nationwide, 8 Per Cent (1978),[1] witness Edward G. Kreyling, Jr., Vice President—Marketing, Southern Railway stated:

"First, and this is very basic and very important for the Commission to understand, *railroad prices, like most other prices, are not set by railroad costs. They are set by a competitive economic marketplace* and in some case by Commission regulation, i.e., prescribed rates. (Emphasis supplied.)

"The railroads are not like public utilities such as those which produce electric power. We do not have service areas carved out for our exclusive use. We are faced with competition for virtually all of our services.

"On Southern our staff of rate officers have the responsibility for determining the market price for rail transportation of commodities assigned to each of them. They examine prices of other rail carriers, prices of other modes of transportation, costs of private transportation, possibilities of swapping production, Commission orders, and all other economic factors which determine the market price. They have no cost information, because such information is not relevant to the determination of market price.

"After the price which will enable us to handle the business has been determined we must then decide whether to actually offer the service at that price. This decision requires proper evaluation of our costs. For this reason the information as to price, equipment, weight, distance, etc., is passed to our Cost Department, which then determines whether or not we are likely to be able to produce the service at a

[1] Chicago Board of Trade was an active participant in these proceedings.

cost to us which is less than the market price. If we cannot, we must either find a way to reduce the cost or decline participation by not offering the service. If we expect our costs to be less than the market price, we offer the service at the market price. The level of our contribution to overhead and profit is not disclosed to the rate officer.

"Frequently, the market price is not substantially above our variable costs, certainly not enough to cover a fair share of the fixed costs. However, if the traffic can make a significant contribution to the overhead and profit of the firm, we will pursue such traffic. Without it, an additional burden would have to be borne by other customers or the stockholders. Other customers are benefited, not hurt, by our participation in such traffic. But we could not exist if all of our traffic were of such a nature. Fortunately, some traffic does carry signficantly more than an average share of the costs."

It is reasonable to assume that other railroads also price their services in similar fashion. Under present law, the railroads have the freedom to, and do, price their services to meet the competition of motor carriers, water carriers and other rail carriers. No shipper protests a rate reduction and certainly the railroads are not famous for protesting each other's rate adjustments. These competitive rate adjustments are often made on short notices to the public. Futhermore, it is safe to say that the greatest majority of the railroads' rates are published without protest and become effective without involvement by the I.C.C.

CBT believes that the Department of Transportation made no effort to study the impact of rail rate and service deregulation upon the grain trade, or any other industry. Its ultimate goal was directed to the financial well-being of the railroads without due consideration to the users.

It has long been recognized that it is contrary to the public interest for each railroad to price its services solely with regard to its own interest. Grain shippers have an obvious and vital economic interest in the cost of rail transportation. Rail transportation is one of the more important governing factors which determines the location of any grain facility and the rail rate structure has for over a century exerted great influence as to the location of these facilities. It is safe to say that the cost and quality of available transportation is critical to the competitive position of the grain trade.

Rate levels, rate relationships and rate stability are still of vital importance to the grain trade shippers. Transportation cost is an important element in grain marketing. Farmers and country elevators whose market price for grain is a delivered price FOB the market must absorb rate increases and rate differentials as part of their cost of doing business. Grain trade interests all have located their businesses by reference to rates made within the regulatory framework that has required rates to be reasonable and fairly related. We believe that DOT did not consider harm to shippers in its proposal to abolish regulation and little, if any, data exists on this important issue. Regulatory legislation was enacted to create and preserve an equitable balance between railroads and shippers and that balance has guided the evolution of the existing grain rate structure within which grain interests have grown and prospered and upon which a great many of its major investments and competitive relationships are based. Harm to the small shipper results in an unregulated rail rate climate. This was one of the factors responsible for the IC Act. Under our present regulatory scheme, rail rates are being designed to the relative cost and service advantage of the large shippers who can exercise options such as shipping in multiple car lots, unit trains, leasing fleets of private rail cars, coupled with river barges and private trucks. The small shipper is hard pressed to compete in today's climate with the concentrated power in major industries which are able to legitimately outbid him.

CBT is of the opinion that competition alone among the railroads for the same traffic, or competition by other modes, is not adequate to assure shippers of a reasonable stable and non-prejudicial rate structure. Excluding the larger terminals, the greatest percentage of grain facilities are generally located on one railroad. In the case of the larger terminals, reciprocity of switching arrangements among the carriers serving those terminals enable these facilities to utilize more than one carrier. Under deregulation, these reciprocal switching arrangements will end. Where the railroads do encounter effective competition, they are free to reduce their rates down to the actual cost of handling the traffic. The margin above that cost is an indication of the extent of the monopoly power that they enjoy.

IV. RATE BUREAUS

Section 105 removes the I.C.C.'s authority to grant antitrust immunity to rate bureau agreements after two years.

The purpose of the rate bureaus is to facilitate rate changes. Since tariff changes are sought by shippers and by carriers, proposals for such changes are submitted to the bureau either by the carriers on behalf of shippers, by shippers, or by carriers submitting their own proposal. Once a proposal is docketed in the appropriate railroad rate bureau and publicized, any interested party may object to the proposed tariff change by protest within the bureau and state its reasons. Protests often alert parties at the outset to problems and permit corrections of the effective proposals and withdrawal of clearly improper ones.

The CBT is on record in support of collective ratemaking and the rate bureau agreement under Section 10706 (formerly Section 5b) of the Interstate Commerce Act.[2] As a party to the original case, the CBT supports anti-trust immunity in making rail rates.[3] The grain rate structure is such that the railroads would be severely handicapped without collective ratemaking and immunity from anti-trust prosecution and the grain industry would be forced into higher rail rates. The production of grain is spread over a broad area of this country and the movement to consuming areas requires two or more railroads. Without anti-trust immunity, two or more railroads could not set the price for transportation without prosecution by the Department of Justice. Without Section 10706 of the Act, the grain trade would be required to approach each individual railroad in the route of movement for a rate over its portion of the route.

This would be a cumbersome procedure and it would be very difficult, if not impossible, to establish common carrier liability in such a climate. The rate bureau procedure gives great latitude to individual railroads to adjust their rates in their own interest. The free exchange of information in the public and closed meeting insures that each railroad has access to all information it needs to determine what its interests really are. The CBT supports the secrecy of the closed traffic committee meetings and further believes the rate bureau serves as a useful forum recognized by Congress.[4] In the area of rate bureaus, the railroads and users of rail transportation are at complete odds with the administration's bill.

V. MERGERS

The administration's bill would subject mergers to the anti-trust laws and the I.C.C. would lose its jurisdiction. Rail mergers involve widespread area of varied shipper/receiver interests, requiring expertise in transportation for complete evaluation of the effects of such mergers. CBT believes the I.C.C. with its experience with affected railroads and the shippers they serve is better equipped to handle mergers rather than the Department of Justice which lacks the required expertise in this area. Also, the provisions of the 4R Act relating to shortened merger procedure (Section 11343, IC Act) should be tested under I.C.C. jurisdiction before any change in jurisdiction is even considered.

ABANDONMENTS

Current law governing abandonments places upon the Commission the obligation to weigh the burden of the continued operation of the line on the railroad against the burden of loss of the line upon local interests. S. 796 establishes a three year transition period after enactment and then the railroads would have the freedom to abandon a line without Commission approval upon eight months' notice to the public.

CBT believes that each abandonment is a special case and should be decided upon its own merits. Furthermore, the current law should not be tampered with until such time as the "Rural Transportation Advisory Task Force" releases its findings and recommendations with respect to the transportation needs of the agricultural community. Created by an act of Congress and signed into law (P.L. 95-580) by the President, this task force, composed of respresentatives of government, agriculture and transportation, is mandated to hold public hearings and formulate a proposed national agricultural transportation policy. The two major reasons for creation of this task force are: (1) Agricultural transportation is being threatened by the proposed abandonment by the railroad companies of thousands of miles of important railroad lines in the United States; (2) The Secretary of Transportation has "a responsibility to assume a more active role in representing the interests of agriculture and rural development in the United States in order to insure the availability of an adequate, efficient, and economical transportation system."

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[2] Section 5b Application No. 2 Western Railroads—Agreement; Section 5b Application No. 3 Eastern Railroads—Agreement; Section 5b Application No. 6 Southern Railroads—Agreement.

[3] Interstate and Intrastate.

[4] See S. Rep. No. 94-499, 84th Congress, 1st session, pp. 14, 15 (1975).

CBT submits that S. 796 is directly at odds with the Congressional mandate of the task force act and DOT in proposing this legislation has taken an active role contrary to agricultural interests and rural development.

CONCLUSION

The problems of the rail industry have been building up over a long period. Today only a part of the industry is in a precarious financial position. S. 796 is not the cure-all as the administration would have the public believe. The bill does not have the support of the rail industry collectively, and is silently opposed by individual rail lines. The grain trade cannot support it as its effects, if passed into law, would be disastrous.

[From Traffic Management, Vol. 18, No. 3, March 1979]

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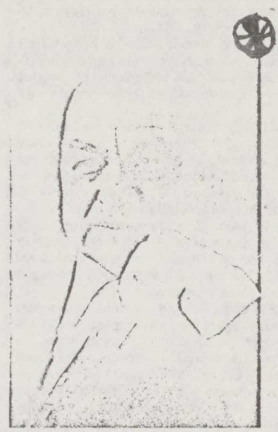

STEPHEN TINGHITELLA,
Editorial Director

The Interstate Commerce Act — let's not scrap it

Behind all the announcements emanating from Washington, D.C. about option papers for transport reform, legislation to outlaw collective ratemaking, changes for open entry or exit, route flexibility and rate decontrol, lies the ultimate goal of deregulators—repeal of the Interstate Commerce Act. They seem to be planning a legislative strategy which would attack vital segments of transport regulation. Businessmen who are either in their camp or sit on the sidelines won't know what hit them if deregulation wins out. But they'll surely realize what they've lost when shipping problems mount.

Briefly, here's what the Interstate Commerce Act now provides:

- Transportation must be furnished by common carriers upon request.
- Rates, charges and tariff rules must be just and reasonable, and may be suspended or cancelled by the Interstate Commerce Commission if they are not.
- All tariff rates, rules and classifications must be observed and no one may deviate.
- Carriers may not unjustly discriminate between shippers, nor practice preferences or prejudice on rates or service.
- All transport operations, extensions of service, or abandonments must be approved by the ICC, except those specifically exempt.
- Complaints may be brought to the ICC's attention by any interested party, and investigations made if reasonable grounds are presented.
- Ratemaking principles are well established, and act as a guide.

In enforcing the IC Act, the commission:

- certifies that carriers have the necessary fitness and ability to serve the public.
- provides assurance that a carrier is generally responsible for loss or damage claims and has adequate insurance.
- prevents carriers from picking and choosing customers based on desirability of freight.
- settles disputes between shippers and carriers.
- prevents price gouging in transportation.
- protects consumers from carriers' violation of ICC rules, and from malpractices when they move their household goods.
- guards against monopoly pricing and destructive competition.
- sees to it that carriers serve small towns and communities listed on their certificates.

Since the Act to Regulate Commerce was enacted in 1887, it has been amended well over 200 times, and codified last year into Title 49, U.S.C. Traffic managers trained in freight transport understand the evolution of that document and are familiar with its provisions. If repeal of the Act comes to pass, they would have to adjust to a new and strange legal environment, with frequent visits to corporate attorneys for advice. This could prove costly. Precedents on issues long established may have to be reconsidered and retried in the courts.

In our opinion, the Interstate Commerce Act through the years has fulfilled its stated purposes to correct carrier abuses, provide service at fair rates, and fix certain responsibilities. It continues to do so today. It's a good law—let's not scrap it. Write your senators and congressmen and, if you agree, tell them that you feel that deregulation is not in the public's best interest.

Stephen Tinghitella

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TRANSPORTATION REGULATION: A Shipper and Carrier Perspective

A noted professor of transportation finds that shippers and carriers support a wide variety of regulatory modifications, but neither group wants any radical changes to our regulatory system.

By DR. JAMES R. STOCK, Assistant Professor, Department of Marketing, University of Notre Dame

"The U.S. transportation picture is clouded. Misallocation of economic resources has cost the consumer and taxpayer millions of dollars. Symptoms of the malady include excess transportation capacity, a duplication of facilities, financial problems among the carriers, artificially high transportation rates and subsidized commodity movements," wrote Edward Donohue and Stanley Hill in "National Transportation Policy and Regulatory Agencies" in 1971.

Unfortunately, their statement is just as applicable today as it was then. Not much seems to have changed in the regulatory picture in the last seven years.

Although new regulations have been added and old regulations modified, superseded or deleted, many would argue that the regulatory picture is as clouded today as it ever was.

Transportation regulation is truly an issue which generates bi-polar opinion, with almost no one indifferent. This reaction is expected given the impact transportation regulation has on both carriers and shippers.

It is vital that shippers and carriers be aware of changes in regulatory controls since both must operate under such a variety of government regulations and regulators. And of course, for transportation decision-makers, the present and future aspects of regulatory controls are especially important.

This article is part of a comprehensive study recently done on the status of the transportation system. The portion of the study covered in this article focuses on what shippers and carriers thought about various regulatory proposals.

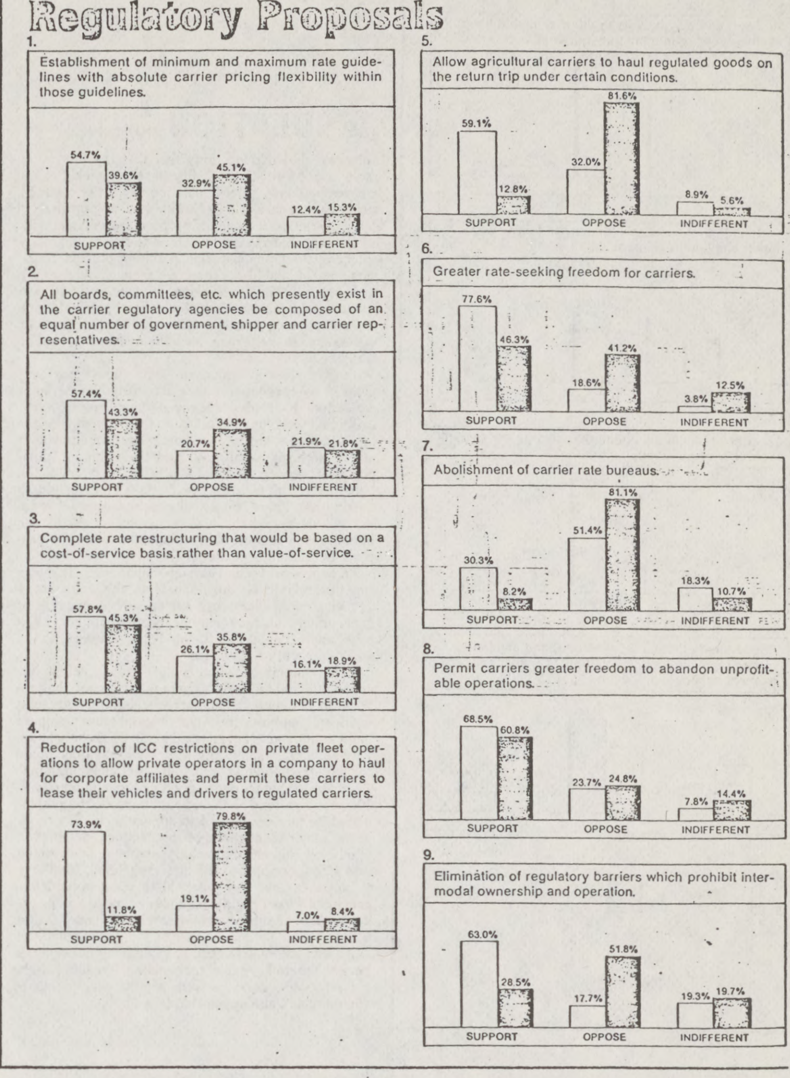
A total of 2,810 shippers and carriers were asked to register their support or non-support for 13 selected legislative proposals concerning regulation.

Shipper respondents (1,515) were selected from the 1977 National Council of Physical Distribution Management membership roster. Carriers survey (1,295) were from all modes and were selected by SIC listings in Dun and Bradstreet directories. The response rate for the shipper group was 33.3% and was 39.5% for the carrier group.

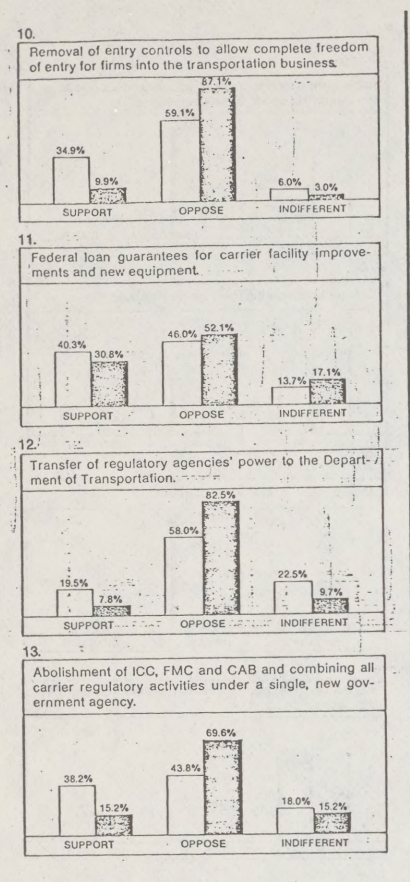
The regulatory proposals were drawn from those receiving the most attention in the academic and trade press. The list does not attempt to be exhaustive, but it does represent items of high interest to shippers and carriers. In fact, most of the proposals were originally generated by carriers and shippers as well as by government bodies.

With respect to the less-drastic re-regulatory issues, shippers tended to support the proposals presented to them, while carriers were divided in their support (No. 1-3).

Regarding the issue of establishing a "zone of reasonableness" for carrier rates, carriers expressed mixed reaction (No. 1). Slightly more carriers opposed such a proposal than favored it. Intuitively, one would expect carriers to favor a "zone of reason-



Regulatory Proposals
1.
Establishment of minimum and maximum rate guidelines with absolute carrier pricing flexibility within those guidelines.
54.7%
39.6%
32.9%
45.1%
12.4%
15.3%
SUPPORT
OPPOSE
INDIFFERENT
2.
All boards, committees, etc. which presently exist in the carrier regulatory agencies be composed of an equal number of government, shipper and carrier representatives.
57.4%
43.3%
20.7%
34.9%
21.9%
21.8%
SUPPORT
OPPOSE
INDIFFERENT
3.
Complete rate restructuring that would be based on a cost-of-service basis rather than value-of-service.
57.8%
45.3%
26.1%
35.8%
16.1%
18.9%
SUPPORT
OPPOSE
INDIFFERENT
4.
Reduction of ICC restrictions on private fleet operations to allow private operators in a company to haul for corporate affiliates and permit these carriers to lease their vehicles and drivers to regulated carriers.
73.9%
11.8%
19.1%
79.8%
7.0%
8.4%
SUPPORT
OPPOSE
INDIFFERENT
5.
Allow agricultural carriers to haul regulated goods on the return trip under certain conditions.
59.1%
12.8%
32.0%
81.6%
8.9%
5.6%
SUPPORT
OPPOSE
INDIFFERENT
6.
Greater rate-seeking freedom for carriers.
77.6%
46.3%
18.6%
41.2%
3.8%
12.5%
SUPPORT
OPPOSE
INDIFFERENT
7.
Abolishment of carrier rate bureaus.
30.3%
8.2%
51.4%
81.1%
18.3%
10.7%
SUPPORT
OPPOSE
INDIFFERENT
8.
Permit carriers greater freedom to abandon unprofitable operations.
68.5%
60.8%
23.7%
24.8%
7.8%
14.4%
SUPPORT
OPPOSE
INDIFFERENT
9.
Elimination of regulatory barriers which prohibit intermodal ownership and operation.
63.0%
28.5%
17.7%
51.8%
19.3%
19.7%
SUPPORT
OPPOSE
INDIFFERENT



REGULATION CONTINUED

ableness," but carriers may feel that the minimum rates might limit their ability to react quickly to increases in energy prices, inflation and other costs. In either case, a carrier's flexibility would be limited.

Shippers favored such a proposal based primarily on the fact that rates would tend to become a known entity in the transportation planning process. Shippers would also be protected from unreasonably high rates. In addition, some shippers support rate guidelines because they feel their products are presently being transported at rates higher than necessary in order to subsidize other types of freight.

Similar reasons would underlie the support expressed by carriers for rate structures based upon cost-of-service (No. 3). Many shippers, particularly rail and motor users, feel that they are paying for more service than they are receiving. Carriers would argue, perhaps justifiably, that the value of transportation service provided is a better measure of the true "costs" of moving the product from origin to destination. There is only lukewarm sentiment in favor of this approach, however, as evidenced by the mixed views expressed by respondents on the proposal to restructure rates.

As expressed by one carrier respondent, "It seems too optimistic to suppose that the regulatory agencies could work any better with a mixture of government, shipper carrier representatives." Another carrier said, "In theory it sounds good, but it will never work in practice."

These comments were typical among carrier respondents and among shippers who opposed the proposal to restructure the carrier regulatory agencies to include an equal number of government, shipper and carrier representatives (No. 2). Of those who favored the proposal, many indicated that they would "at long last" have an input into carrier regulation.

On the proposals dealing with deregulation (No. 4-10), shippers tended to support most of the proposals while carriers tended to oppose them. The relaxation of private carriage restrictions drew overwhelming support from shippers, and as expected, was strongly opposed by carriers (No. 4). Similarly, shippers favored the proposal to allow agricultural carriers to haul regulated goods on return trips under certain condition, while carriers opposed it (No. 5).

As was the case for the re-regulatory issues, shippers supported greater rate-setting freedom for the carriers while carriers were almost evenly split in their support and opposition (No. 6).

REGULATION CONTINUED

Most of the articles appearing in distribution oriented publications on this subject have concluded that rate deregulation would lead to an overall reduction in carrier rates. Shippers would obviously benefit, assuming that service would remain at its present levels. And just as obviously, such rate deregulation would be unbeneficial to carriers.

With many carriers suffering financially, as evidenced by some recent bankruptcies, a reduction in rates would force many companies out of existence.

Shippers and carriers opposed the abolishment of rate bureaus (No. 7). Although some respondents indicated that some inefficient carriers are protected because of rate bureaus, the presence of rate bureaus lends stability to the ratemaking process. Many argue that rate chaos would result if rate bureaus were eliminated.

Both respondent groups recognize the inefficiencies that occur when carriers are forced to continue unprofitable operations (No. 8). The rail crisis in the Northeast provided dramatic evidence of the problems resulting from a carrier being forced to maintain service to points that provided little or no revenue-generating traffic. While there are social benefits in continuing service to consumers and businesses on unprofitable routes, carrier and shippers believe the advantages of discontinuing or curtailing service to some locations outweigh the disadvantages.

Carriers opposed the proposal that would allow intermodal ownership on the grounds that carrier monopolies would be created (No. 9). Shippers, however, favored the proposal because they feel that carrier service would be improved and rates would be decreased.

A major issue in the deregulation argument has been the call for easing entry controls into the transportation industry (No. 10). Shippers and carriers opposed removing entry controls so as to allow complete freedom for firms to enter the transportation business.

As stated in another article that appeared in DISTRIBUTION WORLDWIDE in January 1977, "Shipper Views on Regulation" by Roger Jerman, Ronald Anderson and James Constantin, complete freedom of entry and exit would eliminate the advantages of carrier certification (financing, franchise right, near monopoly) and make it more difficult for shippers to obtain adequate levels of service.

Many other transportation proposals have been presented which cannot be categorized as deregulation or re-regulation, yet they are important issues related to the subject of regulation (No. 11-13).

One such proposal concerns federal loan guarantees for carriers to improve facilities and equipment (No. 11). Both respondent groups were divided on their support for such a proposal. As stated by one respondent, "Loan guarantees are fine for some carriers, but not so fine for others." He apparently means loan guarantees should be offered on a case-by-case basis and should be provided to carriers that absolutely need them, and only when competition would not be hindered. This attitude was shared by most respondents, both carrier and shipper.

Shippers and carriers reject the proposal that would transfer existing regulatory power to the Department of Transportation (No. 12). In a survey report related to this one, it was quite clear that the DOT is not highly rated for its effectiveness, fairness or necessity. It follows logically that respondents would not favor the transfer of additional power to an organization like the DOT.

Similarly, carriers opposed the abolishment of the ICC, FMC and CAB and the combination of their activities under a new agency (No. 13). Carriers feel there is a need for those regulatory bodies, and while they might want the agencies improved, they believe any of the three should be eliminated.

Also, there is a general feeling among most carriers that new agencies just create additional bureaucracy. And more often than not, this feeling has been pretty accurate in the past.

Shippers, on the other hand, are uncertain as to the benefits that such a consolidation of existing bodies would bring. This uncertainty is probably the reason for the mixture of support and opposition by shippers on this proposal.

The regulatory question is a complex one that engenders emotional responses from shippers and carriers alike.

Most shippers and carriers agreed that the regulations and regulatory agencies that control transportation are necessary, but could certainly be better run.

Improved efficiency and fairer treatment of those affected by transportation regulation would substantially brighten the regulatory picture in the U.S.

According to this survey then, deregulation is not the popular answer to our transportation problems. The answer seems to lie in re-regulation and improvement of the present regulatory system. ■

This article was adapted from a major research monograph, "A Survey of Attitudes and Opinions on Transportation Regulation" published by Ohio State University in December, 1977.

De-regulated Air Freight Rates Soar . . .

Motor Carrier Regulation Aids Public

In the battle underway to deregulate the motor carrier industry, critics contend that regulation of the trucking industry is inflationary and that consumers pay billions in excess transportation costs. These claims are not backed up by facts. The facts show the effects of regulation to be anti-inflationary.

Costs for moving freight by regulated motor carriers have increased less than the average cost of general consumer products, even during the years of this country's greatest inflationary spiral.

For instance, from a base of 100 in 1967, revenue per ton mile of regulated general freight carriers rose to 166.2 in 1977. During the same period, the Consumer Price Index rose from 100 to 181.5—15 points, or 22% higher, than the price of regulated motor carrier service.

Between 1967 and 1977, consumer price changes for housing, home ownership, fuel oil, coal, gas, electricity, and medical care, for example, were higher than the increase in truck charges.

Consumer food prices alone in the eleven year period rose to an index level of 192.2. Other consumer price changes were also higher than the increase in truck charges. Compared with the 166.2, housing in 1977 was 189.6; medical care was 202.4 and fuel oil and coal were 283.4.

The American consumer generally takes freight transport charges for granted—perhaps the highest tribute that can be paid to the regulated transportation system. It's inexpensive and it works.

Industry officials say they find it difficult to understand why someone like Esther Peterson, special assistant to the President for consumer affairs, says the White House consumer office will work to deregulate trucking because transportation costs are such a big factor in food prices.

First of all, most farm commodities are hauled by unregulated truckers. Secondly, when cattle prices jumped 11% in January, a development that ensures spiraling retail food prices in the months ahead, transportation played no part whatsoever. Cattle prices rose because production was cut.

Just as perplexing to industry observers is the federal government's continuing efforts to deregulate the trucking industry despite evidence that the system is healthy and works to protect consumers. They point to government deregulation of the air cargo industry where rates are now soaring.

Air cargo freight rates have increased by 21% in the 14 months since Congress enacted legislation ending Civil Aeronautics Board control of the airline industry. CAB officials expect another increase by most carriers within the next two months.

Airline deregulation is currently being hailed as a model for a proposal to deregulate the trucking industry. But little is known publicly about airline deregulation's unfavorable and unpublicized impact. Most industry observers feel it is a harbinger of what's ahead if deregulators have their way with trucking.

Following airline freight deregulation in Nov., 1977, most air carriers raised cargo rates an average of 10%. This was followed in Jan. 1979 by another increase of about 10%. On a compound basis, the figures show a 21% hike in rates in just 14 months.

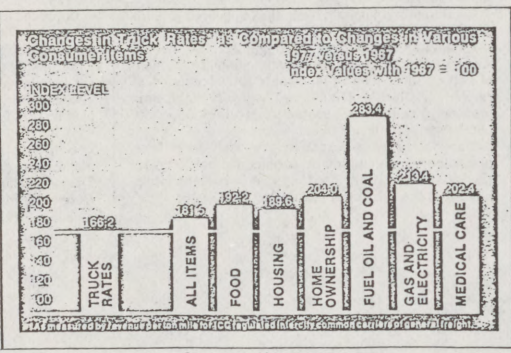
CAB officials said it is impossible to predict how high rates will go. As of March 1979, air carriers no longer were to be required to ask CAB for permission to increase their rates, and CAB was to lose its authority to investigate the legitimacy of such increases.

The actions of the past few months suggest that customers who rely on air carriers to deliver their goods are being particularly hard-hit by deregulation's after effects.

William J. Augello, executive director of the Shippers National Freight Claims Council, points to the problems:

"In view of the fact that the results of deregulation of the airline industry are being touted as clear proof that deregulation of the motor carrier industry will be bene-

See Next Page



al to the public, proponents and ponents alike should give careful nsideration to what has actually ppened under air deregulation s far," Augello said.

n addition to rate hikes, Augello, ionally recognized as an expert land and air transportation, d other unfavorable results of regulation are showing up:

- Minimum charges are now $19 shipment on most lines, up from ange of $13 to $17.
- Most supplementary charges ve been doubled (C.O.D., assem- and distribution, restricted and raordinary value charges, etc.).
- Surcharges on certain com- dities have been increased to as ch as 175% (despite CAB orders ding 110% to be the maximum tified by cost evidence).
- Liability limits have been luced from $9.07 to $.50 per und. Some airlines have reduced eir liability to even lower limits, ., $.50 per pound per piece lost or maged.
- Excess value charges have en increased 300%, from $.10 to 10 per $100.
- Liability rules prescribed by e CAB have been discarded (e.g., lines have restored their "no ecial or consequential damage" delayed).

"Several problem areas have developed since the industry was de- gulated," said H. Ernest Frank- , chairman of the Air Transportion Committee of the National Industrial Traffic League.

"With the filing of tariffs no nger required, a shipper won't be le to tell what his charges will . Two shippers, for example, uld get two levels of rates from e same carrier. This particularly fects small shippers who might ve to pay higher rates since they not have the leverage that rger companies have to negotiate a case by case basis and thereby tain better rates," he said.

Franklin added, "With regard to uck deregulation proposals, I ppose if you go the same 'total regulation route,' there is the ssibility that the same things will ppen with the trucking industry —changes in liability rules, elimination of tariff filing requirements and the potential for discriminatory practices."

The fact that carriers are no longer duty-bound to provide service could be of great consequence to the daily business of many shippers, according to James F. Lovett, director of Federal Government Relations for the Westinghouse Corporation.

"Westinghouse often is required to make emergency shipment by air of components needed by its public utility customers," Lovett recently testified during a civil court case against the CAB. "Conceivably, such refusal (*of carriers to handle these articles*) could shut down a vital electric power plant."

Larry L. Rodberg of Burlington Northern Air Freight noted that "fast, efficient service of off-line points has deteriorated."

Trans World airlines has discontinued flying all of its 707 freighter jets. Augello said that of the nearly 100 new air freight firms which have announced plans to enter the market, few are actually operating due to start-up costs.

A Mover Looks At Air Travel

Sidney Epstein, senior vice president, Allied Van Lines, Inc.—pointing to a recent edition of United Airlines' *Mainliner* magazine—told *MJ&USM*:

"In view of the current atmosphere, I found it most interesting that the airline saw fit to tell its customers how great its service was and to point out all of the various conditions that contribute to their inability to provide an on-time service in but only 83% of their flights.

"The Interstate Commerce Commission doesn't tolerate 83% performance," he said.

(*96.8% of all household goods shipments are picked up on time and 90.0% are delivered on time—Editor.*)

Epstein said it was not his intent to be critical of airline service because "I truly believe that they provide very good service. I do, however, think it is very important to point out the many, many different conditions that household goods movers face each and every day and how these conditions impact our ability to pick up and deliver on time.

"Let's look at the airlines and the type of cargo—passengers—they carry:

- The cargo self loads and unloads.
- If the passenger is not ready when the airline leaves, then the airline leaves without the passenger.
- The passenger must travel according to the airline schedule, not to any personal requirement nor under any conditions such as reasonable dispatch.
- You pay the same rate for an airline seat no matter how big or small you may be. The average price of a New York to Chicago airline ticket approximates $52 per hundred weight. "Just think what movers could do with that kind of revenue," Epstein asked.
- The airline provides no extra stops enroute. You go to the airline terminal and then provide additional transportation to the specific point you want to visit.
- The 83% on-time performance the airline is so proud of doesn't really say it all. The entire world is familiar with the amount of time you can wait for your baggage. That waiting time can add 20% or more to your transit time, yet the airline is not responsible for that time. Movers, on the other hand, are rated in accordance with the time they actually carry the goods into the residence.

Epstein, who was named chairman of the American Movers Conference Public Relations Committee following his appointment to the board of directors, said: "We (*movers*) have been the recipients of all sorts of unwarranted and unearned abuse from the ICC and certain politicians . . . we can no longer afford the luxury of sitting back and merely trying to defend ourselves, the time has come when we must tell our story to the public, be they individual shippers or national accounts."

Epstein made his remarks in discussing AMC plans to launch a wide spread public relations program "to bring our story and our situation clearly into focus for the general public," he said. ■

RAILROADS AND REGULATION: THE IMPERATIVE NEED FOR CHANGE

Prepared By

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Washington, D.C.

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FOREWORD

This report presents the results of a study undertaken by Barber Associates at the request of the Association of American Railroads. While its major focus is on economic deregulation of the rail industry, inquiry has resulted in a wide-ranging assessment of U. S. surface transportation and the changes which have occurred in its make-up over the last several decades. This examination, profiling the dramatic changes which have taken place in the economy and in transportation, shows that the railroads, once the centerpiece of American transportation, now confront pervasive competition. Given this fundamental shift in circumstance, comprehensive regulation of the railroads is now not only anachronistic but acutely detrimental to the railroads and to the public interest in a viable, efficient, and revitalized private sector rail system. Clearly the time has come for rail deregulation and this report articulates the reasons and the goals that should shape public policy.

INTRODUCTION AND OVERVIEW

This report discusses the deteriorating condition and market posture of the American railroad industry and the major contributing factors. It will be seen that the railroads have been in a state of decline since the Depression, a condition that has been greatly aggravated since the end of World War II. This downward trend has not ended. It persists, in worrisome fashion, despite several attempts by the Congress in the 1970's to try to stop it through well-intended but nevertheless patchwork pieces of legislation.

The most obvious handicap standing in the way of a rail industry bootstrap effort to revitalize itself is a comprehensive system of government regulation initially imposed on the railroads almost 100 years ago. Plainly stated, the railroads -- unlike most other businesses, including most non-rail freight transportation companies which are unregulated or considerably less regulated -- are unable to adjust to the intensely competitive commercial world around them because of a regulatory system that examines, reviews, investigates, and approves or disapproves of nearly everything a railroad company does in operating its business. The time element alone, i.e., the inevitable delays in anticipating, filing, waiting, responding, etc. to regulatory requirements, is an immense burden. It guarantees that business opportunities will be lost and that the non-rail modes of transportation will further widen their already well-established superiority. For the railroads -- who have declining traffic shares, declining revenue shares, declining profits, and rates of return on equity and on net investment of less than two per cent -- complete government regulation is a gross inequity.

It is the conclusion of this analysis that substantial deregulation of the railroad industry is necessary if the industry is to have a chance to sustain itself as a viable element of the economy under private sector management. Deregulation in the abstract is no guarantee of rail industry success by any means, but it would create a far more realistic opportunity for the industry to shake off outmoded characteristics and practices from the past and attempt to match up productively with the modern American economy. Such a policy would also greatly minimize the risk of future rail emergency crises and highly wasteful, multi-billion dollar taxpayer-supported bailouts.

The report is organized in four sections. Chapter I explains the vast economic and social changes that have occurred since rail transportation blossomed in late 19th century America. The railway was the first really revolutionary new transportation technology introduced on this continent. It dominated the national economy and for at least 50 years it was absolutely the unchallenged king of transportation, providing both freight and passenger services, local and transcontinental hauls, and bulk and high value commodity carriage. Shippers and travelers were almost totally captive to the railroads for fast, efficient transportation; other alternatives did not exist. Virtually all of the railway network was in place by 1910 and it was tightly integrated with the demographic and economic characteristics of an essentially agrarian and developing United States. The demographic and economic changes which have subsequently occurred in 20th century America, especially in the last 40 years, have been nothing short of phenomenal and they have generated transportation requirements quite unrelated to the essentially 19th century

configuration of the railway network and rail services. The implications of these developments for the railroads have been and remain extremely serious.

Chapter II analyzes the revolutionary changes in transportation technology -- paralleling those in the structure and mix of the economy -- that have characterized the post-World War I period. The truck, automobile, airplane, self-propelled towboat, pipeline, and other means of transportation and communication burst on the scene with devastating effect on the railroads. Travelers and shippers were given a wide array of transportation alternatives to choose from and in recent decades they have selected overwhelmingly the newer, non-rail modes to meet their transport needs. Many of the new modes have specialized in certain types of freight movement and personal travel, in contrast to the rail system which was designed to be a general purpose form of transportation. Collectively the non-rail modes -- which now account for 70 per cent of the freight tonnage carried -- have succeeded in reducing the railroads' once-paramount position in transportation to a decidedly subordinate and declining role. The non-rail modes compete successfully for both bulk and high value freight, they totally dominate the passenger market, they (pipelines currently excepted) are supported by massively-funded Federal assistance programs for capital investment in their basic rights-of-way, and they compete vigorously over short and long distances reaching every part of the country. Combining the ubiquity and efficiency of the non-rail modes with the forcefulness of competition among both substitutable products and alternative geographic sources of product supply, it must be concluded that competition in

transportation today is absolutely pervasive and extremely effective. Modern shippers and travelers are no longer exclusive captives of any mode of transportation.

The unique system of government regulation that is applied to the railroads is considered in Chapter III. It is a system premised on the 19th century belief that railroads are dominant and have no competition, and that railroads are sufficiently strong financially to be used by the government (Interstate Commerce Commission) to compensate, at their own expense, for deficiencies in other sectors of the economy, e.g., depressed industries or inefficient shippers, and to achieve social purposes (again, at railroad expense) such as helping relatively undeveloped sections of the country or preventing local unemployment. The government-imposed regulatory burden on the railroads has created a woefully unbalanced national transport industry because none of the railroads' competitors are regulated as completely and many are not regulated at all. Thus paradoxically the oldest and increasingly the weakest and most vulnerable of our transportation modes is encumbered by far and away the most restrictive and burdensome set of rules and regulations. The piecemeal attempt at reform of the Interstate Commerce Act in the Railroad Revitalization and Regulatory Reform Act of 1976 has not succeeded. Little meaningful change in fact has occurred in the three years since enactment of this measure and the railroads have continued their decline relative to the other modes. This is confirmed by the rail industry's chronically anemic financial performance.

Chapter IV highlights the implications of the lesson taught by experience with the inadequacies of the 4-R Act. It is manifestly clear that patchwork changes to the Interstate Commerce Act will not suffice to overcome the out-dated premises on which it is based and the equally out-dated practices which the ICC uses to interpret and enforce it. Substantial repudiation of sections of the Act must occur, and a streamlined residual regulatory framework should be established in its place to deal with the relatively small number of legitimate problem situations requiring government surveillance and regulation that will arise in the transition to operation in a transportation market overwhelmingly pervaded by competition. Deregulation will give the railroad industry at least an even chance at winning a place, on the competitive merits, in our dynamic transportation system. The potential benefits to the economy and to the public of a privately funded, privately maintained and operated, energy efficient, cost effective, competitive, and environmentally compatible railway system are great. To achieve these benefits, though, requires for the railroads freedom to price their services and freedom to innovate in response to market conditions; freedom to tailor their overblown rail plant to match the realities of the marketplace; freedom to expand territorially; freedom to diversify across modes; and freedom from the burden of ICC-determined use of the railroads as instruments of social and economic policy. Such freedoms can come only through comprehensive economic deregulation.

I

RAIL TRANSPORTATION IN A CHANGING WORLD

The persistent and painful problems of the railroads today stand in stark contrast to the status of the industry 100 years ago. The railway emerged in the 19th century United States at a time when the Nation's economic development potential was constrained by inadequate transportation. Rarely has a new, innovative technology been introduced into a physical setting better suited to deal with an economic need. In a vast, underpopulated country with an amazing range of agricultural, mining and industrial resources, and a great latent demand for transportation services, the railway became a catalyst in stimulating and accelerating growth in the Nation's economy.

For a Golden Age -- before paved highways and motor carriers, a modern waterway system and self-propelled towboats, the pipeline, the airplane, the automobile, or sophisticated transportation substitutes such as the telephone, radio and the high-voltage electric power line -- the railroad reigned supreme. During this developmental era, the availability of the railroad to deliver people and freight effectively controlled the rate and location of economic activity in much of this Nation. In the absence of any forceful competition, the railroads sought to provide transportation of every conceivable kind -- local, regional, and transcontinental. To a significant degree, shippers and travelers were dependent upon -- or "captive" to -- railroads for fast and efficient transportation. No one then clearly foresaw the possibility of technologies capable of challenging the efficiency and capability of the railroad for any transportation service.

The railroad was considered the dominant, most modern factor, not only in transportation, but in the entire economy. The rail industry was the

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> *[The railways are] the very heart and life of the modern system of commercial existence.... [if] we revert to the primitive days of stage coaches and canal boats, it would be like the breaking of the mainspring of a watch.*
>
> Chicago Tribune (1877)

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largest employer in the country. It was the principal market for the products of the Nation's coal and steel industries. Ten billion dollars of railroad securities had been issued by 1889. "When railroad construction boomed, the economy as a whole boomed too. When railroad securities dropped in value and construction slowed, the entire economy sagged."[1] The rail industry's economic influence and power were simply overwhelming. Enactment of the Interstate Commerce Act in 1887 was in large part a reflection of that fact.

The railroads were basically dependent on the demand for goods and services produced around the country, but this dependence was obscured somewhat by the absence of competitive transportation technologies and by the strong impetus to territorial and economic expansion within the country. It is essential to recognize that the pervasive reach of the railroad system installed in the U. S. in the 19th century became the seed of the industry's mid- to late 20th century condition of decline and inflexibility. So complete was the match between the

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[1] Gerald G. Eggert, Railroad Labor Disputes: The Beginning of Federal Strike Policy (1967) at 3.

then-new and unchallenged railway technology and the objective economic and demographic conditions of the period (extending from the 1850's almost to the Depression years) that when the basic conditions changed radically -- i.e., the "developing" United States became an economically mature society -- and entirely unforeseen new transport technologies subsequently appeared in rapid succession, each capable of efficiently serving one or more of the many transportation needs once handled exclusively by rail, the railroads and their system of public regulation were virtually incapable of reacting decisively and coherently.

By the 1940's the new, dominant technology had grown older; an increasing, redistributed population and a changing economy were making entirely new transport demands; and efficient, new, often single-purpose transportation technologies such as the airplane for rapid intercity travel, the auto for private transportation, the truck for responsive, highly flexible freight shipment, the diesel towboat for efficient movement of bulk commodities by barge, and the pipeline for specialized product delivery, assailed what in these changed conditions had become an over-grown, stationary, inflexible, general purpose, and bureaucratically over-regulated nineteenth century system of transportation.[1]

Over the years the railroads have made important strides toward modernization. Dieselization, installation of advanced signalling and communications systems, development of specialized rolling stock, etc. are among many exemplary efforts which make the railroads highly energy efficient and environmentally

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[1] Although some of the new transport technologies were placed under partial public regulation, none of these regulatory regimes was as comprehensive as that which still bound the railroads.

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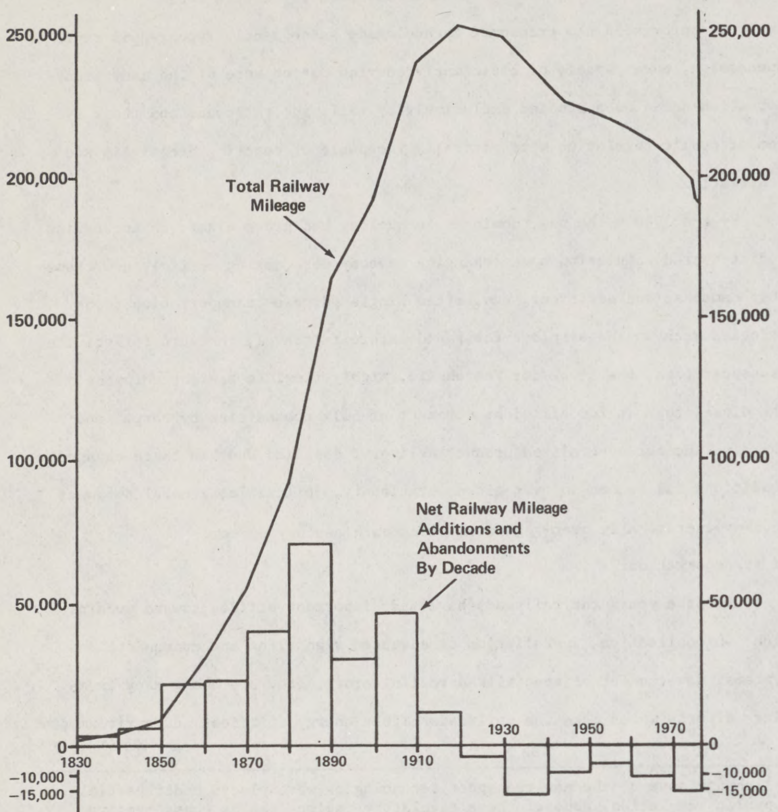
Figure 1

INCREASES, DECREASES, AND TOTAL MILES OF RAIL LINE IN THE U.S., 1830–1977



SOURCE: Association of American Railroads, A Chronology of American Railroads (Washington, D.C., 1962) and Yearbook of Railroad Facts (1979 Edition).

adaptable. But the industry's adjustments to new competitive realities have remained inadequate. As will be shown in Chapters II and III, respectively, the railroads have been losing ground in the battle with other modes for traffic and their financial condition is chronically anemic. Something more is needed if they are not to fail in achieving performance levels of great value to the economy and to a national transportation system balanced by the presence of truly competitive transport alternatives.

A clear understanding of the proud but now-burdensome historical legacy carried by the railroad industry is important to the case for significant change in the economic regulation of railroads.

The Era of Railroad Construction

The U. S. railway network was 95 per cent finished by 1910 and reached its peak of just over 250,000 miles of line in 1920. (See Figure 1.) In a tremendous burst of effort three-quarters of the system was constructed between 1870 and 1910.[1] Over 190,000 miles of line are in place today. It linked the Nation coast-to-coast, but also connected thousands of farms, small towns and mines through a web of secondary and branch lines.

In the 19th century the United States was a farm-oriented country with a relatively dispersed population. Even at the turn of the century farming accounted for a fifth of national income; 40 per cent of the work force was employed in agriculture; three out of five people lived in rural areas; and in so-called urban areas over half the population lived in places of 100,000 population or less. (See Figure 2.) Railway construction was concentrated

[1] The peak periods of railway construction were the decades 1880-1890 and 1900-1910 when 70,330 and 47,093 miles of line, respectively, were installed.

Figure 2

MAJOR ROLE OF THE FARM SECTOR IN 1900

Population	Rural 60.3%	Urban 39.7%
Labor Force	Agriculture 40.2%	All Other 59.8%
National Income	Agriculture 18.6%	All Other 81.4%

SOURCE: Department of Commerce, Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970 (September 1975).

in the East and in the Granger States of the Midwest, accurately reflecting the distribution of population and economic activity.

The northeastern U. S. -- generally the states in the New England, Middle Atlantic, and East North Central areas -- dominated economic life. In 1920, for example, almost half the population and three-fourths of the value added by manufacturing were accounted for in this region. As shown in Figure 3, almost half of railroad originated tonnage, over half of all rail-delivered mining products, and over 60 per cent of all rail manufactured goods traffic were found there. The fortunes of the Northeast and of the railroads were inextricably linked.

The railroads carried everything -- raw materials, manufactured goods, farm products and livestock, people, and mail. Even in 1925 the railroads accounted for 80 per cent of total freight ton-miles moved. In 1926 they were still responsible for over one-fifth (22.5 per cent) of total intercity passenger miles traveled, including private automobiles.

Throughout the late 19th and early 20th century railroad construction era, the railroads enjoyed virtually complete freedom from competition and developed a network of track and services that were admirably matched with the basic structure and working of our developing economy. In roughly the half-century that followed the end of the great period of railroad construction, and especially since the end of World War II, the railroads have been confronted by fundamental structural changes in the mix and the location of American economic activity, by equally fundamental modifications in the social and demographic characteristics of the population, and by the emergence of powerful competing transportation technologies that have completely transformed

Figure 3

DOMINANT POSITION OF NORTHEASTERN STATES[1] IN THE U.S. ECONOMY IN 1920

	NORTHEASTERN U.S.	REST OF U.S.
POPULATION	48%	52%
VALUE ADDED BY MFG.[2]	79%	21%
RAILROAD ORIGINATED TONNAGE	48%	52%
RAILROAD DELIVERED MINING PRODUCTS	53%	47%
RAILROAD MFG. GOODS TRAFFIC	62%	38%

[1] For population and value added the northeastern states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, and Wisconsin. Railroad data are for the Official Territory which includes these states plus Delaware, Maryland, the District of Columbia, and most of Virginia and West Virginia, but excludes the upper peninsula of Michigan and most of Wisconsin.

[2] Data for 1919.

Source: Department of Commerce, Long Term Economic Growth 1860–1970 (June 1973) and Interstate Commerce Commission, Statistics of Railways in the United States (1920).

the transportation services sector of the economy, giving shippers and receivers a broad array of transportation choices. The relative failure of the railroads to adjust to these factors -- for reasons within and beyond their control -- lies at the heart of both their current financial plight and the current debate over economic regulation of the railroads.

It cannot be over-emphasized that demand for transportation is a derived demand. Industry and business seek transportation services because they want to carry out some other economic activity. Transportation is not purchased for its own sake. Since it simply supports other economic activities, the demand for transportation is really dependent on the demand for those goods and services.[1] When the latter fall from consumer favor, or change their raw material inputs or their markets, or are replaced by other products, the requirements for transportation also change. In a dynamic economy such change is common. However, the transportation sector and individual transportation companies can do little to control it. Consequently the competing modes of transportation and the carriers succeed or fail on the basis of their ability to adjust to change.

The railroads have been considerably less successful than their competitors in making the necessary adaptations. One of their greatest present-day handicaps is that they are attempting to operate on what remains essentially a nineteenth century network of lines. Meanwhile much of our economic activity has moved elsewhere and has developed specialized transportation requirements.

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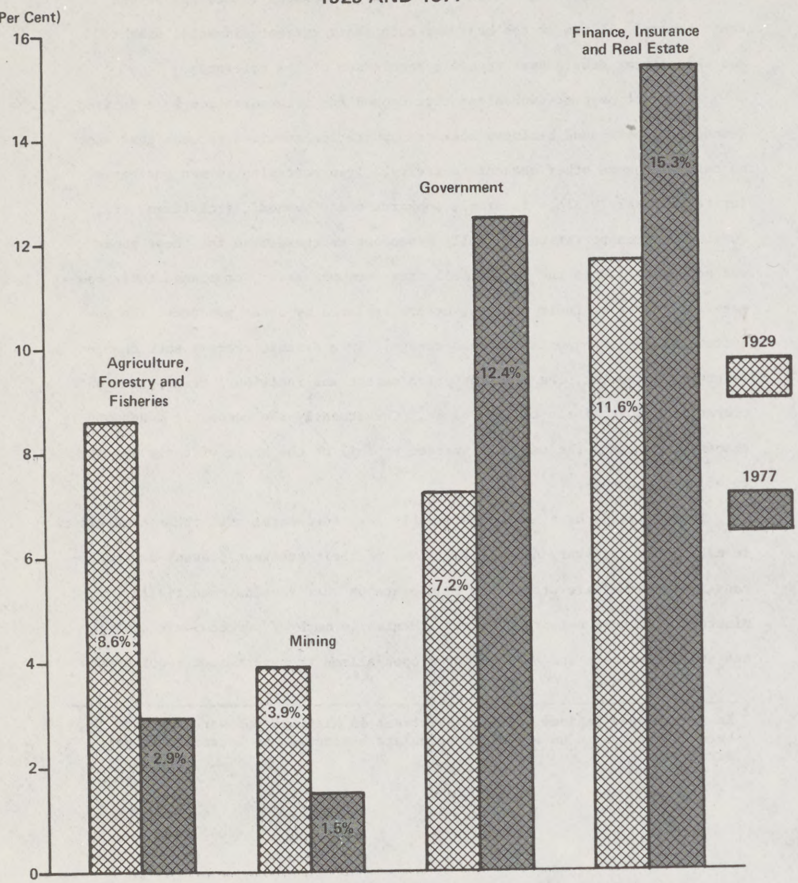
[1] In undeveloped regions, public investment in highways and waterways has been undertaken in an effort to stimulate businesses to locate in those areas.

Figure 4

SHARES OF GROSS NATIONAL PRODUCT BY SECTOR, 1929 AND 1977



SOURCE: Department of Commerce, Long Term Economic Growth, 1860–1970 (June 1973) and Bureau of Census, Statistical Abstract of the United States.

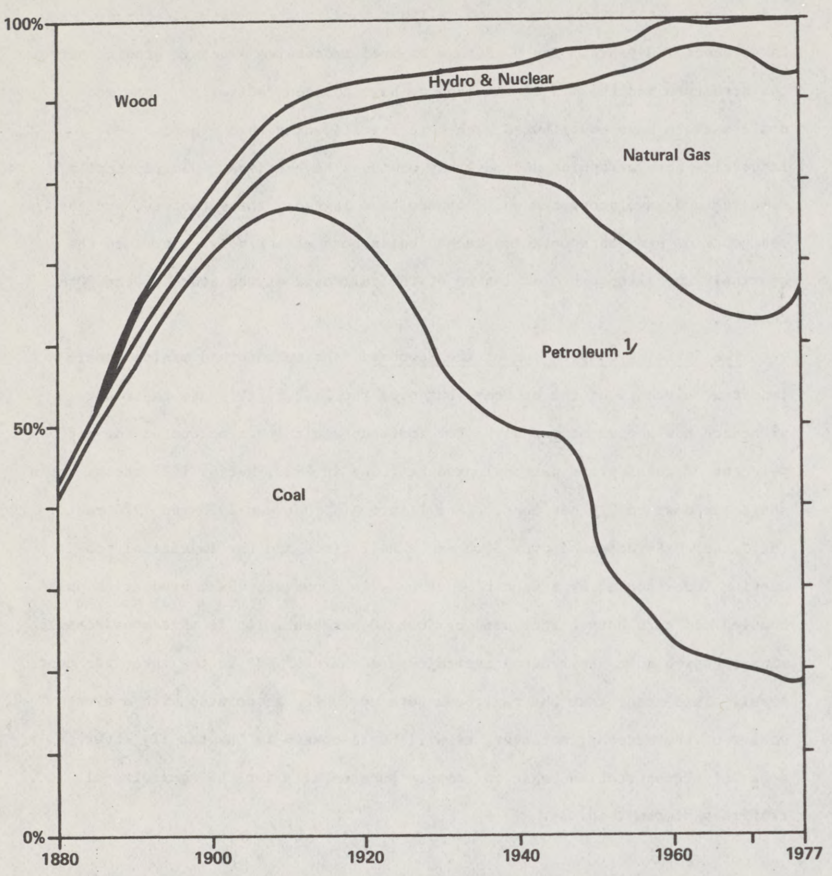
Economic and Demographic Change

The transformation of the American economy from one based on farming and the extractive industries -- as it was during the era of railroad construction -- to what many observers now call a mature, post-industrial economy, has taken about 100 years. The U. S. has enjoyed impressive economic growth, but the structure and the mix of the economy have changed radically. Some economic sectors have contributed much more significantly than others. Some industries have atrophied and entirely new ones have arisen. Geographically, some regions have prospered while others have lagged. These factors, and the emergence of new transportation technologies have effectively undermined the seemingly unchallengeable dominance of the railroads at the start of the 20th century.

The Shifting Composition of the Economy. Agriculture and mining remain important elements of the economy, but over the last fifty years their significance has sagged measurably. For instance agriculture accounted for 8.6 per cent of total gross national product (GNP) in 1929, but by 1977 the sector's share was down to 2.9 per cent. (See Figure 4.) Between 1920 and 1970 real (deflated) GNP increased over five and a half times and the industrial production index soared by a factor of seven. In contrast, wheat production only doubled and corn output increased by just 50 per cent. It is this considerably slower growth that has reduced agriculture's share of GNP to the three per cent level. This meant that the railroads were no longer associated with a growth sector of the economy; moreover, as will be discussed in Chapter II, other modes of transportation began to compete successfully for the agricultural traffic that remained.

Figure 5

SOURCES OF U. S. ENERGY CONSUMPTION, 1880–1977
(Per Cent of Btu's)



[1] Includes natural gas liquids.

SOURCE: Sam H. Schurr and Bruce N. Netschert, Energy in the American Economy, 1830–1975 (1960); Sam H. Schurr, ed., Energy, Economic Growth, and the Environment (1972); and U.S. Department of Energy, Energy Information Administration, 1977 Annual Report to Congress, Vol. II.

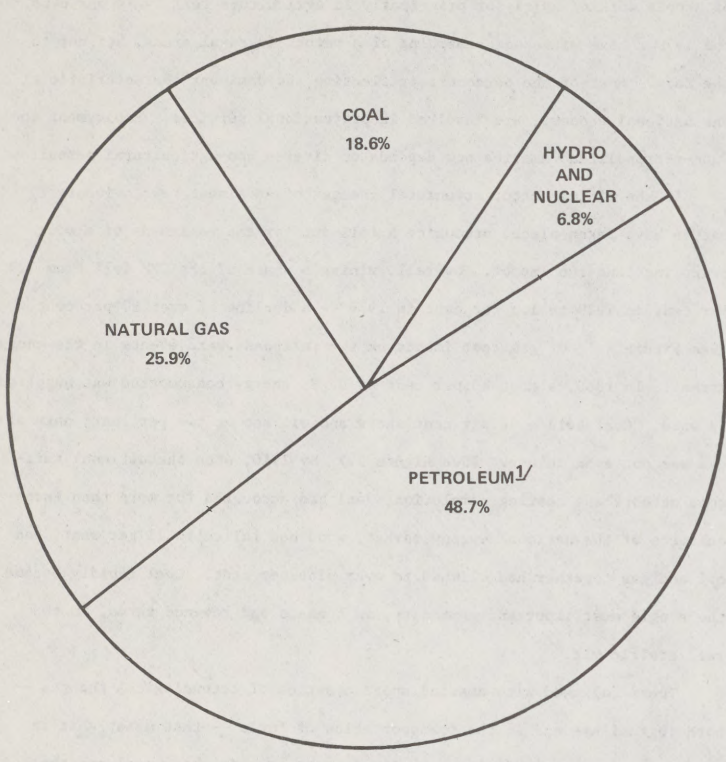
Although three-quarters of the population lived in rural areas in 1870, only a quarter did so 100 years later and many of them had no connection with farming. Indeed, between 1940 and 1970 -- when millions left rural areas to energize the urbanization and suburbanization of America -- the total number of people working solely or principally in agriculture fell by 70 per cent. The 1970's have witnessed something of a return to rural areas, but not to the farm. Most of the newcomers, reflecting the dominant characteristic of the national economy, are involved in professional services. Employment in "non-metropolitan" America now depends on diverse non-agricultural pursuits.

In the mining sector structural changes of an almost revolutionary nature have taken place, producing a fall-out for the railroads of almost crippling long-run impact. Overall, mining's share of the GNP fell from 3.9 per cent in 1929 to 1.5 per cent in 1977 -- a decline of over 60 per cent. (See Figure 4.) Of greatest impact on the railroads were events in the energy market. In 1880, almost 60 per cent of U. S. energy consumption was supplied by wood. Coal held a 40 per cent share and oil was at two per cent; natural gas was not even in use. (See Figure 5.) By 1910, when the national railroad network was nearing completion, coal had accounted for more than three-quarters of the national energy market, wood had fallen to 11 per cent, and oil and gas together had climbed to over nine per cent. Coal rapidly became the single most important commodity, in tonnage and revenue terms, in the rail traffic mix.

There followed with amazing speed a series of technological changes -- both in fuel use and in the transportation of fuels -- that upset what in retrospect was a relatively short-lived status quo in which coal and the

Figure 6

SOURCES OF U.S. ENERGY CONSUMPTION, 1977
(Per Cent of Btu's)



[1] Includes natural gas liquids.

SOURCE: U.S. Department of Energy, Energy Information Administration, 1977 Annual Report to Congress, Vol. III (preliminary data).

railroads together dominated the national energy sector. In the post-World War II years especially, oil and natural gas moved rapidly to take over the residential and commercial space heating markets (in 1933 retail deliveries were one-fourth of total coal usage; now such sales are almost non-existent). The advent of the diesel engine quickly reduced railroad use of coal from a fifth of national coal consumption in 1947 to less than 10 per cent by 1952 and to practically nothing by 1960.

These massive shifts from coal to oil and natural gas displaced large volumes of coal traffic that the rail network was well-positioned to deliver and it also created a demand for transportation service which pipeline technology was uniquely fitted to serve. On top of that barges and trucks began to compete successfully for coal traffic (as coal slurry pipelines threaten to do in the future) and growing mine-mouth generation of electricity -- which needs no off-site transport service -- began to erode traditional coal transportation markets. Nuclear power has much the same effect because its fuel transportation requirements are minimal.

Figure 6 shows that as a result of these revolutionary and on-going changes in the energy sector of the economy, coal accounted for less than a fifth of national energy consumption in 1977 (about equal to the position of its competitors 60 years ago). Coal use may stabilize at or slightly above that figure because of the potential renaissance in coal usage at utility stations triggered by the 1973 oil embargo experience; however, oil, gas, uranium, hydropower, and solar energy -- each of which competes with coal as a fuel and none of which relies on rail transportation -- will continue to dominate the energy sector generally. Coal remains the single most important

Figure 7

PERCENTAGE INCREASE IN REAL GNP BY SECTOR, 1929–1977

TOTAL GNP +325%

GOVERNMENT +629%

FINANCE, INSURANCE, REAL ESTATE, AND GOVERNMENT +524%

FINANCE, INSURANCE, AND REAL ESTATE 459%

SERVICES +354%

MANUFACTURING 304%

WHOLESALE AND RETAIL TRADE +273%

CONTRACT CONSTRUCTION +214%

+63% MINING

+43% AGRICULTURE, FORESTRY AND FISHERIES

SOURCE: Department of Commerce, Long Term Economic Growth, 1860–1970 (June 1973) and Bureau of Census, Statistical Abstract of the United States.

commodity in the railroad traffic mix, but other modes now participate in roughly half of this coal transportation market and coal itself is merely a part of an energy market environment characterized by severe competition, change, and uncertainty.

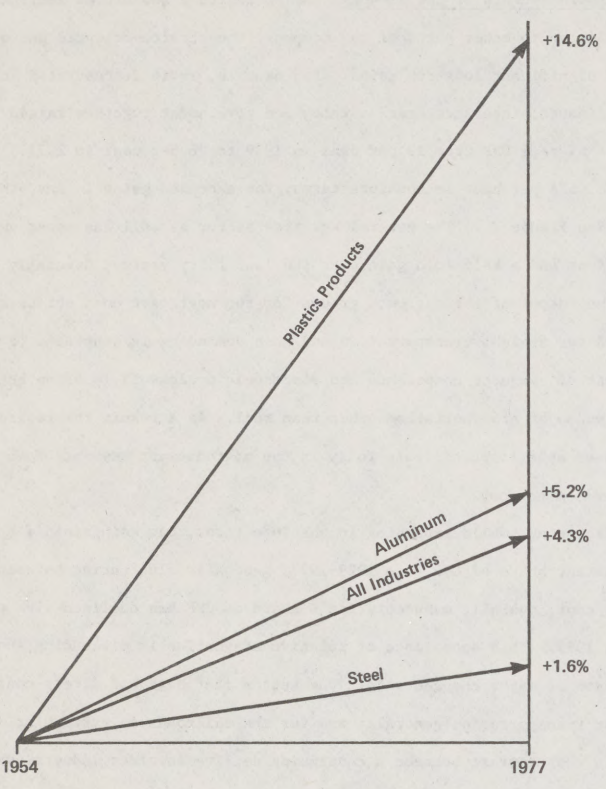
The Growth Sectors of the Economy. As agriculture and mining declined sharply relative to other parts of the economy, the service-oriented sectors registered significant long run gains. For example, as is demonstrated in Figure 4, finance, insurance, real estate, and government together raised their share of real GNP from 19 per cent in 1929 to 28 per cent in 1977. Such an increase, 524 per cent in absolute terms, far exceeded gains in any other sector. (See Figure 7.) The general services sector as well has experienced a healthy four and a half-fold gain over the last fifty years. Crucially important, the output of these growth groups for the most part does not create much demand for freight transportation and such demand as is generated (e.g., for shipment of computer components and electronic equipment) is often better served by modes of transportation other than rail. As a result the railroads have not been able to participate fully in the most buoyant segment of the modern American economy.

Manufacturing, while expanding in absolute terms, has maintained a remarkably consistent share of GNP from 1929-1977, generally fluctuating between 22 and 25 per cent; overall, manufacturing's share of GNP has declined five per cent since 1929. This appearance of relative stagnation is misleading, however, because of major changes within the sector that have had direct consequences for transportation generally and for the railroads in particular. The key here is the contrast between a continuing decline in older industries and

Figure 8

AVERAGE ANNUAL RATE OF GROWTH IN THE INDUSTRIAL PRODUCTION INDEX FOR SELECTED INDUSTRIES, 1954 THROUGH 1977

(Per Cent)



SOURCE: Federal Reserve Board, Industrial Production (1976 Revision) and Statistical Release G.12.3. (March 16, 1978).

strong growth in entirely new product areas. For instance, the share of total value added by manufacture accounted for by textiles, apparel, lumber and wood products, and tobacco products fell by two-thirds (from almost 30 per cent to less than 10 per cent) between 1899 and 1976. On the other hand, in an almost mirror-image reversal the chemicals, electrical machinery, instruments, and rubber and plastics groups increased their aggregate share by three and a half times (from seven per cent to 25 per cent).

Changes Within Industry Groups. Significant restructuring has taken place within major industry groupings such as metals. Aluminum consumption, for example, has grown immensely relative to steel. Figure 8 shows that from 1954 to 1977, the industrial production rate for aluminum increased at an average annual rate three and a quarter times faster than steel. Plastics production increased over three times as much as that for all industries during this period. These patterns of industrial development have had deleterious impacts on the railroads. Many of the newer (and lighter) materials have been substituted directly for older, heavier products. This has reduced the railroads' comparative advantage in the movement of heavy goods in large volumes.

The new products in the modern economy often are items of high dollar value and shippers are prepared to pay a premium for fast, reliable, top quality transportation in order to reduce inventory charges, meet precise customer demands, or insure that an item needed as part of a more comprehensive production process is delivered on schedule. In many modern production and marketing processes, higher cost transportation may actually reduce the total costs of the complete operation from raw materials to purchase by the final consumer. The automobile manufacturers, for example, spend over $100 million annually to

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ship auto parts by airplane to their assembly plants because it is cheaper to pay for such relatively expensive transportation than to close down an entire assembly line. Trucking, because it is so flexible, responsive and ubiquitous,

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> *[I]f we can't move vehicles to the dealers because of poor service and lack of rail equipment ... then we will not use rails. We will simply have to spend more to assure service to our dealers. We are unwilling to delay delivery of our product.... We are prepared to pay the higher freight cost for motor transport in order to avoid delivery problems.*
>
> Director, Transportation and Traffic,
> Ford Motor Co. (1978)

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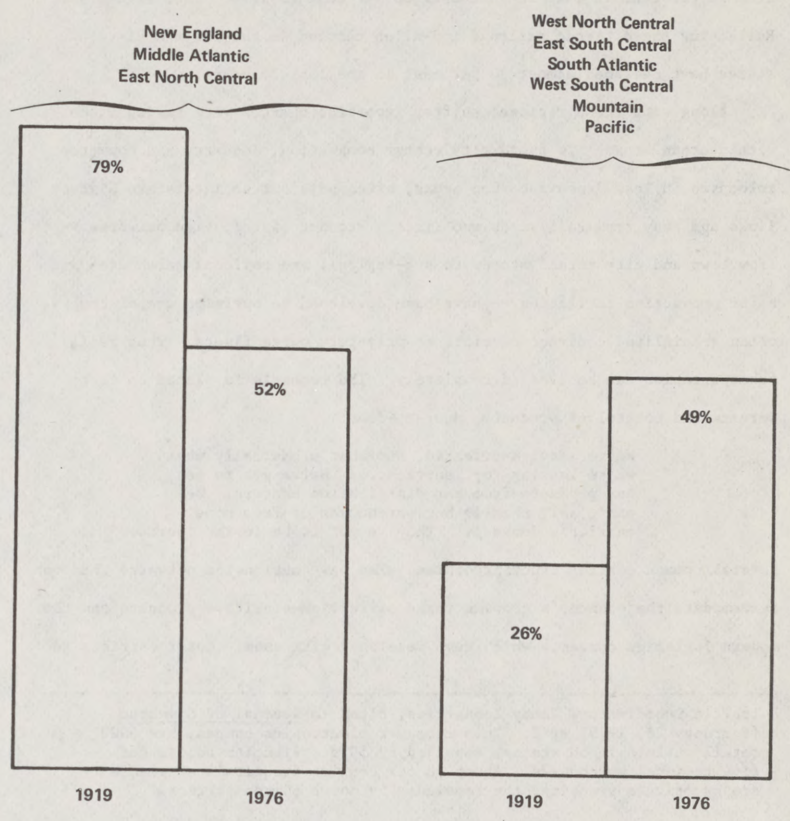
has captured the lion's share of high value manufactured traffic. In this speed and quality vs. price trade-off where demand is quite inelastic relative to transport rates, railroads are severely disadvantaged compared to other unregulated or less regulated modes which can provide superior levels of service, charge higher rates and capture the business. The modern economy routinely generates such trade-off situations, to the continuing benefit of the non-rail modes.

Regional, Demographic and Locational Change. The Northeast's domination of American life -- so significant during the period of rail network construction -- has been permanently altered. Population has been drawn to the Far West, Southwest, and West. Income differentials among regions are rapidly being equalized, in large part because industrial and commercial activity has been more broadly and evenly dispersed. For example, all regions outside the New England, Middle Atlantic, and East North Central areas have a higher share

Figure 9

CHANGING REGIONAL SHARES OF VALUE ADDED BY MANUFACTURE, 1919 AND 1976 (Per Cent of U.S.)



Source: Department of Commerce, Long Term Economic Growth, 1860–1970 (June 1973) and Bureau of the Census, Statistical abstract of the United States.

of value added by manufacture today than they did in 1920. Indeed, the South Atlantic share increased by two-thirds; the East South Central, Mountain and Pacific regions roughly doubled their shares; and the West South Central region's share more than doubled. In contrast, the northeastern states dropped from 79 per cent in 1919 to just over 50 per cent in 1976. (See Figure 9.) Reflecting these trends railroad ton-miles carried in the Eastern District states have declined almost 30 per cent in the last 30 years.

Along with these regional shifts, important changes were taking place within urban areas. To avoid city center congestion, industry and commerce relocated in less dense suburban areas, often adjacent to interstate highway links and away from rail yards and lines. Product distribution networks -- from town and city retail stores to sub-regional and regional warehouses and major production facilities -- have been developed to optimize use of trucks, often specialized contract carriers or privately owned fleets. Thus rail transportation can be avoided completely. The emphasis is placed on fast service and control of products, door-to-door:

> We're service-oriented, and that's basically what we're looking for, service.... We've got to get our products from our distribution centers. We can't sell them in our warehouses or from some carrier's docks.... They've got to be in the stores."[1]

Several common carrier trucking systems also have nationwide networks that can accommodate the economy's growing range of service-sensitive products and the modern logistics concepts which have developed with them. Motor carriers go

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[1] Traffic Coordinator, Tandy Industries, cited in Journal of Commerce (February 26, 1979) at 2. This consumer electronics company has 6000 retail outlets in 50 states, supplied by 50 distribution points and five regional warehouses. About 60 per cent of the firm's shipments are by private trucking, the remainder by motor common carrier.

anywhere, and, as will be established in Chapter II, carry virtually anything. In effect they can offer single line service for their markets across extensive geographic areas. In many respects motor carriage matches up with the modern 20th century economy as responsively as the railroad system did with our late 19th century economy. Indeed the invention and growth of several non-rail types of transportation powerfully reinforced the forces of economic and population change that we have been discussing.

II

THE PERVASIVENESS OF COMPETITION IN AMERICAN TRANSPORTATION TODAY

The revolutionary changes in the economy and life style of the country which so clearly separate the late nineteenth century -- when the railroads were the preeminent transporters -- from the present, have been fully matched by changes in transportation technology. In the late 1800's there was nothing else to challenge the railroad, except along the seacoasts and the Great Lakes. Indeed a system of Federal regulation was devised in part to serve as a substitute for the lack of normal market forces.[1]

The basic premise for such regulation has long since vanished. The automobile and truck began to compete energetically with the railroads in the 1920's, but it was the explosive growth in national income after World War II, a simultaneous flowering of transportation technologies -- jet aircraft, powerful diesel towboats, efficient trucks and automobiles, nationwide pipeline systems -- and the creation of planned, highly organized and well-funded Federal programs for the development of highways, waterways, airports, and airway control systems, that combined successfully to eliminate the dominance of the railroad. These events, aided and abetted by changes in the make-up of the economy, in the sources and uses of energy, and in the location of industry, business and the population, have completely transformed the environment in which the railroads and railroad regulation were originally established. They

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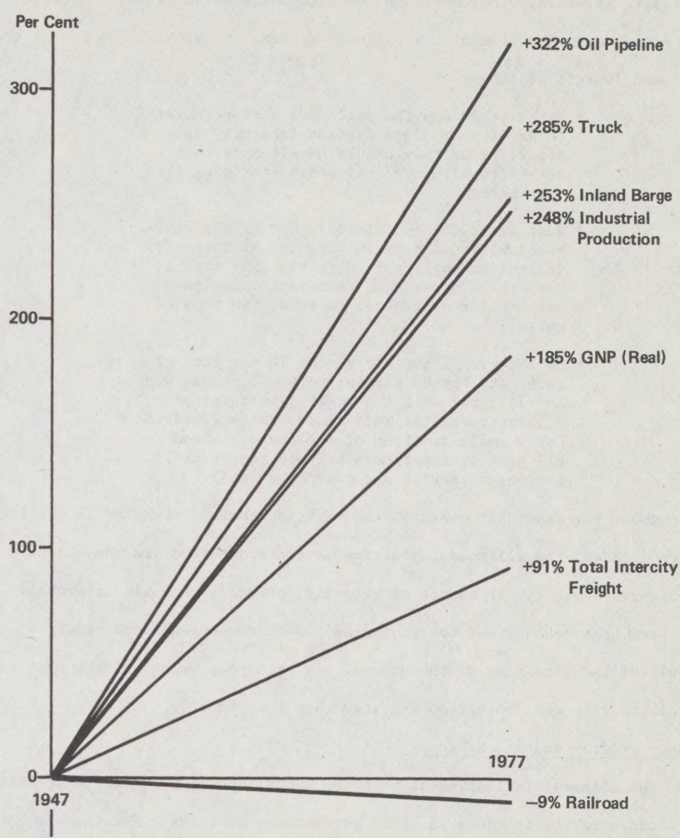
[1] Federal regulation was also intended to curb wasteful competition between railroads and inconsistent regulation by the individual states.

Figure 10

GROWTH IN INTERCITY FREIGHT TONNAGE AND THE ECONOMY, 1947–1977



SOURCE: Transportation Association of America.

have also liberated the captive shipper from dependence on the railroads, opening up an unparalleled number of transportation options to which shippers have responded enthusiastically. The spectacular success of trucking, water carriage, aviation, pipelines, and the automobile stand in vivid contrast to the steady deterioration of the railroad system. Consider but a few of the profound indicia of change --

* Fifty years ago the railroads accounted for three of every four freight intercity ton-miles; today they handle barely more than one-third with non-rail modes providing the remainder.

* Just after the end of World War II the railroads hauled almost 60 per cent of intercity freight tonnage; but currently they handle less than 30 per cent (non-rail modes thus account for over seven of every ten tons of cargo);

* On the eve of the War almost 70 per cent of intercity common carrier personal travel was by rail; but with the growth, in particular, of air travel the rail share has declined to but a small fraction of one per cent (and for all practical purposes private sector rail passenger service has come to an end).

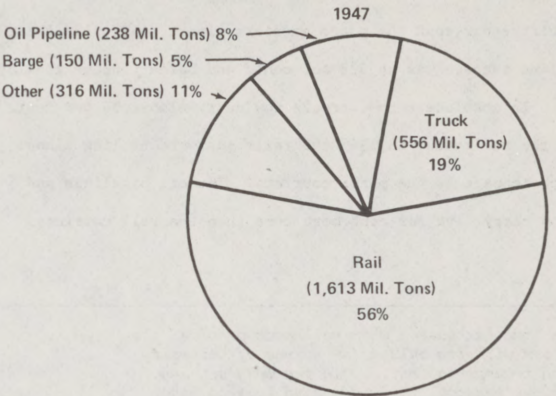
Throughout the last half century, and with increasing intensity in the last three decades, the railroads' position in transportation has thus been in pronounced decline. It cannot be gainsaid, however, that simultaneously shippers, the economy and the consuming public reaped enormous benefits as a result of the flowering of the modern, new transport modes and the vast range of alternative transportation services that they provide.

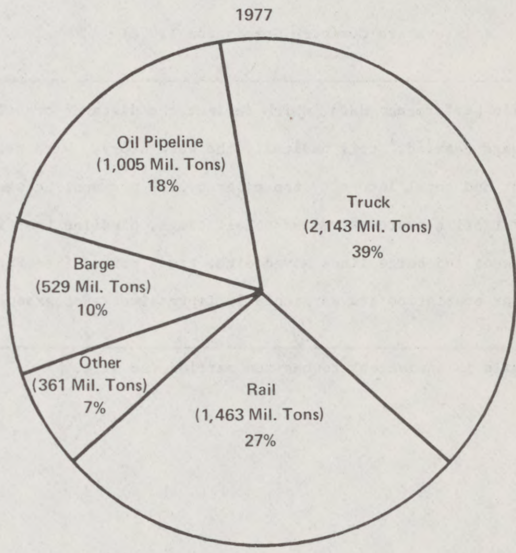
Transportation and the Economy

The clearest indication of both the depth and the reach of competition in transportation is found in basic performance measures. For example between

Figure 11

DECLINING RAILROAD TONNAGE AND SHARE OF INTERCITY DOMESTIC FREIGHT





SOURCE: Transportation Association of America.

1947 and 1977, while the economy (real GNP) was growing 185 per cent, industrial production was up 250 per cent, and tons of intercity freight increased 91 per cent, the railroads carried nine per cent fewer tons. (See Figure 10.) During the same thirty-year span the motor carriers almost quadrupled their tonnage; oil pipeline tonnage was up 322 per cent; and barge tonnage grew by over 250 per cent. In absolute terms, trucks now carry almost 50 per cent more tonnage than the railroads; in 1947 the railroads were hauling almost three times as much tonnage as the motor carriers. The oil pipelines and barges together now carry five per cent more tons than the rail carriers. (See Figure 11.)

> *The time has passed when railroads provided the Nation with its only major source of intercity land transportation.... In the long run and for various reasons, railroads have lost to other modes of transportation considerable volumes of traffic.... The railroad industry's traffic volume has not kept pace with this Nation's growth rate.*
>
> Interstate Commerce Commission (1976)

Ton-mile performance data, which reflect the distance traveled as well as the tonnage carried,[1] tell basically the same story. With real GNP growing 185 per cent and total intercity ton-miles by 129 per cent between 1947 and 1977, truck traffic soared five and a half times, pipeline traffic increased by 433 per cent and barge lines moved eight times more. (See Figure 12.) The motor carrier statistics are particularly impressive. For example, in 1965

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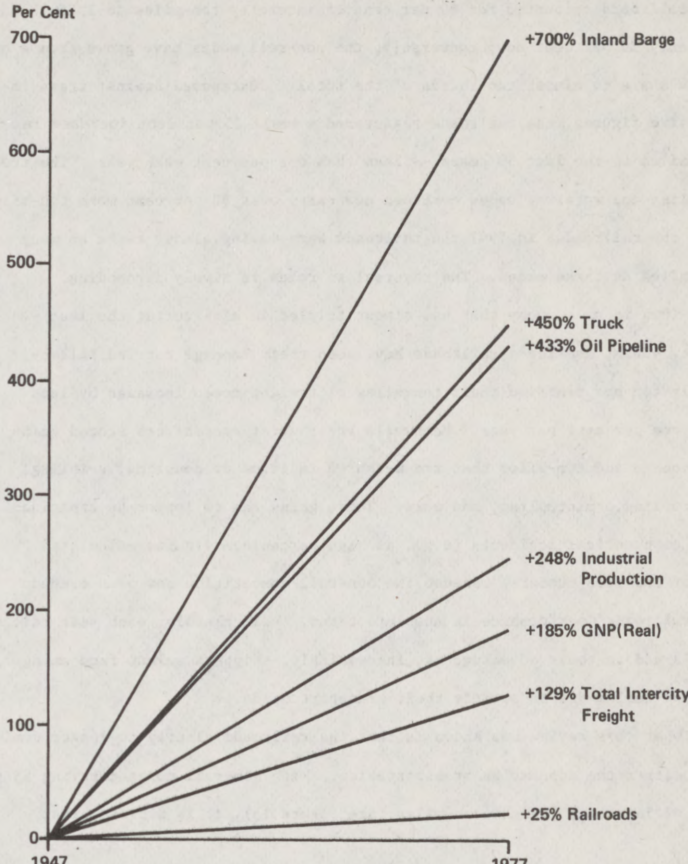
[1] One ton-mile is equivalent to one ton carried one mile.

Figure 12

GROWTH IN INTERCITY FREIGHT TON–MILES AND THE ECONOMY, 1947–1977



SOURCE: Transportation Association of America.

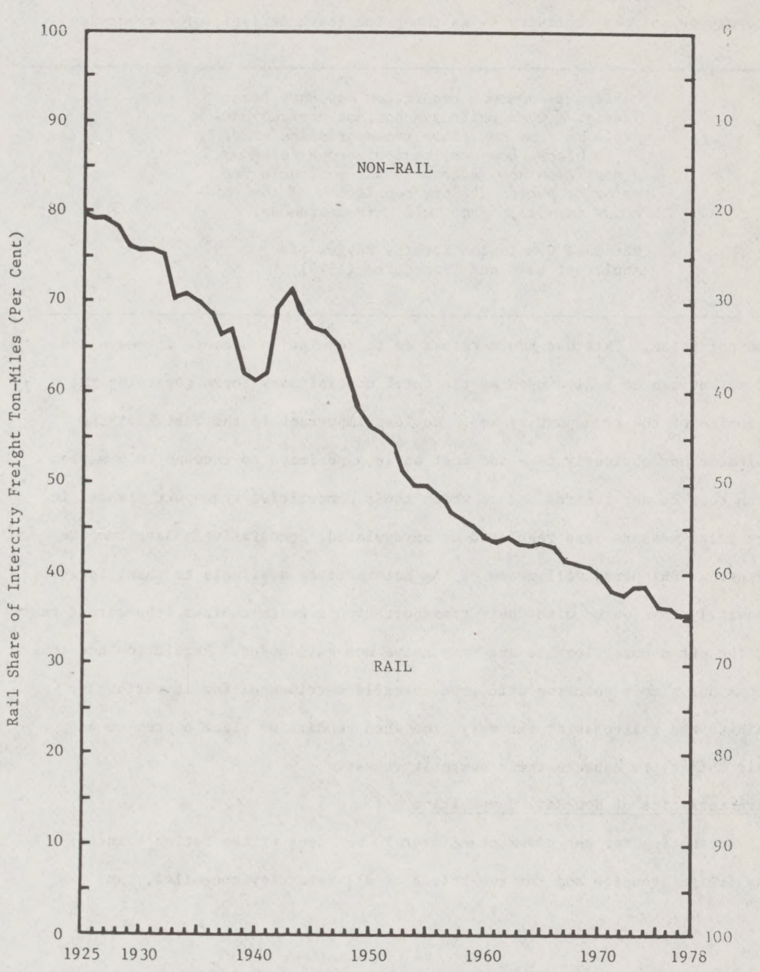
ton-miles hauled in combination trucks on main non-urban roads totaled 182 billion; by 1976 this had increased to 476 billion ton-miles, up more than two and a half times in just eleven years. On the basis of comparative shares, the railroads accounted for 80 per cent of intercity ton-miles in 1925, but for only 35 per cent now; conversely, the non-rail modes have grown from a one-fifth share to almost two-thirds of the total. Juxtaposed against these impressive figures, the railroads registered a small 25 per cent increase in ton-miles in the last 30 years -- less than one per cent each year. The truck, pipeline and waterway modes combined now carry over 80 per cent more ton-miles than the railroads; in 1947 the railroads were moving almost twice as many ton-miles as these modes. The reversal in roles is simply astounding.

Thus in an economy that has almost tripled in size during the last thirty years, America's railroads have seen their tonnage carried fall by nearly ten per cent and their ton-miles of freight moved increase by less than one per cent per year. Meanwhile their chief competitors scored gains in tonnage and ton-miles that are measured in terms of doubling, tripling, quadrupling, quintupling, and more. These gains can no longer be explained away as numerical accidents (e.g., as high percentage figures calculated off of low base numbers) because the non-rail competition now even exceeds the railroads' performance in absolute terms. Relentlessly, each year rail's rivals add to their advantage as, increasingly, shippers select from among the non-rail modes to satisfy their transport needs.

What this review has shown is that the railroads clearly no longer dominate either the economy or transportation. With non-rail modes carrying 65 per cent of intercity freight ton-miles (see Figure 13), it is manifest that

Figure 13

THE DECLINING RAIL SHARE OF INTERCITY FREIGHT TON-MILES



Source: Harold Barger, The Transportation Industries: 1889-1946 (1951); Transportation Association of America.

shippers now have available and are using, in increasing degree, a broad range of transport alternatives other than rail service. Competition -- not rail monopoly or shipper captivity -- is the prime characteristic of current-day

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> *Strict economic regulation may have been justified when railroads had not serious competition from any other transportation mode. It is clear, however, that vigorous intermodal competition now undermines the rationale for existing public utility regulation of the railroads in most, if not all, circumstances.*
>
> National Commission for the Review of Antitrust Laws and Procedures (1979)

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transportation. This has acute relevance to regulation because it means that the market can be relied upon as the chief disciplinary force governing the economics of the transport system. No less important is the fact that the railroads now obviously face and must be in a position to respond to a market which they do not control and in which their competitive transport rivals, in very large measure less regulated or unregulated, comparatively have immense strength. Shippers, well aware of the alternatives available to them, increasingly have voted with their transportation service choices (the surest test) for the often more flexible and responsive non-rail modes. Regulation has thus become not simply anachronistic, but actually detrimental for it seriously inhibits the railroads at the very time when conditions place a premium on their ability to enhance their competitiveness.

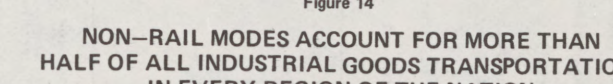
Characteristics of Non-Rail Competition

Accounting for the movement of over 70 per cent of the Nation's intercity freight tonnage and for two-thirds of all intercity ton-miles, the

Figure 14

NON–RAIL MODES ACCOUNT FOR MORE THAN HALF OF ALL INDUSTRIAL GOODS TRANSPORTATION IN EVERY REGION OF THE NATION

(Non-Rail Per Cent of Total Tons)



SOURCE: 1972 Census, Area Report 8.

non-rail transporters -- the trucks, the water carriers (barge, Great Lakes, and coastal), truck/water combinations, and the pipelines -- now dominate U. S. freight transportation. This domination exists in all geographic areas. Figure 14, for example, shows that the non-rail modes account for more than half -- and in most instances for two-thirds or more -- of all industrial goods transportation in <u>every</u> region of the country. They are dominant because they are so responsive to the changing needs of the economy. Unquestionably their flexibility in adapting to continuously changing requirements for transportation is their greatest strength, and, conversely, the railroad industry's comparative inflexibility (in part imposed by regulation) is its principal handicap.

It must be re-emphasized that the railroad network was designed in turn-of-the-century conditions to be a general purpose transportation system serving

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> *[T]oday, truck and barge competition are what really sets the tone of management and, increasingly, the pricing policy of the railroad industry.... [T]he rise of other modes has had an enormous effect on competition in the transportation industries. It is a major reason why railroads have lost their market share and their potency in the marketplace.*
>
> Federal Railroad Administration (1979)

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everything from passengers to freight, local to transcontinental trips, low value bulk to high value manufactured commodities, and mail and small parcels to livestock and iron ore. The non-rail modes have tended to be more specialized, each competing efficiently for parts of the total transportation market.

In effect they have succeeded in sharpshooting the once rail-dominated market for transportation and have succeeded in reducing the railroads to a subordinate and still declining position within it. Today the non-rail modes, significantly less regulated than the railroads, are able to satisfy shipper demands for low cost transportation service, for high quality service, and for service at any distance interval at virtually any location in the country.

Bulk Commodities and Low Cost Transportation. Cost is significant to all transportation users, but is particularly important in the movement of lower-valued or bulk products (grains, coal, ores, etc.) where the cost of transportation can make up a large share of the final delivered price. Here water carriers are especially competitive for they offer service that typically is lower in cost than rail. In 1977, for example, average revenue per barge ton-mile was about half a cent as compared with over two cents for rail (on some bulk movements rail revenue per ton-mile may fall to about a penny, still well above that for barge service). Not surprisingly, then, shippers of a wide range of bulk articles (and a significant volume of manufactured items such as steel, sugar, petroleum products, and chemicals) make extensive use of barge service. Between 1960 and 1977 barge traffic on the Mississippi River System increased by 128 billion ton-miles or by about 184 per cent.

Offering similar low-costs are the petroleum pipelines. Common carrier lines in 1976 realized average revenue per ton-mile of less than half a cent. (The larger diameter pipelines, built mostly in recent years, are believed to have even lower costs.) With the expansion of the pipeline network nationally, a large share of crude and refined petroleum products now moves by this mode (the rest goes via water in the oil companies' privately-owned fleets).

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No significant amount of petroleum any longer moves by rail. Pipeline technology, moreover, is not limited to petroleum, or even to liquids. It can be adapted to the movement of solids in a liquid or gaseous slurry mixture, with coal being an important illustration. Pipelines, then, offer considerable potential additional competition for bulk traffic to and between points located in areas away from water.

Intermodal Competition for Bulk Traffic. The transportation of bulk commodities is characterized by pervasive intermodal competition. To some this may appear surprising, for it was long-supposed that the railroads would continue to occupy a dominant position in the movement of raw materials even if

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> *Even in transportation of bulk commodities, where a service advantage can be provided, the railroads have lost their market share. Barges, proposed coal slurry pipelines, and even trucks provide ready alternatives for the shipment of many traditional rail commodities, such as coal, refined petroleum products, cement, and grain.*
>
> Department of Transportation (1978)

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they lost competitive position for finished goods. The fact, however, is that even here the non-rail modes, truck as well as barge and pipeline, have demonstrated a strong capability to move bulk products in direct and effective competition with rail. The shippers of bulk products often select the non-rail modes, persuasive testimony to the fact that the captive shipper -- the shipper with absolutely no choice other than rail -- is a rare exception, not the rule, in today's conditions.

For example, in the commodity mix moved by railroads farm products have consistently held about an eight or nine per cent share of total originated tonnage, from 1920 to the present. But growth in absolute terms has been extremely sluggish over that long period, averaging less than one per cent annually. Since 1974 rail originated farm products tonnage actually has fallen over 14 per cent. The decline in non-grain farm product traffic has been particularly precipitous, with annual car loadings dropping by 23 per cent in 1978 alone. One important reason for this trend, of course, is the major inroads made by barge, truck, and truck/barge competition. Most of the carriers involved are exempt from regulation, but between 1967 and 1977 even the regulated motor carriers increased their agricultural commodities tonnage by 65 per cent (about five per cent per year). The non-rail modes, regulated and unregulated, are now the dominant carriers of agricultural and food products, including grain.

Focusing on grains -- once the domain of the railroads -- it can be seen that the trend toward non-rail shipment has been accelerating rapidly. As

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> *Technological developments have substantially enhanced the capability of motor and barge carriers in some areas to move grain.... The presence of this competition necessitates revisions in the grain rate structure.... Such action ... is needed to improve the financial condition of railroads and to enable them as a group to compete more effectively as well as constructively with motor and barge competition for the grain traffic.*
>
> Interstate Commerce Commission (1979)

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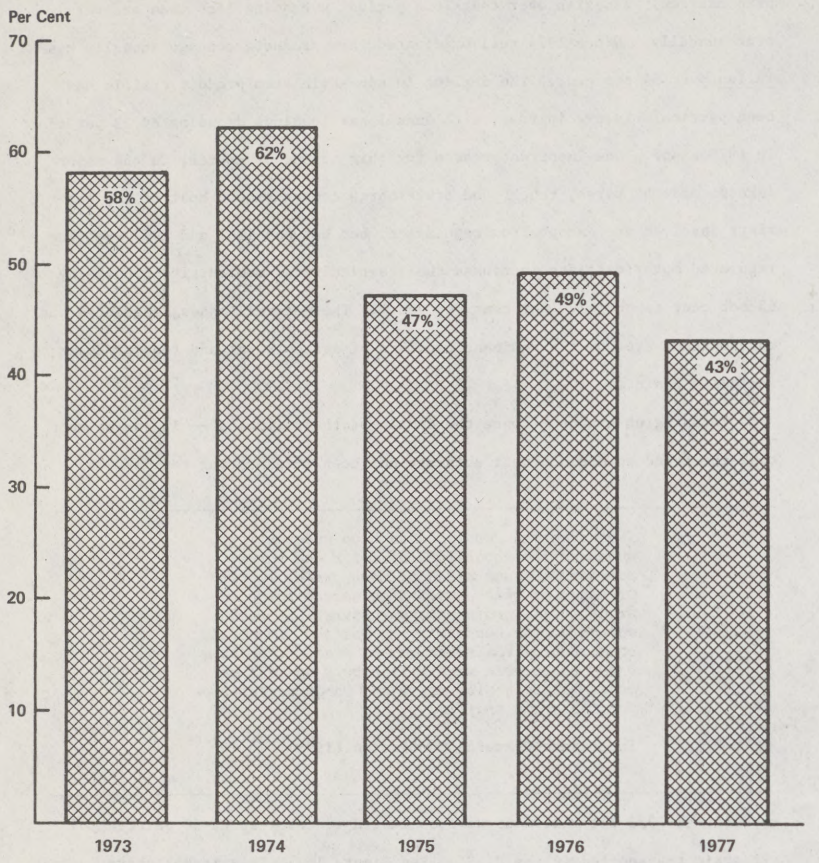
recently as 1973 the railroads were estimated to carry about 60 per cent of all grain transported in the U. S. (See Figure 15.) This market share lasted

Figure 15

RAILROADS NO LONGER DOMINATE GRAIN* TRAFFIC

(Grain originated by rail as a share of grain sold)



* Barley, corn, oats, rice, rye, grain sorghums, wheat and soybeans

Source: U.S. Department of Agriculture, Crop Reporting Board, Field Crops; Interstate Commerce Commission, Freight Commodity Statistics and Forms QCS.

through 1974, but since that year the railroads have carried less than half of the total volume of grain shipments. Consider the following specific illustrations of the intensity of intermodal competition for grain transportation in the 1970's:

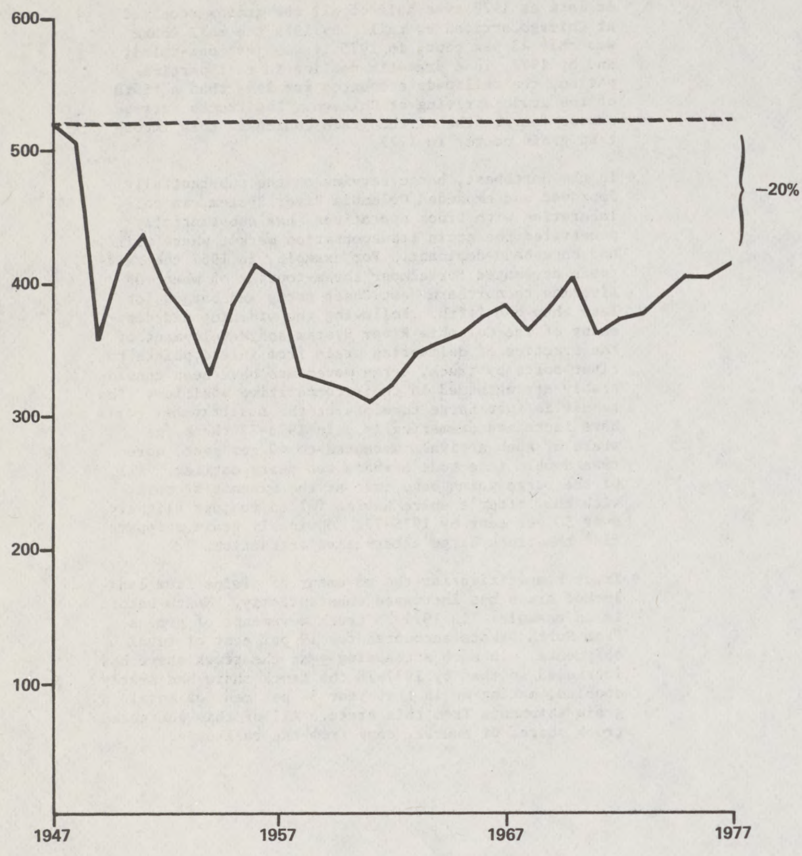
* As late as 1970 over half of all the grains received at Chicago arrived by rail. By 1974 the rail share was only 43 per cent, in 1975 it was just one-third, and by 1977, in a dramatic decline in rail participation, the railroads accounted for less than a fifth of the grain arriving at Chicago. The trucks carried almost four-fifths of the grain coming to this important grain center in 1977.

* In the Northwest, barge service on the substantially improved and expanded Columbia River System, in collaboration with truck operations, has substantially penetrated the grain transportation market where rail had once been dominant. For example, in 1967 the railroads accounted for almost three-fourths of wheat deliveries to northern West Coast ports and barges for less than one-fifth. Following the widening and deepening of the Columbia River System and development of the practice of delivering grain from inland points to river ports by truck, barge movements have been considerably strengthened in their competitive position. The result is that barge receipts at the northernmost ports have increased dramatically. In 1976-77 the barge share of such arrivals amounted to 40 per cent, more than double this mode's share ten years earlier. All of the barge gains have come at the expense of rail, with the latter's share having fallen to just slightly over 50 per cent by 1976-77. Obviously grain shippers find the truck/barge alternative attractive.

* Truck competition for the movement of grains from landlocked areas has increased substantially. North Dakota is an example. In 1974-75 truck movements of grains from North Dakota accounted for 19 per cent of total shipments. In each succeeding year the truck share has increased so that by 1977-78 the truck share had nearly doubled, making up in that year 34 per cent of total grain shipments from this state. All of this increased truck share, of course, came from the railroads.

Figure 16

ORIGINATED COAL TONNAGE FOR CLASS I RAILROADS, 1947–1977
(In Millions of Tons)



Source: Interstate Commerce Commission, Freight Commodity Statistics, (1947–1975) and Forms QCS.

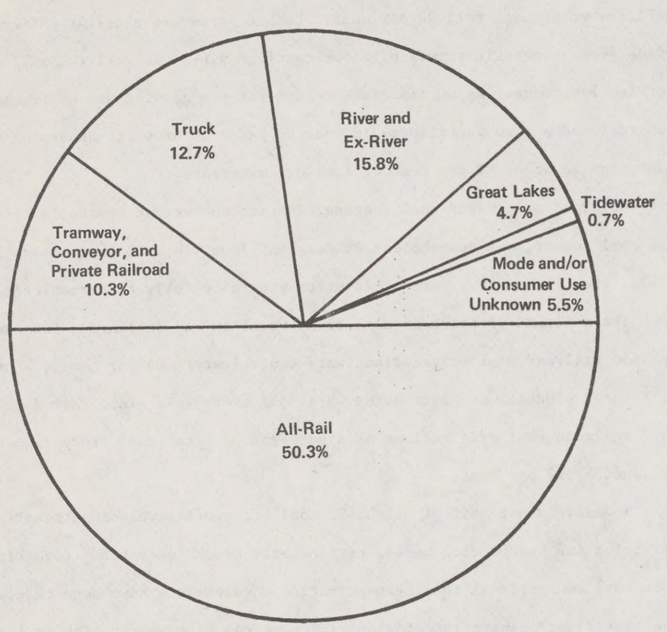
What is true for grains is true of many other bulk products. Today the railroads transport less than five per cent of sand and gravel tonnage (trucks account for 90 per cent). Of lumber produced in the Pacific Northwest, the railroads accounted for 75 per cent of the traffic in 1967 and the trucks for 22 per cent, but by 1978 each mode was carrying about 50 per cent. Nationally rail lumber tonnage fell 34 per cent. Lumber producers assert the increasing price (cost) competitiveness of motor carriage vis-a-vis rail (as well as service advantages) as an important reason for the growing use of trucks. The non-rail modes also participate in over 80 per cent of portland cement movements and in about 80 per cent of iron ore movements.

Railroad originated coal tonnage, despite the recent revitalization of the coal sector, was nonetheless 20 per cent lower in 1977 than it was in 1947. (See Figure 16.) Even this steep gap fails fully to communicate how much the railroad position in coal transportation has declined. For example, in 1954 railroad coal originations were equivalent to 85 per cent of total U. S. coal production. Decreasing in almost every year since that date, by 1977 railroad coal originations as a per cent of total coal production had declined by 29 per cent.

Nowadays about half of all U. S. coal transport involves substantial participation by non-rail modes, particularly truck and water. (See Figure 17.) Moreover, conventional fuel transportation requirements have been reduced by the significant generation of electricity at the mine-mouth which is transported by wire direct to consumers, thus obviating the need for long-haul coal movement. This technique, which now accounts for approximately 12 per cent

Figure 17

TRANSPORTATION OF COAL BY DOMINANT MODE IN 1977[1]
(Per Cent of Short Tons)



[1]Transport by water may include truck or rail links and transport by rail may include incidental truck links.

SOURCE: U.S. Department of Energy, Bituminous Coal and Lignite Distribution, (January – September and October – December 1977).

of total coal "shipments" to electric utilities,[1] effectively diverts coal traffic from the railroads. In addition the movement of coal in slurry pipelines has become feasible. One coal slurry pipeline of five million tons capacity is already operating in the West. Half a dozen others designed to serve the Southwest and Southeast from coal basins in the West and Midwest are in the advanced planning stage. Some have capacities as high as 25 million tons a year.

It is particularly important to recognize the growing importance of trucking in the transportation of bulks of all kinds. Roughly a million tons a year of taconite pellets, for example, now move from Lake Erie ports by motor carrier to steel making facilities in the Youngstown, Ohio area, a movement for which the railroads for years were the sole form of transportation. Many other illustrations of bulks moving in truck service can be cited, e.g., salt, limestone, dolomite, cement, plaster, gypsum rock and ground gypsum, etc. Contributing in part to this expansion in truck movements of bulks are technological developments such as pneumatic air trailers, hopper bottom drop trailers, and other specialized equipment which permit carriage of bulk products but can also be adapted so as to allow the efficient back-haul movement of other types of cargo, bulk and non-bulk.

Obviously, then, barges, pipelines and water carriers have made bulk commodity transportation markets highly competitive and their growing advantage in these markets shows no sign of abating. Shippers have many alternatives from which to choose and frequently select one or more of the non-rail modes.

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[1] Mine-mouth electricity generating plants involve some on-site coal movement, typically by conveyor or truck; such movements are reflected in the Department of Energy data depicted in Figure 17.

Figure 18

TRUCKS DOMINATE IN THE TRANSPORTATION OF GOODS ORIGINATING IN FAST GROWING SECTORS OF THE ECONOMY

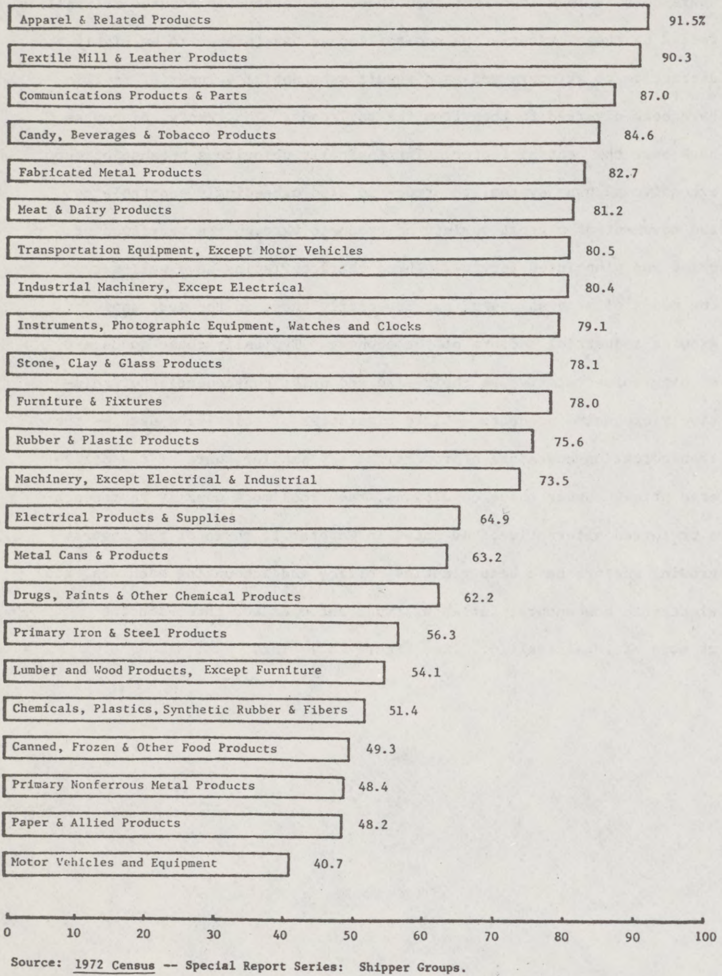
	Average Annual Growth Rate, 1958-1972 (Per Cent)	1972 Modal Share of Tons (Per Cent)		
		Rail	Truck	Other
Plastics Products	13.1	16.0	83.0	1.0
Office, Computing and Accounting Machines	9.4	2.6	84.2	13.2
Electronic Components and Accessories	11.6	8.3	76.7	15.0
Real GNP (1972 dollars)	4.0			

Source: Bureau of Labor Statistics, The Structure of the U. S. Economy in 1980 and 1985; Council of Economic Advisors, Economic Report of the President (1976); and 1972 Census, Area Report 8.

High Quality Transportation Services. Service efficiency and adaptability, or more generally the ability to satisfy a broad range of demands (for different products moving between diverse geographic locations), has special meaning to shippers of higher valued commodities where cost is less important than speed and reasonably assured reliability. Tested by these criteria the non-rail modes have proven to be highly attractive to shippers and as a result substantial volumes of traffic have been diverted to them from the railroads. The trucks, of course, have been the central factor. Intrinsically ubiquitous because of our extensive highway system, the truck is also exceedingly adaptable to the movement of a great variety of products through the provision of quick and pinpointed service. These characteristics have well-served the needs of many shippers, but especially those in the most rapidly growing industrial sectors of the economy. Typically these goods are of high value relative to their size and bulk; consequently for relatively expensive products -- like cigarettes or television sets -- the transportation costs are a proportionately smaller share of the delivered price. Under these conditions, the truck mode usually represents a preferred alternative. As noted in Chapter I, three of the fastest growing sectors have been plastics, office and accounting machines, and electronic components; for each, truck accounts for three-fourths or more of total traffic. (See Figure 18.) This

Figure 19

NON-RAIL MODES DOMINATE THE
MOVEMENT OF MANUFACTURED GOODS
(Non-Rail Share of Intercity Tons Shipped
By Manufacturing Establishments, 1972)



Source: 1972 Census -- Special Report Series: Shipper Groups.

pattern is constantly repeated in the manufactured goods sector. Profitable less-than-carload traffic, once the preserve of the railroads, has also been siphoned from the railroads because of the service advantages provided by trucks. Specialized parcel service companies and the intercity buses have become dominant in small package express markets, with air freight transportation (now substantially deregulated) also experiencing rapid growth.

Intermodal Competition for Manufactured Goods. According to the Census of Transportation the non-rail modes, principally trucks, accounted for more than 60 per cent of the total tonnage of manufactured goods in 1972. Indeed, of the 112 three-digit manufactured commodity groups reported in the Census, non-rail carriers moved half or more of the traffic in 95 of the groups (85 per cent). There could hardly be more compelling evidence of the pervasiveness of competition throughout the transportation market.

Figure 19 illustrates the tremendous extent of participation in the transportation of industrial products by non-rail modes in 23 important shipper groups. It shows that for most of the product categories they accounted for the movement of more than half of the tonnage involved and in many cases for more than three-fourths. Even in product categories where the railroad share exceeded 50 per cent (and this pertains only to four of the 23 groups) the non-rail modes accounted for at least 40 per cent of the intercity tonnage shipped. In other words, even in those few categories of manufacturing products where the railroads account for as much as half of the total traffic, other modes (especially trucks) are providing forceful competition.

Figure 20

INTERMODAL COMPETITION INCREASINGLY PERVADES TRANSPORTATION

(Per Cent Distribution of Intercity Ton–Miles, Rail and Non–Rail)

Commodity group	Year	Rail	Non–Rail
MACHINERY, EXCEPT ELECTRICAL AND INDUSTRIAL	1963	RAIL 52%	NON–RAIL 48%
	1972	RAIL 38%	NON–RAIL 62%
BASIC TEXTILES AND LEATHER PRODUCTS	1963	RAIL 25%	NON–RAIL 75%
	1972	RAIL 16%	NON–RAIL 84%
DRUGS, PAINTS AND OTHER CHEMICAL PRODUCTS	1963	RAIL 62%	NON–RAIL 38%
	1972	RAIL 44%	NON–RAIL 56%
MEAT AND DAIRY PRODUCTS	1963	RAIL 47%	NON–RAIL 53%
	1972	RAIL 28%	NON–RAIL 72%
FABRICATED METAL PRODUCTS	1963	RAIL 41%	NON–RAIL 59%
	1972	RAIL 23%	NON–RAIL 77%

SOURCE: U.S. Bureau of the Census, Census of Transportation 1963 and 1972, Commodity Transportation Survey -- Special Report Series: Shipper Groups.

Moreover, the effectiveness of this competition is increasing steadily. The 1963 Census of Transportation showed that the railroads carried about 44 per cent of intercity manufactured goods tonnage. Less than a decade later, in 1972, the rail share had declined to under 39 per cent. Meanwhile the truck share had increased by over four percentage points, i.e., nearly all of the loss in market share experienced by the railroads between 1963 and 1972 represented diversion to trucking.

Changes in some individual industrial product categories show stunning losses in rail share and comparable gains for motor carriers, taking both tonnage and distance into account. Using this ton-mile measure one finds that between 1963 and 1972 the rail share declined from 52 per cent to 38 per cent for machinery, from 25 per cent to 16 per cent for textiles, from 62 per cent to 44 per cent for drugs and chemicals, from 47 per cent to 28 per cent for meat and dairy products, and from 41 per cent to 23 per cent for the carriage of metal products. (See Figure 20.) Reflecting its competitive vibrancy, trucking has continued to penetrate deeply into what had once been predominantly rail traffic.

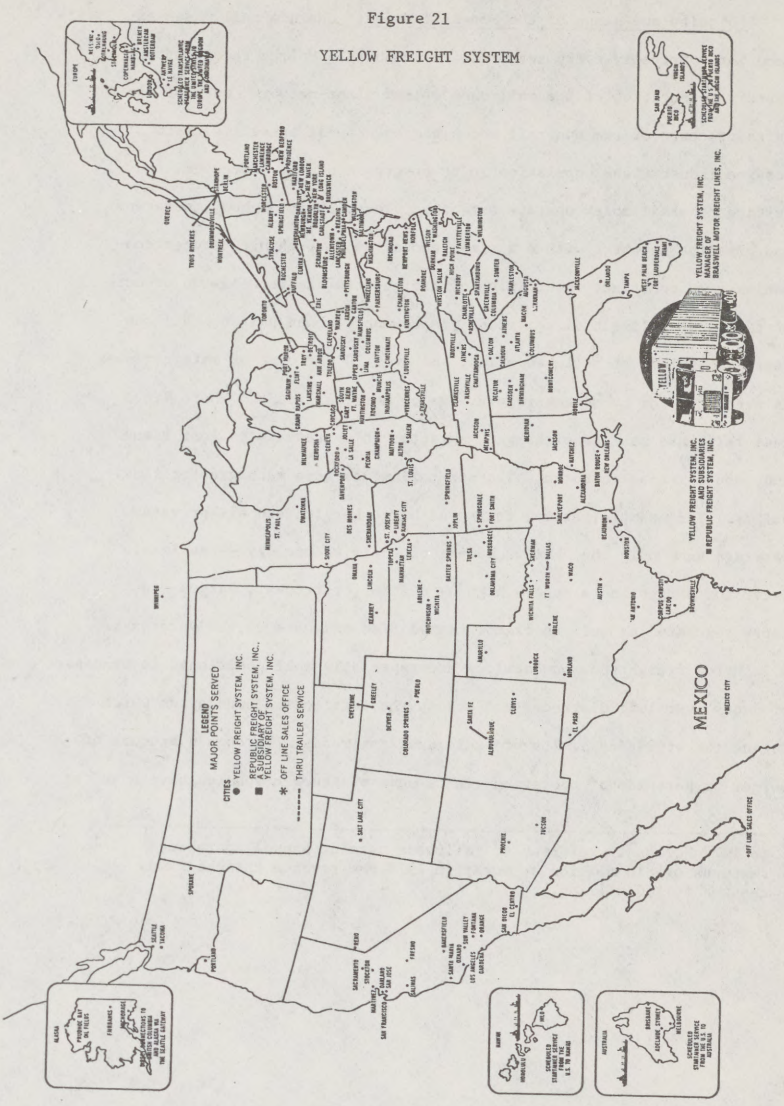
The crucial point is that for the transportation of nearly every conceivable industrial product the trucks, and often other modes (especially barge for the movement of chemicals, steel products and sugar), represent an effective transportation alternative which is readily available and highly adaptable for intercity transportation. Intense intermodal competition for the movement of industrial products is thus firmly established reality. With a broad range of transportation choices shippers clearly are no longer "captive" to rail service.

Passenger Transportation. In their heyday, the railroads were the dominant supplier of intercity passenger service in the U. S. and passenger revenue was an important source of railroad income. In 1929, for instance, the railroads carried over three-quarters of a million passengers and accounted for 77 per cent of intercity for-hire passenger travel. In 1935, however, the Federal Coordinator of Transportation concluded -- correctly -- that "the automobile has slaughtered the railroad-passenger business." After a brief respite during the World War II years, low cost travel by private automobile and the speed and convenience of the airplane turned rail passenger service into a sea of red ink (prolonged in part by the reluctance of regulators to recognize that their pre-auto and pre-aviation "public convenience" concepts had become anachronisms in an age of new transportation technologies). Population growth in areas without an extensive rail network and relative population stagnation in areas with dense rail trackage helped to reinforce these trends.

Nevertheless, it was not until 1970 -- 35 years after the Coordinator's diagnosis -- that the Federal government provided the railroads with an opportunity to withdraw entirely from earnings-sapping passenger service. An indication of the magnitude of the burden placed on the railroads is suggested by the fact that the industry's cumulative passenger service deficit 1946-1970 was six billion dollars (1977 dollars), an amount which exceeds by 60 per cent the rail industry's current $3.8 billion backlog of deferred railway and equipment maintenance and delayed capital improvements. Today less than three-fourths of one per cent of total intercity passenger-miles is supplied by rail and over half of this is for non-Amtrak commuter travel.

Figure 21

YELLOW FREIGHT SYSTEM



Ubiquity and Range of the Non-Rail Modes. The non-rail modes extend into virtually every corner of the country. Unlike the nineteenth century orientation of the railroads' fixed plant network, much of the infrastructure of the non-rail modes has been built specifically to service industry and population in newer growth areas. Moreover, the surface non-rail modes operate extensively over their highway, waterway and pipeline networks with a minimal amount of interchange between companies. By contrast, interlining of freight traffic between two or more of the Class I line haul railroads[1] is common: about half of rail tonnage, two-thirds of rail ton-miles, and over 70 per cent of rail revenues is accounted for by movements over two or more railroads. Where lines meet rail cars must be exchanged, a factor which results in lost time and some increase in costs. The non-rail modes have much greater flexibility. For example, exempt truck and barge service and all private carriage know only the obvious bounds of their technology -- navigable water for barges and a superb highway system for trucks. Barges can carry regulated as well as exempt commodities anywhere on the waterways.

Motor freight common carriers are especially well-positioned to transport products over long distances and across the territorial boundaries which define the operating limits of individual railroads. Through a process of merger or purchase of operating rights several truck companies have acquired

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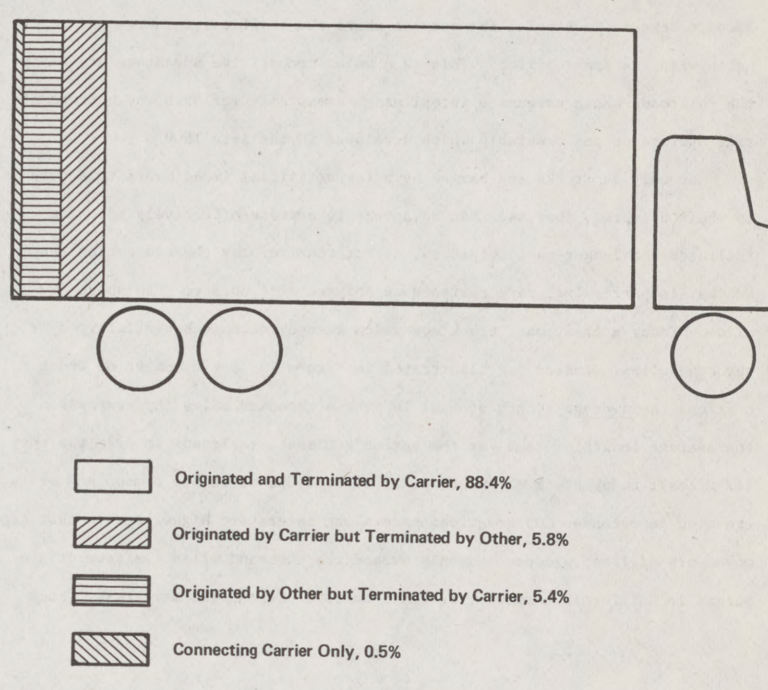
[1] In 1977 "Class I" referred to railroads earning annual operating revenues of $10 million or more; in 1978 the revenue threshold was changed to $50 million.

Figure 22

DISTRIBUTION OF TRUCK TRAFFIC, 1977
(Per Cent of Tons)



Originated and Terminated by Carrier, 88.4%

Originated by Carrier but Terminated by Other, 5.8%

Originated by Other but Terminated by Carrier, 5.4%

Connecting Carrier Only, 0.5%

SOURCE: American Trucking Associations.

coast-to-coast authority or extended multi-state territorial grants. Figure 21 shows a route map of just one of these carriers -- a trucking company with 1977 operating revenues of $574 million -- whose lines criss-cross the country, unimpeded by the artificial boundaries which continue to characterize the rail industry. With route systems such as this, motor carriers (and other non-rail modes) provide shippers with fast, efficient, and reliable single-line service that minimizes the amount of interchange between companies. Significantly, as illustrated in Figure 22, almost 90 per cent of the tonnage moved by regulated trucks is in single line service where the traffic originates and terminates with the same carrier. This is a major competitive advantage vis-a-vis the railroads whose extensive interlining essentially reflects the pattern of rail operations and ownership which developed in the late 1800's.

Not only do trucks and barges have few artificial impediments to access to their networks, they use that advantage to compete effectively with the railroads for longer-haul shipments, a fact that refutes the old notion that trucks, in particular, were confined to shipments of no more than about 400 miles. Today a great many truck movements exceed, often substantially, a thousand miles. Indeed, as illustrated in Figure 23, for a number of truck carriers the average length of haul is over a thousand miles (by comparison the average length of haul for the nation's Class I railroads in 1978 was only 587 miles); today truck movements of 1,000 to 3,000 miles are common and of increasing importance. Observations made along interstate highways show that truck movements of fresh produce commonly exceed two thousand miles (as from origin points in California, Arizona, or Texas to upper East Coast markets). Truck

Figure 23

ILLUSTRATIVE EXAMPLES OF TRUCKING COMPANIES
WITH AVERAGE LENGTHS OF
HAUL GREATER THAN 1000 MILES

Company	Average Length Of Haul
Transcon Lines	1,699
K & W Trucking Co., Inc.	1,393
Southwest Motor Freight	1,383
IML Freight, Inc.	1,340
Time-DC, Inc.	1,322
Lee Way Motor Freight, Inc.	1,226
Navajo Freight Lines	1,183
Illinois-California Express	1,161
Yellow Freight System, Inc.	1,125
Ringsby Truck Lines, Inc.	1,119
East Texas Motor Freight Lines, Inc.	1,065
Mercury Motor Express Inc.	1,009

Note: For each of these carriers, 50 per cent or more of total tonnage is moved in truckload lots.

Source: TRINC's Blue Book of the Trucking Industry (1978 Edition).

hauls of this length are by no means exceptional. Movements of grains, meat, processed foods, steel and other metals, furniture, paper, and other products

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Not only are trucks gaining in bulk and higher rated carriage, they are competing for larger shares of certain long-haul commodity markets once dominated by railroads.

Department of Transportation (1978)

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often extend more than a thousand miles; transcontinental movements (east-west, north-south) are an established feature of current-day truck operations. (See Figure 24.)

Barge movements along the inland waterway system also are of extended lengths. In the transportation of farm products, coal, steel products, chemicals, and other commodities barge movements often exceed a thousand miles. Coal, for example, moves in substantial quantities from points along Ohio River tributaries to destination points in Florida (via the Mississippi River and the Gulf Intracoastal Canal) and fertilizer and other products move in the opposite direction; steel products move from New Orleans to Pittsburgh, Chicago, and other destinations in the north; semi-finished steel products move from Chicago to points in Texas near Houston; coal moves from Ohio River origins to Texas for steel making purposes, etc.

Regardless of distance, therefore, the non-rail modes have proven that they can, with great success, compete effectively with the railroads. By effectively removing the constraint of distance the non-rail modes have almost eliminated the last vestiges of the historical rail "captive shipper." While there may be circumstances in which rail service is peculiarly well-suited

Figure 24

DIVERSITY OF TRUCK COMPETITION:
INDICATIVE EXAMPLES

Commodity	Movement	Approximate Distance (in miles)
Steel products	Colorado to Seattle & Portland	1300-1400
Non-ferrous metal basic shapes	From New England & South Atlantic States	over 1500
Paving & roofing material	From West South Central States	over 1500
Grain mill products	From West South Central States	over 1500
Preserved fruits & vegetables	From South Atlantic States	over 1500
Fresh Fruits & vegetables	California to East Coast cities	3000
Grated cheese	Illinois & Wisconsin to California & Oregon	2100
Oleomargarine	Illinois to California	2100
Coffee	Houston to New Jersey & Northeast States	1600
Chemicals	Texas Gulf to Indianapolis	1000
Synthetic Plastics	Texas & Southwest to Northeast points	over 1600
Generators, turbo engines	Massachusetts to California	3000
Tires	Texas & Oklahoma to California	1800
Printing paper	Ohio to California	over 2200

Source: Recent rate actions; and <u>1972 Census</u>, Commodity Series.

to satisfy the transportation requirements of a given commodity or of a given geographic market, the economic characteristics of non-rail competition and the repeatedly demonstrated adaptability of the services they render in meeting diverse shipper demands for transportation makes it evident that these will indeed be exceedingly rare instances.

Government Aid Programs. Trucking, inland waterway carriage, private auto use, and aviation have also benefited from massive government aid programs to finance construction and maintenance of their basic rights of way. Without this support none of these modes would have been able to exploit their intrinsic technological advantages as rapidly or extensively as they have. As of 1977, for example, the government had spent over $100 billion (much of it drawn from automobile user charges) for a highway right-of-way that greatly contributes to the efficiency of motor carrier operations. Through 1975 the Federal government had spent an estimated $15 billion in general taxpayer revenues for construction, maintenance and operation of the waterways network (over 70 per cent of that sum in the post-World War II period). Waterway operators have paid no user charges; hence their basic right-of-way has been provided completely free of charge.

> *Federal subsidies causing distortions in the marketplace have accelerated the decline of the railroad market share and railroad rate of return on investment. For rail to remain competitive over a broad spectrum of commodity groups, in the long term, Government investment and regulatory policies must provide for equitable competition.*
>
> Department of Transportation (1978)

By comparison with their Government-aided prime competitors the railroads have suffered serious disadvantages. At the very time when the other modes

have experienced rapid gains in traffic and revenue, in part due to the benefits afforded by government assistance for the development of the infrastructure they use, the railroads, despite a sharp relative decline in traffic and materially reduced earnings, have had to commit massive amounts of private capital for plant improvements. In 1978 alone, for instance, railroad industry capital expenditures for roadway and structures totaled $866 million; over the last ten years such outlays, nearly all of which have been financed by the railroads themselves, were $5.1 billion. Nonetheless it is widely recognized that even these massive levels of investment have not been sufficient to sustain the railway system at desirable levels. Inadequate revenue, of course, is a key element of the problem. Thus defined is a vicious circle: government investment programs have contributed to the diversion of traffic from rail to truck and water, leaving the railroads with inadequate resources from which to finance their own plant modernization, which in turn seriously handicaps them in competing for traffic. Inequitable government policy has resulted in an intensification of intermodal competition which has been beneficial to the other modes and harmful to the railroads.

Market Competition

It was noted earlier that freight transportation demand was derived from other economic activity. It is not self-generated or spontaneous. In a very real sense, then, transportation competition is subsumed within the broader conception of "market competition." Market competition normally is thought of as competition between geographically separate producing centers or sources of supply and competition between products that are reasonably good

substitutes for one another. This competition between locations and between products exerts a powerful and usually controlling influence on the transportation choices made by shippers. Its significance has been too long neglected, particularly by the ICC which is extremely reluctant to acknowledge these potent forms of competition in its regulatory decision-making.

Practically no product, manufactured or primary, is found in a single geographic location. The result is that even if a particular carrier or mode

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> *There is an enormous amount of competition out there. We should protect it, and permit it to do what competition does to perfection -- benefit the consumer ... rail-rail competition, rail-truck/rail-barge competition, competition among regions or producing areas, competition among competing final or intermediate products, competition from private or producer/shipper owned transportation, and potential competition from new modes, markets or products.*
>
> Federal Railroad Administration (1979)

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of transportation were to be the principal means of transporting a given product in one area of origin, there is a near certainty that there are other sources, served by other rail carriers or other modes, from which users can obtain their supply. Illustrations abound: oranges from California compete with oranges from Florida; potatoes from Idaho compete with potatoes from Maine; sulfur produced along the Gulf Coast competes with sulfur imported from Canada; flour milled from grain in one area of the country competes in the same markets with flour milled from wheat in other regions of the country; steel produced in Chicago competes with steel manufactured in Pittsburgh, Cleveland, and Birmingham, as well as with imported steel articles. Similarly,

different products compete in common markets for substantially equivalent end purposes. Cane sugar, produced in the southern United States or abroad, competes with beet sugar and with artificial sweeteners; glass containers compete with metal and plastic containers; aluminum competes with steel for use in cans as well as in other applications; copper cable competes with aluminum cable; plaster competes with various types of building board for construction; cotton competes with wool and with synthetic materials; etc.

Transportation costs and service are merely one element of the complex process involved in the selection of a product and its source by the ultimate

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> *The pressures from potential competition are very real, and often powerful, in transport markets. Also in transport, competitive forces are not limited to direct competition between carriers or modes.... [T]here are also very powerful and widespread forces of market and locational substitutional pressures that impact strongly on railway rates.... All in all, transport competition for freight is dynamic, many-faceted, and far more present in ... transport markets than is commonly thought. Neglecting all but intermodal competition markedly short-changes reality.*
>
> Professors T. D. Heaver and J. C. Nelson (1977)

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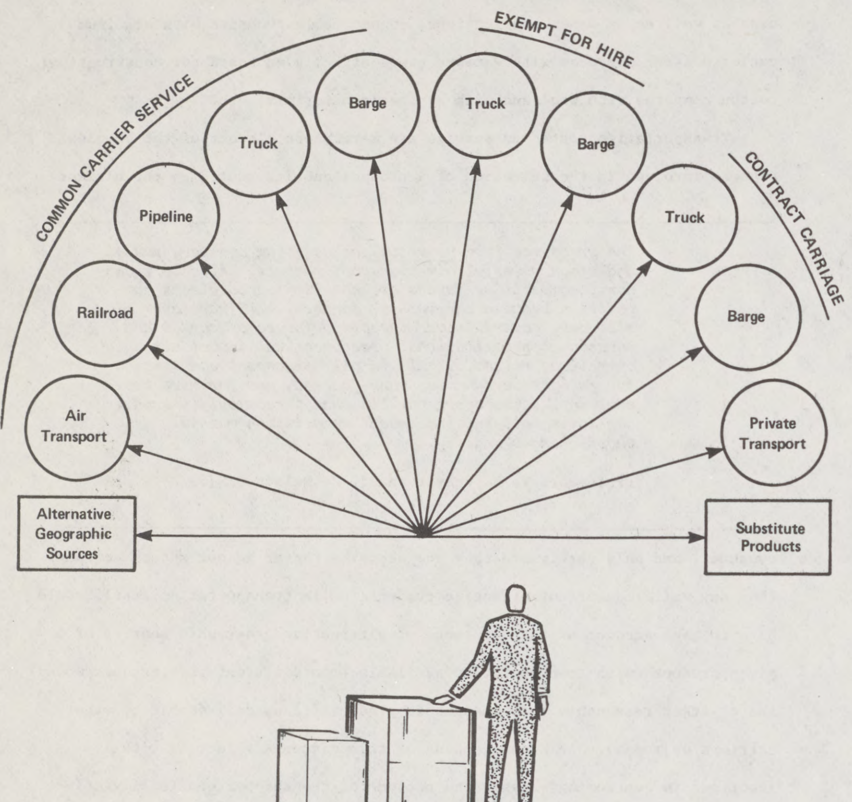
consumer, and only rarely are they the decisive factor in our modern economy. Thus any valid measure of effective competition in transportation itself would have to take account of the existence of alternative geographic sources of a given product (with transportation available from different carriers and modes) and of other reasonably interchangeable products (also deliverable by other carriers or modes). An understanding of this elementary fact is vitally important to overcoming exaggerated notions of the shipper who is allegedly

Figure 25



"captive" to a single carrier or mode. The multiplicity of products and geographic product locations available to this country -- drawn from domestic and foreign sources -- is incredible. They are tied together by the major transport infrastructure systems -- rail, highway, waterway, pipeline, and airport/airway -- and the technologies which use them. This combination of product diversity, source diversity, and transportation diversity -- actual and potential -- has created perhaps the most expansive array of competitive choice ever devised. To purport to judge transportation competition in isolation (by ignoring or merely paying lip service to the product and source competition) is to create a dangerous distortion of reality. Among other things this misperception contributes to the perpetuation of the myth of the predatory nineteenth century railroad monopoly at a time when the railroads have in fact become the most disadvantaged link in the national transportation system.

Intermodal Competition Increasingly Pervades Transportation

Under current day conditions competition -- in all of its many and changing forms -- aptly characterizes American transportation. Throughout the economy one finds the sharply-etched symptoms of fierce competition -- among differing products, alternative geographic locations, the several transportation modes, between carriers, in the contest between regulated and unregulated movement of for-hire transportation, and between those classes and private carriage. (See Figure 25.) In all of these ways the surging forces of change have ended whatever dominance the railroads may have possessed fifty or more years ago and have created a keenly competitive transportation market.

That there are today a wide range of vibrant intermodal competitors -- active in some markets, potential entrants in many others -- contesting for a share of the intercity freight transport market is amply clear from the preceding discussion. Today shippers of all kinds of products in all the regions of the country have available a broad range of transportation options, aside from railroads, to which they have turned with increasing alacrity. Indeed, the most compelling evidence in support of the proposition that competition is now the prime characteristic of American transportation is found in the behavior of users and in their allocation of traffic among the various modes. As noted earlier, and as is forcefully indicative of the present situation in transportation, more than 70 per cent of all the tons of freight shipped in intercity commerce now move by truck, barge, pipeline, or some other means of transportation aside from rail. This pronounced inclination of shippers to employ non-rail modes in satisfying their transportation requirements is comprehensive in scope. It applies to all forms of manufactured commodities but it also applies with comparable vigor to the transportation of bulks; it extends to long haul movements as well as shorter distances, and it characterizes transportation in every region of the country. It is obvious that no significant transportation sector is now free from the winds of intermodal competition, and that shippers -- confronted with this broad spectrum of transport options -- are no longer captive to rail or to any other single form of transportation.

In this setting it is apparent that competition reigns supreme. It is recognition of the present pervasiveness of competition -- not the decades-old notion of railroad dominance -- which must govern in the search for a regulatory policy for the railroads which is compatible with contemporary economic reality.

III

EXCESSIVE REGULATION: ROADBLOCK TO A REVITALIZED, VIABLE RAIL INDUSTRY

A system of government economic regulation -- as comprehensive today as it was 50 years ago -- envelops the railroads. If the railroad industry is to have a plausible opportunity to revitalize itself under private sector management, however, the inhibitions imposed by regulation must be removed. It has been declared in law to be a national purpose that the railroad mode of transportation "remain viable in the private sector of the economy."

> *An essential step in the federal efforts to help revitalize quality railroad service in the United States is the reform of railroad regulation.... Railroad regulation has failed to assure adequate industry profits and rates of return and has retarded the industry's ability to compete with competitors.*
>
> Senate Commerce Committee (1975)

Without fundamental changes in the current system and practices of regulating the economic and commercial affairs of the railroads by government, this objective will not be achieved; indeed, it will be difficult enough to attain even with considerably greater freedom from regulation, given the financial and competitive handicaps which the rail industry must surmount.

Regulation: An Anachronism in Today's Environment

Along with a nineteenth century railway network and a late twentieth century tidal wave of economic, demographic, and technological change, the railroads have had to operate within a unique system of government-administered

regulation. The railroads were the first mode of transportation to be regulated. Enactment of the Interstate Commerce Act in 1887, supplemented periodically by additional legislation, resulted in a comprehensive system of economic regulation of the railroads. As common carriers the railroads are required to serve all who tender shipments. Entry, exit, pricing, financing, construction, car service, and virtually every other aspect of the business were regulated -- and remain regulated -- in minute detail despite the disappearance of railroad dominance of transportation.

> *The current system of railroad regulation reflects a series of uncoordinated actions intended to remedy specific problems encountered during the almost 100 years since the regulatory system was first imposed. The result is a hodgepodge of inconsistent and often anachronistic regulations that no longer correspond to the economic condition of the railroads, the nature of intermodal competition, or the often conflicting needs of shippers, consumers, and taxpayers.*
>
> Department of Transportation (1978)

Unbalanced, Anti-Competitive Regulation. The same tough restrictions that continue to govern the railroads are not applied to other modes. Trucks and barges were only partially regulated in and after the Depression. Important segments of these modes were left unregulated; key commodities, including grains, coal and many other bulk products, remained totally exempt from regulation if carried by barge, and under certain circumstances, if carried by truck (but remained fully regulated if carried by rail); and controls applied to regulated truck and barge companies were considerably less comprehensive (and hence less burdensome) than those for railroads. The inset table helps to illustrate

the extent of this disadvantage to the railroads in quantitative terms. Although all rail traffic is regulated, 16 per cent of pipeline, 56 per cent

FEDERALLY REGULATED INTERCITY
FREIGHT SHARES BY MODES, 1976
(Billions of Ton-Miles)

	Total Ton-Miles	Regulated Ton-Miles	Per Cent Regulated
Rail	799	799.0	100.0
Pipeline	523	441.4	84.4
Truck	510	224.4	44.0
River and Canal	267	43.5	16.3
Domestic Deep Sea	218	8.1	3.7
Great Lakes	106	0.2	0.2

Source: Transportation Association of America.

of truck, 84 per cent of barge, 96 per cent of domestic deep sea, and over 99 per cent of Great Lakes traffic is unregulated. This gives the non-rail modes an enormous advantage. It means that unregulated for-hire and exempt carriers are free to respond at will to market opportunities, tailoring and adjusting their services and prices promptly to meet shipper needs and competitive forces as they see fit.

Barge carriers, for example, are predominantly free to render service, when they wish, and at unpublished rates that can be (and are) changed without notice to reflect changes in demand and supply. This allows them, in common with most businesses, the discretion to adjust their rates and service in such a way as to maximize the yield for most of the service they offer. Many truckers have the same advantages. Being totally regulated, by contrast, the railroads lack the freedom to refuse traffic or to make prompt rate

changes which their water and truck competitors possess. This is a serious handicap, one which severely restrains the railroads in their ability to compete. Irregular route motor common carriers have been able to develop lucrative specialized transportation services. The so-called truck and barge "contract carriers" are only lightly regulated and have considerable flexibility vis-a-vis common carriers to contract their services to particular shippers. Moreover, in 1978 and 1979 the ICC began progressively reducing the scope and intensity of its regulation of common carrier trucks and is formally considering complete elimination of its regulation of barges. None of these freedoms is enjoyed by the railroads, but they must compete against each of them.[1]

In addition many shippers have involved themselves directly in transportation by setting up private trucking and barge fleets. By establishing their own transportation organizations, tailor-made, as it were, to satisfy their needs, they can reduce or eliminate the need for common carriers (by rail or another mode). The potential for shippers, both large and small, to engage in private transportation -- it is very easy to lease equipment for this purpose -- exerts a powerful competitive check on common carriers. Actual and potential private carriage has intensified competition in transportation to a degree and in a way that is only partially reflected in the declining market share of the railroads and the increasing share of the non-rail modes. The point is that shipper-molded transportation, reflected in private (or

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[1] Contract rates were once thought forbidden to the railroads. Recently the ICC issued a policy statement that sanctioned the use of contract rates by railroads under specified conditions which include the necessity to obtain Commission approval on a case-by-case basis. Ex Parte No. 358-F, Change of Policy, Railroad Contract Rates (November 9, 1978).

contract or other non-common carrier service), has become a special dimension of competition in the contemporary environment and one which has been of particularly adverse significance for the railroads given their total commitment as common carriers and their complete regulation.

A good example of the stacked deck against which the railroads compete is the experience of one of the largest fertilizer manufacturers in the country. It is owned by 22,000 farmer-stockholders. The company ships about half its output by unregulated barge, the remainder by rail and truck. The truck segment involves use of common carriers, contract carriers, the company's private motor carrier fleet, and shareholder's trucks. The rail share of the traffic, distributed among five carriers, is shrinking. In 1978, barge shipments increased 38 per cent and for-hire truck movements were up 21 per cent, but railroad shipments declined by 24 per cent. The company's director of transportation attributes the growing reliance on barge movement to this mode's freedom from restrictive regulation which, he says, encourages the carriers "to operate their business in a business-like manner. They've been freed to operate on tributaries which they've found are feasible to operate on, and they've been able to negotiate on competitive rates."[1] Endorsing greater ratemaking freedom for the railroads, he observed that in contrast to the non-rail modes they:

> ... have been hamstrung by heavy regulation and antiquated labor rules that 'have kept them from progressing fast enough to keep up with the demand and with other modes.'[2]

Inability to negotiate freely with shippers, inability to respond quickly to changes in demand, and inability to respond promptly to the rate and service

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[1] Cited in Journal of Commerce (May 2, 1979) at 5.

[2] Ibid.

offerings made by other modes to the shippers -- all due largely to the unavoidable inhibitions of the rail regulatory system, but not borne by non-rail carriers -- are among the severest handicaps placed on the railroads.

The Pernicious Effects of an Outmoded Tradition of Regulation. When the railroads were dominant regulation came to be viewed as not only a means of controlling their economic behavior (rates, service, mergers, etc.), but also as a device for attaining diverse social and economic development objectives around the Nation. The railroads were thought of as "rich" and given the predicate that for a time they were the sole means of land transportation the ICC came to believe that by manipulating rail rates or compelling continued service over loss-producing branch lines it could (and should) influence the destiny of selected industries, individual businesses, geographic regions, and communities. Through such practices regulation was relentlessly used, not just to insure that rates were "just and reasonable" or that as businesses the railroads behaved "properly," but as well to turn the carriers into instrumentalities for the achievement of ICC-determined social and regional purposes.

Without here debating the merits of the Commission's initial conception of its role as both regulator of general economic development and social planner it is appropriate to stress that it had its roots in the dual notions that the railroads monopolized U. S. transportation and that their earnings were so vast as to permit them to "subsidize" non-economic undertakings as directed by the ICC. Those basic underpinnings -- transportation monopoly and vast earnings -- have long since been removed, as the earlier discussion has shown. Nonetheless the regulators continue to require frequently, in their rate and abandonment decisions, that the railroads submit to decisions harmful to

Figure 26

PER CENT OF FINAL PRICE OF PRODUCTS
ACCOUNTED FOR BY TRANSPORTATION CHARGES

Product	Per Cent
Building Paper and Board	13.4
Wheat	8.1
Agricultural Chemicals	7.5
Malt Liquors	5.9
Wheat Flour Milling Products	5.3
Iron and Steel Pipe	5.2
Manufactured Iron and Steel	4.8
Canned Fruits and Vegetables	4.1
Semifinished Steel	4.0
Pig Iron	3.8
Plastic Products	3.8
Farm Machinery	3.5
Plastic Materials	3.5
Rubber	3.5
Fresh Meat	2.6
Sugar	2.6
Lumber	2.5
Aluminum Shapes	2.3
Cotton	2.2
Primary Copper Products	1.7
Textile Products	1.2
Automobiles	0.9

Source: Interstate Commerce Commission.

themselves that have little or nothing to do with rail transportation per se. Rail rates are thus held down, or rail rate relationships adjusted, or abandonments discouraged, in a way calculated to assist one area or an industry

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> *[I]t is important to realize that a growing, changing economy must accommodate ... changes. Efforts to protect sections of the economy from change can only be counter-productive to long-run growth and welfare.*
>
> Council on Wage and Price Stability (1979)

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or a business establishment, or to achieve some concept of inter-industry or inter-regional economic "balance." In 1975, for example, the Commission held down rail rate increases on lumber, fiberglass insulation, plastic pipe, and other building materials on the ground that it would help offset a recession in the housing market. The rationale for this action had nothing to do with the economics of transportation per se or with the financial condition of the carriers; rather it reflected a decision by the Commission to use railroad rates as a tool to gain another end in circumstances where the railroads desperately needed to increase their revenue in order to sustain even a modest level of earnings. It is especially ludicrous to hold down rail rates when transportation charges account for such a modes share of so many products, as shown in Figure 26.

Each of these variants of regulatory action has helped to sap the strength of the railroads; each has assumed, even as radical economic changes occurred and forceful, pervasive new modal competition appeared, that the railroads somehown retained a position of power in the economy equivalent to what they enjoyed in the 1890's. Each assumed that the railroads could somehow make up the

losses incurred as a result of these decisions on traffic elsewhere, despite the fact that the railroads' share of traffic has been in long-term decline and their earnings are severely impoverished. Few allowances have been made by the ICC for the fact that competition from the other transportation modes and the relatively modest railroad involvement in newer high growth, high value commodity sectors have drastically reduced the ability of the rail-

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> *Regional growth and adjustment to change, overall-stabilization policy, antitrust considerations, national defense and so on, which have provided the rationale so often in the past for uneconomic decision-making by the I.C.C., can now be attacked in a more forthright fashion than was the case 30-50 years ago.... Indeed, it smacks of arrogance for the Commission to claim that it carefully weighs all of these issues. Not only is it not capable of making such complex assessments with any precision whatsoever (nor has the Commission ever specified the relative weight it attaches to the various interests), it is not qualified to substitute its social welfare function for that of the electorate or the Congress -- nor has it any business doing so.*
>
> Professor George W. Wilson (1975)

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roads to practice such social and economic subsidization of other industries and businesses without injury to the carriers and ultimately to the public as a whole.

The ICC's persistence in using the railroads in attempts to achieve non-transportation purposes -- long after the predicates for such an approach had vanished -- is strongly indicative of the fact that the tradition or habit of regulating is so deeply ingrained in regulatory institutions that they simply are not capable of breaking it on their own. Notwithstanding Mr. Justice

Frankfurter's observation in 1942 that the Commission had been charged by Congress with "the duty of being responsive to the dynamic character of transportation problems," the railroad experience of the last fifty years demonstrates that a judicially-oriented regulatory body cannot keep pace with nor

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> *Regulatory agencies ... are supposed ... to adapt their rules and practices to the Nation's needs in a volatile and changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.*
>
> United States Supreme Court (1967)

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adjust to a truly dynamic transportation marketplace. Of course the very existence of that dynamism, represented by pervasive competition in all its forms, is the central reason for sharply reducing regulation.

Regulatory Attitudes in a Changed World. For reasons previously developed at length the transport environment has been radically recast and in the process the railroads' once-dominant position has been destroyed. With competition, not purported rail monopoly, now ruling the scene old regulatory strictures and attitudes must give way to regulation by the marketplace. Yet so long as there is not a basic change in the law itself it is completely unrealistic to expect that the appointed regulators, here the ICC, will accomplish the forceful shift to rail deregulation that is required.

Some expressions of the regulators reflect an awareness that the world has been changing and in ways that should compel an end to old-style regulation. Nonetheless this recognition of the change in conditions which has

taken place is at best qualified in content, is unsupported by the sorts of decisive decisional actions that are so urgently needed, and, because of the decidedly piecemeal previous attempts at modernizing the Interstate Commerce Act, is always confronted, when translated into action, with the likelihood of lengthy litigation and possible reversals in the courts. With a rail industry rate of return on investment of less than one per cent and with immense rail traffic losses to other (and significantly less regulated) modes it is or should be apparent that continued preservation of the status quo is harmful to most everyone's long run interests -- those of shippers, regions, rail labor, and the carriers alike. Under this condition a substantial and immediate reduction in rail regulation is an imperative mate to basic changes in rail transportation. The regulators, though, continue to hold tightly to the regulated past despite some recognition that all is not well. In its reluctance to give up jurisdiction (demonstrated anew by its narrow interpretation of the 4-R Act's market dominance standard), its continuing intervention in matters involving rates and operations,[1] and in its constant inhibition of the abandonment of uneconomic lines, as well as in other ways, the ICC -- reflecting the fact that it is an instrument for regulating -- has made clear that meaningful deregulation will have to come through new and wide-ranging legislative action.

It must be emphasized that recent efforts to liberalize rail regulation by amending the Interstate Commerce Act while leaving its basic structure --

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[1] For example, in the spring of 1978 the ICC issued a car service order requiring that certain cars in short supply be processed through rail yards in 24 hours. The practical infeasibility of this order forced railroads to move cars without regard to actual transportation requirements just to be in compliance. In August 1978 (after attempting to levy several millions of dollars in fines on allegedly non-complying carriers) the Commission conceded the "practical difficulties" associated with a 24 hour turnaround and authorized a 60 hour standard instead.

and the form and procedures of the Interstate Commerce Commission -- largely intact have failed. The changes, although well-intended, in fact have frequently produced more regulation; more protests, proceedings and litigation;

New policies would give the railroads an opportunity to rationalize existing operations, retire underutilized facilities, and adjust price and service offerings in accordance with market demands and the modern freight transportation environment. These changes cannot, however, be accomplished without specific legislative direction. Congress has attempted on several occasions--in 1940, 1958, and again in 1976--to achieve some of the procompetitive goals described herein by giving broad directions to the ICC to allow railroads increased pricing flexibility. Each of these attempts to a substantial extent has fallen short of its goals, largely because each has left the basic scheme of regulation intact. Fundamental revisions to the Interstate Commerce Act should be made now to avoid continuing railroad bankruptcies and increased dependence of the railroads on the federal treasury.

National Commission for Review of Antitrust Laws and Procedures (1979)

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and most unfortunately, a perpetuation of the government-imposed delays and denials which constantly diminish the railroads' opportunities to respond to commercial market signals or to their increasingly effective non-regulated and less regulated transport competitors. Nothing short of explicit removal of substantial portions of the badly outdated Interstate Commerce Act will do if meaningful change is to occur.

The 1976 Legislation and Its Implementation Have Fallen Short of According the Railroads the Necessary Freedom From Undue Regulation

Congress became increasingly concerned with the failing fortunes of the railroads and passed several important pieces of legislation in the early

1970's including the Emergency Rail Services Act of 1970, the Rail Passenger Service Act of 1970 (and subsequent bills pertaining to Amtrak), and the Regional Rail Reorganization Act of 1973. There was a strong "emergency need" aspect to these laws caused in part by the collapse of rail passenger service generally and especially by the bankruptcy of several major eastern railroads -- Central of New Jersey (1967), Penn Central (1970), Lehigh Valley (1970), Reading (1971), Erie Lackawanna (1972), Ann Arbor (1973), and Boston & Maine (1975). As railroad industry strength continued to weaken and the tide of bankruptcy moved into the Midwest and West -- Rock Island (1975) and Milwaukee (1978) -- the Congress came to realize that the railroad industry was not simply faced with temporary or emergency set-backs but rather suffered from chronic, deep-seeded deficiencies. It was decided that if the industry was to survive in the private sector some very fundamental changes would be needed, particularly in loosening the grip of regulation. With that end in mind, the Railroad Revitalization and Regulatory Reform Act (4-R Act) was enacted on February 5, 1976.

The 4-R Act. The 4-R Act is notable on two dimensions: (1) the clarity and scope of its declared purposes, and (2) the lack of progress in achieving them during the three years since enactment. The Act sought to:

> [R]ehabilitate and maintain ..., improve the operations and structure, and restore the financial stability of the rail system of the United States, and to promote the revitalization of such railway system, so that [it] will remain viable in the private sector of the economy and ... provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness and economy....[1]

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[1] 4-R Act, § 101(a).

To achieve this basic rehabilitation, improvement, restoration, and revitalization within the private sector (i.e., preventing a repetition of massive Federal spending commitments of the type encountered with Amtrak) the Act prescribed ratemaking and other regulatory reforms. Congress also listed a number of specific policies to be followed, including increasing the attractiveness of investing in railroads, allowing greater freedom in raising and lowering rates, promoting other pricing innovations that would reflect shipper and market demand sensitivities, and establishing guidelines for determining adequate revenue levels for railroads.[1]

The key concepts contained in the Act's declaration of purpose and policy were essentially restated and linked in a new Rule of Ratemaking which directed the ICC to:

> [Establish] revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission should make an adequate and continuing effort to assist such carriers in attaining such revenue levels.[2]

The idea here was to remove all doubt that the railroads should be earning revenues at a level sufficient to support capital expenditures, operating

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[1] Id., § 101(b). Railroad rates (prices) apply to individual commodity movements. "Revenue levels" refer to the total revenues earned from these rates. The rates collectively should provide a level of revenue sufficient to meet expenses and capital charges and yield a "fair return" on investment. Rail industry revenue levels now fall far short of this standard.

[2] Id., § 205.

expenses, profit, and the attraction of adequate amounts of capital. The policy of encouraging substantial pricing flexibility in determining rates for individual commodities (in order to meet the competition) was intended to give the carriers greater scope in achieving the newly established, more comprehensively defined "adequate" revenue level.

4-R Act Results. The results to date have been extremely disappointing. The regulatory reform segments of the 4-R Act took the form of amendments to the Interstate Commerce Act and it is clear that the pure inertia of the latter has been strong enough to neutralize or defeat the ambitious intentions of the former. The ICC did decide that the railroads should be entitled to earn a rate of return on net investment equivalent to the cost of capital which, some three years after passage of the 4-R Act, it eventually calculated at 10.6 per cent. Although the railroads feel the figure, properly calculated,

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> *[T]he railroads can't raise their rates on their good traffic lest they lose it to some kind of truck transportation. They can't raise their rates on the bad traffic without winding up with a potful of litigation, or losing the movement [altogether].... Out of this no-win situation, they are supposed to earn substantial profits, which they must have to rebuild their seriously debilitated tracks. Alas, collectively, nobody ships much by rail, and so nobody really cares.*
>
> Director of Purchasing, Lincoln Electric Co. (1979)

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should be 12.5 per cent, the futility of this exercise in continuing regulatory control is amply illustrated by the rail industry's actual rate of return -- 0.24 per cent for the 12 months ended June 1978. Spending years arguing about the right double-digit target figure while perpetuating an environment that holds the carriers to an actual rate of return shockingly lower is

regulation at its worst. Furthermore, despite the absolutely central role of revenue adequacy established by Congress in the 4-R Act, the ICC adamantly refuses to consider it as anything more than one "important factor" among many that it will weigh in reaching general and specific rate decisions.[1] This interpretation effectively guts the intent of the legislation.

Equally as unfortunate, the ICC has negated the rate flexibility policies of the 4-R Act through an unduly restrictive interpretation of the concept of "market dominance." The Act (§ 202) states that no rate increase could be

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> *[R]ailroads are prevented from adjusting to changing competitive conditions. Though railroads have somewhat greater pricing freedom under the 4-R Act, the restrictive and unworkable market dominance provision discourages voluntary rate reductions, since corresponding upward adjustments are normally stalled by lengthy adversary proceedings. The experience of the railroads with reduced experimental barley rates in North Dakota is a striking example of this problem.*
>
> Director of Traffic, North Dakota Public Service Commission (1979)

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found unjust or unreasonable unless the railroad had market dominance over the service at issue, and that no rate increase could be suspended by the Commission in the absence of a finding of market dominance. The Commission has established criteria for determining market dominance that effectively define from 48.5 per cent to 77.8 per cent of all rail traffic as market dominant.[2] There is

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[1] See Ex Parte 338, Standards and Procedures for the Establishment of Adequate Railroad Revenue Levels (served February 3, 1978) at 13.

[2] See Interstate Commerce Commission, The Impact of the 4-R Act Railroad Ratemaking Provisions (October 5, 1977) at 42. Cf. Kearney Management Consultants, Task 1: Market Dominance Evaluation, Vol. 1: Main Report, Preliminary Draft (March 1, 1977) at III-7 and III-16.

something utterly unreal about a situation in which the rail share of total intercity tonnage carried has fallen to 26.6 per cent, the rail share of total intercity ton-miles has fallen to 35.5 per cent, and the rail rate of return has fallen almost to zero, yet the ICC decrees that for one-half to three-fourths of their traffic the railroads are "market dominant."

The Department of Transportation's evaluation of the Commission's market dominance approach sums up the problem succinctly:

> The "market dominance" provision of the 4R Act was, in many respects, the Act's most glaring failure. Intended to eliminate ICC regulation over most railroad rates, the vagueness of the market dominance concept and inappropriately restrictive ICC implementing regulations resulted in continued ICC regulation, even where unnecessary or unintended. Although ... the legislative history ... makes clear Congress' belief that rail market dominance was the exception, not the rule, the ICC's rules implementing the market dominance concept result in a substantial portion of all rail rates remaining subject to ICC maximum rate regulation.[1]

"Market Dominance" and "Captive" Shippers: The Failure To Recognize the Growth of Competition

One notion -- the so-called "captive" shipper -- seems to lie at the root of the ICC's determination to define so much rail traffic as market dominant, its penchant for sheltering at railroad expense various non-rail (and non-transport) businesses while making its regulatory decisions, and its general reluctance to loosen regulation of the railroads. A captive shipper would be a shipper with a commodity that can only be moved by rail and hence might be victimized by rail carriers if regulation were relaxed.

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1 Department of Transportation, Report on the Regulatory Reform Provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 (February 1979) at 15.

It must be expected that given substantial deregulation a few legitimate instances of this problem could arise. For that reason a residual regulatory process should be created to deal with them fairly. But the prevalence of "captive" situations is markedly less than opponents of regulatory reform proclaim and much rarer than the Commission's market dominance interpretations imply.

There is simply too much evidence of intense, effective competition in transportation, and of a weakened, deteriorating railway system, to warrant the continuing use of railroad regulation to preserve or bail out the economic fortunes of other industries and shippers, many of which earn rates of return surpassing that of the railroads. In too many instances the "captive shipper" argument is an excuse behind which to hide long overdue adjustments by affected businesses who have become inefficient or who have been overtaken by ordinary economic change. If they are entitled to assistance as a matter of public concern, such assistance should be delivered directly by government, but certainly not at the expense of the railroads on the basis of judgments by the ICC, an agency with considerable transportation knowledge but no competence in assessing complex economic and social conditions beyond that field of expertise. It is dangerous to leave the Commission in possession of such power.

For example, focus on one commonly cited class of captive shipper, long a beneficiary of ICC regulatory protection, namely, the venerable country grain elevator and the farmers who supply them. Ignored are the massive inroads in grain traffic made by truck, barge and truck/barge combinations and the definite trend toward closing of country elevators that has been occurring in spite of ICC-enforced requirements that the railroads continue

to serve the places at which they are located. Serious studies in Iowa, Minnesota, and North Dakota show that a significant structural change in the

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> *Iowa towns that had lost their railroads indicated rail abandonment had little effect upon employment and businesses in those communities. Business activity remained relatively unchanged, or increased. Elevator storage capacity and employment increased ... and most changes occurring in the number of business firms were not related to rail abandonment....*
>
> Iowa State University and Iowa Department of Transportation (1976)

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grain and grain marketing sector of the economy is taking place: so-called "rail-captive country elevators" in fact are dwindling (to be replaced by more efficient systems of marketing grain based on fewer, but higher volume elevators or on increased grain storage on the farms), yet the railroads are being forced to decay with them, largely because of misplaced ICC notions about captive shippers and the Commission's inadequate grasp of basic economic

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> *Another important factor ... is the major explosion of grain storage on the farm.... It is an economic fact of life that in a large part of the upper midwest grain moves from farm storage to river subterminal by 40-ton truck. With a major shift in the location of grain stocks from trackside elevators to the farms, there may be little remaining business for the branch line.... The expansion of farm storage of grain has done more to bypass elevator facilities than could any transportation factor.*
>
> Federal Railroad Administration (1977)

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changes that are well beyond the control of railroads, or of any of the transportation modes, or of transportation regulatory agencies.

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Analyses by the North Dakota Public Service Commission have shown that country elevators in that state have been failing for years, for good reasons quite unrelated to the railroads:

> The argument that branch line abandonments will lead to closings of elevators and severe economic and social harm to the communities involved is a post hoc ergo propter hoc fallacy.... We have been losing country elevators in North Dakota at the rate of one or more per month, and such losses have nothing to do with railroad abandonments. Country elevators are a business, and the undercapitalized and inefficient are going to fail regardless of the level of rail service provided. Such is the operation of an efficient market place.
>
> In 20 years, the number of country elevators in North Dakota has fallen by 45 per cent.... The trend is toward fewer and more efficient elevators, and preservation of unproductive branch lines ... will neither improve elevator nor railroad productivity.[1]

Studies in Minnesota and Iowa of the effects on grain elevators of rail abandonments show that efficient elevator operations can adjust to loss of

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> *Not only did the non-rail elevators expand their capacity as fast as other Minnesota elevators, but they exceeded the overall rate of expansion. The evidence ... indicates that [the] vast majority of the elevators losing rail service in Minnesota have not been adversely affected in their ability to compete with nearby rail elevators.... The elevators are as viable as their nearby competitors who have rail service.*
>
> Professor H. B. Spraggins, University of Minnesota (1978)

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rail service. Some (but not all) had to pay higher transportation rates than before, but their ability to expand capacity and attract growing volumes

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[1] Frank N. Wilner, Director of Traffic, North Dakota Public Service Commission, "Our Railroads Need to be Put on a Diet," Remarks before the Grain Marketing Seminar, Upper Great Plains Transportation Institute (January 23, 1979) at 9-10.

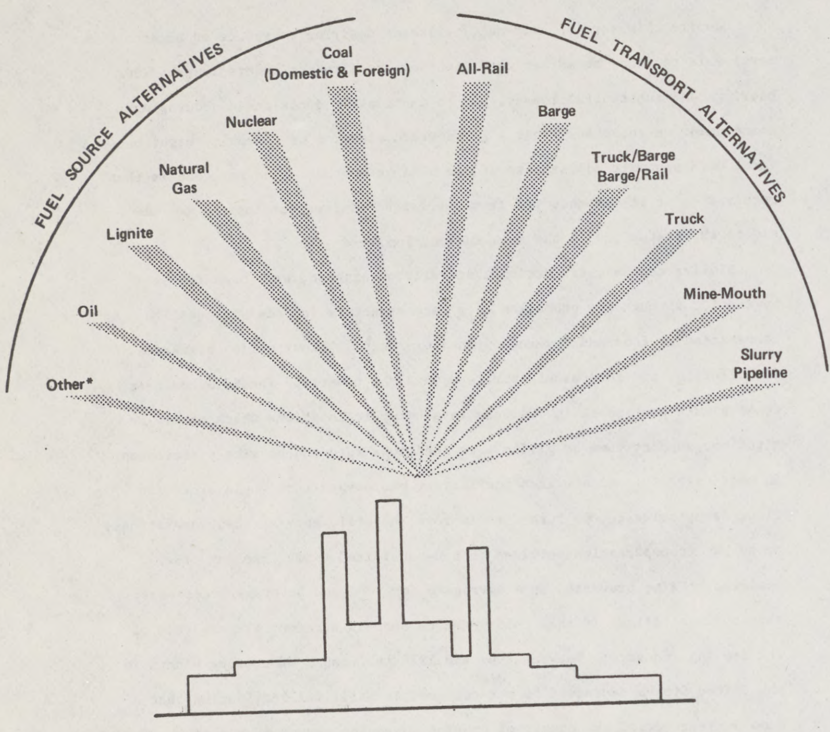
of business and profits has not been hampered. As discussed earlier, much of the traffic is served by truck, barge, truck/barge, and truck/rail services. Community growth has not been affected significantly by abandonment; indeed, in Iowa growth rates were found to be generally higher for towns without railroads.

Despite this sort of evidence, railroads desiring to reduce or abandon service in response to market conditions are required to endure lengthy ICC hearings and substantial losses, not to mention ICC decisions discouraging abandonment on the theory that a given grain elevator or community might be faced with economic adjustments of one kind or another. The railroad is thus required -- at its expense and from severely deficient earnings -- to subsidize the status quo in the area in question.

Similar economic distortions, at railroad expense, have been fostered by the ICC through its promotion of a rate structure intended to equalize competition by food and beverage processors such as flour mills, breweries, distilleries, and food manufacturers around the country. The idea has been to keep such processors in business in geographic locations which otherwise might not support them by giving such locations rate and service preferences. In many cases this underwrites inefficient businesses that would otherwise close down, relocate, be forced to improve the efficiency of their operations, or to buy transportation services on non-subsidized terms like any other business. Using breweries as a surrogate for food and beverage processors, the inherent fallacy in this policy can be seen in a recent FTC analysis of the brewing industry. Between 1947 and 1976 the number of brewing plants in the United States decreased 80 per cent and is still falling; during that same 30-year period the number of brewing companies shrunk 88 per cent. The

Figure 27

FUEL AND FUEL TRANSPORT ALTERNATIVES AVAILABLE TO ELECTRIC UTILITY SYSTEMS



* Includes hydro and geothermal sources, electricity purchased from other utilities, and electricity imported from Canada and Mexico. In future will include solar, biomass and other currently non-conventional fuels.

key reasons for this dramatic, massive structural change are improvements in brewing technology that raised the minimum efficient-size plant and permitted multi-plant economies of scale. Transportation costs apparently played no significant role in these enormous changes.[1] Similar changes have occurred, as they should, throughout our dynamic economy. Notwithstanding the Interstate Commerce Commission's quaint notions about "equalizing" competition between businesses and shippers solely on the basis of adjusting their transportation rates, such a naive concept of economic and commercial life has no basis in reality today. Yet the Commission has the authority, through rail regulation, to continue acting on the basis of inadequate and ill-advised economic judgments.

One particularly controversial bone of contention is the ICC's policy of regarding the majority of coal shippers and receivers as captive to the railroads. In doing so the Commission ignores the very real competition among fuels and among the companies that transport them -- oil, gas, uranium, hydro, rail-delivered coal, imports of foreign coal, imports of foreign electricity (from Mexico and several Canadian provinces), and coal and lignite burned at the mine-mouth to generate electricity that is transmitted long distances by wire. Figure 17, displayed in Chapter II, shows that the non-rail modes participate in about half of all coal deliveries. Figure 27 illustrates the great range of fuel and transportation alternatives available to utilities.

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[1] Federal Trade Commission, The Brewing Industry (December 1979) at 51.

The Commission also ignores the real and potential competition between the several important coal production basins in the country, each served by different railroads. The recent procurement of coal for Florida Power Corporation's Crystal River unit illustrates the tremendous diversity in fuel supply locations and in the means of transport. Florida Power received four bids from northern Wyoming, one from southern Wyoming, three from Colorado, one from Utah, ten from coal fields in various states in the East, four from Australia, three from Canada, and two from South Africa.[1] The utility considered rail movements to ports as geographically dispersed as Houston, Port Arthur and New Orleans -- each to be linked to onward ocean barge shipment to Florida; rail movements to various Mississippi River points for connection to river barges to New Orleans followed by transloading to ocean barge for delivery in Florida; and all-rail movement of coal in shipper-owned cars. The company finally decided to ship its coal by barge from mines in Illinois, Indiana and Kentucky to New Orleans for transfer to ocean barge. Other Florida and Georgia utilities are contemplating slurry pipeline delivery from midwestern and eastern coal fields.

The Commission also ignores the vast bargaining power possessed by the utility systems -- the dominant coal users in the United States -- many of which own their own coal reserves, their own fleets of coal hopper cars, and even private transportation facilities like transshipment yards, barge fleets, and towboat operations. And it discounts or disregards such significant

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[1] Gulf state utilities from Florida to Texas now import substantial quantities of coal from Australia, South Africa, and Poland.

determinants of the demand for rail-delivered coal as consumer demand for electricity, the Nation's total electrical generating capacity (currently in a state of great surplus, which is not expected to work down to normal levels before the late 1980's), and government-determined environmental regulations which discriminate among various classes of coal. In its market dominance rulings, the Commission has been inclined to disregard the multiple facets of competition that should be crucial to such findings. Prominent in this context is the failure of the ICC to accord any weight to the competitive "shopping" engaged in by coal users (utilities and industries) whereby prior to making a final election as to the transporting carrier, they intensively scrutinize alternative fuels as well as various coal supply sources served by different railroads and other modes. In a recent proceeding, for example, the Commission acknowledged that the coal shipper involved had:

> sought and secured several quotations for the movement of coal not only from the proposed origin [in Colorado] but from origins in Alabama, New Mexico, and Wyoming, as well as other origins in Colorado. These requests and quotations covered originations by a railroad other than the [originating railroad finally chosen], annual volumes of varying quantities, and the furnishing of freight cars by either the shipper or the railroads.[1]

Notwithstanding this -- and dismissing as well evidence that the shipper had a choice between the Colorado rail rate at issue and a lower Wyoming rate offer from another railroad -- the Commission concluded that there was an absence of effective competition, i.e., there was market dominance, because "whatever competition respondents may have once faced when protestant was searching for a fuel source no longer exists now that commitments to a particular source have been made." By circumscribing its assessments in this way, the Commission

[1] Incentive Rate on Coal--Hayden, Colorado to Kings Mill, Texas, Docket No. 36936 (served January 17, 1979) at 3.

drains all substantive meaning from the statutory and economic concept of "effective competition."

The regulatory system -- including both the statute and the institution which administer it -- must be radically changed in order to overcome the now-threatening anomaly of a seriously disadvantaged rail industry continually hamstrung by outmoded notions of rail monopoly and of the apparent existence of hosts of captive shippers on the part of its regulators.

An Illustration of Needlessly Perpetuated Regulation: Fresh Fruit and Vegetable Traffic

Ironically the ICC's apparently inherent inability to release the railroads to compete is well illustrated by one of its very few successes in relaxing rail regulation. On March 22, 1979 -- over three years after enactment of the 4-R Act and one year after a request from the Southern Pacific Railroad -- the Commission exercised for the first time its authority to exempt entire classes of services or transactions from regulation.[1] It exempted most fresh fruits and vegetables, a commodity class which the railroads had lost almost entirely to trucking (mostly unregulated trucking).[2]

Rail fresh fruit and vegetable originations have been falling for years. Just between 1970 and 1977 traffic fell from 6.5 million tons to 2.9 million tons -- a disastrous drop of over 55 per cent. Department of Agriculture data show that in 1970 the railroads were handing on to 31 per cent of this market;

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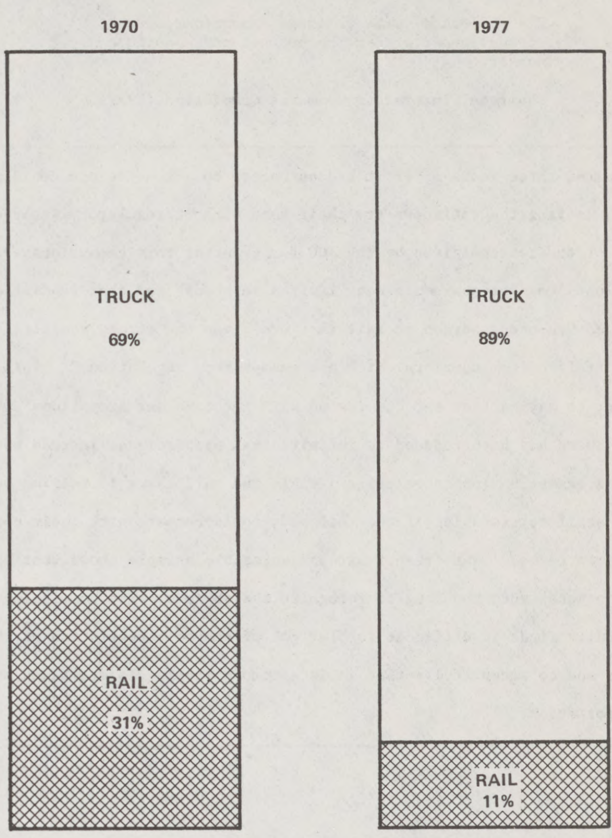
[1] 4-R Act, § 207. The Commission may approve such exemptions upon petition by shippers, carriers, and the Secretary of Transportation, and on its own initiative.

[2] See Ex Parte No. 346 (Sub-No. 1), Rail General Exemption Authority--Fresh Fruits and Vegetables (served March 22, 1979).

Figure 28

DECLINING RAILROAD SHARE OF FRESH FRUIT AND VEGETABLE TRAFFIC

(Per Cent of Rail Carlot Equivalent Unloads)



SOURCE: U.S. Department of Agriculture.

trucking had 70 per cent. By 1977, the rail share had plummeted to 11 per cent. (See Figure 28.) It has been obvious for years that the railroads were at a severe disadvantage vis-a-vis other modes in competing for this traffic. Yet the ICC has let the railroads' market share decline to one-tenth

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The railroads, with isolated exceptions, are virtually out of the fresh fruit and vegetable market.

Chairman, Interstate Commerce Commission (1979)

-- and waited three years after it had authority to act -- before deciding to "risk" letting the railroads try their hand without regulatory interference.

Two of the reasons given by the ICC for granting this exemption were that the railroads' market share was now "limited in scope" and that regulation constituted "an undue burden on rail carriers given the strong competition for this traffic from carriers which are exempt from regulation."[1] This is tantamount to saying that the Commission will not consider exemptions until the rail share has been reduced to infinitesimal proportions, instead of permitting an exemption (or other relief) while the rail share is falling but is possibly still retrievable (if the railroads could compete with their competitors on even terms). The fresh fruit and vegetable example shows that the Commission takes much too long to recognize the obvious. The Commission institutionally finds it difficult to "let go" of economic regulation of the railroads and to accept fully that it is a competitively disadvantaged mode of transportation.

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[1] Id. at 5.

Figure 29

RAIL AND TRUCK SHARES OF SELECTED FRESH FRUITS AND VEGETABLES, 1970 AND 1977
(Per Cent of Rail Carlot Equivalent Unloads)

1970

1977

BANANAS

66%

TRUCK

78%

34%

RAIL

22%

POTATOES

63%

TRUCK

82%

37%

RAIL

18%

MUSHROOMS

96%

TRUCK

99%

SWEETPOTATOES

99.9%

TRUCK

100%

SOURCE: U.S. Department of Agriculture.

This is underscored by the fact that even while granting the fruit and vegetable exemption, the Commission withheld it from eight items within or related to that category, pending further investigation.[1] Data available on four of these exceptions show that between 1970 and 1977 the rail shares of banana shipments fell from one-third of the total to just one-fifth; rails' share of potato traffic slumped from over one-third to less than 18 per cent; rail movements of mushrooms declined from 3.5 per cent to less than one per cent; and the rail share of sweetpotato traffic fell from one-tenth of one per cent to zero. (See Figure 29.) Truck shares in 1977 were, respectively, 78.3, 82.2, 99.3 and 100 per cent. Indeed, trucking has carried 100 per cent of sweetpotatoes in the USDA survey since 1975. What need is there for more months and years of study and investigation? The Commission stated that for some of these items, such as potatoes, "in certain areas, the railroads' market share may be greater and, therefore ... regulation may be necessary at least in those areas."[2] This is an incredible doctrine because it maintains that until the rail share of traffic is beaten down perhaps almost to zero (the rail share of potato traffic overall, for example, has declined almost 50 per cent between 1970 and 1977), in every region, it should not be deregulated; by implication, the logic of the Commission's position would maintain that if a railroad succeeded in winning back some market share by competing successfully the ICC might reward it with a reimposition of regulation. Only a limp procedural reason was given by the Commission for withholding the exemptions from mushrooms and sweetpotatoes, but surely 99.3 and 100 per cent motor carrier

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[1] Peanuts, potatoes, sweet potatoes, bananas, cocoa beans, green coffee, mushrooms, and fresh fish and other marine products.

[2] Id. at 5.

shares should suffice to establish the absurdity of regulating the railroads' 0.7 and 0.0 per cent shares of this traffic. If a formal investigation is needed to clear such commodities for exemption from regulation, it is obvious that the railroads are doomed. The 90 years of ICC regulation of the railroads has simply become habitual; a dramatic change will be necessary to overcome it in practice. The 4-R Act approach has not been able to do so.

The lesson that has been learned in the three years since enactment of the 4-R Act is that piecemeal attempts to amend the Interstate Commerce Act have failed. The Department of Transportation apparently shares this view, pointing out that many of the 4-R Act changes were inconsistent and vague and that many of them have not been fully tested, in part because of railroad caution and in part because the ICC and the courts have snarled themselves, the carriers and shippers in endless proceedings concerned with standards, procedures, and debatable legal interpretations. The need is for a significant

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> *[P]atchwork reforms like the 4R Act superimposed on an entrenched regulatory system are not likely to succeed. Time after time, statutory changes thought to be simple become ensnared in regulatory webs or protracted courtroom litigation.... The ICC thwarted some reforms [and] the reforms themselves were either too limited or too ambiguous.*
>
> Department of Transportation (1979)

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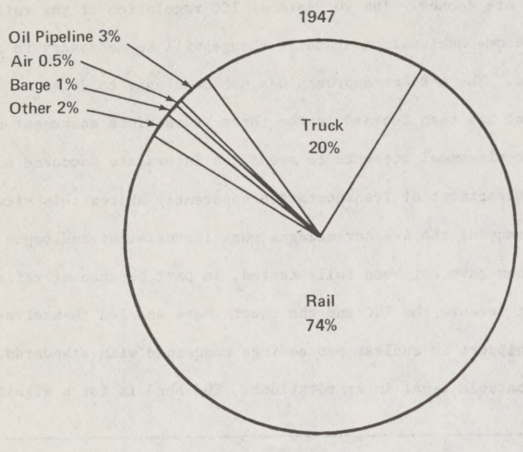
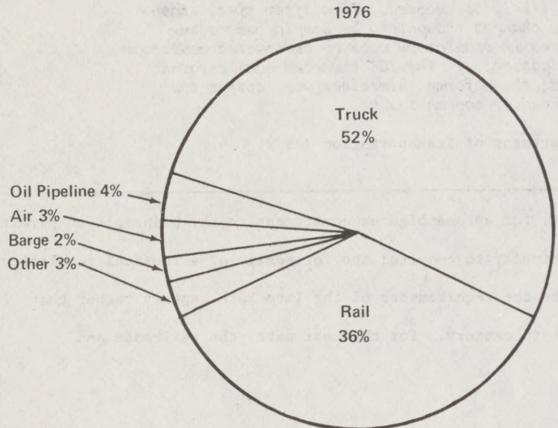
break with the past; for an unambiguous commitment to the principle of permitting railroads the opportunity to compete; and for design of a residual regulatory structure that suits the requirements of the late 20th century rather than those of the late 19th century. For the most part, the railroads and

Figure 30

FREIGHT REVENUE DISTRIBUTION OF REGULATED CARRIERS IN DOMESTIC OPERATION, 1947 AND 1976





SOURCE: Transportation Association of America.

their shippers should be permitted to negotiate contracts, provide for arbitration of disputes, bargain over rates and services, and generally operate like other business. The rail industry should also be freed from many of the constraints of out-of-date rail labor legislation and policy which further reduce the ability of railroad companies to be economically competitive.[1] Rail labor and rail management should be placed on the same relative footing as that which prevails in industry generally.

Financial Posture of the Railroad Industry Reflects Competitive Realities

Clearly the tremendous changes in the structure and mix of the U. S. economy and the emergence of so many strong, competitive transport alternatives have swept the railroads from the pinnacle of their power. They continue to remain under immense competitive pressure from other modes, from the continued erosion of many traditional rail-oriented markets, from product substitution, and from economic and demographic trends which occur quite independent of the railroads. Above all they are saddled with an old regulatory system that stifles attempts to respond to this powerful array of forces. Reflecting all this, it is no surprise that the railroad industry's current financial posture is abysmal and worsening. These factors are in large part the cause of the financial deterioration and at the same time their persistence makes it difficult for the railroads to stem the decline. Tinkering with the Interstate Commerce Act, as through the 4-R Act, has failed to alleviate this situation.

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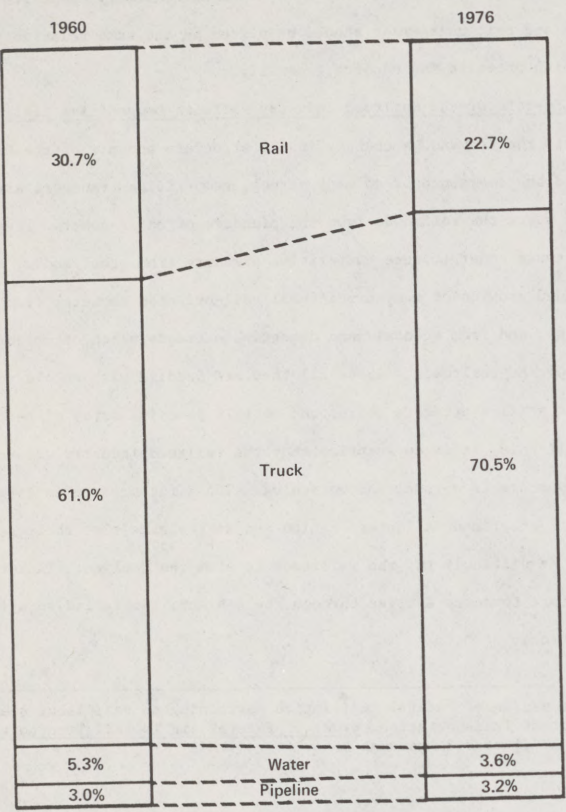
[1] For a discussion of Federal legislation pertaining to rail labor see Department of Transportation, Study of Federal Aid To Rail Transportation (January 1977) at V-34 through V-44.

Figure 31

FREIGHT REVENUE DISTRIBUTION OF ALL REGULATED AND UNREGULATED INTERCITY CARRIERS, 1960 AND 1976
(Per Cent)



SOURCE: Transportation Association of America.

As Figure 30 illustrates, in 1947 the railroads accounted for almost three-fourths of the freight revenue of all regulated transportation companies. By 1976, the railroad share had dropped to just over one-third. Trucking alone now accounts for over half of the freight revenues of regulated carriers. As dramatic as this measure of decline is, it ignores the powerful influence of unregulated transportation. Focusing on the period between 1960 and 1976 Figure 31 shows the distribution of intercity freight revenues for railroads and for regulated and unregulated trucking, pipeline and domestic water carriers. In 1960 the railroad share of the revenues of this grouping was 30 per cent; by 1976 it had declined by one-fourth to 23 per cent. Conversely intercity trucking's share jumped from 60 per cent to over 70 per cent.

A comparison of the shares of all regulated and unregulated intercity and local freight revenues reveals a similar disparity. In 1960 the rail share ($18 billion) was over one-fifth of the total, but by 1976 it had shrunk to just 13 per cent. In that year regulated and unregulated intercity trucking ($56.0 billion) accounted for 41 per cent, and in combination with local trucking brought the motor carrier share of national intercity and local freight revenues to $110.5 billion, or 81 per cent. There can be little doubt about the overwhelming dominance of the motor carriers.

As things now stand the railroad industry suffers from severe earnings impoverishment, with a rate of return on net investment barely above zero -- 0.24 per cent for the year ended June 30, 1978.[1] As shown in Figure 32, it has not exceeded two per cent since 1974, or three per cent since 1966, or

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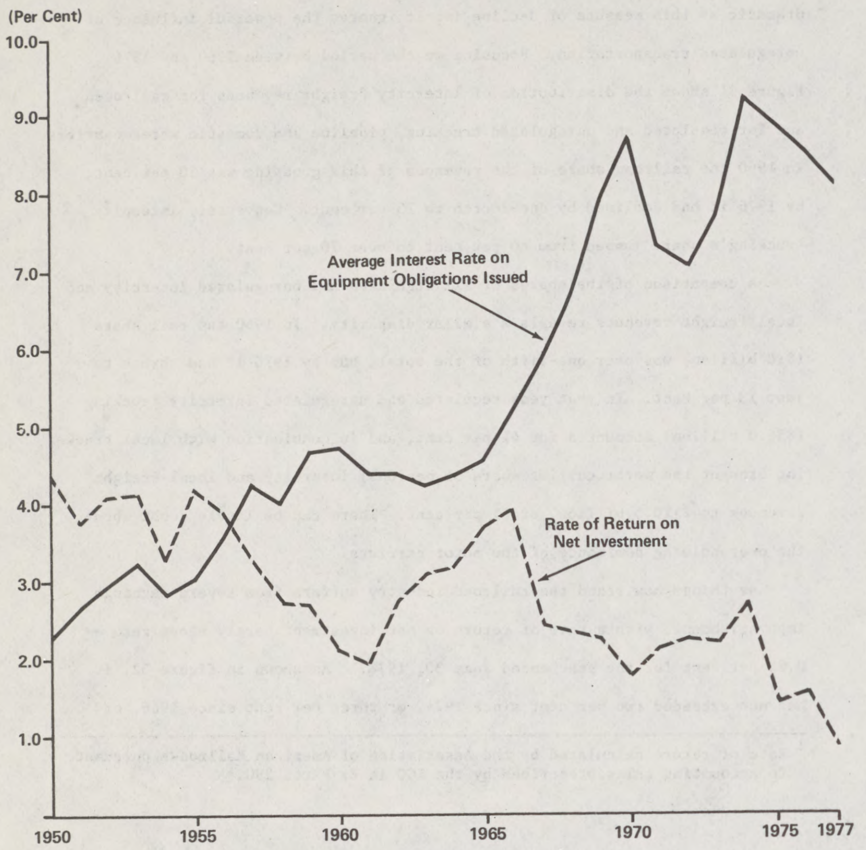
[1] Rate of return calculated by the Association of American Railroads pursuant to accounting rules prescribed by the ICC in Ex Parte 290.

Figure 32

THE WIDENING GAP BETWEEN THE RAILROADS' RISING COST OF CAPITAL FOR EQUIPMENT AND FALLING RETURNS ON INVESTED CAPITAL, 1950–1977



Source: Association of American Railroads, Yearbook of Railroad Facts.

four per cent since 1955. Even excluding Conrail, the Long Island, the Milwaukee, and the Rock Island, the industry rate of return on investment for the twelve months ending in June 1978 was below four per cent. Among railroads frequently considered as part of the strongest group in the industry, the Norfolk & Western, Southern, and Union Pacific were in the 7-8 per cent range while the Chessie System, Burlington Northern, and Southern Pacific fell below two per cent.

Figure 32 also illustrates the large and growing gap -- heavily influenced by inflation -- between the rail industry's rate of return on net investment and the average interest rates that it must pay for money (in this example, for obtaining rail equipment). Note that through much of the 1950's rail rates of return, though low, exceeded the cost of equipment debt. In the late 1950's, however, equipment interest rates began regularly to outpace the rail rate of return and since the mid-1960's they have soared to the 7-9 per cent range -- three times greater than in 1955 -- while carrier rates of return have sagged to historic lows. The replacement cost of equipment has exploded as well. The average cost of new freight cars is now three times greater than it was in 1959 and twice that of ten years ago. Locomotive prices have also about doubled in the last decade.

With Net Railway Operating Income (NROI)[1] declining, and with working capital seriously diminished, the carriers as a whole have not been able to maintain plant and equipment at the desired level, let alone make the investments needed to approach peak efficiency. The future portends an accentuation of these negative trends absent significantly increased revenue and

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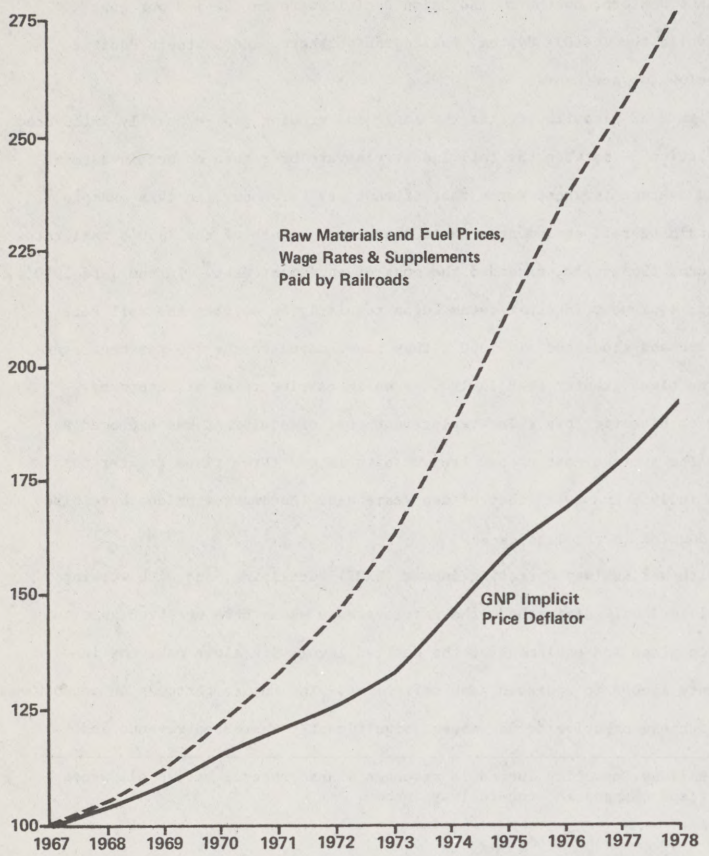
[1] Net Railway Operating Income is revenues minus expenses before allowance for fixed charges and non-railway income.

Figure 33

THE INCREASE IN RAILROAD COSTS HAS SIGNIFICANTLY EXCEEDED THE RATE OF INFLATION IN THE ECONOMY SINCE 1967

(Indices, with 1967 = 100)



Source: Economic Report of the President (January 1979), and Association of American Railroads, "Indexes of Railroad Material Prices and Wage Rates" (January 26, 1979).

earnings. The Department of Transportation's recently released study of the railroad industry's capital investment requirements for the period 1976-1985 reveals a critical capital shortfall of from $13 to $16 billion, excluding Conrail's needs and assuming that the industry can raise from $26 to $30 billion from internal and external private sources.[1] Obviously there is an

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> *American's railroads are in trouble. For decades they have been losing freight -- and profits -- to trucks, barges and pipelines. Only recently, however, has the seriousness of the problem struck the nation.... Unless something is done soon, many ... railroads also could become unwelcome wards of the Federal Government.*
>
> New York Times (1979)

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acute need for means to enhance revenue, raise earnings, improve the carriers' financial position, and thereby reduce the size of this shortfall.

This precarious financial status reflects the fact that under regulation individual rate adjustments and general rate increases have been inadequate even to keep rail revenue in line with the most obvious cost categories. Railroad costs have raced ahead of the rate of inflation, as shown in Figure 33. The rail industry composite index of material, fuel, wage, and wage-related expenses has increased almost half again as much as the general level of inflation in the economy, placing the rail carriers in a most difficult catch-up posture. The industry has sought approval for additional revenues to offset at least a major share of the cost increases, but in general rate increase

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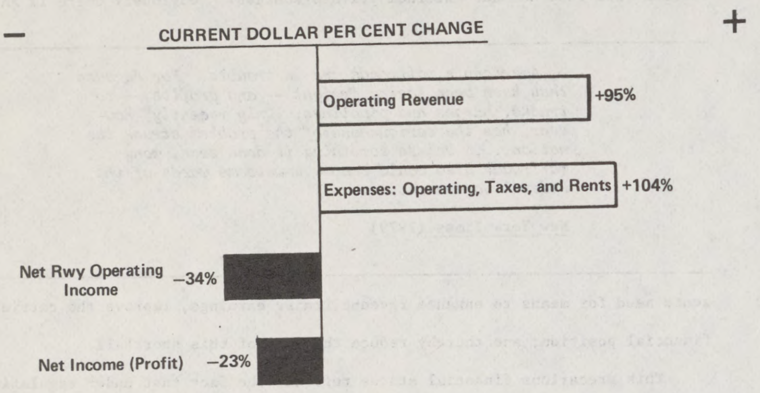
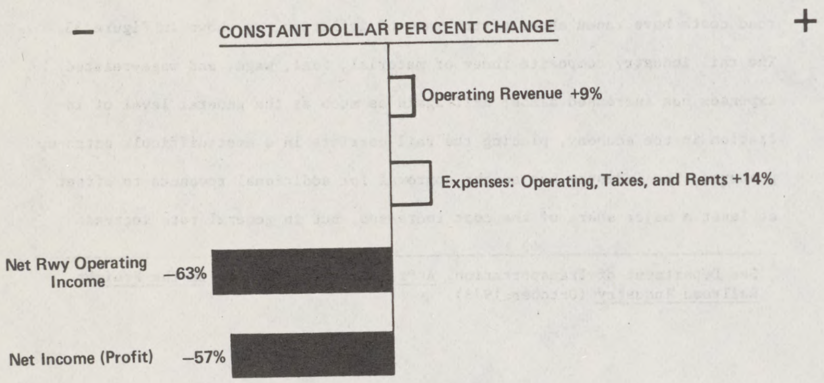
[1] See Department of Transportation, A Prospectus for Change in the Freight Railroad Industry (October 1978).

Figure 34

THE WORSENING FINANCIAL POSTURE OF CLASS I RAILROADS FROM 1967 THROUGH 1977 IN CURRENT AND CONSTANT DOLLARS





SOURCE: Association of American Railroads, Yearbook of Railroad Facts (1978) and U.S. Department of Commerce.

proceedings since 1966 the ICC has approved increases that have fallen short of railroad requests cumulatively by about $1,200,000,000. Individual rate changes on the thousands of rail tariffs subject to ICC regulation offer no

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> *Railroad regulation has failed to assure adequate industry profits and rates of return and has retarded the industry's ability to compete with competitors.... If railroads are to regain lost traffic, they must be able to lower their rates, innovate new services, and respond to new and changing circumstances.*
>
> Senate Commerce Committee (1975)

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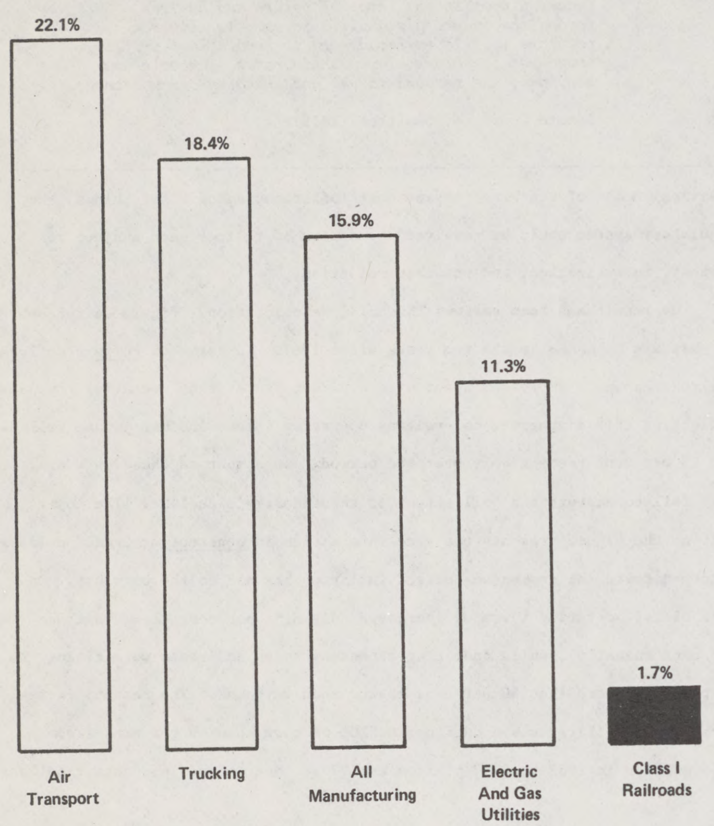
practical means of tracking rampant cost inflation; among other things, the regulatory system would be paralyzed by a mass of filings each subject to protest, investigation, and possible rejection.

The result has been serious financial deterioration. Figure 34 focuses on what has happened in the ten years since 1967. In terms of current dollars, railroad expenses increased about nine per cent faster than operating revenues. Reflecting this disparity, net railway operating income and net income fell 34 and 23 per cent respectively over the period. As somber as these data are, they fail to capture the full extent of the industry's decline. The lower half of the Figure presents the same information in constant or "real" dollars to demonstrate the tremendous effect inflation has had on the carriers. On this basis, operating revenues increased only nine per cent (less than one per cent annually), while operating expenses, taxes and rents were rising 14 per cent, more than 50 per cent faster than revenues. The result, in real terms (1972 dollars) was a decline in NROI of more than 60 per cent (from $855 million in 1967 to $313 million in 1977). Net income in constant dollars

Figure 35

COMPARATIVE RATES OF RETURN IN 1978
(Net Income As a Per Cent of Net Worth, Beginning of Year)



SOURCE: Citibank and Association of American Railroads.

also plummeted about 60 per cent (from $701 million to only $300 million). These figures are spectacular indicia of the worsening condition of the rail industry.

> *It is pretty much a foregone conclusion that a serious economic recession will push a good number of marginal railroads into bankruptcy and the non-marginal into a weakened state (with but a few exceptions). In that sense, the problem of Conrail and all other railroads are essentially a matter of degree.*
>
> Progressive Railroading (January 1979)

As noted above the rate of return on railroad net investment fell to 0.89 per cent in 1977 and to 0.24 per cent for the 12 months ended June 30, 1978. Another relationship -- looking at net income relative to net worth -- permits a reasonable comparison to be made of performance among industries generally. Here Figure 35 shows that for 1978 the manufacturing industries as a class averaged a 16 per cent rate of return; the gas and electric utilities, like the railroads a fully regulated industry, averaged over 11 per cent; aviation, on the way to substantial deregulation, earned 22 per cent; and regulated and unregulated trucking -- which as we have seen, has come to dominate intercity freight transportation -- earned an impressive average rate of return of 18 per cent. By comparison, the railroads on this measure show a paltry rate of return of 1.7 per cent. Excluding Conrail and the Long Island, the remaining carriers earned a 6.4 per cent of return. Eastern District railroads showed a negative return, the Southern District 4.5 per cent and the Western District 6.4 per cent. Looking at some of the

carriers generally considered among the stronger railroads, the Norfolk and Western and the Union Pacific are in the 10 per cent range; the Southern Pacific, Burlington Northern, Santa Fe, Chessie, and Southern fell between

NET INCOME AS A PER CENT OF NET WORTH
FOR SELECTED INDUSTRIES IN 1978

Industry	Per Cent
Baking	20.1
Dairy Products	15.6
Meat Packing	10.5
Sugar	12.0
Other Food Products	16.5
Soft Drinks	22.8
Brewing	11.4
Tobacco Products	19.8
Clothing and Apparel	14.7
Shoes, Leather, etc.	16.3
Paper and Allied Products	14.0
Chemical Products	15.0
Cement	19.7
Other Stone and Clay Products	17.5
Building, Heating and Plumbing Equipment	21.8
Nonferrous Metals	10.2
Other Metal Products	13.6
Farm, Construction, etc. Equipment	18.3
Electrical Equipment and Electronics	18.0
Autos and Trucks	17.2
Total Manufacturing	15.9
Railroads	1.7

Source: Citibank and Association of American Railroads.

3.6 and 8.9 per cent. These figures pale along side the average returns earned in aviation, trucking, and manufacturing and they are none too impressive when matched up against the electric and gas utilities average rate of return on equity of 11.3 per cent. Indeed, utilities now are routinely citing a cost of equity of from 14 to over 15 per cent in their rate applications.

As well it is vitally important to consider that the shippers -- once largely captive to the railway system -- are thriving industries, benefiting from a broad range of transportation modes and services, and generating outstanding financial performance records. As the inset table on the preceding page illustrates, the shipper industries are earning financial rates of return that are orders of magnitude greater than the railroads. These data indicate that the premise for the decades-old notion of protecting the rail captive shipper is seriously flawed. In fact in modern times the tables have been turned.

The railroad industry is clearly in distress. Buffeted by effective competition, it must change -- and be allowed to change -- if it is to be able successfully to compete for traffic and remain a viable transport option for shippers.

IV

THE PREREQUISITES OF EFFECTIVE RAIL DEREGULATION

If the railroads are to be revitalized and if they are to realize their potential as an efficient, energy-saving, environmentally compatible form of transportation they must change the ways in which they conduct their business. Competition, pervasive and powerful, will accept nothing less, for today it is the market which sets the pace to which the railroads must respond. As things stand, however, the railroads remain as comprehensively regulated now as they were in the 1920's. Despite the profound changes in economic circumstances and transportation technology that have taken place in the last half century -- a period in which the railroads' share of intercity freight tonnage transported has declined to less than 30 per cent, their share of passenger travel has virtually disappeared and their collective rate of return on investment is close to zero -- Federal government regulation of the railroads remains largely unchanged in its basic features.

On the outmoded assumption that railroads dominate the nation's transportation they continue to be denied the freedom to change rates, reduce service, inaugurate new service, restructure, or otherwise act in ways that are calculated to respond to the dictates of the contemporary competitive environment. Competition demands change but regulation inhibits it, both by imposed overt rules and restrictions and by creating a subtle but pernicious climate that is hostile to innovation and experimentation in rates, services and the other attributes of normal, competitive business behavior. To permit --

indeed to stimulate and to provoke -- the changes in railroad organization and practice which are essential if this mode of transportation is to be revitalized and to remain viable in the private sector, economic deregulation

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> *Only fundamental changes in the industry will restore the railroads to health.... The railroad industry is subject to detailed regulation.... The ICC, responding to political pressures, has used its regulatory powers to cross-subsidize low rates (in relation to cost) to small shippers, to shippers located along some lightly used branch lines, and to shippers of some bulk commodities. Competition from trucks and unregulated carriers has made this policy of cross-subsidization unworkable, as these modes have diverted to themselves and forced down rates on the very traffic that is supposed to "carry" the subsidized traffic.*
>
> National Commission on Productivity (1973)

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of the railroads is imperative. In every key respect regulation obstructs the ability of the railroads to change and to compete in the contemporary market. The time has long since come for the shackles of regulation to be removed; nothing less will serve the interests of the railroads or of the public. The remainder of this part of our report outlines the major principles which should guide meaningful deregulation.

Freedom to Price and Innovate

If any business is to compete, as the railroads must, it is essential that it be allowed to price freely and to innovate in the products (or services) it sells. In the case of the railroads this implies the discretion to change prices promptly, up or down, in accordance with market conditions. It also dictates constant adjustments in service calculated to respond to or to stimulate market changes aimed at attracting potentially profitable traffic.

It means, in a phrase, giving railroads the freedom to price, to innovate, and to change their rates and services.

> *The inability of farmers and railroads to bargain for rail service, especially in light of a similar freedom for trucks and barges, which also receive massive government subsidies, has caused our once great rail system to fall into a state of disrepair and despair.*
>
> Director of Traffic, North Dakota Public Service Commission (1979)

As things now stand, however, the railroads are captive to regulation. A railroad cannot promptly respond to an immediate market opportunity by raising or lowering rates, or by inaugurating a new rate for a new service; instead it must file at the ICC and run a regulatory gauntlet often involving protests and a lengthy hearing process. Following public notice (normally 30 days) the ICC may suspend the proposed rate for a period up to seven months (and sometimes longer). Even if a rate is not suspended the Commission may institute an investigation, thus leaving it uncertain whether the rate will be allowed to remain in effect. Moreover, with respect to any existing rate a complaint may be filed by a shipper, triggering a complex procedural process which may lead to a finding that the rate is unlawful. In any of these situations the carrier may be ordered to make reparations (i.e., to refund what it has collected). Finally, the Commission has the authority, in specified conditions, to set limits for a rate; in effect, to substitute its judgment as to an appropriate charge.

By the time this process ends -- with or without approval -- the odds are very great that the original market conditions have changed anyway. Similarly, a railroad that experiments with lower rates cannot raise them quickly if it incurs losses instead of hoped-for profits; instead, it must file and wait and lose money, not to mention developing a stifled urge to innovate or experiment:

> Contrast this, if you will, with the normal process in general industry where one company tests the market with a price change, with no advance notice, and in a day or a week either goes ahead or retreats, depending upon the actions of the competition and the customers.[1]

It cannot be overemphasized that many of the railroads' competitors can change prices daily or hourly if they wish, up or down. They can quickly raise rates to earn profits when market demand is great and lower them just as quickly if the market does not respond. In contrast, the railroads face a procedural challenge and delay each time they propose a change. In one five month period, for instance, the rates of unregulated barge carriers of grain serving points in Iowa fluctuated between 60 per cent below the norm to as much as 300 per cent above it:

> Grain hauled in bulk by water carriers is exempt from rate regulations.... Therefore, barge operators are free to adjust their rates according to the day-to-day supply of and demand for barges. The actual rates under which grain moves in barges are the result of negotiations between shippers and barge companies. The negotiations are usually in terms of "percent of tariff." During periods of low grain exports, barge companies reduce their rates to attract grain from the railroads. But rates climb sharply when large volumes of grain move into export markets.

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1 B. F. Biaggini, Remarks before the Transportation Law Seminar, ICC Bureau of Investigations and Enforcement (March 7, 1979).

> In early-1975 when exports were low, barge rates declined to 60 percent of tariff. But during the harvest season of 1975, barge rates climbed to as much as 300 percent of tariff.[1]

The barge operators (and exempt truckers and farmer cooperatives) can make instant, and broad, rate changes in response to the market and in response to the ICC procedure-bound railroads, without answering to anyone except themselves and their shippers. This is an enormous advantage for them and an equally enormous disadvantage for the railroads. Clearly railroad regulation serves as a significant barrier between the rail carriers and the marketplace which their competitors do not endure (or whose own form of regulation is much less constraining).

The necessity to file changes at the Commission and anticipate reactions from shippers, other railroads, non-rail carriers, and the ICC itself insures some form of delay in almost every instance. Also frustrating is the persistence of regulatory proceedings over long periods of time, even in the face of dispositive common sense evidence. For example, poultry growers in New England managed to keep in litigation for six years (1973-1979) a protest against rail rates on feed corn from the Midwest to the Northeast. They were able to do this despite evidence that transportation costs accounted for only four per cent of the cost of a chicken. The Commission, and ultimately the Court of Appeals, upheld the railroads in this case, but the huge waste of rail carrier time and resources -- all sanctioned by the existing railroad regulatory system -- is indefensible.

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[1] C. P. Baumol, et al., A Summary of An Economic Analysis of Upgrading Branch Rail Lines: A Study of 71 Lines in Iowa, Final Report, Iowa Department of Transportation/Iowa State University (1976) at 31 and 34.

The regulatory process as it thus pertains to ratemaking has several major adverse implications, of which two deserve special emphasis. First, it necessarily slows the railroads -- often severely -- in their adaptation to changing market circumstances. With the competing modes having very substantial flexibility to change their rates, often on literally a moment's notice or without any notice at all, the railroads are obviously badly handicapped. Second, the relevant regulatory process is a legalistic jungle, snarled in complex and protracted adversary proceedings that consume large amounts of managerial resources. With any change in a rate for an established or new service susceptible to full-blown legal battle, uncertain of outcome and of the time of a decision, the inescapable effect is to slow innovation by carrier marketing officers and to tilt the balance against change and toward maintenance of the status quo.[1] "Detailed regulatory controls have ...

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[1] The 4-R Act's patchwork emendation of the Interstate Commerce Act has not significantly relieved the burden of procedural delay and litigation. For example, grain shippers protested promulgation of a seasonal, peak pricing tariff by southern railroads in April 1977 -- a tariff filed consistent with new 4-R Act pricing provisions, and with ICC concurrance -- on grounds that the tariff violated another, vintage 1910 section of the Interstate Commerce Act (having to do with discrimination between short-hauls and long-hauls). The United States Court of Appeals held that the ICC should have undertaken an investigation of the matter. "The Commission," as pointed out by its Chairman in testimony before the House Subcommittee on Transportation and Commerce (July 26, 1978) "is concerned that if it is forced to investigate every novel rate proposed, this will have a chilling effect on innovative rail ratemaking and greatly impair the flexibility of rate-making under the 4-R Act." This case still remains undecided; the Supreme Court granted certiorari in January 1979. In a similar type of situation, an individual railroad sought to take advantage of heavy corn movements from the Midwest to the South by instituting a $200 surcharge per car. Even though this action was pursuant to the peak pricing section of the 4-R Act, the ICC denied quick filing of the proposed tariff because the carrier did not comply with certain ICC tariff publishing rules. The Commission approved the tariff after the publishing rules were satisfied; however, three months had elapsed and the peak movement period for corn had passed. Thus Commission approval was worthless.

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constrained railroad management from adapting to changing markets and, over time, have dulled initiative and the incentive to innovate within the in-

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> *The present institutional system with all its delays is particularly troublesome.... The railroads have been caught in a squeeze between the inflationary pressures of rising costs and the inflexibility of the present regulatory system. In placing a premium on the status quo and focusing managements' attention on the intricacies of the complex regulatory schemes, the present regulatory system has sapped the ability of railroads to respond, compete, innovate, and develop their full service capacity.*
>
> Senate Commerce Committee (1975)

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dustry."[1] Regulation exerts a double-edged chilling influence on rail managements, both thwarting their instinct to innovate and consuming an inordinate amount of their time in regulatory matters. This is debilitating for the railroads and hostile to the public's interest in a keenly competitive and dynamic rail industry.

Equipment Utilization. Pricing and service innovations by the railroads must also be sensitively related to the effective management of carrier assets. In this latter respect rolling stock and its utilization assume special importance. Over the last several years the great bulk of railroad capital outlays has been for equipment (in the five-year period 1974 through 1978 such outlays were nearly $7 billion, roughly double the capital expenditures for plant). With almost 1.3 million railroad-owned freight cars in service the

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[1] National Commission on Productivity, Task Force on Railroad Productivity, Improving Railroad Productivity (November 1973) at 187.

intensity with which they are used in the generation of net revenue has a very large influence on carrier earnings. Pertinent here is the negative impact of regulation. For one thing the promulgation of car service orders by the ICC interferes with carrier management's efforts to deploy rolling stock in the way thought to be most productive. Regulatory second-guessing, except in true emergency conditions, impedes carrier attempts to make the most of their investment in meeting shipper needs while also improving earnings. There is, as well, a more subtle adverse influence brought about by regulation. Since equipment utilization is intimately tied up with railroad rates, operations, fixed-plant configuration, and other factors subject to regulation, control over these elements has an unavoidable feed-back impact on the revenue productivity and deployment of rolling stock and other carrier assets. Regulatory constraint of pricing erodes innovation aimed at tailoring what the railroads have to offer -- a combination of service and asset allocation -- to changing market opportunities.

Regulatory Inertia. In addition to the obstacles and restraints which handicap the railroads in particular situations, there is a much broader and persistent inability on the part of the regulatory agencies to accept and adjust to changes. Even when they bring themselves to concede that circumstances may have changed, their response much of the time is simply "too little, too late." For instance, the ICC recently acknowledged the existence of the radically changed competitive conditions in the grain market (discussed above). As a result the Commission has proposed some revisions in the rail grain rate structure which it hopes will "improve the financial

condition of railroads and ... enable them as a group to compete more effectively ... with motor and barge competition for the grain traffic."[1] The Commission's diagnosis of the changed conditions certainly is correct -- it finally establishes to its own satisfaction that truck and barge competition began "to significantly divert grain traffic from the railroads" in the 1950's -- but the validity of its rather weak proposed remedy, tinkering with the structure of regulated rail grain rates, is far more problematic. This example vividly illustrates the essence of the rail industry's problem. While rail's competitors systematically and successfully attack their grain markets virtually unhampered by regulation, the railroads must seek to adjust continually under the handicap of an extremely slow non-market-oriented regulatory system.

The move toward regulatory reform is a recognition ... of the futility of attempting to have thousands of marketplace decisions made by Washington bureaucrats far removed from the commercial scene....

Assistant Attorney General, Antitrust Division (1979)

This example -- and there are many others -- suggests that there is an element of the absurd in a situation in which the Commission, along with the rail industry, is attempting in 1979, on a piecemeal basis through formal regulatory proceedings to deal with a fundamental economic/marketing question that the ICC now concedes was evident in the 1950's. (This particular ICC general investigation of grain pricing was initiated in May 1975 and was

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[1] Investigation of Railroad Freight Rate Structure -- Grain and Grain Products (Sub-No. 9) 345 I.C.C. 2977, 3019 (1979).

completed by the Commission in February 1979 -- a span of almost four years!) Meanwhile the continuing loss of rail market share shows that the industry is simply falling further and further behind relative to other modes. (See Figure 15, which shows that the rail share of grain traffic fell from 62 per cent in 1974 to 43 per cent in 1977.)

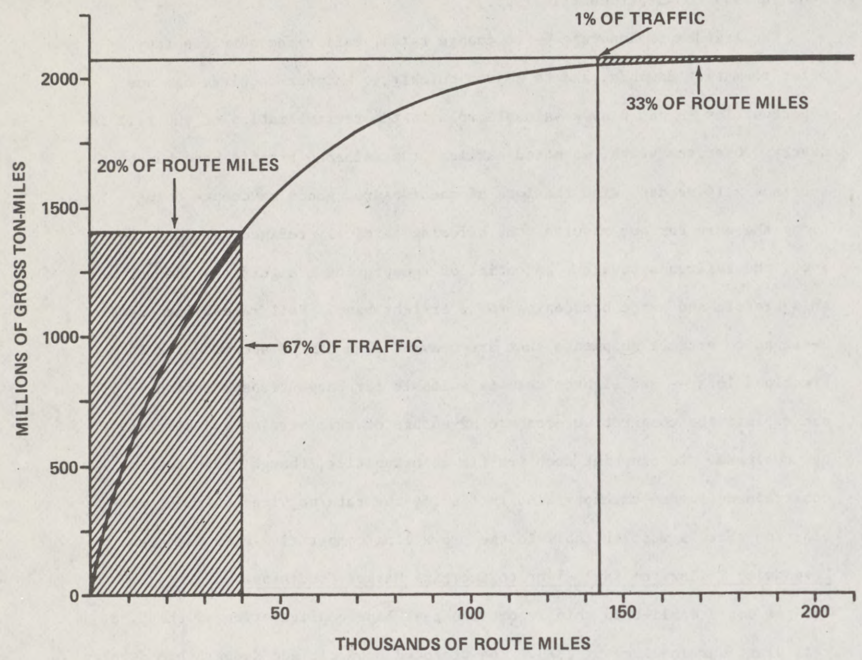
The freedom to innovate -- to change rates, tailor the services they offer to market demands, and to adjust quickly to shipper requirements and opportunities -- can play a valuable role in the revitalization of the rail industry. Over the years, as noted earlier, the railroad traffic base has been substantially eroded, with the loss of manufactured goods movements being among the more serious results. By offering carefully refined services, however, the railroads have the potential of recapturing a significant amount of this traffic and hence broadening their freight base. Rail rates, for example, designed to attract shipments that are heavier than can be accommodated in truckload lots -- and lighter than is suitable for barge transportation -- can exploit the comparative economic advantage of rail service and attract new business. To pinpoint such traffic opportunities, though, requires unconstrained freedom to experiment in finding the rate/service/equipment combination that is most suitable to the prevailing competitive circumstances.

Freedom to Tailor the Rail Plant to Emerging Market Conditions

As noted earlier in this report the peak line configuration of the U. S. rail plant was in place by 1920. The profound economic and demographic developments which have taken place since then have rendered many portions of the rail plant a misfit juxtaposed against the current-day location and pattern of transport demand. Many rail lines simply have no economic justification in today's

Figure 36

A CORRELATION OF RAIL FREIGHT CARRIED AND ROUTE MILES FOR CLASS I RAILROAD LINES IN THE UNITED STATES



SOURCE: U.S. Department of Transportation, Final Standards, Classification and Designation of Lines of Class I Railroads in the United States (January 19, 1977) Volume I.

market, due either to the demise of business (as on branch lines) or to the diversion of traffic to another mode. Similarly, changes in rail technology and the availability of other forms of transportation (such as collection or delivery of freight via truck in congested urban areas) have outmoded rail terminals, yards, and related facilities. At the same time, of course, new sources of freight business have developed in locations and for products which were not anticipated when rail construction was at its peak at the turn of the century.

The severe handicap of the 19th century rail network configuration can be illustrated with data from the Department of Transportation's detailed classification and designation analysis of railroad lines. Bearing in mind that there are about 194,000 miles of rail line in the country, 33 per cent of these route miles carry only one per cent of the traffic (measured as gross ton-miles); over two-thirds of the traffic is carried by just one-fifth of the route miles. (See Figure 36.) These simple statistics, of course, do not properly reflect the existence of outmoded terminals, yards and other facilities. It is obvious that the railroads have a vastly overblown plant, much of which they are forced to retain in operation because of regulation, not because of economics or sound commercial practice.

The railroads urgently need a high degree of flexibility to adjust their plant to today's market needs. Regulation severely constrains this freedom. Line abandonments as well as line extensions require ICC approval (or, in other cases, the blessing of state regulatory bodies), conferred only after usually time-consuming and expensive hearings conducted in accordance with

standards that have the effect of perpetuating service that is uneconomic. The fact that currently nearly as many miles of rail line remain in service as were in service in 1900 despite the revolution which has taken place in the mix and geographic pattern of demand, the widespread availability of truck, barge and pipeline transportation, the capacity-increasing effects of changes in railroad operations and technology, and a nearly 40 per cent drop in freight train miles since 1944, is a sobering reminder of the difficulty encountered in curtailing such operations.

The ICC tends frequently to deny or slow the rate of abandonment (as well as restrain pricing flexibility) for reasons related to economic and social development policy, as noted earlier in this report. But the Commission also restricts rail service abandonment applications for other non-commercial reasons totally beyond the control of the railroads. For instance it may judge that in a given local area state roads and highways are not adequate to support alternative truck service to a shipper or shippers. In disapproving a rail abandonment application on these grounds the ICC does nothing to exert pressure on the state to correct the alleged highway deficiency.[1] It does nothing to assist or induce the shipper to seek help in relocating or improving the efficiency of its operations, commercially. It does nothing to require remedial action by the affected parties within a fixed time period. It simply directs the railroad to continue the service, eat the losses that it incurs, and forego more efficient allocation of the

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[1] For the first time, FRA has authorized use of Federal railroad funds to improve county roads in Minnesota as part of the Local Rail Service Continuation Program. See FRA Grant Agreement Amendment No. PR-8-MN-01(01) (January 1979).

carrier's resources. The status quo, no matter how unsatisfactory from a railroad point of view or how unsatisfactory from an economic point of view, is perpetuated at railroad expense. The regulatory system provides no incentive -- and the ICC feels no responsibility for providing such an incentive -- to alter the circumstances which in effect imprison the railroad. This is an incredibly lop-sided, wasteful and inequitable view of the world.

Clearly excess branch lines, duplicative main lines in some areas, and redundant terminals inflict needless costs on an industry which desperately requires improved earnings. A leaner rail plant, tailored to the condition's of today's marketplace, is urgently required but regulation impairs achievement of that goal.

Freedom to Expand Territorially

We have seen that during the last half-century major changes have taken place in the American economy and in the location of business activity and distribution of the population. This process of diffusion has been accompanied by a growing interdependence among all the regions of the country. Truck operators, in particular, have expanded their operations so as to provide single line service throughout the U. S., a major competitive advantage. Waterway system improvements have greatly extended the effective reach of the barges. The railroads, however, remain geographically and corporately fragmented, with many individual carriers confined to essentially the same areas they served 50 or more years ago. With nearly a fifth of rail traffic now moving between rail Districts and some two-thirds of all ton-miles moved in hauls involving two or more rail carriers it is apparent that extensive interlining -- expensive and time consuming -- takes place within the rail system.

Interlining also compromises service quality because the originating carrier, losing control of the shipment after interchange, is circumscribed from taking action to assure its prompt delivery to the ultimate recipient. Unlike truck transportation efficient single line rail service, with its lower costs and greater appeal to shippers, is often less the rule than the exception.

The basic explanation is that the railroads have not expanded, through merger or consolidation, across the fragmented geographic and corporate zones which have historically demarcated the industry. "Balkanization," as the National Productivity Commission has termed it, adversely impacts individual carriers both by constraining them from developing and expanding their traffic base and by inhibiting their ability to expedite and control existing shipments efficiently. This results in a fundamental irony:

> Balkanization handicaps the railroads most in handling long, inter-regional shipments that must be interchanged between two or more railroads. Yet the comparative advantage of the railroads and their greatest traffic potential is in just this type of traffic.[1]

Regulation here, too, has had a chilling effect, complicating and slowing the process of integration rather than stimulating changes in organization which hold considerable benefit for the revitalization of the rail system.

The merger process is inordinately complicated, requiring many years for the proceedings to unfold. They tend to be conducted by the Commission within an institutional framework that assumes an all-dominant rail industry, as well as with a proclivity to protect every affected non-merging

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[1] National Commission on Productivity, *op. cit.* at 274.

carrier's status quo position. To sanction only that change which will not disturb the status quo is to reduce the pace of change to a crawl. The rail-

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> *This fractured or Balkanized [rail industry] 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.... 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.*
>
> National Commission on Productivity (1973)

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roads must have greater freedom to alter their industry's organization structure and patterns of territorial operation. The present-day unwritten assumption that there is something sacrosanct about maintaining, as they were 50 or more years ago, dozens of railroads which collectively are losing traffic, profits and access to adequate investment capital at a dangerous rate, is a regulatory blindspot of serious proportions.

Freedom to Diversify

In the final analysis the railroads, like their modal competitors, are engaged in the provision of transportation service, not simply "rail" transportation. Each mode may have distinct attributes that give it an advantage in certain circumstances but opportunities abound for their integration into

cross-modal systems of transportation structured in a way best to serve shipper needs most efficiently. Given the broad range of competition -- and competitors -- that now exists in transportation and the ease with which entry can be made into the truck and water sectors the public would be well served by allowing railroads, and carriers in the other modes, to diversify throughout transportation. Today railroad entry into or acquisition of motor carriers or barge carriers is severely restricted. Under current conditions, however, such a per se restriction forecloses intermodal combinations that could enhance efficiency in the provision of transportation service immensely. Where a railroad believes it could generally improve its capabilities as a transporter by offering non-rail service it should be allowed to do so subject only to the applicable provisions of the antitrust laws.

The intermodal transportation company approach has worked very well in other countries. For example, CP Rail, a successful Canadian railroad, is part of Canadian Pacific Limited which also owns and operates a deep sea shipping fleet, an international airline, a telecommunications system, a

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> *The railroad industry has been unable to adjust to changing market conditions because its facilities are fixed in place, because the regulatory climate constrained management's ability to merge facilities and abandon obsolete properties and lines, and because traffic has been lost to other modes of transportation. Public policy has also prevented the rail industry from developing unified systems of transportation using many different modes to move goods.*
>
> Senate Commerce Committee (1975)

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trans-continental highway express and trucking network, and a 56 per cent interest in the Soo Line in the United States. The implicit 1920's "robber

baron" hangover which permeates Interstate Commerce Act rail regulation so as to exclude rail association with other modes is a half-century out of date. Far from being in a position to acquire truck and barge lines in order to eliminate the competition, the survival of many railroads as efficient transporters may very well depend on having the opportunity to link up with other modes in providing flexible, responsive transportation service.

Transitioning to Deregulation

Continuation of the status quo in the railroad industry and in railroad regulation is hostile to the legitimate interests of everyone concerned with rail transportation. Change is imperative and it must infuse every aspect of railroading and affect the ways that the carriers relate to their competitors and to those whom they serve. The fundamental prerequisite to change, though, is freedom -- the freedom of the carriers to price, to innovate, to contract and expand, to restructure their systems, and generally to alter all of the established ways in which they function. Regulation denies this freedom; consequently deregulation is essential. Nonetheless, after almost 100 years in a completely regulated environment, deregulation cannot be achieved at a single stroke. Carriers and shippers alike will benefit from a phased transitional program, perhaps analogous to the approach followed in the Airline Deregulation Act of 1978. The objective of such a program is to facilitate diverse changes in the structure of the rail system and in railroad pricing and marketing practices while at the same time preserving the conditions essential to effective railroad performance during the period in which the groundwork will be laid for more basic long-run changes in the way in which the carriers conduct their businesses.

Many important changes in regulation can, of course, be made swiftly and should be effected immediately. For example, rail rate regulation, subject to standby authority for the rare instance in which a shipper can demonstrate a clear absence of effective competition (i.e., the unavailability of transportation by other modes and the lack of competition from alternative sources or products), can be curtailed promptly. The same is also true of the regulation of line abandonments and of extant ICC authority over equipment utilization (car supply and accompanying charges). Rapid deregulation in these areas is feasible and would give the railroads badly-needed freedom to start to innovate, adjust their plant to current demand, manage their assets, and price their services in a fashion that would allow them to compete more effectively.

At the same time, however, it is impractical to end abruptly other features of railroad regulation such as the carriers' long-standing practice of agreeing on rates with other railroads. The reality of the situation is that the railroads are highly interdependent. While they compete with one another for traffic they also must cooperate -- indeed, successful cooperation in this context contributes to more competition since it increases the number of separate routings over which rail movements can take place. The substantial amount of rail traffic -- whether measured in terms of tonnage, ton-miles or revenues -- that is subject to interlining among two or more carriers was discussed in Chapter II. Given such extensive interlining, cooperation among the railroads is as inescapable as it is essential to their ability to compete and serve shippers as a viable transport system. Continued freedom for the railroads to discuss and agree on rates and service arrangements is thus vital

and consistent with a comprehensive program aimed at preserving and promoting competition in transportation.

While it is to be expected that the rail system will continue to be made up of a number of independent railroads, among which coordination will remain a practical necessity, a sound program of regulatory reform must also, as part of a constructive transition period, create a climate conducive to longer-run structural change in the industry, particularly steps explicitly designed to facilitate basic alterations in the structure of the system. Through mergers, consolidations of property (duplicate lines, terminals, and yards), and cooperative operational arrangements, as well as through integration into non-rail forms of transportation, the likelihood is great that the railroads can position themselves in new and distinctive ways that will contribute to their revitalization. They should be given every incentive to undertake such restructuring. While the competitive ramifications of rail mergers or asset acquisitions should remain subject to review by the courts or the ICC, the review process should be greatly speeded up during the transitional period with the aim of encouraging arrangements that offer promise of improving the efficiency and effectiveness of transportation service provided by the railroads.

Synopsis

The railroads have inherited a nineteenth century railway network that to a large extent has been overtaken by the powerful demographic and economic forces that have transformed the Nation in the 20th century. Highly efficient and highly flexible alternative transportation technologies have eroded or eliminated most traditional rail markets and

captured a commanding share of emerging new markets. Most of them have received critical infusions of Federal funds in the post-World War II period that helped to underwrite their financial and operational success. These non-rail technologies also are in large measure unregulated, or at least less-regulated, while the railroads remain fully regulated through a system designed to deal with long-outmoded conditions.

The total environment in which the railroads must subsist has been radically and irrevocably altered. The rail industry does have intrinsic strengths -- plant in place, transportation experience, energy efficiency, environmental compatibility, ability to move commodities at low cost -- but the carriers must have greater freedom to adapt or these advantages will be lost. Ironically the shippers, as well as the public and rail labor, would be the greatest losers. Shippers will benefit far more from an economically viable railroad industry capable of competing strongly with the other modes than they will from continuation of chronic rail industry deterioration. In this long term context effective deregulation of the railroads would be decidedly procompetitive and helpful to shippers; failure to make major changes may, as a practical matter, eliminate the rail industry's ability to serve as an effective transport competitor. The public too would benefit from the lower costs which such competition would encourage. Use of extant railroad capacity is desirable environmentally; constructing new facilities for other modes usually requires the taking of land, creation of new air and water pollution, etc. Preservation of the railway system's energy efficiency potential is also an issue of important public concern. Everyone, most notably taxpayers, obviously stands to gain from a privately financed, privately maintained, and privately

operated railway system that is both efficient and self-supporting. The staggering public costs of nationalization are the most likely alternative.

Adaptation to change, however, is not a one-time act. As rapidly and as forcefully as economic changes beyond the control of the railroads continually occur, they must be in a position to respond with at least as much freedom as their competitors. They should be given the latitude to succeed -- or fail -- as commercial enterprises. Even the French government -- long a practitioner of regulated and protected rail transportation -- is deregulating the French railroads (and motor carriage as well), demanding that they meet the

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> *[R]egulation itself is the culprit: No amount of enlightened tinkering is likely to be an effective substitute for the profit incentives of a free market. And the basic rationale for Government intervention -- a lack of competition -- simply does not apply in an era when railroads are beset by competition from trucks and barges.*
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> New York Times (1979)

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test of the marketplace. Canada has already relaxed transportation regulation on a major scale, with considerable success. If rail regulatory restrictions are not removed in the United States the debilitating downward trend of loss of rail traffic and markets, decreasing earnings, inadequate service, and costly Federal subsidization of an inefficient status quo will persist and gradually worsen.

The inevitability of this gloomy prognosis can be challenged directly and promptly by major regulatory changes that recognize the vastly different role

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of the railroads in the present and future economic structure of the Nation. The key is placing the railroads on a footing of equality with other transportation modes -- free of artificial, inhibiting restraints. This in effect calls for offering the railroads an opportunity -- though not a guarantee -- to demonstrate their worth to the economy in head-to-head competition with other modes and with the other, no less real and pervasive manifestations of competition such as product substitution and geographic competition.

Deregulation along the lines set forth above will allow, indeed in some respects force, the railroads to change, in ways that are likely to be substantial. For the railroads, no less than those they serve, the implications of reduced regulation will be profound. Given the present plight of the rail industry, however, there is no practical choice other than to curtail regulation and to create a climate of economic freedom for the railroads. Alone this will not provide an answer to their problems -- much depends on the skill and ingenuity of their management -- but it is a crucial prerequisite if the railroads are to be permitted to compete, change, and thereby best serve the public.

RENO, NEV., FIELD HEARING, APRIL 20, 1979

APRIL 18, 1979.

Senator HOWARD W. CANNON,
Federal Building, Reno, Nev.

DEAR SENATOR CANNON: Attached is a resolution adopted by the Fallon City Council concerning S. 796 entitled the "Rail Deregulation Act of 1979".

The concern of the City is that this bill may allow easy abandonment of branch lines such as the branch serving the City of Fallon. Abandonment of this branch would severely damage the current economy and future economic development of this area.

We would appreciate your assistance in helping maintain this vital transportation system.

Sincerely,

BEN T. BARTLETT, *City Engineer.*

Enclosure.

RESOLUTION NO. 79-18

Whereas, U.S. Senate Bill 796 known as the "Railroad Deregulation Act of 1979" has been introduced by Senator Cannon at the request of the President, and

Whereas, rail service to the City of Fallon is essential to existing shippers and receivers and to the continued economic development of the area, and

Whereas, this bill appears to allow abandonment requests filed by the carrier to be approved without benefit of the recourse presently afforded under the law, and

Whereas, the City Council supports government deregulation of private enterprise in all reasonable ways. Now, therefore be it

Resolved, That the Fallon City Council supports deregulation of private enterprise in accord with Senate Bill 796 with the exception of removing current recourse by shippers, receivers and governmental entities affected economically by abandonment of lines.

Passed and adopted this 17th day of April 1979.

MERTON E. DOMONOSKE, *Mayor.*

RENO, NEV., *April 18, 1979.*

Hon. HOWARD W. CANNON,
U.S. Senator,
Reno, Nev.

DEAR SENATOR: John Harmon has asked me to thank you for your letter of March 30, 1979 directed to him as Manager and Director, Western Division, Standard Slag Co. I will be present at the hearing on behalf of the Company.

Our experience with Southern Pacific teaches us that deregulation should be very carefully weighed. First, Southern Pacific is in a profit position and all they are interested in is long, mainline hauls. They don't need Government subsidy and, in our opinion, they don't need deregulation.

Briefly, our experience is that they have abused the public and their customers. In 1975 their local traffic representative testified before the Churchill County Planning Commission in our behalf for the re-establishment of a mill on the Fallon branch line saying in substance that it would save the line. When we were ready for shipment of the barite product, we were then advised that they had almost simultaneously petitioned the ICC to abandon the line. At great expense and delay we beat them before an ICC Administrative Judge from Washington. Southern Pacific appealed and at further expense and delay we were affirmed. We still don't have adequate service.

On the basis of the foregoing, we oppose rail deregulation in Nevada and we also oppose the Railway Rehabilitation Act and particularly the provisions which require the State of Nevada to go into the railroad business so that the railroads can get Federal funds. We feel that a railroad should have an obligation under its certificate of public convenience to provide adequate service particularly in the few branch lines that are left.

If the deregulation recommendation of the Carter Administration proves acceptable, then we suggest that strict precautions be enacted to protect against rate and service abuse. We don't for a moment suggest that the railroad companies should operate at a loss and rate adjustments where justified should be permitted.

We will appreciate your accepting this letter as a part of your record.

Sincerely,

LESLIE B. GRAY.

COMPETITION FOR THE MOVEMENT OF MANUFACTURED GOODS TO THE STATE OF NEVADA

(By Karen L. Borlang and Edward B. Hynison)

INTRODUCTION

There have often been assertions and counter assertions about the amount of competition faced by railroads for the movement of goods. Recently, the debate has narrowed to the question of whether competition is a sufficient regulator of railroad rates or whether an external regulator is required to assure that rates do not rise unreasonably. Traditionally, those arguing in favor of deregulation have asserted that market forces were adequate to assure that railroad rates would be controlled just as the prices of other goods and services in the economy are controlled. Opponents argued that the opposite was true. Too often in the past, the opposing parties couched their arguments only in general terms. The shift of traffic from railroads to competing modes was cited by supporters of deregulation as evidence that the railroads faced pervasive competition. Opponents claimed that while railroads faced competition in some markets and for the movement of some commodities, there was no market force available to hold down the level of rail rates on other commodities.

This study consists of an examination of the competitive forces at work in the market for transportation of manufactured goods. The study is based on the origin-destination data by commodity and state collected for manufactured products in the Census of Transportation.[1] The study is limited to manufactured products because the market share data only extend that far.

The market share data demonstrate convincingly that competitive forces are sufficient to assure that transport charges for the movement of specific commodities will be held to competitive levels by market forces. The data permit identification of the nature and level of competitive forces associated with specific commodities (identified at the 3-digit level of detail of the Standard Industrial Code) into and out of all states where railroads either originate or terminate significant quantities of traffic. The study takes into account intermodal competition between states of origin and of destination. It evaluates the effect of availability of each commodity from competing locations on transportation prices. It identifies the effect of competition between producers located at different points but competing in common markets on the level of transportation rates that can be charged by carriers from each of the points of origin. Finally, it identifies alternative markets and means of transportation for commodities moving out of each state. The data reveal that for almost every commodity there is one or another type of competition sufficient to assure that rail transportation rates will be held to reasonable levels.

Types of competition affecting the rates transportation companies charge

There are four different types of competitive forces evaluated in this study that can work to hold down transport costs. In all instances, competition can exist between carriers of the same mode or between carriers of different modes. The different types of competition considered in this study include: (1) Direct head-to-head competition between carriers competing to carry goods between a particular origin and destination; (2) competition resulting from availability of alternative markets served by competing carriers in which the seller can market goods if the transportation costs associated with selling in a particular market become too high; (3) competition between carriers competing to keep the producers they serve at diverse origins competitive in a common market; and (4) competitive pressure on transport prices resulting from requirements that the delivered price of a commodity be held down to keep the producer competitive with substitute products available in the market. If a carrier does not offer rates sufficiently attractive to be competitive with other available carriers, or to keep the shipper competitive with other producers in a market, the railroad will lose the traffic. In the first two instances the shipper and receiver continue to buy and sell as before shipping by means other than railroad. In the last two instances, there is a symbyotic relationship between shippers and carriers in that if the carrier fails to keep the shipper competitive, the shipper must exit the market and the carrier loses the traffic as a

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[1] Census of Transportation, U.S. Department of Commerce, Bureau of the Census, 1972.

result. It is axiomatic that no carrier wants to lose traffic unless it would be more costly to continue to provide service than to lose the business altogether.

The most commonly examined type of competition in the transportation industry is competition between carriers competing to move goods from a common origin to a common destination. Such competition can be either intramodal or intermodal. The data available from the Census of Transportation do not identify share of market by competitor but only mode. While one can generally assume that a number of competing motor carriers exist (or would exist in the absence of restrictive entry regulation) the same is not always the case with railroads. Thus, for purposes of this analysis, a railroad industry market share between two states of less than 70 percent of the total amount of a commodity carried is presumed to be indicative of effective head to head competition. Since most major markets are served by more than one railroad, the share of any one rail carrier in a market is likely to be below 70 percent if the aggregate amount carried is that high. Further, an examination of the data suggests that for the commodities covered in the Census, the rail share of the market seldom rises to 70 percent of the amount of the product carried. In addition, the other forms of competition discussed below work to further increase the level of efficiency with which the market regulates freight rates.

The second type of competition is alternative market and source competition. If a seller sells his product in several markets and ships to the different markets via different carriers, then the efforts of one carrier to raise rates unreasonably will result in the shipper reducing sales in that market and increasing sales in other markets served by competing carriers who offer service at lower cost. If the disparity becomes large enough, the shipper will shift all of his traffic out of the market. Thus, availability of alternative markets provides a shipper with leverage to use against any carrier who tries to raise rates. Similarly most markets are served by several producers of a product located in different origins and shipping by different carriers. Any effort of any one carrier to raise rates will cause the delivered price of the product of other firms to become relatively more attractive. Again the effect on the carrier attempting to charge the higher rate will be to dry up the traffic and leave him with nothing.

The data show that producers generally ship their products to many different markets if they expand beyond the local market areas at all. Even when the commodity is carried to a few of those markets primarily by rail, it is often carried to others by truck. At the very least, it is likely to be carried on a competing rail system. Again, data restrictions limit examination of the amount of competition between railroads trying to keep producers competitive in the markets they serve. What evidence is available, however, indicates that there is already substantial intramodal competition and there would be considerably more if the regulatory constraints discouraging such competition were removed.

The data on intermodal market competition is extremely persuasive. They show that in most instances, even when a product moves to a few markets by rail, most of the product is sold in markets where the share shipped by truck is substantial. Further, the evidence suggests that there are generally many alternative sources of supply for each market and that goods move from many of these sources primarily by motor carrier.

Market competitive exists whenever producers at different origins compete at a common market point. Purchasers in that market are only concerned about the delivered price of the product in that market. Thus, the price at which the product will sell is determined by the production costs plus transportation costs. As long as competing transportation companies service the different producers, market forces regulate the maximum transportation charge that can be levied by holding it to the level that allows the producer to be competitive in the market. Local production and short haul truck competition tend to place a very low ceiling on the level of rates that can be exacted by any shipper. As long as a railroad can cover costs at a rate that leaves his shipper competitive in the market, the railroad's incentive is to offer service. At any higher rate, there would be no demand for service since the producer would cease to be competitive.

The available data demonstrate that for most products, market competition is pervasive, that is, there are few manufactured products that are supplied from only one or two sources. The movement data show that competition from producers located at different origins provides substantial downward pressure on the railroad rates associated with virtually every manufactured product moved by railroad. The traffic patterns shown in the data demonstrate that market competition will prevent a railroad from charging an unreasonable rate.

Finally, product competition exerts additional downward pressure on rates. Product competition works in much the same manner as market competition. The difference is that substitute products competing in the market apply downward

pressure on rail freight rates. If two products are substitutes for each other, then consumers will purchase the one that has the lowest delivered cost. If the freight rates rise to increase the delivered price of one, then consumers will purchase the other, reducing demand for the transportation services needed to get the first product to market, and placing downward pressure on freight rates.

The available data do not bear directly on the issue of product competition. However, in addition to the market competition described by the data, product competition can be a significant additional force in the marketplace.

COMMODITY SHIPMENTS TO NEVADA

Although Nevada did not export sufficient manufactured products to have been included in the Census of Transportation data on outbound movements, there are substantial movements into the state of Nevada by both motor carrier and rail. Ninety-two commodities are shipped into Nevada; 43 of these move in some part by rail. Only 22.8 percent of all manufactured products moving into Nevada moved by rail. California provided most of the manufactured goods moved to Nevada, 63 percent of the total. Of the total shipments from California, only 12.4 percent moved by rail. Of course, the aggregate data, while suggestive of the pervasive nature of competition between modes for the movement of goods into Nevada, is not conclusive with respect to specific commodities. The data with respect to individual commodities, however, confirm what the aggregate data suggest, that there is little moving into Nevada for which there is no effective competition. This means that there is a functioning market mechanism in place to assure that railroad rates do not rise to unreasonable levels.

There are a number of movements from particular states to Nevada that are made primarily by rail. However, movements of the same commodity from other sources is always available to provide competitive pressure to keep down rail rates. Usually, commodities not only move from a number of different sources, but they move from many of the sources by motor carrier. A discussion of these commodities for which railroads carry more than 70 percent of the traffic from any individual origin state follows.

Meat, dairy products, canned foods, grain mill products and beverages all move by rail from some origins to Nevada. The products also move from other competing origins often by truck. In the case of grain mill products, the movement by railroad is subsidized by the farmers who, as a result of the ICC mandated rate structure, pay most of the transport cost [2] of both the grain and the processed grain products. More important, Nevada has local sources of substitute products not dependent on rail service that compete with the imported products and impose an upper limit on delivered price.

Meat moves from Colorado and Nebraska primarily by railroad. However, that accounts for only 37 percent of the meat brought into the state. The other 63 percent, including all of the meat from California and from numerous other states, moved by motor carrier. In addition, Nevada itself produces significant quantities of meat. In order for those producers shipping into the state by rail to continue to sell in the state, the transportation rates must be low enough to keep them competitive with other sources of meat, including local meat. Of course, the producers in Nebraska and Colorado also ship by motor carrier. In the unlikely event that rail carriers could not offer low enough rates to keep them competitive, they could sell in markets served by other railroads or by motor carrier.

Similarly, dairy products move to Nevada from Pennsylvania mainly by railroad. They move from Wisconsin and from California, however, completely by motor carrier. Only nine percent of the total dairy products move in by rail. This suggests that Nevadians will receive low-price dairy products from these latter sources, and that railroad rates will be held down on all sources by the forces of market competition. Even if Pennsylvania is no longer able to market in Nevada, Pennsylvania producers can and do ship to other markets, served by motor carrier or by other railroads.

Canned goods move into Nevada from California, Idaho, Florida, Georgia, Missouri, Ohio, Pennsylvania, Texas, and Washington. All of the canned goods moving from Georgia and 27 percent of the canned goods moving from California move by rail. All the rest come in by motor carrier. Thus 70 percent of the total canned goods movements arrive in Nevada by motor carrier. In addition, the movement is from so many different origins that there is substantial market competition. Finally, canned goods compete with frozen and fresh goods, both of which are abundant in Nevada, thus there is direct intermodal competition, market competition and

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[2] See Interstate Commerce Commission, Ex Parte No. 270 (Sub-No. 9) Investigation of Railroad Freight Rate Structure—Grain and Grain Products.

product competition all available and collectively assuring reasonable prices for such goods.

Grain mill products move to Nevada from Illinois, Michigan, Missouri, and Texas. The peculiar railroad rate structure imposed on movement of grain and grain products by the Interstate Commerce Commission prevents the grain from moving by another mode as it often does when moving in the international trade. Thus, most mill product deliveries in Nevada are made by rail, but the market share data is not indicative of a rail monopoly. Rather, it is indicative of a rate structure imposed by regulation that virtually requires the grain mill products move by rail, and in the process discriminates against local milling operations in Nevada.

Under the grain rate structure kept in place under the current regulatory system, the rates on grain moving from farm to mill are kept high. Grain mill products can, however, be shipped out on very low rates if they were produced with grain brought in by rail. Thus, in effect, money earned on the inbound is used to subsidize the outbound movement. Further, farmers must normally sell their grain on the basis of the market price in the milling area less the rail freight charge associated with getting the grain from farm to mill. Thus, farmers frequently cannot avoid shipping by rail even when it is more costly than available alternatives. Millers ship their products by rail because the transportation is subsidized. This results in inflated transportation charges that persist only because of the present rate structures and the present marketing practices based on those rate structures.

As a result of the low rates on mill products coupled with the high rates on grain, mills in the midwest are given an artifical competitive advantage over mills located in Nevada. The big gainers in the system are speculators and some mills, but the big losers are farmers and consumers. The advantage would disappear if the grain rate structure mandated by regulation were to disappear. Absent the current rate structure, both farmers and consumers would be made better off. Even in the current instance, however, local producers provide substitutes that compete with the imported products.

Beverage products are shipped to Nevada from California, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri and Ohio. This commodity is shipped entirely by rail from Indiana, Maryland, Minnesota and Missouri; these shipments and rail shipments from California, Kentucky and Ohio account for only 22.1 percent of the inbound movements of beverage products. Truck movements from California, Kentucky, Michigan and Ohio account for the other 77.9 percent of the shipments of beverage products to Nevada. (In fact, the truck movement from California alone constitutes 77.1 percent of the shipments of this commodity).

Cigar products are shipped to Nevada from Florida and Pennsylvania. While rail movements account for 72.5 percent of the shipments of this commodity, the number of shipments in the sample is small (106.86 and 20.54 tons respectively) and reported market shares are subject to severe sampling error. In most other markets, cigars move 100 percent by truck suggesting a high degree of substitutability of truck movements for rail movements in the Nevada market.

Women's outerwear products are shipped from Alabama, New York, North Carolina and South Carolina. The shipment from Alabama constitutes the only rail movement and this represents only 0.4 percent of total shipments. The remaining 99.6 percent of this commodity moves by truck.

Miscellaneous manufactured textile products are shipped only from New York and entirely by rail. The shipment is very small (13.99 tons), however, and like the other textiles, shipped out of the east could easily be shipped by truck or air at competitive rates.

Sawmill products are shipped from California and Washington. While all of the shipment from Washington is by rail, the shipment from California is significantly larger and moves predominantly by truck. The rail share of the shipments of sawmill products is 9.5 percent.

Millwork and other products are shipped to Nevada from California, Montana, Oregon, Pennsylvania, Washington and Wisconsin. Rail carries more than 70 percent of the commodity from Montana, Washington and Wisconsin, but these along with the rail movements from California and Oregon comprise only 42.7 percent of the inbound shipments of millwork and other products. The remainder of the shipments move by truck.

Household furniture products are shipped to Nevada from ten states: Arkansas, California, Illinois, Indiana, Mississippi, New York, Ohio, Pennsylvania, Texas and Virginia. The railroads carry more than 70 percent of the tonnage shipped from illinois, Texas and Virginia. These and the other rail movements account for 32.2 percent of the household furniture products shipped to Nevada. The remaining shipments are handled by truck.

Public building furniture is shipped to Nevada only from Michigan. The railroads carry 99.9 percent of the shipments of this commodity, with the other 0.1 percent shipped by air. The tonnage shipped (832.80 tons in the sample) is not great and the commodity is such that it could be moved by truck without significant problems in household furniture.

Paper mill products are shipped to Nevada from California, Louisiana, Michigan, Ohio, Oregon, Washington and Wisconsin. The railroads carry more than 70 percent of the tonnage from California, Louisiana and Oregon, and some of the products from Washington. All of the paper mill products shipped from Michigan, Ohio and Wisconsin go by truck as do portions of the California and Washington shipments. Of the total paper mill products imported, 69.9 percent are brought in by rail, and the rest by truck. As with many other products, market competition is extensive.

Paperboard products are shipped to Nevada from California and Indiana. The railroads carry 92.6 percent of the shipments of this commodity. The other 7.4 percent is moved by truck. The railroads carrying his commodity are competing lines each trying to set rates that keep their producers competitive so the traffic continues to move over their lines. Thus, market competition between different producers and competing railroads work to hold rates to competitive levels.

Converted paper products are shipped to Nevada from Arkansas, California, Michigan, New York, Oregon, Washington and Wisconsin. The railroads ship all of this commodity from Arkansas, Oregon and Washington and over 70 percent from Wisconsin. These movements, along with a very small movement from California constitute 56.9 percent of the shipments of converted paper products to Nevada. The remainder of the shipments are moved by truck.

Industrial chemical products are shipped to Nevada from nine states: California, Illinois, Michigan, Missouri, New Jersey, Pennsylvania, Tennessee, Texas and West Virginia. Only from Texas, however, does the rail share of the tonnage shipped exceed 70 percent. This movement, along with the rail movements from California and Illinois account for only 18.9 percent of the industrial chemical products shipped to Nevada. The majority of the remaining shipments are made by truck, with a very small percentage shipped by air.

Miscellaneous chemical products are shipped to Nevada from California, Illinois, New Jersey and Pennsylvania: only from Illinois is the rail share of the tonnage shipped greater than 70 percent. The Illinois movement accounts for 85.9 percent of the inbound shipments of this commodity. All of the movements from California, New Jersey and Pensylvania are by truck, suggesting that traffic from Illinois could be diverted to trucks without great difficulty, since it already moves by truck from alternate sources at comparable distances from Nevada.

Miscellaneous plastic products are shipped to Nevada from eight states: California, Connecticut, Michigan, Mississippi, New Jersey, Ohio, Pennsylvania and Texas. This commodity is shipped by rail only from Ohio; all other movements are by truck. This rail movement accounts for only 0.3 percent of the miscellaneous plastic products shipped to Nevada.

Primary non-ferrous products are shipped to Nevada from California and Texas. While all of the movement from California is by truck, all from Texas is by rail. The rail movement accounts for 74.9 percent of the shipments of primary nonferrous products to Nevada.

Plumbing and heating products are shipped to Nevada from California, New Jersey and Ohio: only Ohio ships this commodity by rail. This movement accounts for 63 percent of the shipments of plumbing and heating products to Nevada. The remaining shipments are handled by truck.

Fabricated structural metal products are shipped to Nevada from New York, Ohio, Pennsylvania and Texas: only from Ohio is this commodity shipped by rail. This movement accounts for only 14.2 percent of fabricated structural metal products shipped to Nevada. The remaining movements are by truck.

Farm machinery products are shipped to Nevada from Illinois and Ohio. While Ohio moves its entire shipment by truck, the Illinois movement is sufficiently large so that 99.1 percent of the total movements of farm machinery products are by rail. As these products are shipped disassembled, however, rail traffic could be diverted to trucks with little difficulty were railroad rates to rise unreasonably just as automobiles once moved by motor far more frequently than they do now.

Construction and related machinery products are shipped to Nevada from 12 states: California, Colorado, Georgia, Illinois, Indiana, Iowa, Minnesota, New York, Ohio, Pennsylvania, Texas and Wisconsin. The railroads move this commodity from Illinois and Wisconsin. These two movements account for 87.1 percent of the construction and related machinery products shipped to Nevada. These movements are on competing lines, however, serving competing producers. There is thus much

market and product competition for the sale of this commodity which works to keep down transportation rates. The remainder of the traffic moves by truck.

Service industrial machinery products are shipped to Nevada from seven states: Illinois, Indiana, Michigan, Missouri, New Jersey, Tennessee and Wisconsin. The railroads carry this commodity only from Tennessee. This movement accounts for 64.2 percent of the shipments of service industrial machinery products to Nevada. The remaining shipments are by truck and air.

Electric machinery products are shipped to Nevada from California, Illinois, Indiana, New York, North Carolina and Pennsylvania. The railroads move this commodity only from Illinois; only 0.5 percent of the shipments of electric machinery products are accounted for in this movement. All other movements are by truck and air.

Electric lighting and wiring products are shipped to Nevada from California, Connecticut, Illinois, Massachusetts, New Jersey, New York and Ohio. Only from Massachusetts is this commodity shipped by rail. This movement accounts for 6.7 percent of the electric lighting and wiring products shipped to Nevada. The remaining movements are by truck and air.

Radio and TV products are shipped from California, Illinois and Massachusetts to Nevada. The railroads carry this commodity only from Massachusetts. This movement accounts for 38.4 percent of the shipments of radio and TV products to Nevada. All other movements are by truck.

Auto and auto parts products are shipped to Nevada from Illinois, Indiana, Nebraska, Ohio and Wisconsin. The railroads are used to haul this commodity form Ohio and Wisconsin; these two movements account for 75.2 percent of the shipments of auto and auto parts products to Nevada. There is, however, substantial market competition as these movements are, on competing rail lines. All other shipments are by truck and air.

Railroad equipment products are shipped to Nevada from Ohio and Pennsylvania. Rail shipments of this commodity only originate in Pennsylvania; this movement accounts for 98.4 percent of the shipments of railroad equipment products to Nevada. Ohio's shipment, however, is entirely by truck, and given the small size of the entire shipment, (821.52 tons in the sample), truck movements of this commodity are feasible.

Miscellaneous manufacturing products are shipped to Nevada from eight states: California, Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York and Pennsylvania. The railroads carry this commodity from Massachusetts, Michigan and New York. These three movements account for only 4.6 percent of the miscellaneous manufacturing products shipped to Nevada. The remaining shipments come by truck and air.

In terms of overall movements to Nevada by state, only 11 states ship more than 70 percent of their commodities to Nevada by rail. These states are: Colorado, Illinois, Indiana, Louisiana, Maryland, Minnesota, Missouri, Montana, Nebraska, Virginia and Wisconsin. In the majority of these cases, however, the number of commodities shipped by a state is small; for example, Louisiana, Maryland, Montana and Virginia only ship one commodity each, while Colorado, Minnesota and Nebraska each ship two. In addition, these shipments often tend to be small in size. This would suggest that it would be feasible to divert this traffic to truck or air.

TABLE I.—COMMODITY SHIPMENTS TO NEVADA

Origin	Total tons shipped	Total rail tons	Rail share (percent)
Alabama	48.22	4.14	8.6
Alaska			0
Arizona	1,215.65		0
Arkansas	10,409.28	1,129.01	10.8
California	1,001,608.46	124,575.22	12.4
Colorado	3,305.49	2,992.53	90.5
Connecticut	499.77		0
Delaware			0
Dist. of Columbia			0
Florida	1,011.92	92.33	9.1
Georgia	2,792.16	894.26	32.0
Hawaii			0
Idaho	519.48		0
Illinois	71,956.46	57,446.49	79.8
Indiana	4,254.61	3,418.90	80.4

TABLE I.—COMMODITY SHIPMENTS TO NEVADA—Continued

Origin	Total tons shipped	Total rail tons	Rail share (percent)
Iowa	904.75		0
Kansas	176.63		0
Kentucky	2,208.61	1,239.03	56.1
Louisiana	2,475.59	2,475.59	100.0
Maine			0
Maryland	468.79	468.79	100.0
Massachusetts	1,153.81	566.51	49.1
Michigan	3,789.51	2,576.23	68.0
Minnessota	1,368.13	1,335.00	97.6
Mississippi	1,444.17		0
Missouri	8,921.78	8,007.75	89.9
Montana	1,666.00	1,666.00	100.0
Nebraska	25,529.02	20,846.65	81.7
Nevada			0
New Hampshire			0
New Jersey	1,301.32		0
New Mexico			0
New York	5,921.62	129.76	2.2
North Carolina	934.17		0
North Dakota			0
Ohio	28,311.59	8,916.47	31.5
Oklahoma	5.84		0
Oregon	16,307.93	9,244.36	56.7
Pennsylvania	15,269.32	4,782.59	31.3
Rhode Island	215.79		0
South Carolina	10.31		0
South Dakota			0
Tennessee	4,212.52	1,896.21	45.0
Texas	22,263.72	6,694.31	30.1
Utah			0
Vermont			0
Virginia	485.11	378.39	78.0
Washington	19,840.96	13,795.41	69.5
West Viginina	217.67		0
Wisconsin	18,909.81	16,910.62	89.4
Wyoming			0

BENDER WAREHOUSE CO.,
Reno, Nev., June 13, 1979.

Senator HOWARD W. CANNON,
Senate Office Building,
Washington, D.C.

DEAR HOWARD: The other day a friend of mine gave me a Xerox copy of an article my Grandfather had written on Reno, way back in 1899. It is an interesting little article about a small community of 6,000 people that someday should expand to 25,000. Wouldn't he be amazed at the population today; but at least he lived to see his projection come true.

I would not bother you with this trivia if it had not been the last two pages that hit home on the subject of deregulation—what it was like in Reno before Section 4 of the ICC Act was passed outlawing higher rates for short hauls. It is frightening to think it can come back full circle as he describes it.

I am not sending the whole article, just the part about freight rates, and I would like to ask that this be made part of the record.

Cordially,

FRANK N. BENDER, *President.*

Enclosure.

[From the Nevada Magazine, August 1899]

Reno, The Metropolis of Nevada

(By Hon. F. H. Norcross, Secretary Reno Improvement Association)

Reno today is the wealthiest and most populous town or city in the sparsely populated State of Nevada. Unlike most of the other towns of the State, which have attained any considerable population, Reno owes but little of her growth and prosperity directly to the mining industry, though it is quite probable that a few years hence will see Reno the center of large mining and milling operations, as she is situated in a vast undeveloped mineral region.

Reno is located upon the line of the Centeral Pacific Railroad, twelve miles east of the California boundary, at the point where this great trans-continental thoroughfare begins its ascent of the Sierra Nevada Mountains. It is also situated upon both banks of the Truckee River, the largest stream of water to which our arid State can lay claim, and one of the most beautiful mountain rivers on the American continent. It lies in the northwestern part of the famous Truckee Meadows, a magnificent valley of about ten miles in diameter, of wonderfully fertile soil, lying between a spur of the main range of the Sierra Nevada Mountains and the Washoe range. At Reno this valley has an elevation of four thousand, five hundred and fifty feet above the sea. The surrounding mountains vary in height from six thousand to ten thousand feet, while Mount Rose, overlooking the valley from the southwest, rears his majestic head yet a thousand feet higher.

The valley of the Truckee Meadows is the richest and most beautiful of a chain of tributary valleys that skirt the eastern base of the Sierra Nevada Mountains to the north and south for several hundred miles. A considerable portion of these valleys has been brought under a high state of cultivation by means of irrigation. From the Truckee River alone more than fifty irrigating canals convey water to the adjacent country, supplying immense fields of grain, alfalfa and other products of the soil with necessary moisture.

From a picturesque standpoint there are but few places in this country, the size of Reno, that can surpass it. Nature has lavished upon Reno and her vicinity many of her choicest gifts. To the west the Sierra Nevada Mountains rise abruptly a mile above the elevation of the town, covered during the winter and until late in the * * * of wheat per acre, await only the solving of the problem of irrigation which, even in this vicinity, is yet in its infancy. At present these thousands of acres, capable of supporting a large population, lay untouched by the plowman's hand. High up in the Sierras the snows of winter pile up the moisture in vast quantities. In the warm spring and summer days the snow is melted, swelling the rivulets, creeks and rivers, a great portion of it flowing away to some "sink," doing no good. More than twice as much water flows to waste every year during the non-irrigating season, than is used by the farmers in irrigating the soil now under cultivation. This, too, in view of the fact that there is probably not another portion of the arid west which has such magnificent natural advantages for the storage of water.

The people of Reno, however, do not look upon the Truckee River simply for what it may accomplish in the way of irrigating enterprises; they know it is one of the most magnificent water powers on the Pacific Coast, and some day they know that power will be put to use, and that many factories and mills will surmount its banks, furnishing employment to thousands.

The person, not familiar with the facts, would very likely wonder how it is that with all this great water power, free to him who will harness it, and with all this land waiting to yield bountiful harvests, that more has not been accomplished. But, if you will ask the business man of Reno where the trouble lies, he will tell you that it is very largely a question of transportation, that the agricultural industry cannot stand much greater development because the home market is limited, and freight tariffs are too high to permit of a wider field of enterprise, that this same question of transportation cuts off the possibility of large factories, that would ordinarily take advantage of the splendid water power of the Truckee. The merchant will also tell you that Reno's natural position ought to make her the trade center for a wide area of the country to the north, east and south, but that no wholesale house can exist here and compete with San Francisco and Sacramento, which enjoy much greater freight privileges than Reno. The Reno merchant must pay from one and a half to two times as much for freight from Chicago and other eastern points, that is exacted of the Sacramento or San Francisco merchant, though Reno is the shorter haul. Not only this but when the Reno merchant undertakes to obtain some trade to the north or south, he finds his California rival can ship goods to the same point for less freight charge, though the California merchant must ship over two roads and

through Reno in order to reach the same destination.These are conditions, the justness of which the Reno merchant has as yet been unable to comprehend.

But while in the main Reno has been, and is, discriminated against in regard to this question of frieghts and fares, it is but just to say that the Southern Pacific Company has dealt very fairly towards our great cattle and sheep industry, and this fact encourages Reno people to hope for more equitable freight tariffs for other branches of commercial industry as soon as the situation is presented to the railroad company in an intelligent and businesslike way. It is gratifying to note that an effort is now being made to so present the matter to the railroad authorities that they will yield to Reno the privileges it would seem she is so justly entitled to. Failing in this effort, an opportunity is afforded our representatives at Washington to gain the everlasting gratitude of the people, by affording them relief through the Inter-State Commerce Commission. At any event, it is but reasonable to presume, that present conditions will not always endure. Justice must be done to Reno sooner or later, and when it is, her future, as a commercial and manufacturing city of importance, is assured.

Nevada State Rail Plan

SUMMARY AND RECOMMENDATIONS

Preface

In the past several decades the railroad industry in the United States has experienced financial problems stemming primarily from the economic effects of shifting production demands, industrial relocation, competing transportation modes and governmental policies. These conditions are particularly true in the northeast region of the nation where, since 1972, several major rail carriers have gone bankrupt. The financial collapse of these carriers prompted the federal government to enact the Regional Rail Reorganization Act of 1973. This Act established planning processes for the reorganizing and restructuring of the rail systems of the 17-state Midwest and Northeast Region and provided financial assistance in the form of federal subsidies for the continuation of essential local rail services in this region.

Congress, realizing that southern and western rail carriers are subjected to many of the same forces that caused failure to major carriers in the northeast, established additional major rail legislation when it enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). This Act now makes available financial assistance for rail systems located in the 31 states outside the northeast region. One prerequisite for receipt of this assistance is that the state in which the carrier is located must have an adopted State Rail Plan.

Governor Mike O'Callaghan, in response to this requirement, in November 1976, designated the Nevada State Highway Department in conjunction with the Nevada Public Service Commission as the responsible agencies for the development of the State Rail Plan for Nevada.

Nevada's State Rail Plan was developed through the cooperative efforts of these agencies.

In general, the rail industry in the State of Nevada does not face the problem of unprofitable lines and abandonments that have plagued carriers in eastern states in recent years. Since 1970 only one rail abandonment has been approved in the state. Although possibilities do exist of future branchline abandonment, the overall demand for rail service throughout the state is expected to increase.

In recent years Nevada has experienced a phenomenal growth rate, as shown by an increase of population in excess of 400 percent for the period 1940 to 1970. Although growth is not expected to continue at this rate, a steady increase is expected for some time to come.

Also, the combination of vast quantities of relatively inexpensive open land, free of congestion and environmental problems of more urbanized states and Nevada's favorable Freeport laws, shows great potential for future light industrial and warehousing development. Many large manufacturing companies have already taken advantage of these conditions, especially in the large urbanized areas of the state, by establishing major warehouse facilities close to existing rail service where items are shipped into these areas from various manufacturing centers across the nation, warehoused and later distributed throughout the western states.

Even without internal growth, Nevada's geographic location is most significant in the nation's future transportation picture. With an ever increasing demand for large quantities of less expensive energy, Nevada finds itself strategically located between the large energy consuming metropolitan centers of California and the fossil-fuel deposits located in other western states.

To meet these future needs and to guarantee the continued social, economic and environmental well-being of the state, it is the responsibility of the State of Nevada to provide its citizens a balanced multi-modal transportation system.

There is currently no unified transportation plan for Nevada. The development of a modal plan for rail will serve as the initial step in this direction and will help place rails in the same perspective as highways, transit and airports. Such planning will reduce uncertainty about the future state posture towards the various modes of transportation and prepares the way for establishment of a state program for each transportation mode. The initial State Rail Plan will help determine whether rail programs are necessary and, if so, what these program should be. In developing a continuing Rail Plan Program the primary concern is to assess the financial viability of existing rail services, maximize future benefits for both shippers and carriers, identify needs and deficiencies and formulate recommendations directed toward averting future rail service problems.

While the primary focus of state rail planning is on light-density lines (branchlines), if the planning effort is to be truly comprehensive, a thorough knowledge and understanding of all of the state's raillines and services is essential. Under current federal regulations states are not responsible for mainline planning. This is the role of the U.S. Department of Transportation, the Interstate Commerce Commission and the railroad companies. However, states are required to become thoroughly familiar with the function, service and utilization aspects surrounding all raillines within the state.

This report includes a section devoted to the entire state rail system and identifies carriers, densities and passenger service on a line-by-line basis. This general overview, if revised regularly, will provide an early warning of future rail problems.

To develop a basic understanding of current railroad operation, the state has developed and will maintain an adequate data base to intelligently address such key issues as likelihood or profitability, subsidy, acquisition, abandonment and alternate modes. The federal legislation, which requires development and adoption of a state rail plan as a prerequisite before any portion of a state's rail system is eligible for federal assistance, also requires an annual update of the state rail plan as part of a continuing planning process. This report includes recommendations for a continuing planning and update program.

Since enabling state legislation is necessary for Nevada to participate in the project implementation phase of the 4R Act, completion of the initial State Rail Plan was scheduled so that any necessary state legislation could be considered at the 60th session of the Nevada State Legislature.

The initial State Rail Plan should not be considered complete with this first effort. It was not possible to address all major rail issues within the time frame available and some key issues will require refinement during the update. In addition, it may be necessary to modify the State Rail Plan to reflect any state rail legislation enacted by the 60th State Legislature.

Summary and recommendations

Nevada is located between the western states of California, Oregon, Idaho, Utah and Arizona. It comprises approximately 110,540 square miles in area, is 485 miles long, 315 miles wide and in size is the seventh largest state in the nation. Its estimated 1977 population was 633,397.

Currently, mining and agriculture are, and will continue to be, important industries in Nevada, but by far the largest industry is tourism which is based mainly on gaming. Agricultural employment represents a small portion of total employment within the state as a whole; however, for many of the rural counties it is a substantial percentage of total employment. Mineral production, for the last 20 years, has shown a steady upward pattern interrupted by a few years with small drops or leveling off. This trend in the future will definitely be upward as new ore deposits are found and developed. This trend is presently stifled by increasing governmental regulation and by federal land being withdrawn from mining.

Early mining efforts were aimed at the extraction of precious metals. By the early years of this century, copper production exceeded that of gold and silver (in terms of value). Copper has remained the single largest contributor to the total value of mineral production in the state. In 1977, 31 percent of the total value of mineral production was copper.

Other products of the mineral industry in Nevada include gold, sand, gravel, barite and many other minerals. There was a decrease in total production in 1976 due to problems associated with the copper industry.

In the depression year of 1931, casino gambling was legalized as a means to increase tax revenues. The success of legal gambling can be measured in millions of dollars collected in taxes from casinos each year. Currently, gaming taxes account for almost forty percent of the state's general fund revenues.

Today, without a doubt, tourism must be considered the State's most important economic activity with the resort areas of Reno, Las Vegas and Lake Tahoe attracting most of the state's 30 million visitors each year. Nevada's popularity for most visitors is the offering of world famous entertainment in conjunction with large scale statewide casino gambling. To others, recreation including skiing, camping and hunting serve as the main attraction.

Because of Nevada's favorable Freeport laws, which do not tax goods stored in the state for delivery to other states, light manufacturing and warehousing is becoming a major industry. Several industrial parks have established in the Reno-Sparks area to serve as major distribution centers for many national companies.

Historically transportation has been one of the most important factors in the economic development of most areas. Employment, commerce, recreation and nearly all other activities are reliant on transportation for the safe and efficient movement of people and goods.

Initially, it was the railroad that gave Nevada its first reliable transportation mode. Later, with the advent of the motor vehicle and a general decline in mining activity resulting in many rail abandonments, it was the motor vehicle and highway system that became the primary mover of people and goods in the state. Then, with the legalization of gambling in 1931, the need for a more multimodal system saw the development of busses and airplanes as major transportation modes.

Rail planning process

Rail planning has emerged as a new area of responsibility for federal and state governments. Recent federal actions, the Regional Rail Reorganizational Act of 1973 (3 R Act) and the Railroad Revitalization and Regulatory Reform Act of 1976 (4 R Act) acknowledge that the private railroad industry can no longer be expected to provide services for which revenues realized are less than the cost of providing the service. These acts call for a comprehensive federal, state and local rail planning process to deal with the problems of uneconomic light density lines which may be lost due to abandonment and authorizes, on a temporary basis, subsidies to provide for the continuation of essential rail service.

The comprehensive rail planning program began in Nevada in January of 1977 with the preparation and submittal to the Federal Railroad Administration (FRA) of a rail planning work statement outlining the scope and objectives of the State Rail Planning Program and an application for federal planning assistance funds. Actual planning activities did not begin until early June 1977 following approval of Nevada's funding application by FRA in late May 1977.

During development of the State Rail Plan, it was found, as suspected at the beginning of the program, that Nevada does not face the major problem of excessive and unprofitable rail mileage that has plagued many eastern states in recent years.

True, the state does face possible abandonment of approximately 113 miles of railline, but this mileage consists primarily of little used rural branchlines and represents only a small portion of total state rail mileage.

Although Nevada's overall rail industry appears financially stable, the state is not without its rail problems. Coupled with a steady increase of interstate rail traffic and a statewide population that has increased fourfold in the last three decades, many of the state's larger urban areas are now finding that normal rail operations are impeding everyday urban activity.

It is this day-to-day conflict, which results in time delays, increased vehicle costs and safety hazards, that has become the topic of increasing concern on the part of the general public and elected officials and prompted the expansion of the state's rail planning program.

It was not proposed to modify, to any great extent, the scope and objectives of the initial state planning program, but rather expand the program so that all concerns and issues identified in the early phase of the planning program could be addressed. This will be accomplished in two separate phases.

Phase one is the development of the initial State Rail Plan including a detailed description of the existing state rail system; identification and discussion of key rail related issues and concerns; identification of those raillines potentially subject to abandonment; and recommendations of policies, procedures, and actions necessary to establish a continuing comprehensive rail planning and project implementing process in Nevada.

Phase two will serve as the first update including all modifications necessary to reflect any rail legislation enacted by Nevada State Legislature. This phase will also include an evaluation of the entire state rail system with particular emphasis placed on what effects increased rail traffic will have on this system and the state's urbanized communities.

In developing the State Rail Plan and its update, the primary concern is to assess the financial viability of existing rail services, maximize future benefits for both

shippers and carriers, identify needs and deficiencies and formulate recommendations directed toward averting future rail service problems.

Commodity flow

Of the estimated 368 billion dollars expended for transportation by the nation in 1976, $165.2 billion or 45 percent was spent on cargo transportation. The impact of such expenditures on the economy of the nation is obvious. The cost of virtually every item purchased by the public is influenced to some degree by transportation costs.

A major shift from rail transport to truck transport in the last half century has greatly changed commodity transport activities. If government and private industry are to collectively assure that the future transport system will effectively serve both the flow of commodities and people, it will be necessary to develop an understanding of present and future demands so that an integrated system of transportation modes can be developed to meet these demands.

Commodity flow analysis is a study within itself. When developing the State Rail Plan, no attempt was made to address goods movement in the detail necessary to identify specific issues or to develop recommendations.

Statewide and regional commodity flow analysis will be a major activity of the comprehensive statewide transportation planning program which will include all modes of transport (highway, rail, air and pipelines). Commodity flow information is presented in this report only to give a general overview of this movement by mode in Nevada.

Rail freight movement

The U.S. rail freight network is a highly complex interdependent system. The production of rail service entails origination and destination; switching, classification and routing; and line-haul carriage. Nearly half of all freight movement involves two or more rail carriers. There are numerous measures of rail system usage, including carloads, carmiles tons, gross ton-miles and train miles. Regardless of the measure of system usage employed; an understanding of the various critical factors that effect usage is essential when evaluating a rail system. These factors include commodity type and service characteristics, length of haul; seasonal variations in volume of traffic; directional imbalances in traffic flows and non-commitment empty-return rates; terrain, climatic conditions and other physical characteristics. All of these factors affect costs and service and as a result—rail usage.

Traffic density, generally defined in terms of the amount of gross tonnage[1] carried over a railline, is the most common and readily available measure of system usage.

The traffic density on Nevada's rail system, in terms of gross ton miles per mile (or simply gross tons) is summarized as follows:

FREIGHT TRAFFIC DENSITY—1977 STATE OF NEVADA[1]

Millions of gross tons	Mileage	Percent of total system mileage
Less than 1	314.3	20.2
1 to 9.9	162.1	10.4
10 to 24.9	461.7	29.6
25 to 49.9	260.1	16.7
50 and over	360.8	23.1
Total	1,559.0	100.0

[1] Does not include U.S. Gypsum or Nevada Northern branchlines.

As can be seen, Nevada's rail system carries a wide range of tonnages, with 20 percent of the system carrying less than one million gross tons per year while only slightly more, 23 percent of the system, carries in excess of 50 million gross tons per year. It should also be noted that only one section of branchline carries in excess of one million gross tons annually. This is the Boulder City Branch from Boulder Junction to Henderson for a distance of 9.8 miles. This represents three percent of the state's Class 1 branchline mileage or 0.6 percent of the total system mileage.

[1] Gross tons includes the weight of the locomotive, cars, caboose and cargo. Net tons is the weight of the cargo only.

Highway truck transport

Nevada's highway network is the backbone of its transportation system. Major highway corridors, established by physical features and population centers have been developed to varying degrees. State highways serve both interstate and intercity traffic and carry the major portion of the highway traffic volume. County highways serve major and minor intra-county movements which the state highways cannot accommodate. The city street systems serves primarily intercity movements.

The State of Nevada is crossed east to west by several major highway corridors. Of these the majority of the east-west truck freight traffic moves over Interstate Highways 15 and 80. Over these routes the heaviest truck freight volumes are between California on the west and Nevada's two large metropolitan areas—Reno and Las Vegas—with that segment of I-80 west of Reno carrying approximately 9.3 million net tons in 1977 and the segment of I-15 west of Las Vegas carrying 7.7 million net tons.

Major north to south truck freight movements are along U.S. Highways 395, 95 and 93. North-south freight movement is heaviest along U.S. 395 with that segment of this route between Reno and Carson City carrying approximately 2 million net tons of truck freight in 1977.

Air cargo in Nevada

Nevada is presently served by several certified CAB carriers. In 1977, these carriers enplaned in Nevada 4.1 million passengers, 4646.7 tons of cargo and 2731.6 tons of mail. These activities were distributed among the state's four air carrier airports: Elko, Ely, Las Vegas and Reno.

Pipelines

A little noticed but highly significant method of transporting is by way of the pipeline. Although pipelines are used primarily to transport liquids, gases and liquefied solids, they can also be used to convey agricultural, mining and industrial products which are in solid form (powdered, granulated, packaged, capsulized, etc.)

Nevada is served by three functional categories of pipelines: petroleum product pipelines which carry gasoline, diesel fuels, jet fuel and heating oil; natural gas pipelines and coal slurry pipelines. All pipeline transport in Nevada terminates in the state. No commodities originate in the state for export outside the state.

Summary—State of Nevada pipeline imports by functional category, 1977

Pipeline (functional category):	*Imports*
Petroleum products (gasoline)	496.7 million gallons.
Natural gas	60,844.9 million cubic feet.
Coal slurry	5.220 million tons.

Existing State rail system

The American rail system is a highly complex and interdependent system, which throughout its brief history has experienced many major changes in its magnitude as well as it role as a national transportation mode.

From the earliest construction of railroads in the United States, beginning in the 1820's, total national rail mileage increased steadily reaching its peak of just over 254,000 miles in 1916. Then, because of various social, economic and political changes, rail mileage decreased to where it is now estimated that the national is less than 200,000 miles.

The State of Nevada is traversed by three major railroads with transcontinental connections: The Southern Pacific, Western Pacific and Union Pacific. It is also served by one intrastate shortline carrier; Nevada Northern and one private rail-line; U.S. Gypsum.

This system comprises 1,577 miles of railline, of which 1,244 miles are mainline and 333 miles are branchline.

STATE RAIL SYSTEM MILEAGE AND PERCENT OF MILEAGE BY CARRIER [1]

Carrier	Miles	Percent
Nevada Northern Railway Co	159.7	10.0
Southern Pacific Transportation Co	595.1	37.8
Union Pacific Railroad Co	366.6	23.3
U.S. Gypsum	6.0	0.4

STATE RAIL SYSTEM MILEAGE AND PERCENT OF MILEAGE BY CARRIER [1]—Continued

Carrier	Miles	Percent
Western Pacific Railroad Co	449.3	28.5
Total	1,576.7	100.0

[1] Does not include yard tracks, sidings, or spurs.

Classification of railroads

The Interstate Commerce Commission (ICC) classified railroads as either Class I or Class II and defines these classifications as:

Class I.—railroad companies earning more than $50 million gross revenue annually.

Class II.—railroad companies earning less than $50 million in annual revenues.

Nevada's rail system is made up of 1,411 miles of Class I railroads and 160 miles of Class II railroads.

Class I railroads.—Southern Pacific, Union Pacific, and Western Pacific.

Class II railroads.—Nevada Northern.

Rail passenger service

Today rail passenger patronage in Nevada is minimal with one AMTRAK passenger train crossing the central part of the state each day in both directions. This train, the San Francisco Zephyr, operates between Chicago and Oakland/San Francisco. Amtrak began this service in Nevada on May 1, 1971. Passengers may board or detrain at stations in Reno, Sparks, Carlin and Elko. Stops at Winnemucca are made by signal only.

In a U.S. Department of Transportation report, published in May 1978, U.S. DOT recommends the elimination of the San Francisco Zephyr route between Chicago and San Francisco. This recommendation, if implemented, would leave Nevada completely without any regular rail passenger service.

A special "Fun Train" between the San Francisco Bay Area and Reno has operated since November 1963. This service is now provided by Amtrak on a seasonal basis (January through April), with ten runs scheduled for the 1979 season. Since Amtrak began this special service in the winter of 1971/1972, they have averaged nine tranis per season with an average of 600 passengers per train.

National defense

To insure that the Nation's defense is served by adequate, safe and efficient ground transportation, the U.S. Department of Defense has designated a national network of strategic ground transportation corridors. This designation was accomplished through the cooperative efforts of the individual states, the U.S. Department of Transportation, and the Military Traffic Management Command, an agency of the U.S. Department of Defense. In Nevada, the mainlines of both the Southern Pacific and the Union Pacific have been designated as segments of this network.

The Department of Defense has also identified two military installations in the State of Nevada vitally dependent on rail service. These are the Hawthorne Army Ammunition Plant located in Mineral County near its county seat of Hawthorne and the Nellis Air Force Base near Las Vegas.

Railroad abandonments

As discussed in this report, recent Federal Legislation, the Regional Rail Reorganization Act of 1973 (3R Act), the Railroad Revitalization and Regulatory Act of 1976 (4R Act), and the Local Rail Service Assistance Act of 1978 were enacted by the U.S. Congress to help states and local communities deal with the problems of uneconomic light density raillines.

Also explained is that, of primary importance to Nevada are those sections of the 4R Act and the Local Rail Service Act of 1978, which extend many of the subsidy and planning provisions of the 3R Act to those states outside the northeastern region. For example, federal funding is now available for state-sponsored rail freight assistance programs, including rail service continuation payments, purchase or lease of lines for operations, rehabilitation of light density lines and programs to reduce the impact of rail service abandonment in ways other than continuation of direct rail service (such as industrial relocation assistance).

To be eligible for assistance under these programs, a project must:

1. Be part of or related to railroad freight lines on which abandonment or discontinuation of line or service has been approved by the ICC based on the finding that public convenience and necessity permit such abandonment or discontinuation,

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or be certified as a railline which, based on level of usage, carried 3 million gross tons of freight or less per mile during the prior year.

2. Be analyzed and, where appropriate, justified in the state's rail plan.

3. Satisfy specific criteria and goals established by the state for assistance.

To provide states and the ICC an early warning of potential abandonment application, each rail carrier is required, pursuant to ICC regulations, to file annual system diagram maps and line descriptions by categories. These categories are as follows:

ICC railline categories

Category 1.—Lines or portions of lines anticipated to be subject of an abandonment discontinuance application within three years.

Category 2.—Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

Category 3.—Lines or portions of lines for which an abandonment or discontinuance application is pending before the ICC.

Category 4.—Lines or portions of lines which are being operated under rail service continuance provisions.

Category 5.—All other raillines.

The Union Pacific Railroad Company has filed an application for abandonment of one branchline and has designated as "potentially subject to abandonment" three other branchlines or portion lines in Nevada. These are as follows:

Abandonment applications pending

This category, Category 3, designates those line or line segments for which abandonment applications are pending.

On the System Diagram Maps submitted by each carrier prior to March 30, 1978, there were no lines in Nevada designated in this category. However, on June 30, 1978, Union Pacific filed an application with the ICC for abandonment of its Wells Branch from near Rogerson, Idaho to Wells, Nevada.

Because there has been no traffic over this line since January 1973, no analyses, projections or evaluations were conducted. Also, since there is no apparent local opposition to this proposed abandonment, nor is there potential for future traffic, the Sate of Nevada will not oppose this abandonment.

Lines potentially subject to abandonment

Lines termed "potentially subject to abandonment" are those raillines designated as Category 1 or 2 on the system diagram maps. Since limited data are currently available for these lines, analysis has not been conducted at this time. The state will, however, continue to monitor these potential abandonments and consolidate all pertinent information as it becomes available.

Potential abandonment (category 2)

Union Pacific Railroad Co.—Boulder City Branch (Henderson to Boulder City) 12.87 miles. Pioche Branch (Panaca to near Pioche) 18.18 miles. Prince Branch 8.71 miles.

Class II raillines potentially subject to abandonment

The Nevada Northern Railway, a Class II shortline, serves northeastern Nevada much as a Class I branchline would and has connections to two major Class I railroads.

For years most of the traffic moved by Nevada Northern has been traffic related to copper mining and smelter operations in the Ely-McGill area.

Recently, because of depressed copper prices and environmental restrictions, the open pit mining operations have stopped and apparently there are no short range plans to reopen. Although smelting has continued at the McGill plant, this operation will also cease as ore stockpiles are depleted.

Closure of the mine and the pending closure of the smelter has seriously depressed economic conditions in the Ely area. These closures will also result in virtually all traffic ceasing on the Nevada Northern and its eventual abandonment or discontinuation of service unless new traffic can be generated.

In an attempt to improve local conditions an all-out effort has been made to attract new rail-oriented warehousing and light industry to the area. As a result of these efforts, there is a good possibility that a large coal-fired electric generation plant will be constructed in the Ely area. Coal to fire this plant would be moved by unit coal train Nevada Northern from Utah.

In addition, considerable oil exploration is in progress in eastern Nevada. Although several wells are now producing, the full potential of these deposits are not known at this time. If these reserves should become major producers, Nevada

Northern could become the principle transporter of crude oil from the field to the refinery.

Although the long-range potential of Nevada Northern is promising, the short-range period could become critical. Even if potential oil reserves should become major producers and the power plant a reality, it is doubtful if these could be realized for at least 5 to 7 years and without additional traffic or assistance, prior to this time, Nevada Northern will not be able to continue rail service. Because of this potential and the economic importance of Nevada Northern to the Ely area, every effort should be made to assure continuation of this rail service, either through intensive efforts to generate new traffic or some financial assistance. If these are not attainable this facility should at least be considered for rail banking.

Urban conflicts

Railroads have historically engendered commercial and industrial activities and have augmented the growth and well-being of the areas they serve. However, urban expansion has now left many major rail facilities in the center of urban areas where mainline rail operations must traverse the densely developed central city. Also, many times, yard and switching facilities are located adjacent to residential or other land use areas where rail operations have detrimental social or environmental impacts on such areas. This urban expansion, coupled with a major increase in vehicular travel, has magnified the conflicts between railroad operations and highway users and has brought about major concerns and desires for possible solution.

Railroad-highway conflicts or concerns can be grouped into six general categories: Safety; Delays and increased operating costs for highway users; Community barriers; Environmental degradation; Incompatible for inappropriate land use; and Increased railroad operating costs and reduced efficiency.

To identify areas of conflict in Nevada and to estimate environmental affects and increased operating costs caused by these conflicts, some basic criteria were established for conflict evaluation. From existing data all grade crossings with a highway vehicular volume of 1000 vehicles or more per day and a daily train traffic of 15 or more were selected for review and evaluation. Accident records were also reviewed in order to isolate and identify all crossings showing a history of high vehicular and/or pedestrian/train accidents. Individual points of conflicts were combined by urban area or place for analysis on an areawide basis.

The following is a summary of those urban areas evaluated and the degree of conflict identified for each area.

Urban area:	*Degree of conflict*
Reno	Major.
Las Vegas	Do.
Elko	Do.[1]
Lovelock	Minor.
Winnemucca	Do.
Battle Mountain	Do.
Carlin	Do.
Wells	Do.
Caliente	Do.

[1]A Track Relocation program is currently in progress to correct conflicts in the Elko area.

Railroad—highway grade crossings

The urban rail incompatibilities discussed in Chapter VII of this report identify many of the concerns involving railroad operations in Nevada and solutions must be found. These solutions must be individualized according to the needs, concerns, type of community and level of rail service involved. No one solution is consistently best for all communities, railroads or adjacent land uses. Workable solutions must be the results of compromise by all parties concerned and provide the most satisfactory overall improvement.

If all rail facilities were grade separated from major streets and highways, the concerns over delay and safety would be resolved. Grade separation structures remove the delays and accident frequency at railroad-highway crossings by eliminating the conflicts of crossing at grade. However, separation structures are expensive and may have adverse impacts on adjoining land use. Because of their high cost, only a limited number of grade separation structures can be justified economically.

At any railroad-highway grade crossing where it is impractical to close them to highway through traffic or impractical to construct grade separations because of either adverse physical or environmental conditions or excessive costs, the use of improved crossing surfaces and the installation of active devices to warn vehicle drivers of the approach or presence of trains on a crossing should be considered.

The State of Nevada, through its Department of Highways, has for many years worked closely with the local governments and the railroad industry to eliminate hazards at railroad-highway grade crossings. In the past most of this effort was limited to individual crossings experiencing high accident occurrence or to grade crossings along highway improvement or realignment projects.

With the enactment of the highway Safety Acts of 1973 and 1976, much needed additional funds became available to engage in a truly comprehensive statewide railroad-highway grade crossing safety program. Sections of these Acts authorize funds for railroad-highway crossing safety improvements on all Federal-aid Systems except Interstate as well as most highway off the Federal-aid System.

Project selection in the comprehensive statewide railroad-highway grade crossing safety program is made through a systematic process of analysis and prioritization of candidate projects.

The present schedule for upgrading all warning devices to minimum standards on the Federal-aid Systems in Nevada is 1978. For those crossings not on any Federal-aid System the present schedule is 1980. This goal, however, is dependent upon the availability of funds and capability of the local entities to supply matching funds.

Recommendation

A Revolving Fund should be established to provide matching funds for off-system Federal-aid railroad/highway grade crossing projects where local entities, because of limited funding sources, cannot provide match.

State rail plan

Although the initial state rail planning effort was primarily that of identifying key rail related concerns and issues and evaluating to the extent possible those railines or services pending abandonment or potentially subject to abandonment, the overall planning effort, if to be truly effective, must also look at rail services in respect to the economic development and growth of the state.

Railroads are vital to the economy of the state and, with proper planning, future economic growth will develop taking maximum advantage of existing rail services. With favorable state freeport laws and large areas of undeveloped land adjacent to existing rail services, every effort must be made to coordinate rail planning with the orderly social, economic and physical development of the state.

State rail goals

Within Nevada's overall transportation goal of providing its citizens with the most effective, economical and balanced transportation system possible for the movement of the people and commodities, the following specific rail goals were developed.

Develop and maintain a rail planning program that is responsive to the needs of the State of Nevada.

Develop and maintain a rail planning program that enables the state to participate in all existing and future rail assistance programs.

Promote a safe and efficient state rail system for the economic movement of commodities, both intra as well as interstate, that is integrated and compatible with all other transportation modes.

Promote a transportation system that will enhance the economic wellbeing of the State of Nevada, conserving our rapidly dwindling natural resources and reducing environmental impacts.

State rail policies

Throughout the initial rail planning program a number of key rail related issues and concerns were identified.

The following policy statements were formulated to address these issues. Since, in many cases, enabling State Legislation is necessary before these statements can be formally adopted, it must be understood that these statements represent Nevada's interim position.

Rail ownership

Believing in the private enterprise system, the State of Nevada endorses the principle of private ownership and operations of the nations railroads.

Regulation

Recognizing that some regulation is necessary for the safe and efficient operations of transportation systems, the State of Nevada encourages deregulation or modifications to existing regulations that would improve the economical operations and competitive opportunities of all transportation.

Taxation

The State of Nevada supports fair and equitable taxation of all transportation modes.

Abandonments

As a part of the comprehensive rail planning process each railine in Nevada pending abandonment will be evaluated. Based on the results of this evaluation and the desires of the local communities the State of Nevada, through its designated agency, will decide whether to oppose, support or remain neutral in abandonment proceedings.

Subsidies

Subsidies should be used only for those rail facilities identified as essential to the State's rail network and have the potential to be self sustaining. Match for Federal Assistance Funds shall be provided by the beneficiaries of this essential service.

Rail banking

Where applicable, as an alternative to abandonment, the State of Nevada will support rail banking. As an incentive for cooperating in such programs, rail carriers may be granted forgiveness of taxes on operating properties of those rail facilities placed in a bank.

Urban conflicts

The State of Nevada will, to the extent possible, cooperate in all Federal, local and rail carriers programs that will eliminate or minimize urban/rail conflicts.

Essential State rail system

In this, the initial State Rail Plan, the entire existing state rail system, with the exception of the Wells Branch in northeastern Nevada, must be considered the essential state rail system.

Only as sufficient data becomes available can the necessary evaluation be made to determine the true essentially of individual rail segments.

Organization for implementation

In order to implement the State Rail Plan, it is desirable for the state to have or create a unit whose duty it is to undertake the different activities required for successful implementation. In most states, this unit, sometimes called the railroad implementation group, is a part of the designated state agency. In other states, however, the railroad implementation group may be in some other agency or authority.

The state rail implementing group will have six basic functions to perform: Administration/management; legal; fiscal control/accounting; promotion and development; performance evaluation; and safety, energy, and pollution.

Continuing planning program

Federal legislation requires that State Rail Plans be updated, including revisions and amendments, on an annual basis. The annual update must be submitted to the FRA no later than August 1, of each year.

If Nevada's State Rail Plan is to remain current and be updated annually, there must be established a process of continuous surveillance and evaluation of rail related activities and the assignment of responsibilities for updating and amending the adopted plan.

The continuous process will require the orderly scheduling of activities in each of several phases. Where updating of some elements of the plan can best be accomplished by continuously recording changes as they take place, others can be updated more easily by periodic reinventory. However, regardless of the methods used, continuous suveillance and systematic re-evaluation of pertinent data will permit updating the plan without resorting to the major effort exerted during initial plan development. In addition, the continuing planning program will provide important assistance in plan implementation and can be most beneficial in providing research and development of new techniques which will increase the accuracy and reliability of the process.

The organization established for initial plan development should be carried forward in to the continuing phase. Although manpower requirements will fluctuate, the basic framework of organization, including committees and public participation, should remain in existence.

It is anticipated that the continuing rail planning program for Nevada will require no more than one full-time and one part-time staff persons plus supporting services "as needed".

Recommended enabling State rail legislation

For the State of Nevada to implement the State Rail Plan, certain enabling state legislation must be enacted.

The following recommendations were developed during the intial phase of the state rail planning program. The recommendations are general only and must not be considered all-inclusive. To insure that Nevada has full authority to engage in all phases of the 4R program, as well as any other federal rail programs, the Nevada State Legislative Counsel Bureau will review all pertinent state and federal statutes, laws and regulations.

Recommended legislation

Designated implementing state agency.

Authorize designated state agency to apply for, accept and expend federal, state, local and private funds for planning and implementation of rail transportation projects; and to cotnract for acquisition, construction and improvement of rail facilities, financed either in whole or in part by federal monies.

Authorize designated state agency to serve as agent for counties or municipalities for implementation of rail continuation or rehabilitation projects.

Authorize designated state agency to enter into compact, contracts or agreements with other states or groups of states, or with public or private corporations operating raillines or services if such compact, contracts or agreements are deemed necessary for continuance or improvement of rail services vital to the State of Nevada.

Enact legislation to establish a state physical preservation program. The physical preservation program (or rail bank) would be used as alternative to actual abandonment.

Legislation should include provisions limiting the time an individual rail facility could remain in the program (5 years). However, an extension clause should be included.

As as incentive to rail companies for cooperating in this program, legislation should include a provision to grant forgiveness of taxes on the operating properties of those raillines in the program.

Future rail program

Assuming that all necessary enabling State legislation is enacted to establish a continuing statewide rail program in Nevada, a scheduling of activities to guide the program beyond initial plan development is then in order.

This process must be comprehensive enough to encompass all aspects of rail transportation, yet flexible enough to adjust to unexpected changes.

While portions of the State Rail Plan may be long-range in scope, many of the recommendations center around specific projects which will change as experience is gained and new problems emerge. Because of this the future overall statewide rail planning program will have two basic elements. A short range element which concentrates more on immediate problems and needs (next 5 years or less) and a long range element which looks toward future needs (up to 20 years).

The primary activity of the short range program will be to make the necessary changes or modifications that result from conclusions or findings of periodic program evaluation, status changes or the identification of additional railline potentially subject to abandonment, changes in federal and state funding and legislative programs, and policy changes which modifies the general thrust of the state's rail program.

The long range element will look more toward forecasting future rail needs and identifying and evaluating possible impacts. Also included in the long range program will be the comparison and integration of the rail plan with all other appropriate planning programs for the state.

Scheduled activities—fiscal years 1979 and 1980

Update State Rail Plan (short-range elements).
Develop long-range element (forecasts).
Develop program of projects.
Organize project implementation group.
Review existing regulatory and taxing procedures.
Complete state grade crossing program.
Implement state rail safety inspection program.
Continue commodity flow analysis.
Evaluate urban conflicts (forecasts).

SIOUX FALLS, S. DAK., FIELD HEARING, JULY 5, 1979

GENE FORD TRUCKING,
Sioux Falls, S. Dak., June 27, 1979.

Hon. LARRY PRESSLER,
U.S. Senator, Sioux Falls, S. Dak.

SENATOR PRESSLER: My name is Gene Ford. I am owner of Gene Ford Trucking domiciled at 4000 North National Avenue, Sioux Falls, South Dakota 57104. I am an independent contractor with 21 tractors and 23 trailers on long-term lease to a regulated motor carrier who operates, as pertinent to my business, between the Midwestern United States and the West Coast. I started in the trucking business with Midwest Coast Transport, Inc. in 1959 and in 1971, I began to purchase my own equipment, in turn contracting the same to Midwest Coast. I would like to speak to the issue of deregulation as I feel it would affect my business and the state of South Dakota.

Over the years, Midwest Coast has developed a very comfortably balanced operation which is of immense benefit to me as an owner-operator of equipment with long-term financial obligations to meet on that equipment. The balance of Midwest Coast's operations (uniformity of headhaul to backhaul) is very important to me because it means that when I leave South Dakota with a load of meat and packinghouse products, I am assured of a return load for my equipment either in the transportation of frozen foods or similar types of edible foodstuffs when my truck unloads on the West Coast. The balance in my company's operations means not having to wait two or three days to find another load to haul back to the Dakotas or very near by. It further means not having to deadhead hundreds of miles in the wrong direction in order to pick up a load that delivers hundreds of miles from where my truck would normally reload or where my drivers live.

With the advent of deregulation, anyone can haul anything. Loads that I would normally haul will be subject to diversion by carriers who did not previously have the authority to transport them. As a result, my deadhead or down time will increase and my cash flow will diminish. At the same time, my fixed costs will continue, which on one truck will average more than three times the amount that an ordinary person would spend on a house payment.

Let me give you an example of my haul and what could happen to me with deregulation. South Dakota produces very few regulated commodities which move in truckload shipments with exception of meat products. As a result, I am required to own the most expensive truck equipment in the business in order to transport those meat products. An average refrigerated meat trailer, properly insulated and equiped with meat rails and refrigeration unit cost approximately $28,000 notwithstanding the cost of a West Coast tractor which approximates $60,000.

Generally, I serve meat plants located in such places as Sioux Falls, Mitchell, Huron and Rapid City. I transport packinghouse products for various meat packers located at those points to points West of the Continental Divide. When I unload in Tacoma or Seattle, Washington, as example, my company has three things for me to haul to the Dakotas. Those products generally consist of frozen foods, canned goods, and fresh produce such as apples, pears, cherries, strawberries, potatoes, etc.

Normally, 15 percent of my regulated haul consists of canned goods because there is not enough frozen foods available to fill 100% of the trucks my company unloads in the Northwest. While frozen foods generate much greater revenues than transportation performed for canned goods, in order to get our trucks back home we provide this alternative transportation service to the public. Obviously, the best use of refrigerated equipment is not in the transportation of canned goods since it was not designed for that purpose. Nonetheless, we are required to haul canned goods to supplement the return of our equipment to the South Dakota meat packers for reloading on a consistent basis.

With deregulation, people with less expensive equipment such as dry vans, bull racks, or even open tops with tarps, can haul canned goods. They cannot however, haul meat. Therefore, they will cut into this particular lane of traffic and, gladly so, since economically, it is more prudent for them to haul canned goods than grain or fresh potatoes, etc. Thus, they take a load away from me and return to the Dakotas. Two things occur as a result of this incursion into my haul. First, it causes my trucks to sit and ends my cash flow. Second, it causes my drivers to leave me because they do not make money if the trucks are idle. Aside from myself, we have the public consideration. The people who will be in a position to divert the canned goods loads in vans or bull racks, cannot haul meat. Therefore, when their truck empties out in South Dakota they cannot serve the meat packing industry as would be the case if I had hauled the load. Chances are, the independent leaves South Dakota and goes somewhere else to reload his truck and the meat packer ends up with a load of meat sitting in his coolers that will not move because of my inability to return to South Dakota for reloading.

The above, in part, is what deregulation represents to me and should be a matter of serious consideration by the meat packing industry in South Dakota, or anywhere else for that matter. For every load I lose on my backhaul, that will be just one less load of meat that will be hauled West from South Dakota.

To take this point one step further, if the deregulators are of the opinion that this would result in lower freight rates, just the converse is true. If I lose too many loads to "gypsy" trucks, the South Dakota meat industry is going to be forced to subsidize this newly government fostered inefficiency by absorbing my out-of-pocket costs into the rate they pay for on one-way transportation to the West Coast. Otherwise, there will be no trucks for them to use because I could not afford to deadhead back to their plants at the existing rate levels.

The aforementioned is but one consideration in the long list of reasons why deregulating the trucking industry will not wash. Regrettably, the people that support deregulation of this giant industry of ours know little or nothing of the cold hard facts of the trucking business.

Respectfully submitted,

GENE FORD.

TERMINAL GRAIN CORP.
Sioux City, Iowa June 27, 1979.

Senator LARRY PRESSLER,
Senator JAMES J. EXON:

This statement is made by Terminal Grain Corporation, an Iowa Corporation with a Terminal Elevator, a barge receiving and shipping elevator in Sioux City, Iowa ans six country elevators within the State of South Dakota. We hold three memberships to the Sioux City Grain Exchange and have been buyers, sellers, and transporters of grain through-out the United States for more than 50 years.

We wish to state our opposition to Bill S. 795 deregulation rail and truck service and urge all those interested in the State of South Dakota to do likewise.

There is little that deregulation can do for South Dakota. Certaninly it will neither lower rate structures nor assure more or better rail service.

Most important for rail users is the abandonment procedure. The bill will allow wholesale abandonment of any line on 60 day notice and without adequate justification or viable information demonstrating non-compensatory probability. Railroads are a quasi-utility entity. They have enjoyed semi-monopolies for many years, were very favorably treated at their inception and after they acquired an obligation to provide service to the shippers and public. They should not be allowed to abandon tracks and service because of greater financial returns elsewhere of losses because of their own inefficiencies and unwillingness to provide service.

Rail deregulation, as proposed in Bill S. 796 would have a disasterous effect on South Dakota. The provision for rate increases in a very short time frame would cause havoc for the country elevator and other business dependent upon rail service as they would never know what the rate would be in any future period. They would have to protect themselves from spastic increases by paying less and/or charging more to the producer of consumer.

Contract rates allow large users of rail service to obtain more favorable treatment, service rates, or both, than smaller users could obtain. The 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 products. This will reduce the competative capability of the small user and eventually he will be forced out of business in favor of major firms at a few specific locations. 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 railroad rate policies, larger crops and the emergence of the large export market. From both a national view and a 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 to receive a fair price for his grain. Without this export potenial only the domestic requirements for South Dakota corn, wheat and beans would cause much lower prices in the State.

To receive the benefits of the export market, South Dakota, North Dakota, Nebraska, Montana, and Western Iowa and Minnesota must have an adequate rail system. One that provides service at fair rates. The distance from these interior markets to the port locations is too far to move large volumes of grain by trucks.

Railroads are the only way this volume can be handled. From an energy consideration alone, national policy demands the continued existance of rail transportation.

The recent change in statue of the Panama Canal combined with the energy crunch, which shows no sign of abatement, has made it more practical than ever to service Japan, Korea, Taiwan and others in this part of our world from our Pacific coast. Ocean freight through negotiable, is from $6 to $10 per 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 1,500,000,000 bushel in 1983.

In summation, deregulation will cause: Economic loss through reduced markets and prices; an environmental problem (increased truck traffic); an energy problem (trains are far more efficient than trucks); and the loss of many services to businesses and people in South Dakota.

We need modification and enforcement of present regulations. You should—

1. Provide for investigation for rate increases and assure prompt action.
2. Place the burden of proof on the transportation organization. They have most of the information.
3. Provide 90 day notice on rate changes (gives shipper time to project)
4. Seasonal rates are impractical. The railroads cannot take care of business in what they refer to as the off-season.
5. Oppose contract rates, they will eliminate competition and shippers.
6. There is no reason to relieve the railroads of their common carrier obligation.
7. ICC should retain authority over car service rules.
8. ICC retain authority over rates.
9. ICC retain authority over abandonments.
10. Reciprocal switching should be made mandatory.
11. Protection of shippers should be retained.

We believe that 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.

We thank you for this opportunity to communicate.

Sincerely,

William E. Palmer,
General Manager.
D. A. Maher,
Merchandise Manager.

Del Moe Trucking,
Brandon, S. Dak., June 28, 1979.

Hon. Larry Pressler,
U. S. Senator, Sioux Falls, S. Dak.

Dear Senator Pressler: My name is Del Moe and I am the owner of Del Moe Trucking. I would like to respond to your letter of June 15, 1979 by issuing the following statement on the question of deregulation.

I own six tractors and six trailers (mechanically refrigerated) which are on long-term lease with Midwest Coast Transport, Inc., a regulated carrier of perishable commodities. My equipment has been on lease with Midwest Coast since 1974. I have been in the trucking business since 1959.

Principally, my trucks haul fresh and cured meats and other types of frozen and refrigerated food commodities. As pertinent to the Dakotas, the preponderance of my transportation is performed in the haulage of fresh meat due to the number of slaughter facilities located in this state. As a result, I am domiciled in South Dakota and most of my drivers come from this state. I think I can safely state that the company I work for is the largest single hauler of meats and packing house products from the state of South Dakota.

In 1974, I made a decision to invest in equipment and place those trucks with Midwest Coast on long-term lease because I was assured in my own mind that they had a well-balanced operation and that they obtained a fair return for the services I would perform for them. In turn, I was assured that the contract to be maintained between myself and the employer company was as fair and equitable as could be obtained with any other trucking firm in a similar business. I am more confident than ever that my decision was a correct one, however, deregulation could pose a very serious threat to my future ability to remain in this business.

I am of the opinion that when one cuts through all of the contrived reasons for deregulation, the truth is that someone has the notion that it is going to reduce all

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of the freight rates and supposedly, assist in stemming the tide of inflation. It does not take a very astute businessman to figure out that this is just so much nonsense.

The facts are, that in my business when one considers the long-term investment and business risk, my margin of profit is extremely modest in addition to being very speculative. The latter consideration due to my dependence upon the specialized transportation of a very narrow group of commodities.

South Dakota, as well as states adjacent to it, are very under-industrialized as a result to which, they are a hard goods consuming area and for the most part, are reliant upon the outbound transportation of foodstuffs to other states in order to foster their economy. Also, because of the sparcity of population, the hard goods consumed in this state are comparatively minimal as opposed to the more densely populated states in other sections of the country. My point is, that there is considerably more product leaving this state as opposed to that which returns inbound. With that in mind, a very small percentage of our trucks return to South Dakota as opposed to the number that leave here and all of the deregulation in the world will not change that fact. The people here in South Dakota can consume only so much hardware or other types of foodstuffs not manufactured right here at home. Keep in mind that the principal of efficient trucking is a backhaul for every headhaul and ideally, that backhaul should end up somewhere near ones next headhual.

Currently, we are required to deadhead into South Dakota from more productive receiving areas in Iowa, Minnesota, Nebraska and North Dakota in order to provide enough equipment to the local meat packing industry of South Dakota so that their product can be shipped to other sections of the country. Our outbound rates do not, at this point in time, reflect that deadhead mileage because we do not consider our deadhead so critical as to warrant that consideration. In other words, while my truck may go to Minneapolis, Minnesota and unload, and then deadhead empty 240 miles to Sioux Falls, South Dakota to reload, we do not charge the meat packer in Sioux Falls, for those 240 deadhead miles. To carry the point one step further, the rate from Minneapolis to the West Coast for a load of meat is approximately $50 per load higher than that rate from Sioux Falls, South Dakota. The theory is that under regulation, we do not discriminate between the packer in Minneapolis and Sioux Falls. The rates are designed to return so many cents per hundredweight on loaded miles. In a manner of speaking, we are not penalizing the South Dakota packer for our own internal inefficiencies or inability to obtain freight back to the point from which the round trip originated. That is our system today. A nondiscriminatory one based upon the accepted and existing National Transportation Policy.

Today, in recognition of this concept, we are somewhat protected from haphazard competition because a few people in the Commission realize that this type of transportation problem exists. In passing, by the way, we are not blind to these risks in our business and based upon the volume of business handled, we can sustain a certain percentage of this out-of-pocket cost to a point, but beyond that, we begin to get into dire trouble. However, if under deregulation, we lose all competitive protection, one must consider the ultimate consequences to the meat packer in South Dakota.

First, as a earlier expressed, there is only so much freight to be hauled into South Dakota. The perecentage of that freight to the total handled into adjacent areas is already so low that it is not a significant consideration. Cutting the freight rates into South Dakota, which are marginal at best, would not cause a significantly greater quantity of food to be consumed in the state nor would it result in any more plates or silverware being sold. Turning then to the larger metropolitan consuming areas such as Minneapolis, Minnesota; Omaha, Nebraska; or Des Moines, Iowa, one must ask the same question. The answer would probably be the same. Why? Because first of all, I doubt seriously that if the freight rates were cut that the savings would be passed along to the consumer. I personally do not think that the shelf price of one item would significantly reduce, in part, because it is doubtful that if it did, it would change the buying habits of anyone. For one thing, every time an electric drill goes on sale, I don't rush down to the store to buy one if I already have one in my possession and, furthermore, I do not stock up on sale items I don't need. Moreover, freight rates today, on truckload quantities, really play a very nominal role in the shelf price of any product. As example, the transportation cost for a 42,000 pound load of meat from Sioux Falls, South Dakota to Portland, Oregon costs the meat packer $1,575 or approximately $0.04 a pound. Assuming that sirloin steak sells for $3 a pound, the $0.04 per pound transportation cost is really not very significant. On the other hand, if my rate to Portland, Oregon was cut by 25 percent, a loss to me of $393, I could not afford to provide the transportation. However, the 25 percent cut in my freight rate, would in fact only reduce the price of a pound of sirloin steak by $0.01 per pound. Candidly, my wife would not drive across the city of Sioux Falls to save $0.01 a pound on a piece of meat. However, if

on the other hand, a rash of unwarranted competition, by virtue of deregulation, begins to change this delicate balance and results in the dilution of my freight to Omaha, Nebraska; Minneapolis, Minnesota; or Des Moines, Iowa, by employing cutthroat rate tactics, the price of hauling meat from South Dakota is bound to go up.

First, I may be forced to haul at a loss to the larger consuming cities, if I am to compete in the truck marketplace. Next, I certainly cannot afford to deadhead my equipment to South Dakota without some other remuneration. Therefore, one of two things occurs. Either I stay in the larger consuming city and try to reload my trucks back from that point or, I substantially raise the rate outbound from South Dakota to compensate for the losses I have experienced into the metropolitan areas and the further losses I will sustain in dead-heading my equipment to the South Dakota facility.

Obviously, the South Dakota packer will not be willing to absorb that loss so he will raise the price of his product to the man on the West Coast. If the man on the West Coast does not consider the price of South Dakota meat to be competitive, he will refuse to buy the product. With a diminished market, the South Dakota packer will sell less product. If he sells less product, he will need less people to work for him and the end result will be a higher rate of unemployment in the state of South Dakota or, in the alternative, the packer will close his doors and reopen in an area that is better prepared to offer a great quantum of transportation at a lower level of rates.

In consideration of the above, to me, the theory of deregulation is really a theory of redistribution, i.e., of my freight to someone else. How that is supposed to assist the economy of this country is beyond me. It should however, be obvious to everyone that the only people that will benefit from deregulation, for a brief span to time, will be the larger industrial complexes and metropolitan consuming areas. Certainly, not a sparsely populated state such as South Dakota.

On a larger plane of consideration the facts are that there is only so much gross national product to be hauled and there are only so many trucks to haul it. Cutting the rates, if that is the theory of deregulation, is certainly not going to create any incentive for the new entrant into the business but, it most certainly will break a lot of people who are not reaping any of the so-called "windfall" profits referred to by certain individuals in our government. Obviously, when the resultant rate wars break me or other people like me and when the transportation of the gross national product is left to the survival of the fittest, what do you suppose will ultimately happen to the price of trucking?

The recent nationwide independent truckers' strike initiated for the most part by deregulated truckers (truckers without a contract with a regulated carrier) is a prime example of the picture I am trying to portray. Agricultural produce (exempt from economic regulation) which previous to the strike moved from California to the East Coast via the independent truckers at approximately $2,500 per load was recently quoted in the newspaper as moving at approximately $5,000 per load because of the inability of anyone to obtain a reasonable quantum of transportation service.

Obviously, I do not have all of the answers but one thing I do know, we are providing a pretty darn good service to the public at a very equitable rate level and if anyone thinks that deregulation will result in lowering freight rates, they are very naive indeed. The only thing it will ultimately result in is a greater shortage of trucks and freight rates which will never see a ceiling.

Thank you for your time and consideration.

Sincerely yours,

DEL MOE.

MIDWEST COAST TRANSPORT, INC.,
A SUBSIDIARY OF ALL-AMERICAN TRANSPORT, INC.,
Sioux Falls, S. Dak., June 29, 1979.

Hon. LARRY PRESSLER,
U.S. Senator,
P.O. Box 1372, Sioux Falls, S. Dak.

DEAR SENATOR PRESSLER: At your invitation and on behalf of Midwest Coast Transport, Inc., I have prepared a statement of response to the question of deregulation. Initially, I should indicate that some of what I will say may paraphrase others before me and regrettably, I cannot at this time, recall the origin of each of these source materials. Nonetheless, those persons may rest assured that their ideas will not intentionally be distorted or expressed out of context because the same concepts have been long-considered by all of us who have been touched by "de facto deregula-

tion" or those of us who are confronted with the dismantlement of the National Transportation Policy as we know it today.

OPENING STATEMENT

"Today, under the Motor Carrier Act, a common carrier Certificate requires the holder to render reasonably continuous and adequate service within the scope of its Certificates considering all the circumstances. It must accept and transport all freight tendered to it in accordance with the provisions of its tariff. It cannot limit its service to a group of preferred patrons, nor limit the type or number of patrons, but must serve all shippers who request its service to the extent of its ability, and it cannot by stipulation or contract limit the service it will perform under its Certificate. The duty to transport within the limits of its ability all freight tendered it, is a common law duty and this and its responsibility to the public is neither nulified or changed by Part II of the Act, and neither, fear, greed or the unauthorized dictates of government officials, nor contracts with its own employees or a union representing them may excuse a common carrier from rendering service to the public generally or to a particular shipper. The carrier, however, is not forced to itself carry the goods to every point on its authorized route. The duty to accept and transport freight extends to freight tendered it by other carriers. However, the duty of service is limited to service on reasonable demand therefore and to the extent of the carriers' reasonable ability."—Source unkown.

OPINION

The theory and concept of deregulation does not envision the above principals. Thus, in deregulation, no carrier would be required to serve anyone. He could pick-and-choose his freight as it pleased him to do so. He could apply unreasonably high rates to that freight he considered undesirable or unattractive to his particular mode of operation. He would not be required to handle freight with reasonable dispatch nor would he be accountable to anyone for the manner in which he conducted his business or for that matter, when it was conducted.

My summarization above is an obvious oversimplification because the variations on the theme of deregulation are virtually boundless but the resultant impact on the general public would, in every case, be the same. In the final analysis, the key word is obligation. We have a pretty good idea as to what a common carriers' obligation is under his Certificate to the general public today. No one has however, ventured a guess as to what his obligation would be under deregulation. In the circumstances, we can only surmise that it would be none.

Deregulation is not a new theme. It has been a specific bone of contention in the motor carrier industry for numerous years and the subject of public and political controversy since passage of the Motor Carrier Act more than 40 years ago. However, it was not until the last few years, more specifically, since the term of the sitting Chairman of the Interstate Commerce Commission, that the motor carrier industry realized that the regulatory system, as we know it today, was being methodically dismantled by agency fiat rather than by congressional mandate and, that in the process, the body of law governing this administrative concept was being systematically disregarded. Hence, the term "de facto deregulation." As a result of this agency erosion, a cry of public outrage and congressional indignation has placed surface transportation squarely at the cross roads of a decision-making process which will have such a decided effect upon this nation's economy that it may be felt for generations to come.

As early as 1977, this author was asked to respond to a number of questions advanced on the issue of deregulation and interestingly enough, as I reflect on these questions and answers, they fundamentally remain the same today. The following is a text of that response.

Question. Is there a need to continue and encourage, through regulation or other means, a strong and stable common motor carrier system?

Answer. Most assuredly, since there are no other viable alternatives with the same degree of flexibility inherent to the motor common carrier system. Simply stated, there is not an airline, railroad or barging company serving every conceivable receiving or shipping point and even if there were, these three modes of transportation would remain partially inadequate because of their mechanical inability to properly distribute the national product, in every case, to the end user.

Question. In your opinion, would deregulation provide more competition in the trucking industry, or would it have a monopolistic effect with small trucklines being forced out of business?

Answer. Initially, deregulation would provide more competition in selected areas or, in high-volume traffic lanes. The competition in these lanes would probably

become very fierce with resultant wholesale rate cutting to follow in an attempt by the new carriers to establish a foothold in the marketplace. I use the term "wholesale rate cutting" because the concept of deregulation erroneously assumes that there is much more freight available than there is equipment to haul it. In actuality, there is only so much freight available and to promote free-entry will do nothing more than redistribute the existing freight. Thus, the new carrier, having no previous experience or identity will have nothing more to sell than rates. The net effect would then be the dilution of revenues to a point that carriers experiencing only modest or marginal profits would be forced out of business or at the minimum, away from those particular lanes. Keep in mind also that this has a doubling effect because theoretically, for every headhaul, there must be a backhaul in order to maintain a balanced operation and some sort of rate stability.

Moreover, it is not enough to assume that a new carrier, who by underbidding the former carrier, would have the kind and type of equipment which would adequately accommodate the backhaul shipper. This might occur if, as example, the headhaul shipper manufactured iron or steel articles which could move on a variety of equipment as opposed to perishable commodities moving in the backhaul direction. Obviously, the perishable commodities would be susceptible to transportation in insulated or refrigerated equipment only. Thus, while the competitive effect may be beneficial to the initial shipper, it conceivably would be render no transportation available to the backhaul shipper.

The larger, more well-financed truckline, with a sophisticated network of operations could better wait this situation out and others akin to it. He would recognize that the backhaul was dependent upon his equipment flexibility and, if the sum of the backhaul available from a given area was reliant upon this fact, the new carrier would soon bankrupt himself because of the inability to attain that flexibility and the resultant backhaul. Again, this is an oversimplication but it is entirely possible that the top eight or ten carriers in this country could survive deregulation because of their degree of sophistication and financial strength. In the final analysis, as the new entrants and inexperienced suffered economic failure, they would be bought up for a few cents on the dollar or just simply sink into obscurity. Moreover, the inescapable conclusion is that as deregulation brings a rash of new competition into the trucking business, who will price-cut their way into the market, they will set off a wave of mergers that will transform trucking into a far more concentrated business than it is now with many shorthaul or regional truckers being squeezed out. As a result, the big national companies will come to dominate the industry in both rates and policy.

Question. Do you feel that the Interstate Commerce Commission and the U.S. Department of Transportation exercise too much or too little control over the trucking industry?

Answer. Both, dependent entirely upon the area of control. Unfortunately, many of the problems of control are as a result of bureaucracy, and a lack of real-world experience by those who administer the program. There is a definite need to improve upon or modernize the present regulatory scheme. Not unlike utilities companies, we do need certain regulatory controls and guidelines. It is not necessarily a question of how much regulation since that is determined by the complexity of the issue, but rather, the effectiveness and equity with which that regulation is administered.

In essence, the system is only as effective as the people that run it. If they have no concept of the transportation problem, then they cannot effectively render the decisions that govern its success or failure. Unfortunately, the decision-making process in the present regulatory scheme is breaking down, in part, because of political bias and certain other pressure groups who have no real expertise in the field. We need more unbiased input from the industry in general, both manufacturing and transportation, and less from would-be statisticians and political economists. Simply stated, the Commission is not listening these days. Its much too busy running for its life.

Question. In your opinion, would the traditional law of supply and demand regulate the trucking industry without the interference of government agencies?

Answer. The law of supply and demand has always regulated the trucking industry. Under the ACT, regulation is merely the vehicle that defines and franchises the carrier's operation, simultaneously protecting the shipping and receiving public from various forms of discriminatory abuse whether it be in the form of rates or policy to provide equipment to one shipper over another.

On the other hand, regulation is, in part, designed to protect the carrier from himself and, in doing so, it simultaneously protects the public's interest. It is not in the interest of the public that a carrier becomes financially or operationally unfit to

operate thereby exposing public cargo to loss or damage or by creating a potential safety hazard of himself.

Unfortunately the "traditional law of supply and demand" would not, standing alone, regulate the industry simply because it would create a "survival of the fittest" syndrome with a considerable substance of small businessmen being hurt in the process. In the final analysis, it would all come to a question of "corner cutting" economics with the bulk of the transportation being concentrated in the most lucrative routes between major cities, leaving small communities without any regular service at all.

Question. Do you feel that deregulation of the trucking industry would increase or decrease the use of other modes of transportation?

Answer. It would decrease other modes in the beginning, possible beyond revitalization.

The only other modes of transportation are air, rail and barge. All three are limited in their flexibility and all, to some extent, depend upon trucking for final distribution. Deregulated truckers, while the railroads remain regulated, could finally push the remaining railroads to the brink of financial disaster, simply because the new competition would price cut their way into the railroads' remaining markets. Even the Interstate Commerce Commission admits that one of the major reasons for regulating the motor carrier industry is because of their threat to the railroads. Obviously, the already financially plagued railroads do not have the economic resources to withstand rigorous price cutting tactics.

Doubtless, there would be a sizable increase in shipper-owned private carriage. Unfortunately, not all shippers can afford to own a fleet of trucks and, to say the least, only an insignificant segment of the public would be served thereby since the private carriers first loyality would be to the parent company.

Question. Under deregulation, do you feel the service from carriers would be better or worse than under the current regulated system?

Answer. It is true that competition spurs service but if the competition has been reduced to one of bargain hunting, once a load has been obtained what, if any, incentive is left which would compel the carrier to offer decent service? Certainly not the thought of obtaining another poor paying load.

Under the current regulation system, the rates do not vary considerably from one truckline to another and, for the most part, in the transportation of LTL commodities, they are identical. Therefore, the only thing a carrier sells is service. Under deregulation he would, in the beginning, sell rates. In the end, he would sell neither rates nor service. He would delivery ultimatums.

Question. What would happen to the distribution of goods to and from the small towns and communities should there be deregulation of the trucking industry?

Answer. Obviously, it would cease or at the very minimum, it would become intermittent. Regular route carriers are now required to serve the small communities and many times at a loss, which loss is born by an offset with more lucrative operations. Many of the smaller feeder operations would be drastically affected because the "independents" or "wildcatters" would skim off any of the lucrative traffic, particularly in the area of volume, and disregard the remainder, leaving the feeder line with only the more difficult freight as a means of livihood. If the feeder continued to operate, he would find it necessary to double or even triple his rates in order to offset his cost of operation.

Question. Assuming that deregulation had an adverse effect on the shipment of goods to and from certain areas, do you feel that some businesses and industries would be forced to relocate?

Answer. Possibly so, if they were far removed from major highway systems or, if there were no major carriers domiciled in their area. Obviously, geographics will play a definite roll in deregulation. The proof of that experience lies in railroad abandonment proceedings. I have been informed that many smaller or seasonal type shippers have in the past, found it necessary to relocate away from abandoned rail sites although, I do not have documented proof of this fact.

In recent years however, there has been an exodus by many major shippers away from the metropolitan areas to lesser populated communities in the Midwest and West. Many internal factors have influenced this relocation process but, in part, it has been predicated upon the motor carrier's willingness and ability to follow this traffic and, to build a balanced operation around it. In our area, Minnesota Mining and Manufacturing Company has been an example of this concept. Consider if you will the population of Hutchinson, Minnesota; Knoxville, Iowa; Cumberland, Wisconsin; Aberdeen and Brookings, South Dakota, to name a few. Disrupt the concept of balance and economics with deregulation and these plants will suffer drastically, if not close altogether. Imagine if you will, the impact on the small community work force when and if this occurs.

Question. Without regulations, would carriers refuse to handle certain products in favor of other more easily handled products?

Answer. Absolutely. Pure economics would force this issue. Carriers are now required to prove the compensatory nature of their rates to both the public and the Commission. These rates are subject to suspension and investigation if they are unrealistically high or low when compared to the carrier's cost of operation. It does not take much on the downward side to tip the scales against the carrier. For example, the latest available figures for the year of 1975 revealed that all Class I and II special commodities carriers had a profit before taxes of 2.84 percent of their gross sales revenues, and 1.78 percent after taxes. Thus, as a group these carriers had extremely modest profit margins.

Today, carriers are obliged to haul both good and bad. Deregulation will breed selectivity due to an affinity to cut rates in order to control traffic. In view of the profit margin espoused herein, the carrier will have no choice but to vie for those loads which operationally pose the least amount of difficulty so that the movement will not exceed the carrier's out-of-pocket cost.

Question. If the trucking industry should be deregulated, would carriers continue their responsibility for loss and damage in transit?

Answer. Only within the last few years has the Interstate Commerce Commission taken some jurisdiction over the matter of cargo liability and, only to the extent that they require records to be assiduously kept for purposes of inspection and, that uniform rules will be published in tariffs by all carriers concerning handling and disposition of cargo claims. Thus, the Commission can, on complaint, exert pressure upon a carrier to settle claims disputes. The Commission takes the position that a poor claims experience ratio can reflect upon a carrier's fitness to operate and ultimately, could preclude him from receiving additional authority or possibly result in the revocation of his Certificates. In the purest sense however, cargo loss and damage is a matter of civil litigation.

With that premise in mind and without agency assistance, it would be rather difficult to litigate loss and damage against an independent trucker whose only financial resource would be the highly leveraged truck in which he would operate and whose base of operations might be nothing more than the backroom of a filling station or the basement of his house, if he even owned one.

Today, in order to obtain a certificate of authority, a carrier is required to prove himself financially fit and correspondingly, satisfy rather rigorous insurance responsibilities.

Question. With deregulation and the resulting greater freedom of entry into the trucking industry, do you feel freight rates would be higher or lower?

Answer. As earlier stated, in the beginning, rates would be lower generally as pertinent to volume traffic. Again, simply because the new entrant would have nothing but rates to sell. However, cutting freight rates is not going to expand the size of the market. Cheaper freight rates are unlikely to cause the appliance industry to produce more refrigerators or the steel mills to produce more steel. Instead of expanding the market and lowering unit costs in transportation, lower prices are simply going to come out of the pockets of the truckers and railroads. The ultimate result could be less competition, not more, as the weaker companies are forced under. Once competition has been lessened, it will simply encourage prices to rise.

Many LTL general commodities carriers are dependent upon volume or truckload backhauls to return their equipment to the heavily industrialized metropolitan areas. As wide spread price cutting and additional competition affects their ability to balance their operations, the smaller LTL shippers will be forced to subsidize the general commodities carriers deadhead experience with absorbtion of higher rates. The same thing to a lesser degree will probably occur with truckload, irregular route carriers.

Question. Since motor carriers are permitted to establish rates by collective ratemaking procedures, how would the shipping public be affected if these procedures were abolished?

Answer. The presence of rate bureaus lends stability to the ratemaking process, particularly in the highly complex area of less-than-truckload traffic. Without collective ratemaking, rate chaos is quite likely to follow. There are thousands of categorized commodities and hundreds of thousands of applicable rates. Frankly, I cannot even conceive of how each individual carrier, from a publication standpoint, could take this massive responsibility onto himself. To those ends, there is not a shipper in the country with a traffic department large enough to catalog or keep current all of the rates or rate quotes which would occur on a daily basis. As a result, shippers would be unable to accurately project the cost of their product and

the receiver would likewise be unable to accurately predict the total cost of the involved product to the consumer.

Question. At present, the trucking industry is subject to safety regulation by the U.S. Department of Transportation. Under deregulation, what effect do you think there would be on highway safety?

Answer. Due to economic instability, carriers would undoubtedly cut corners on equipment maintenance and the type of personnel required to staff and administer a strong safety program. The end result would of course be disastrous. The gross weight of a fully loaded truck (80,000 pounds) experiencing brake failure at the current speed limit speaks for itself. Aside from that consideration, there are others, such as hazardous materials improperly loaded; loads of steel or lumber inadequately secured to flatbeds; refrigeration units with faulty systems; improperly sealed trailers; etc. The possibilities are limitless and the consequences are frightening.

In sum, we are of the firm conviction that trucking deregulation will result in greater instability in rates and most assuredly, less dependable service. Ostensibly the purpose and direction of deregulation is to substantially reduce that which certain bureaucrats deem as artifically high rates and excess profit margins by the introduction of more motor carrier competition. It is true that deregulation will initially bring about cutthroat price competition but it also follows that many trucking companies will be driven out of business. In the final analysis, the shipping public will pay higher rates. Regulation, on the other hand, binds the industry together into a nondiscriminatory system that guarantees for small shippers, the same rates as for the large ones. It protects the many small localities that rely completely on the trucking industry for service. Interestingly enough, the American Trucking Association reports the trucking rates have actually lagged behind the inflation rate. The ATA reports that the consumer price index for 1967 through 1977 has risen 22 percent more than the cost of shipping via motor common carrier.

Under regulation, motor carriers are required to serve without preference or prejudice, large and small communities alike. Regulated motor carriers are obligated to provide efficient and economnical service to everyone. The public is better served by regulated industry, required to haul goods for everybody, than by an unregulated industry that could choose and reject customers as it wishes. This assures smaller shippers and manufacturers that their product will go to market in a fair and orderly fashion.

Deregulation advocates claim less regulation will result in fewer empty backhauls and less wasted fuel. Just the opposite is true. More trucks will be going after the same amount of freight resulting in inefficiency, unreliable service, and the consumption of more fuel. No one advocating deregulation has ever been able to explain how taking a haul away from one trucker and giving it to another results in greater fuel efficiency or any other consumer benefit. There is a relatively constant volume of freight no matter how many carriers of any mode there are. To let any and all carry regulated freight would merely redistribute the traffic but would in no way reduce or eliminate the number of empty hauls. If small town shippers have difficulty in gaining access to markets, it will have a depressing affect on the economies and the employment of workers in small communities. This in turn will have an adverse affect upon the national economy.

I think the current independent truckers' strike (those independent owners who do not maintain a contract with a regulated motor common carrier) is a perfect example of deregulation in its finest hour. The very deregulated commodities which are the consist of his principal haul lies rotting in the fields in which they were grown. Nothing the government can do, short of forcing a state-by-state change in the weight and length laws, can possibly change the lot of the "gypsy independent". Because he does not maintain a contract with the regulated motor common carrier industry, all of the fuel surcharges in the world will not pass through to him. He does not maintain a tariff because under deregulation he is not required to do so. Therefore, this anachronism will continue to be victimized by the very truck brokers who dictate the terms of his haul. Even if he had the right to haul anything he wished to haul he would still be victimized by the complexities of the society he seeks to serve. Do we wish to return to this kind of deregulated trucking nationwide? If the proof of the pudding lies in the evidence of this strike, I think the public will vote NO!

Respectfully submitted.

R. H. Jinks,
Vice President, Commerce & Traffic.

North Western Warehouse Co.,
Rapid City, S. Dak., July 2, 1979.

Re Hearing on truck deregulation.

Hon. Larry Pressler,
P.O. Box 1372,
Sioux Falls, S. Dak.

Dear Sir: We have your letter advising of a hearing on July 5th at 9 a.m. This is to advise you that I plan to be there.

We have been in the warehouse and moving business since 1932. We have spent a lot of years and meetings to help pull up the service and equipment to meet the needs of our customers. With anyone hauling back in the 30's with any kind of trucks and equipment and the drivers and helpers not trained, the public was not happy with the results.

We would like to go forward. Cut out all unnecessary rules that have nothing to do with getting the customer moved. Get the driver more time to drive. Save the I.C.C. and Mover the time and less cost to the Customer.

With deregulation I see the small shipper in the out of way cities getting poor service.

For the above and many other reasons, we do not favor deregulation of trucks in Interstate or Intra-state moves.

This letter is to state our position. I will be in Sioux Falls to go into it at greater length.

Respectfully,

W. L. Koppmann, *President.*

Stagecoach West,
Rapid City, S. Dak., July 2, 1979.

Hon. Larry Pressler,
U.S. Senate,
P.O. Box 1372, Sioux Falls, S. Dak.

Dear Senator Pressler: As requested in your letter of June 15, the following are my comments regarding deregulation legislation now pending in your Subcommittee. Please include copies of this report in the Senate Commerce Committee's Surface Transportation Committee's hearing on July 5.

With South Dakota boasting a population of approximately 700,000 people, it is inconceivable to assume that the State could support an unregulated bus industry. Proponents of deregulation of the industry, namely two of the largest companies, Greyhound and Trailways, urge immediate removal of the restrictive regulations imposed on the bus industry by the Interstate Commerce Commission. At the present time, Greyhound is the dominant company in the industry, controlling 60 percent of the market. Trailways, the second largest company controls 20 percent, leaving the other 20 percent for the hundreds of small independent companies. When considering deregulation, it is these small companies that must be kept in mind, for the impact on their contribution to the industry as a whole will be dramatic. Elimination of entry and price regulations is strongly urged by the two largest operators in order to encourage market regulation as opposed to government control. However, in South Dakota, allowing the continuation of an intercity bus transport system to be dependent upon the market forces of demand and supply could lead to abandonment of the system altogether. The ICC places restrictions upon cessation of service to unprofitable communities if the service to these communities is considered mandatory. This forces the small bus company to continually evaluate their operations in an effort to achieve maximum profitability despite the continuation of unprofitable lines. If deregulation occurred, undoubtedly service to such small communities would be curtailed and all resources concentrated upon achieving financial profitability. Elimination of the bus service to many smaller communities in South Dakota would leave many people unnecessarily stranded.

As a transportation company serving the people of western South Dakota, this is not what we want to see occur in our State. Instead of persistantly promoting the removal of governmental regulations, we recommend a greater emphasis be placed upon united efforts toward achievement of a greater bus industry, providing improved service to the transportationally disadvantaged.

In the face of a nationwide fuel crisis, it has become increasingly important for Americans to consider alternative modes of transportation. This fact alone exemplifies the extreme importance of the bus industry, especially now. As it becomes more difficult to obtain fuel, more and more motorists will be compelled to abandon their vehicles in search of more fuel-efficient modes of transportation. Instead of insisting

upon deregulation then, there should be a greater emphasis upon the enforcement of existing regulations of the bus companies in order to maximize passenger-mileage per gallon as well as fuel-efficiency. Instead of allowing the industry to disintegrate due to deregulation, we feel that it is now time to develop a highly coordinated intercity bus system. Our recommendations to achieve this end include:

1. Development of a nationwide computerized system to assist in the matching of services provided by public carriers. Included in this system should be a toll-free watts line service providing instantaneous responses to questions concerning scheduled operations, rates, layover intervals, and route changes.

2. Encouragement by the ICC of the usage of common terminals and joint facilities by all public carriers in order to reduce inconveniences to passengers.

3. Placement of higher priorities upon the protection of the freight services provided by bus transport. This being a major component of bus usage, especially in rural areas, preferential treatment should be given to the already scheduled bus runs, rather than allowing new permits to be released.

4. Imposition of Federal regulations mandating the highest priority be given to the public carriers for the opportunity to contract and transport the U.S. Mail. It is unnecessary to run private vehicles on long rural routes when the public carrier is already scheduled to complete the route.

5. Implementation of a system of rewards encouraging bus companies to provide service to more communities. Similar to investment credit, already in operation, this would create incentive for companies to provide service to more towns by allowing them some form of tax credit upon this provision.

I regret being unable to attend this hearing, however, I appreciate this opportunity to forward these comments expressing my views concerning transportation needs.

Sincerely,

HERMAN F. JONES, *President.*

DAN DUGAN TRANSPORT CO.,
Sioux Falls, S. Dak., July 5, 1979.

Senator LARRY PRESSLER,
U.S. Senate Commerce Committee, Surface Transportation Committee, Sioux Falls, S. Dak.

DEAR SENATOR PRESSLER: My name is J. P. Everist, and I live at 2801 Carter Place, Sioux Falls, South Dakota. I am employed at Dan Dugan Transport Company whose general office is located at 41st and Grange Avenue, Sioux Falls, South Dakota. Dan Dugan Transport Company is a locally owned and operated motor carrier of liquid and dry products, in bulk, having started in business in the Dakotas, Minnesota and Iowa areas in 1942. Prior to that, our founder, Dan Dugan, had been granted "grandfather" rights on certain bulk commodities in Kansas and Nebraska in connection with the passage of the Motor Carrier Act of 1935. The Dugan company holds many certificates of operating authority on bulk commodities from the Interstate Commerce Commission and the states of South Dakota, North Dakota, Minnesota, and Iowa.

I have been with this company 25 years, the first thirteen of which were in the role of General Manager and the last twelve years in the position of President and General Manager. In this present role, I oversee all the operations of the company including the daily operations, finance, personnel and driver relations, administrative matters, equipment purchasing and rate making.

From our general office in Sioux Falls, we have performed our operations and served continuously in the Upper Midwest during these past 37 years. The attached Dugan "shield" more graphically sets forth our operational territories and the location of our company terminals and origins. Dan Dugan Transport Company currently owns 130 tractors and 224 trailers. This equipment is located throughout our operational area, and its placement at any given time is dependent on customer demand. Occasionally, extraordinary demands are made upon our system, and over the years, it has been our corporate policy to assemble additional manpower and equipment wherever and whenever necessary to meet these demands.

Currently, Dan Dugan Transport Company employs approximately 240 individuals throughout our service area. Our gross revenues over our most recent fiscal year approached ten and a half million dollars. For this same period we operated more than eleven million miles. Over the years the Dugan operation has been conducted with safety as one of our utmost objectives. Our safety record therefore has been consistently excellent and for the year 1978 Dan Dugan Transport Company was awarded the Grand Award in the eight to twelve million mile classification by the National Tank Truck Carriers, Inc. A full-time safety director directs and insures our up-to-date compliance with all federal and state safety rules and regula-

tions. He also makes sure that our drivers are thoroughly familiar with all the applicable safety regulations, and he has over-all responsibility for the training of our drivers and the supervision of our driver trainers. Dan Dugan Transport Company also participates in industry-wide safe driving programs, contests, and voluntary road check programs. All of our drivers are trained in and familiar with the rules and regulations of the Interstate Commerce Commission and the Department of Transportation which affect drivers, inspection of equipment, driving rules and other matters regarding the safety of our operation. We have a director of maintenance who supervises the shop work and general condition of our equipment as well as the safety inspections and maintenance at our various terminals. In addition, he supervises the hired maintenance at points which we do not maintain company operated facilities. We maintain maintenance records in each individual piece of equipment, and these records enable us to forestall most breakdowns. Our outstanding record of safety during the years is illustrated in the records of the Commission, public authorities and national and state trucking associations. We consider ourselves good corporate citizens of those states in our operational territory and conceive that we have served the needs of the citizens of the Upper Midwest very well and safely over the years.

We appreciate the opportunity to submit these observations to your Committee concerning federal deregulation proposals presently before the U.S. Senate. While there are many facets of trucking regulation, we address here only the proposals allowing "freer entry." Specifically, we would like to examine how these proposals might affect bulk commodity deliveries to the cities, small towns, and rural communities of South Dakota.

Unrestricted entry and pricing would result in no operational benefit from backhauls. The distribution of both liquid and dry bulk products is predominantly from refiners and storage depots and is more than 95% one way loaded hauls with an empty return trip. There are very few return loads to be picked up in the areas of the majority of our destinations, and these have to be carefully arranged on a system basis. Easier entry cannot create more backhauls where there are none available nor would more carriers in the field result in a fuel saving. In fact, there would probably be more fuel consumed if the few workable backhauls at present were eliminated by unrestricted outbound hauling.

Service to the small towns and rural communities of South Dakota would suffer if there were no over-all responsibility to serve. Certain high cost of unhandy delivery conditions on certain runs to certain towns would lead to abandonment of those runs, and those locations would suffer from inadequate service as all carriers would strive to retain and serve the better runs. During our severe South Dakota winters, this could exact hardship in rural areas, especially in the delivery of heating fuels.

Whether competition in the bulk hauling business would increase with unrestricted entry is hard to determine. We can see that at the beginning there would be more entrants; however, safety and the reliability of delivery would be questionable. As more carriers could enter the field, one can only foresee a larger number of small, one and two truck owner-operators. One has to only note the recent dramatic desperate shutdown of the 120,000 unit independ- ent truckers fraternity to understand how they have fared in a deregulatory environment. Unprocessed agricultural products have been exempt from regulation, and I would suggest that the independents who have been hauling these exempt commodities are some of the truckers in the worst financial shape. How can we consider creating an environment that would make it possible for all truckers to become as desperate as the independents are?

Bulk haulers are highly competitive because of the full truckload nature of our cargoes. Not only are we vigorously competitive as common authorized carriers but we also compete with proprietary shipper fleets and consignee or jobber and contractor units. It is difficult to perceive how our segment of the industry could become more competitive.

In summary, we suggest that there would be no benefit to South Dakota from economic deregulation of our specialized industry. On the contrary with unrestricted entry and pricing, we could only forecast a deterioration of the present very adequate service, a lowering of safety standards in both driver and equipment areas, and over-use of already scarce diesel fuel suppliers. We would lose the economy of scale and expertise that has been built into the regulated bulk carrier community since 1935. We would be dismantling and fragmenting the best national motor carrier system in the world and probably would have to relearn the bitter transportation lessons of the early 1930's. Retreat from this costly experiment and the inevitable rebuilding process would take a long painful time. We would strongly urge all lawmakers to approach all regulatory proposals for the motor carrier industry very carefully. Lastly, we would suggest that enlightened and responsible

economic regulation of our bulk commodity motor carrier industry be retained to preserve the best of our over-all delivery system and improve it wherever possible.

Respectfully submitted,

J. P. EVERIST.

DELL RAPIDS CO-OP GRAIN CO,
Dell Rapids, S. Dak., July 5, 1979.

MR. PRESSLER: I feel if we should lose all our railroads the economic setback to our community would be greater than anyone could imagine. I feel we have to do everything possible to keep them.

As far as deregulation goes—I'm against that because we do not have any competition and our rates could get very high. It could work in the East because there are more RR.'s so automatically you have competition.

We as a grain shipper will do as much as possible to make something work so we can keep the railroad.

Sincerely,

GIL REICHEL, *Manager.*

STATEMENT OF DAVID L. LEWIS, PRESIDENT, CHIPPEWA MOTOR FREIGHT, INC.

My name is David L. Lewis. I am President of Chippewa Motor Freight, Inc. and majority stockholder. My business office is 1000 East 41st Street, Sioux Falls, South Dakota.

Chippewa Motor Freight, Inc. is a general commodity carrier operating in nine (9) states. We have fourteen (14) company terminals and seventeen (17) distribution terminals. We employ approximately 750 employees within the nine states and our 1979 projected annual revenue is 25.3 million dollars.

There is a new movement in Washington today which is born out of the national outrage over government red tape. This movement is called deregulation. Nearly everyone agrees that there is too much government regulation; however, not all regulation is bad. To approach every system with deregulation is to compound problems rather than solve problems. Each case must be examined on its own merits. It is our feeling that responsible regulation that serves both the general public and business community should not be swept away in a general anti-regulation program.

Prior to 1935 when the trucking industry came under government regulation, there was freedom of entry into the trucking industry with an end result of chaos. In 1935, the Supreme Court of the United States reflected on that time prior to 1935 and observed:

"Then the industry was unstable economically, dominated by ease of competitive entry and fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility."

Motor carrier regulation has stood the test of time, the most realistic test to which a system can be subjected. It has worked and worked well. Evaluation should be on the basis of what was intended and whether the objectives have been achieved and how successful the regulations have been. Even the most ardent advocates have been unable to identify the problem. This entire challenge to motor carrier regulations comes not from the public or users of the system, but from professional bureaucrats. Who then could benefit by deregulation? Only the extremely large shippers who presently have their own fleets of equipment who would be able to handle freight on the backhaul which today now presently is being done by the common carriers.

Today the trucking industry is highly diversified with more than 16,000 trucking companies who are all under regulation by the Interstate Commerce Commission. The four largest motor carriers account for only ten percent (10%) of the industry for total volume. The fact is that 75% of the industry is small businesses with annual gross revenues of less than $500,000.00. If President Carter's deregulation bill would pass it would cause many of these small businessmen to either merge with a larger carrier or go out of business. The end result would be a loss of service to smaller communities. Regulation does protect small shippers and the smaller communities. Removal of this protection then would result in the loss of service to the communities which the carriers are now required to perform. The fact is that all the freight that needs to be hauled today is being hauled. The volume of freight is pushed higher or lower only by the state of the national economy.

If the motor carrier service was deregulated, the shippers would not always know what they would be charged nor would they know if their rates were higher or lower than those of other shippers. Collective rate making provides the shippers and public with an established pattern of determining rates. The National Industrial Traffic League which represents a large group of shippers recently suggested that only the large shippers who could afford transportation departments would be in a position to perform the task of searching out the best rates.

Under today's laws, the Interstate Commerce Commission has the power to approve or disapprove rate increases from many different collective rate making bureaus. The rate bureaus today are exempt from the Anti-Trust Laws.

President Carter's deregulation bill would eliminate the Anti-Trust immunity that the rate bureaus enjoy. This would bring disaster to the trucking industry. The overwhelming majority of shippers and receivers of freight support the present system. This is sufficient proof that it is working to the advantage of the public. The affect of regulation on the trucking industry has been to keep rates low. If the carriers were able to esablish their own rates, the rates would go up rather than go down. An example of this is that in the first fourteen (14) months of deregulation of the airlines, air cargo rates increased 21%. These jumps in rates would help increase the fuels of inflation and further handcuff our economy.

The Carter Administration is enthusiastic over the outcome of its efforts to deregulate the airline industry. In a recent speech to the Business Council in Washington, Carter hailed the amazing success of the airline deregulation. However, since air deregulation, the passenger service to small cities and towns is now being drastically reduced. Since President Carter signed the deregulation act last October, more than 100 cities across the nation have lost service of one or more airlines and an estimated sixty-two (62) cities will soon lose all their scheduled service. Although cities will not be left without commuter service, communities will have a difficult time attracting new business.

Standard passenger fares have jumped seven (7) percent since deregulation. The Civil Aeronautics Board anticipates an additional hike of seven to eight percent (7 to 8 percent) this year. With the deregulation of the airlines, a good proven effective system has been discarded, and the small communities are now paying the price.

A bill has been introduced into the House of Representatives entitled, "Motor Carrier Improvement Act of 1979". This bill is co-sponsored by Representative Jim Abnor of South Dakota. This bill would amend the Interstate Commerce Act to provide for a more effective regulation of the motor carriers. We at Chippewa Motor Freight support this bill because we feel that trucking regulation has provided an industry that promotes fast, efficient inexpensive service. The trucking industry has served our nation well and will continue to do so under regulation. It is our feeling that if President Carter's deregulation bill was passed, it would be economically disasterous to the industry, detrimental to the public and to the national economy. It is important that we look toward the future to improve the trucking industry through regulation. It is ridiculous to abandon a proven system to experiment with a theory which may or may not be correct.

Statement of Sandra H. McPeake, Executive Director, Northern Agri-Fuels Research & Development, Inc., Rapid City, S. Dak.

ABANDONMENT OF THE MILWAUKEE RAILROAD

The following testimony is presented on behalf of Northern Argi-Fuels Research and Development, Inc. and is intended to support the Milwaukee Railroad and its interests in South Dakota.

Northern Agri-Fuels was organized under the laws of the State of South Dakota as a non-profit corporation in August 1978 by a few concerned agricultural people who wanted to do something about the problems facing the agricultural industry. We are generally engaged in promoting the creation of new markets for agriculture products through research and development; we are studying the feasibility of the manufacture of alcohol from farm products, and we are encouraging the use of an alcohol-gasoline blend of fuel in motor vehicles. Approximately two-thirds of our membership of 440 reside in areas directly served by the Milwaukee Railroad. Further, our organization is controlled by the farming community, working together to promote the agriculture industry.

One project which NAF is actively involved in at the present time is in the production of ethanol alcohol from a renewable resource—cereal grains. Besides creating new markets for grain, the alcohol could be used to aid in the energy crisis. The mainstay of the alcohol project is its direct benefits to the consumer: 1) Use a renewable resource to produce a product that would cut pollution by 30 to 50

percent; 2) Increase protein which is in demand, but is in short supply, worldwide; 3) Reduce our dependency on foreign oil—for every gallon of ethanol alcohol we can produce, we can back out 1.8 gallons of foreign crude, which would obviously help our trade deficit.

Northern Agri-Fuels represents eight groups in South Dakota and adjoining states, as well as Canada, who wish to build wheat alcohol plants. Each of these plants will utilize in excess of 11 million bushels of grain annually, and without railroads and other surface transportation, the obvious question is: "How will the agricultural community get its products to Market?" With fuel in short supply at this time, we must look to the future for sources for market transportation. By abandoning the Milwaukee Railroad in western South Dakota, we would in effect be supporting inflationary trucking alternatives, and it has never been a sound policy to eliminate competition in industry. On the reverse, how will the plants get the feed by-products from the alcohol production sites to the designated markets?

We understand that our government spends approximately one hundred billion dollars annually on national defense. These monies are being expended for "preparedness" in the event of a national disaster. Doesn't the agricultural industries in western South Dakota deserve the same type "preparedness" for transporting their goods to market?

The 45-mile link of track in the Badlands would be an ideal location for a mobil missile range, and would prove to be invaluable in the interest of national defense. The S.D. Cement Plant in Rapid City recently expanded its operation, and without competitive rail service, it will almost guarantee the spiraling of transportation costs which greatly effect the local and state economy. Statistics prove that rails have a 5:1 efficiency rating over the trucking industry.

If the Milwaukee Railroad is to continue to be a vital entity in South Dakota, it will be necessary to upgrade its equipment. Approximately 50 percent of the company's cars are in excess of 40-years old. After 40 years of service, these cars cannot be interchanged with other lines. Further, its fleet of locomotives should be increased and fuel allocations guaranteed. We have reports that would indicate the Milwaukee Railroad's allocations have been reduced considerably during recent weeks as a direct consequence of the trucking industry's plea for support.

Western South Dakota is enjoying "growing pains" at the present time. Industry is on the increase; population and jobs are on the increase. It is apparent that the economy of the area will be sacrificed to a great extent if we loose rail service to western South Dakota. If for economic reasons only, it is worthwhile to continue support of the Milwaukee Railroad for the betterment of the community.

Thank you!

Statement of Howard O. Smith, President and Chairman of the Board, C & H Transportation Co., Inc.

To the Honorable Senate Committee on Commerce, Science, and Transportation:

My name is Howard O. Smith and I am President and Chairman of the Board of C & H Transportation Co., Inc. I have been engaged in truck transportation all of my adult life and have been with C & H for over twenty-seven (27) years.

During that time, I have seen C & H grow from a small regional trucking company to the Nation's largest heavy and specialized irregular route carrier. C & H started out with one (1) terminal and seven (7) trucks. Today, it has forty-one (41) terminals and approximately 1,600 tractors and 2,800 trailers. In 1978 C & H and its wholly owned subsidiary, C & H Freightways, had combined gross revenues of $114 million. Approximately 2,300 persons depend on C & H for a living, 1,770 of these are truck drivers. It has made a total investment in our Nation's transportation system of approximately $40,600,000.00. It provides direct single-line common carrier service between virtually all points in the United States, including South Dakota, as authorized in certificates issued it by the Interstate Commerce Commission. It has invested approximately $4,947,000.00 in those certificates. Needless to say, C & H considers its certificates to be property and, as such, entitled to protection. Last year, it paid approximately $4,537,000.00 in State and Federal Income Taxes, $2,299,000.00 in Fuel, Road and Ownership Taxes, and $1,104,000.00 in other taxes. For the protection of its shippers and the general public, C & H pays approximately $4,900,000.00 in premiums, annually, for $10,000,000.00 limit Cargo insurance and $15,000,000.00 limit Automobile and Liability insurance.

In appraising the effects of truck deregulation on service to rural America in particular, and America in general, the Committee should examine the sequence of historical events that originally led to the regulation of America's trucking industry.

Prior to 1935, the trucking industry was chaotic, bewildered and economically unstable due to ease of entry and rate-cutting. Under such conditions, a trucker could legally favor one shipper to the disadvantage of another, serve one locality while ignoring another, and favor this freight while refusing that freight. Shippers who didn't have large volumes of traffic couldn't get service or had to pay a premium for service; unable to compete, many went "bottoms up". Towns which were a little out of the way, or did not generate enough traffic to make service worthwhile to a trucker, simply were not served; many communities dried up for want of transportation. Furthermore, a trucker with enough financial resources could edge competitors out of business by dropping rates below cost. Once competition was eliminated, he could then put the squeeze on the public by charging artificially high rates. If someone else appeared on the scene, he could cut rates again. This type of cut-throat competition resulted in minimal standards of safety and financial responsibility. Thousands of truckers, short on sleep, raced around the country in dangerous "clunkers" searching for freight while hundreds of others went out of business leaving shippers, employees, and other injured persons with unsatisfied claims and judgments.

I would submit that regulation of America's trucking industry is today as it was in 1935, clearly in the public interest. Today's regulated transportation system assures the shipping public safe and adequate service at reasonable rates between all points in the United States. It protects the consumer from unjust discrimination between persons, places, commodities and particular descriptions of traffic. It provides motor carriers with a stable environment in which to compete, invest and grow.

As relates to C & H, deregulation would severely impair its ability to provide the majority of its shippers with transportation service. This is true for a number of reasons. It is important to note that under regulation, C & H is required, within its operating authorities, to serve all the public at all locations without discrimination at published rates which are just and reasonable. Today, C & H's twenty-five (25) largest shippers account for only twenty-eight percent (28 percent) of its business and a large percentage of its traffic moves either to or from rural locations.

In an unregulated environment, C & H would be forced to cater to the transportation needs of large volume repetitive shippers and discriminate against low volume non-repetitive shippers. The "guaranteed" patronage of its larger shippers would be necessary for its survival. Obviously, C & H would extend larger shippers lower rates and priority service. Small shippers would have to pay a premium for service if they received any at all.

Similarly, C & H would be forced to discriminate against traffic moving outside major traffic lanes. Small towns and businesses which are a little out of the way or do not generate enough traffic to make service worthwhile would simply not be served. In a cut-throat environment, C & H could not afford to make shipments into areas where backhauls weren't available. Unfortunately, smaller, less sophisticated carriers would not be able to step in and provide this service since their operating cost would be higher than that of C & H.

Deregulation would have numerous other adverse effects on C & H's operations. First, it would impair C & H's ability to get financing for new equipment and facilities. C & H depends on banks and insurance companies for credit. These institutions have traditionally regarded certificates as ideal collateral. Deregulation would make C & H's certificates worthless. Needless to say, this would restrict C & H's ability to get financing. Second, deregulation of the trucking industry would not have the same beneficial effect, as did deregulation of the airline industry. While airlines have a near inexhaustable supply of potential travelers available, there is only a limited amount of freight available to truckers. Deregulation of the trucking industry would not result in more freight being transported, but instead, would result in cut-throat competition. Third, it would do nothing to relieve carriers from present "crazy quilt" regulation by "well meaning" State governments.

The importance of truck regulation has been highlighted during the current fuel crisis. As apparent to those in the industry, the Interstate Commerce Commission has been instrumental in preventing a breakdown of the Nation's entire motor transportation system. By law regulated carriers, unlike exempt truckers, can only charge published rates that have been approved by the Interstate Commerce Commission. During the present crisis, the Commission imposed an immediate and across the board surcharge on all existing rates. This enabled regulated carriers and their independent contractors to meet increased fuel costs and therefore keep operating.

Unfortunately, the I.C.C. couldn't provide exempt truckers, such as "agro haulers" and "bull haulers" with any relief because of their non-regulated status. Similarly, because of cut-throat competition, those truckers were unable to charge

high enough rates to cover their increased fuel costs. They had no choice but to go on strike. By threats, violence and intimidation, this small segment of the trucking industry was able to cut off service to large portions of the country. Many regulated carriers and their independent contractors, out of fear for life and property, were forced to shut down. As of today, many shippers that rely solely on exempt truckers for transportation of their goods to market and vice versa are still without service. Only the large shippers that operate their own private truck fleets have remained relatively unaffected.

In my own mind there can be no doubt, that if all of America's truckers were regulated, the present "trucker's strike" would never have occurred. Lives would have been spared and perishable commodities would have reached the market place, rather than rotting in the field.

I would hate to think of what might have happened during the current crisis if President Carter and Senator Kennedy had already succeeded in deregulating the motor carrier industry. If a few non-regulated truckers can shut down large portions of this Nation's transportation system, imagine what would have happened if the entire trucking industry had to go on strike to get relief. Obviously, contrary to what President Carter and Senator Kennedy would have us believe, the Interstate Commerce Commission has again proven its worth to the American public.

Statement of Jack Danz, Sioux Falls Area Chamber of Commerce

The Sioux Falls Area Chamber of Commerce recognizes the tremendous importance of a sound transportation system for the economy of our area, State of South Dakota and Nation. In South Dakota, we are dependent on truck, rail, air and bus transportation of the successful functioning of our economy and our lives. In our State, we are particularly dependent on trucks and railroads to move our products to market in the most efficient, economical and expedient manner. Any action or contemplated change in the manner in which the transportation modes are operated is of interest and concern to us as it might affect the successful and effective operation of these systems and service to South Dakota.

The Sious Falls Area Chamber of Commerce would like to thank Senator Pressler and members of the Senate Transportation Subcommittee for the opportunity afforded by these hearings to citizens and various interests to express their veiwpoints on truck, bus and rail deregulation. The Chamber has not made an indepth study of deregulation of trucks, bus and railroads. Therefore, at this time we do not have a position either favoring or opposing deregulation of these modes. We again, however emphasize our recognition of the need for a healthy transportation system in South Dakota. We ask that this Subcommittee, in its wisdom, base its recommendation on continuing and facilitating the successful operation of our free enterprise system the backbone of our Nation, State and Community.

Statement of Birdcen Johnson, Manager, Humboldt Farmers Elevator Co.

Senator Exon, Senator Pressler, gentlemen, I appreciate this opportunity to express my views on the deregulation of railroads. Country elevators throughout this area, and their farmer customers, are threatened with a reduction in transportation service and an increased cost for what service is left.

We all know that our railroads haven't been earning enough money lately. I say earning because they would have enjoyed more business if their service had not deteriorated so much. I don't know an elevator operator who hasn't wanted to load more cars than he has been able to get.

Until recently, trucks have been an answer to some of our problems. Trucks are less fuel-efficient and are paying higher prices for diesel fuel than the railroads are. Substituting trucks for rail is a luxury we won't be able to afford much longer—and neither will our country.

The administration's deregulation bill will make it even easier for the railroads to abandon service. No thought seems to have been given to which lines will be torn up and which lines will be saved or to determine if we can afford to reduce our most fuel-efficient transportation capacity as the fuel crisis closes in on us. Under the proposed deregulation act, the ICC will no longer be able to weigh the abandonments benefit to the carrier against any "severe adverse impact on rural and community development" caused by the loss of rail service.

Do we dare eliminate the public-protective role of regulation without determining how important that role is or considering which shippers will be bankrupt and which will be enriched? A new declaration of National Transportation Policy contained in the Deregulation Act eliminates provisions encouraging sound economic

conditions in transportation and prohibiting unreasonable, discriminatory, and unfair rate-making practice.

The railroads were given considerable freedom in rate-making three years ago, under the 4-R Act. They have not made any real use of that freedom, because there is still maximum rate regulation where there is no competition. What the new Deregulation Act would do is to eliminate maximum rate regulation on even captive traffic. The president of one railroad, Mr. Fishwick of the Norfolk & Western admits that "it would be easy, and tempting for some, for a railroad to abuse a captive shipper over the short run by severely increasing rates". With this in mind, Mr Fishwick suggests "it may be necessary to keep rate regulations over certain commodities such as coal or grain". Contract rates, which the new act would permit, might provide some comfort to a handfull of giant grain marketing firms, but would destroy the little chance country elevators still have to compete with them.

Deregulation might well mean the end of our country elevator grain marketing system—replacing it with a rail system originating from a few large subterminals on major lines, to which grain would have to be transported by trucks, our highway system and fuel supply permitting.

Statement of Loren A. Zingmark, General Manager, East River Electric Power Cooperative, Inc., Madison, S. Dak.

Mr. Chairman and members of the Committee, I am presenting this statement in behalf of East River Electric Power Cooperative, Inc. to express our concern about the deregulation of the truck and rail industries and the impact we believe this would have on South Dakota, its people, and our organization.

East River Electric Power Cooperative is a wholesale electric power cooperative serving 25 member distribution systems who ultimately provide retail electric power to approximately 60,000 rural consumers in 41 counties east of the Missouri River in South Dakota and in four counties in western Minnesota.

Our organization has approximately 2,235 miles of 69,000 volt transmission line and 159 distribution substations. We also have two 15,000 volt and four 230,000 volt substations. Our current construction program includes 70 miles of 69,000 volt transmission line, three additional 15,000 volt and one 230,000 volt substations.

At the outset, we recognize that perhaps there is need for changes in some of the rules and regulations in the railroad and trucking industries. However, we have grave concerns that blanket deregulation of these industries will result in prohibitive rates and the gross abandonment of rail lines in South Dakota, including some that are viable and essential.

We do not believe that these industries compete in the same vein as the airlines. Without a strong competitive influence, the farmers, shippers, and the ultimate consumer would be struck another inflationary blow.

The direct concerns we have are the delivery of materials and equipment throughout our service area and the cost of these deliveries. Our construction program calls for the shipment of approximately 2,000 poles per year from the Pacific Northwest and the delivery of heavy substation equipment from various points in the United States. These materials are of such size and weight that their transport by means other than rail is difficult and in some cases impossible. Material that could be hauled by other means would be considerably more difficult and expensive. These additional costs all contribute to the inflationary spiral causing higher electric rates for our members.

Additionally, we have concern for the potential impact the loss of some rail service would have on future power supply for South Dakota.

South Dakota does not have significant deposits of coal and none in proximity to adequate water supplies—another major resource requirement of thermal generation. It is evident that any coal-fired generation built in this state will require mainline rail service from either North Dakota, Montana, or Wyoming. The abandonment of certain mainline rail service would wipe out the feasibility of such plants in South Dakota and could seriously jeopardize this region's future electric power supply.

As an example of what rail service would be involved in the construction and operation of a 500 MW net generating unit (about the smallest baseload unit now being considered in the industry), we estimate the following:

Construction Materials: Approximately 800–900 rail carloads of material would be delivered to the plant site during construction of the generating station.

Fuel Transportation: Based on fuel from the Bowman-Gascoyne deposits in southwestern North Dakota, approximately 30,000 carloads of lignit coal would be transported to the plant site each year.

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Our power supplier, Basin Electric Power Cooperative, is studying the feasibility of two plant sites in South Dakota along with others in North Dakota, Montana, and Wyoming for their next generation project. This generation would be needed to meet the load requirements in the late 1980's. Whether it is Basin Electric or some other utility, additional generation could be built in South Dakota if we have reliable mainline trackage from the north and west.

If railroads are deregulated, we believe the economic impact on this region would be devastating. Such action could bring on energy shortages, the inability to move farm produce, the elimination of significant industrial growth, the loss of existing businesses, and the loss of many jobs.

If we replaced rail service with trucking, we would have to rebuild and heavy-up much of the state highway system—a system which is already showing signs of rapid deterioration as the result of heavier truck traffic and the lack of sufficient road funding.

In conclusion, we are opposed to the passage of S796 and the full deregulation of the trucking industry.

Statement of Norton L. Quarve, President, Upper Mississippi Waterway Association, St. Paul, Minn.

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 Osborn Building, Saint Paul, Minnesota. The Association is a non profit 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 Company, an electric and gas utility company, whose 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 movement of coal to the generating plants, as well as for other materials.

During this time I have seen a shift from the rail-water movement of coal from Pennsylvania and Ohio via rail to Great Lakes Ports for water movement to Duluth-Superior, then rail to the Twin Cities, then all rail from points in Illinois, Indiana and Western Kentucky, and then rail movement from those same origins to the River ports in Illinois for trans-shipment to the Twin Cities, and more recently all rail movement in unit trains from Montana to the Twin Cities, with some being transferred to barge movement at Twin Cities terminals for destinations south of the Twin Cities. In fact, in 1978 there were over 2 million tons of low sulphur coal originating in Montana that moved downbound via barge on the Upper Mississippi River.

In retrospect, I can only conclude that there has been a tremendous inter-dependence on rail-water movement of coal.

The recent transition to unit train movement of low-sulphur coal originating in Montana to meet air quality standards as a result of the Clean Air Act has been recognized in power plant siting of recent generating facilities.

During the past four years I was employed as the 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 appreciative of the opportunity to present our views, and especially our concerns, at these special hearings on Sen. 796, The "Railroad Deregulation Act of 1979".

At this juncture, I should probably give you a little background on 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 interests of the shipper members in our Association are largely river-oriented, however. There is a substantial movement of waterborne commerce.

In 1978, there was a total of 4800 downbound barge loads of grain originated at Minneapolis-Saint Paul and adjacent ports that represented approximately ¼ billion bushels of corn, soybeans, wheat and other agricultural products grown on Upper Midwest farms. This was an increase of 30 percent over 1977. Export farm products from this area alone had an estimated value of $684,000,000. In addition

barges move substantial quantities of coal, petroleum products, fertilizer, steel and salt upbound to the Twin Cities. We are submitting with our testimony, a statement marked Exhibit "A" showing tonnage 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 inter-dependent for the movement of the bulk commodities which we mentioned before.

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 utterly impossible. There can be no truck-barge movement of grain when the river is frozen. The Upper Mississippi River can only be utilized for approximately eight months of the year, being closed to navigation the remainder of the year. High water can bring barge movement to a standstill. Deciding which mode of transportation that is available or most economical to use is the very essence of traffic management, and one not uncommon to me.

With the various industries represented among our membership, and their interest in transportation via 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 large companies already have policy positions supporting deregulation. However, one of the important issues is to define "deregulation". Should it be relief from onerous or over regulation, or a return to "Laissez-Faire" if that ever existed.

The stated goal of S. 796 is openness in the market place or "the regulation of competition". Does the bill do that or does it insulate one mode of transportation from competition of other modes. If intermodal competitiveness is diminished, how do shippers fare 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 at a lower cost? Would it restrict shippers originating movements via rail to 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 of our members in the form of questions.

What about recommendations?

At the risk of getting into a complex subject on which I have little expertise, I can only urge that the anti-trust laws governing completion 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.

I can only reiterate that it is not the impact of 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 unrestricted competitive warfare.

Let's not be lulled into a hoped for reduction in transportation costs emanating from deregulation which could eliminate intermodal competition and result in 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. What did we learn? Just as the present state of over-regulation was gradual, so should the correction come about.

EXHIBIT A.—ST. PAUL COMMODITY TONNAGE BY PORT AS OF NOVEMBER 30, 1978

Accrued through present month	Total tons	Tonnage in thousands by commodity groupings							
		Coal	Petroleum products	Chemicals	Metals and ores	Nonmetalic minerals	Grain	Stone, clay, cement	All other
All ports:									
Receipts	13,153,000	4,422	2,722.3	1,134	275	836	1,589	1,586.7	588
Shipments	16,786,000	2,228	1,497.3	313	76	503	10,285	1,385.7	498
Minneapolis:									
Receipts	1,109,000	125	108.0	28	78	561	42	118.0	49
Shipments	1,236,000	566	7.0	16	14	6	533	12.0	82
Port of St. Paul:									
Receipts	4,922,000	592	1,983.3	650	85	0	70	1,347.7	194
Shipments	9,783,000	1,183	1,142.3	61	9	344	5,638	1,320.7	85
Cargo in and out of district (L/D 10):									
Upbound	5,951,000	2,535	1,591.0	835	215	344	44	215.0	182
Downbound	9,666,000	341	366.0	14	16	1	8,832	4.0	92
Total:									
Same period									
Last year									

Statement of Francis D. Veal, President, Meat Promoters of South Dakota, Bison, S. Dak.

My name is Francis D. Veal, I am President of the Meat Promoters of South Dakota and a farmer and rancher from Meadow, South Dakota, located in the northwest part of the State.

Our organization is concerned about the future of the transportation industry, specifically truck and rail service and it's impact on the future of agriculture not only in our area but all of South Dakota and adjoining states. The livestock industry in our area depends solely on truck transportation for bringing livestock in or hauling it out. The transportation of grain depends on both truck and rail service. Without both services, we simply have no way of moving what we raise to market.

Regardless of whether the trucking industry is regulated or whether it isn't, the first thing we need is assurance that service will be continued. If this can be assured under a deregulated system, then that is the approach we would favor. Given this assurance, we believe that there is sufficient competition in the trucking industry to keep freight rates in line.

There is no way that I can emphasize strongly enough the importance of a dependable and available trucking industry. It doesn't do us much good to produce livestock and grain and then not be able to get it to market. In the absence of this service, a producer's hands are tied, because it is just not practicable for every farmer and rancher to own his own trucking unit.

We take a somewhat different view of rail service in that we believe this industry must continue to be regulated. There is no competition, which would leave areas like ours open to the threat of limited service and prohibitive rates or more likely no service at all. Continued rail service is absolutely necessary.

Last winter the farmers wanted to ship grain to the west coast, but was unable to do so because of limited rail service and the fact that nobody wants to drive the mountains in the wintertime and also were unable to get a backhaul. As a consequence we still have the grain. We need a better system.

In conclusion I want to re-emphasize that the overriding consideration is assurance of continued truck and rail service on a regular basis at a reasonable cost.

I want to thank Senator Larry Pressler and the Subcommittee for this opportunity to testify.

Statement of Michael Vehle, Chairman, the Mitchell to Rapid City Railroad Users Association

Thank you Senator for the opportunity to present our views before your Senate Transportation subcommittee hearings. As our association is a group of rail user businessmen we do not have the time or the expertise to make a detailed study of the effects of this deregulation proposal. However there are some general feelings and concerns we want to convey to you in a brief manner.

Everyone realizes the need for rules and regulations in any society, the problem always lies in determining what type and how much regulation provides optimum efficiency without causing undue harm to others. This is exactly the problem here. However it must be recognized that the demise of the railroad industry is not due solely to government regulation. Other factors including too much track for available traffic, government subsidy of competing modes of transportation, such as highways and barges, union demands, and mismanagement have also caused the deterioration of the railroad industry. Therefore deregulation will far from settle all our railroad problems.

In a general comment on the deregulation proposal, the deregulation of rates allowing seasonable rates or peak demand rates may be beneficial, as long as these rates are not completely out of line. However, it is a necessity that these and all other rates are published well in advance so the merchandisers can assess the transportation costs when making their advance purchases and sales. In order for us to efficiently provide the best price to the producer, we must know well in advance the cost of transportation to all markets.

The allowance of a 7-percent increase in the tariffs per year for five years without objection I feel is wrong. The need for increases may be more or less than 7% and these increases should be based on the actual need for more revenue and not on a statutory allowance.

Regarding abandonments, the proposed time period allowed for abandonment is thirty days without objection and ninety days with objections. This is not near enough time for rail users to organize and make provisions to preserve the track. Funds for purchasing and organizations of this magnitude take time to put together. I also strongly feel that it is necessary that the current provisions requiring Interstate Commerce Commission hearings on abandonment applications must continue.

Because railroads are a monopoly that provide a unique transportation service we feel it is necessary that we retain restrictions on their ability to just completely abandon service to an area without public hearings. Otherwise South Dakota may be soon abandoned by the railroad industry.

In the case of the Mitchell to Rapid City railroad line, the Federal Government built the major competition, the Interstate highway system, and no if the railroad is abandoned that Interstate will be tore up by trucks and the state will have to pay the highway repair bill. This is unfair to both the railroad and the taxpayers.

In closing, we do not feel it is inconsistent to feel it is necessary for the government to assume that a prudent communications and transportation network is provided to its people—whether it be the mail, telephone, roads, or railroads. With deregulation we fear a prudent transportation system may not prevail. Had either phone or mail service been pure economic, New York to Washington, D.C. would have had great telephone and mail service, but Presho to Reliance service would have been terrible. Therefore, in your deliberations of this bill our concern is that rural America is not forgotten.

Thank you.

STATEMENT OF ROBERT W. RETZLAFF, CORPORATE DIRECTOR OF DISTRIBUTION, JOHN MORRELL & CO., CHICAGO, ILL.

My name is Robert W. Retzlaff, and I am Corporate Director of Distribution for John Morrell & Co. Corporate headquarters is at 208 South LaSalle Street, Chicago, Illinois 60604. John Morrell is engaged in the business of slaughtering and processing livestock, distributing fresh meat and packinghouse products throughout the United States.

Morrell has meatpacking and food processing facilities located in South Dakota, Texas, Iowa, North Dakota, Arkansas, California, Tennessee, Louisiana, Minnesota, and Kansas. Morrell has been engaged in the meatpacking business since 1871, and is one of the largest meatpackers in the United States.

Our position in the question of deregulation is based on our need for a stable, reliable distribution system that will permit us to ship our products from point of production to customers throughout the United States. Morrell has its own sales force, and also sells through brokers. Our products are sold to wholesalers; jobbers and distributors, retailers and to state and federal institutions. Our products must move in a temperature controlled environment. Precise scheduling for loading, predictable time in transit, and prompt delivery is a must to maintain the wholesome quality of the products produced to sell. With the exception of some canned goods and lard, all of our products require a temperature control.

RECOMMENDED POLICY ON MOTOR CARRIER LEGISLATIVE REFORM

Obligation of carrier to serve

In order to obtain authority to transport, carriers hold themselves out to serve the public on reasonable request.

As a result, the carriers serve small and large shippers and urban or rural areas alike. Many meat shippers have plants in rural or less accessible areas or purchase meat from suppliers in such. Without authority and means to compel reasonable service on the part of the I.C.C., carriers would pick and choose business to the detriment of the meat industry.

Freer entry

The I.C.C. should continue to have authority to grant rights to transport interstate freight and to require that carriers seeking authority show that they are "fit, willing, and able." This offers protection to potential shippers which, prior to tendering valuable freight, must know that the carrier is protected by cargo insurance and has sufficient capital and business ability to satisfactorily perform the service required by such shippers. If a carrier does not acquire and maintain insurance, it cannot adequately compensate shippers for lost or damaged merchandise. Lack of sufficient working capital and financial resources will prevent a carrier from obtaining and maintaining equipment. Lack of know-how in a complex business such as transportation generally means late pick-ups or deliveries, unbalanced traffic patterns, and ultimate demise.

Collective rate making

This procedure should continue with appropriate anti-trust relief, to allow shippers who negotiate with many carriers to use this efficient time-productive technique. Carriers which desire lower, or higher, rates than the bureau have the unrestrained right to take independent action—which is essential.

Rate publication on advance notice

Rates must be published in tariffs which clearly state charges and rules governing shipment. This enables carrier and shipper alike to know, in advance, the charge of the service requested.

I.C.C. authority to suspend rates

Often rate and rule changes by carriers results in unreasonable and discriminatory charges. In some cases, such changes are unwarranted and may even constitute an economic embargo of traffic. The I.C.C., acting on behalf of the public, should continue to have the right to suspend such unwarranted changes.

A stable transportation system is an absolute necessity for us to continue successfully to distribute our products throughout the United States. We feel that the position stated above represent a realistic approach to achieving this end.

Statement of Ray A. Petersen Representing American Freight System

My name is Ray A. Petersen, 900 West Delaware, Sioux Falls, South Dakota. I am the former Chairman and Chief Executive Officer of American Freight System. I retired from this position on January 1, 1979 and now serve as a Consultant on Public Affairs. I am authorized to make this statement in their behalf.

I started in the trucking business before regulation and was continuously employed in the industry for some forty-four years. I served as a dock worker, pick-up driver, billing clerk, rate clerk, salesman, terminal manager, general traffic manager, vice president sales and traffic, executive vice president, president, and chairman during this period. I believe I am as much of an expert in motor carrier transportation as there is in the country at this time.

I watched and was a part of an industry which grew from a few struggling small operators, who had difficulty in even meeting the payroll to one which most people take for granted today because of the fine distribution system which has been worked out over the period of years.

I have observed with utter dismay over the past few years, the efforts of people who know absolutely nothing about the business attempt to disrupt and, no doubt, destroy a good part of what has taken over forty years to develop.

Much has been said about the fact that the Certificate of Public Convenience and Necessity is some type of a license to steal. I can assure you that this is the only thing that is given to the carrier. After that it is strictly up to the individual or company receiving it as to what he does with it. If he sets up a good service, with all of the other responsibilities such as sales, claims settlement, employee hiring and training, tracing, and the many other services connected with the handling of freight, he might succeed. If anyone thinks this is an easy business they would only have to take a look at the many who have failed and are are failing today. If anyone is anxious to get into the business, I can refer them to any size carrier they might be interested in, who are presently in financial difficulty. I don't know of any point which could possibly support more than one carrier that does not have competition today. In the event anyone is interested in getting a Certificate of Public Convenience and has any shipper support, it is a simple matter to get the authority just by applying for it, as the Interstate Commerce Commission is granting over 95% of the authorities applied for.

I would also like to comment on the proposal to do away with rate bureaus. I was personally involved with the rate bureaus for some fifteen years. I get the impression that people think the carriers get together in the dead of the night to devise ways and means of stealing money from the shippers. Nothing could be further from the truth. Most of the activities of the rate committees are directed toward meeting competitive situations, rates for new plants and this sort of thing. The only increases taken are on the general rate scale to cover wage increases and unusual price increases which we have experienced over the last few years. These are allowed only after submitting iron clad proof to the Interstate Commerce Commission that they are justified. The truth of the matter is that the large LTL carrier is simply not in a position to publish their own rates. Much of the traffic carried today is interlined to another carrier on a thru one factor rate. No one has said how this would be handled. Rating and rate publication are a highly technical skill. For every carrier to have to do this themselves would be ridiculous. American Freight System processes over 15,000 shipments a day. We have absolutely no idea how we would devise our own system to handle this. We have neither the trained people nor the time and no one to train them.

I would now like to explain what effect I think deregulation would have on a state such as Sout Dakota.

The carrier who started much of the motor carrier service in eastern South Dakota was the Wilson Truck System. Mr. Wilson started this trucking company in the late 1920's with the typical one truck drive-it-yourself operation. This company expanded over the years to such points as the Twin Cities, Chicago, and Omaha in order to give service to South Dakota from the more populated areas. In 1963, the company had fallen on hard times and was sold to Mr. Lauren Lewis, and the name changed to All-American Transport. It was obvious to us if the company was to survive, we would have to further expand the territory serviced and develop more of a two way haul.

We knew there was a substantial amount of meat moving from the area to the midwest, central states and the east, and we felt if we could use this as our back haul, we could expand into such areas as Wisconsin, Iowa, Indiana, Ohio, Kentucky, Missouri, Colorado and Michigan. This enables us to reach many of the suppliers direct rather than on an interline basis, which made the operation more profitable for us. I might add that this expansion took us some fifteen years to accomplish. As our general office was in Sioux Falls, everything we did, we carefully examined what effect it would have on South Dakota, both from a service standpoint and our ability to load direct, which would help our costs.

One must understand the LTL operation to appreciate what it takes to get a small shipment from origin to destination. Most people think their shipment is placed on a truck at their place of business and taken directly to the customer. What actually happens is the carriers must accumulate enough freight at an origin point to move the trailer to a destination or break bulk point. In the American Freight System operation, we are able to accumulate this amount of freight at origins such as Omaha, Nebraska; Kansas City, Missouri; Dallas, Texas; Denver, Colorado; Sioux City, Iowa; Des Moines, Iowa; Quad Cities, Iowa; Chicago, Illinois; Milwaukee, Wisconsin; St. Louis, Missouri; Twin Cities; Minnesota; Indianapolis, Indiana; Louisville, Kentucky; Dayton, Ohio; Grand Rapids and Kalamazoo, Michigan; and Toledo and Cleveland, Ohio. Service from other points can be given by relaying the freight to one of the above mentioned points. The freight loaded on these schedules might be finally destined for any point in eastern South Dakota, or western South Dakota, or in some cases, freight for North Dakota or western Minnesota might be included in order to complete the load. These schedules then move into Sioux Falls for either delivery or break bulk for re-forwarding to the other destinations. It is not unusual for there to be fifty shipments or more included in these loads.

The break bulk shipments are then loaded on other trailers for such destinations as Brookings, Freeman, Huron, Aberdeen, Pierre, Winner or Watertown. At a terminal such as Brookings, the trailer will be unloaded, the local freight delivered, and peddle runs deliver freight to such towns as Arlington, DeSmet, Hetland, Lake Preston, Madison, Argonne, Artesian, Canova, Carthage, Cavour, Epiphany, Esmond, Fedora, Forestburg, Howard, Iroquois, Manchester, Roswell, Vilas, and Volga. Our Freeman, South Dakota terminal serves the towns of Alcester, Avon, Beresford, Canton, Lennox, Springfield, Tyndall, Vermillion, Wagner, Yankton, Alexandria, Armour, Avon, Bridgewater, Burbank, Canistota, Centerville, Chancellor, Dante, Davis, Delmont, Emery, Farmer, Fulton, Greenfield, Harrisburg, Hudson, Hurley, Irene, Kaylor, Lesterville, Marion, Marty Meckling, Menno, Mission Hill, Monroe, Montrose, Olivet, Parker, Pumpkin Center, Rumpus Ridge, Salem, Scotland, Spencer, Springfield, Stanley Corner, Tabor, Tea, Utica, Viborg, Wakonda, and Worthing.

Other terminals provide similar distribution service to the towns in their areas. It should be obvious that if a carrier is to serve this type of area, they are going to need all of the freight that is available. If others are going to be allowed to come in and skim off the cream the only answer will be to discontinue the delivery service and require the small town customer to come in to the distribution terminal to pick up their freight.

American Freight System has invested millions of dollars to establish a system which will enable the small shipper and receiver to receive a good service from origin to destination, regardless of the size of the town. This was done with the reasonable assurance that if the service were satisfactory, some protection would be afforded from cut throat competition.

We would also like to point out the economic impact American Freight System has on South Dakota: 914 employees with a yearly payroll, plus fringes of over 20 million dollars; other South Dakota expenses of over 10 million dollars; plant and equipment in excess of 13 million dollars.

These are the type of jobs that enable people to marry, buy homes, and raise a family and are not the minimum wage type jobs.

In view of the rapidly deteriorating rail service, scarcity and high price of fuel and all of the other problems this country faces, it is hardly the time to throw the best trucking transportation service in the world up for grabs.

OMAHA, NEBR., FIELD HEARING, JULY 6, 1979

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION,
Lincoln, Nebr., April 10, 1979.

Hon. HOWARD CANNON,
Chairman, Senate Commerce and Transportation Committee,
U.S. Senate, Dirksen Building, Washington, D.C.

DEAR MR. CANNON: We are enclosing a copy of the letter we sent to our Nebraska Congressional Delegation on January 19, 1979. This letter pretty much explains our Association's opposition to the railroad de-regulation proposal.

The Nebraska Grain and Feed Dealers Association, which comprises over 1050 grain and feed dealers must oppose this railroad de-regulation legislation since it would eliminate any type of rail transportation to the rural areas of Nebraska and other states as well.

Please read over the attached letter and consider it in your upcoming Committee Hearing on this railroad de-regulation proposal and also please pass on this information to the other Committee members.

We appreciate your help and support to agriculture and anything you can do in opposition to this proposal would be greatly appreciated by the grain and feed dealers and the farmers in Nebraska.

Thanks again for your help and interest.

Sincerely,

ROBERT L. ANDERSON,
Executive Vice President.

Enclosure.

NEBRASKA GRAIN AND FEED DEALERS ASSOCIATION,
Lincoln, Nebr., January 19, 1979.

NEBRASKA CONGRESSIONAL DELEGATION:

On behalf of the over 1050 grain and feed dealers, which are members of Nebraska Grain and Feed Dealers Association, I must oppose the proposed railroad deregulation legislation submitted to the White House on December 15, 1978, as an "Option Paper" from an Inter-agency Group headed by U.S. Department of Transportation. In the past, we've opposed these de-regulation proposals for some of the same reasons we oppose this: Option Paper", since it would eliminate any type of rail transportation to the rural areas of Nebraska.

From our trades' standpoint, we don't need "de-regulation" but "re-regulation" of the railroads. For the past three years, we have sought to work cooperatively with the railroads for better rail rates, on which the railroads can make money, and on better equipment distribution, by submitting proposals to better utilize their equipment, all without very much success.

One of the reasons we are having difficulty with rail rates is the 4-R Act which prevents us from meeting jointly with all Nebraska railroads to discuss grain rail rates. Another reason, is the railroads have been putting in rates which the Association feels the provisions the provisions of the Clayton Act should be used to investigate these differentials and we have put in a special request to the Union Pacific Railroad to equalize these differentials.

All of these present trends by the railroads, under present legislation and regulation, point to elimination of competition within the grain trade and thereby, eventually, mean Nebraska's farmers would not have the safeguards of receiving the absolute highest price when he sells his grain to an elevator. This present trend woudl also mean that many small elevators would simply be forced out of business due to railroads' effort to concentrate on only grain big single point shippers or coal movement.

Option paper does not address rural rail shipments

The "Option Paper" proposed for de-regulation does not address the unique conditions which exist in rural areas. In rural Nebraska, railroads have a virtual monopoly on rail shipments from most towns in Nebraska; the only exception, exists with the larger towns where there are several competing railroad carriers. These are the only locations in Nebraska where the de-regulation proposals have any application at all. The only competition that exists at all with rural elevators now, and the single rail carrier providing service to them, is short-haul truck transportation. However, the best grain bids the elevators receive, are from the Gulf Coast or the West Coast. If these elevators could not ship to these long-haul locations, Nebraska

farmers would receive considerably less for his grain, if all his grain had to be trucked to a distant terminal location. In addition to this, there is very little competitive barge traffic from Nebraska points to compete with long-haul railroad transportation.

If the railroads would be allowed to de-regulate, there would be no incentive for them to incorporate better utilization methods of rail equipment from rural shipping points, nor to incorporate better railroad grain rates to compete effectively with the large grain shipping points. Eventually, this would mean more grain would have to be moved by truck and therefore rural road conditions would deteriorate rapidly meaning additional costs to Nebraska's taxpayers while large shipments of coal and other commodities would continue to disrupt small rural communities.

Railroad deregulation proposal holds disadvantages for Nebraska

Under this proposal, numerous problems would be caused by incorporating these railroad de-regulation proposals. In fact, it's hard to think in anyway Nebraska would gain from incorporating any of these proposals as they presently stand. Some of the problems of the proposals are:

1. All burden of proof in questioning railroad proposed grain rail rates would fall on the shipper. The Interstate Commerce Commission (ICC), the only agency the small country elevator can now turn to for help, would be completely stripped of any investigative powers or other jurisdiction to give these captive grain shippers a hand. And of course, the small grain shipper would not have a rate expert on his payroll to give him a hand either, meaning eventually he would be put out of business.

2. Grain buying competition for the farmers' grain would be eliminated, since only the large shippers would be favored by contract grain rail rates. This would mean the farmer would have very few sources and locations to market his grain and lack a way to keep each grain buyer honest on competitive bids, as presently exists.

3. Contracted grain rail rates to the shipper would not be subject to the ICC approval or could be protested to the ICC, except under anti-discrimination laws. This means the grain shipper would have no protection from at-a-whim increases, which could occur overnight. The grain shipper has to contract his grain far in advance with a distant grain buyer at a set price; this includes the cost for rail shipment and if these costs are increased overnight, the grain shipper would have to eat the difference.

Under the proposal, seasonal rates can be incorporated which allow only a one day notice, if rate changes are within the minimum and maximum ranges. The farmer would suffer because the grain trade would have to protect themselves from this type of action by the railroads.

4. Railroads would set their own penalties (demurrage rates) for not moving rail cars. Through our investigations with the trade, we have found it is not the shippers lack of moving these cars but the railroads. The only time the grain shipper runs into a demurrage problem is due to major seasonal difficulties or other unusual conditions. Common sense would go out the window, if the railroads could do this. A better proposal would be to also set up negative demurrage rates which would force the railroads to pay the same type of penalties for non-movement of loaded equipment.

5. There would be no incentive for the railroads to provide service or equipment when there is a shortage of rail equipment. Presently they have an obligation to serve all shippers on their line, even though this doesn't work out in an equitable fashion, it is better than no equipment which would happen where the big shippers would receive all the equipment.

6. Grain railroad branch lines would be abandoned. Our present problems with lack of equipment for these branch line shippers, even if they can load the larger jumbo hopper cars, would become worse and branch lines would be abandoned, even though the business would be good. This is especially true for lines which can only load the box cars now. There would be no incentive for the railroads to upgrade the present bad rail rates on these branch lines which have been neglected for so many years. They would simply be abandoned under a de-regulation concept.

7. Rural development would take 50 steps backward. In the past few years, there has been some move-a-foot to push the concept of rural development in our nation; with the elimination of the grain shippers from the small towns, you would lose one of the primary focus for redeveloping any of these smaller communities or the agriculture business within that area.

Your help asked for on opposing railroad deregulation

The association needs your help in opposing these railroad de-regulation proposals by the U.S. Department of Transportation. It is our sincere thought the railroads need "re-regulation" and not "de-regulation". Without your help, these proposals

will go into law and therefore Nebraska's farmers will lose; small grain shippers will be eliminated; and, the cost would be prohibitive to Nebraska.

The Airline De-Regulation Proposals worked since it was possible to have many competing carriers at several origin and destination points. This is not true on railroad origin points, where railroads presently have a virtual monopoly.

We need your help in Congress and also in working with the railroads to improve a better utilization of railroad equipment, pursuing alternative utilization methods, and your help in working with the railroads to gain better rail rates on various grain commodities.

We would appreciate any and all help you can give us on fighting these de-regulation proposals and diluting the powers of the Interstate Commerce Commission. Again, our only hope is your help in knocking down a proposal which would force many small Nebraska grain shippers out of business, along with eliminating the competition for the farmers' grain and doing away with rural development. If you need additional information or have questions on our opposition, this office and the members of the Association stand ready to help you in anyway. Thanks again.

Sincerely,

ROBERT L. ANDERSON,
Executive Vice President.

NEBRASKA STATE LEGISLATURE,
Lincoln, Nebr., June 28, 1979.

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

DEAR SENATOR CANNON: I would like to thank you for inviting me to appear at the hearing on Senate Bill 796 scheduled for July 6 in Omaha, Nebraska. I find it will not be possible for me to appear in person. I would like, however, to present this written testimony that I would have used had I appeared in person. The legislative Public Works Committee, which I am Chairman of, has also recently concerned itself with the problem of railroads.

It is clear from our discussions that railroads are no longer the giant monopoly industry which once existed, and may be the most regulated portion of our transportation industry. It is also clear that they feel they could do without some of the federal regulation which has developed. I would hope that you could find ways to bring competition to the transportation industry by re-examining regulation of railroads and other methods of transportation to achieve that goal. A concern of the Nebraska Legislature has been the financing of railroads and the large tax subsidies which have been proposed in order to re-develop the nation's rail system. We hope that large tax expenditures can be avoided through allowing the railroad industry to become financially healthy again.

However, we are equally concerned that with de-regulation, Nebraska's small communities, which support our agricultural economy, may suddenly find their railroad service cut off by abandonment of branch lines or reduced service in certain areas. Agricultural shippers must be assured that transportation to terminals is available for their products at a reasonable cost. Decreasingly regulation and allowing abandonment of unprofitable rail service may benefit the nation's railroads at the expense of increased cost to Nebraska farmers and rural shippers. It may also force farmers and shippers to rely more heavily on the trucking industry, which lately has not been reliable. At a time when the nation is concerned about energy conservation and efficiency it would be foolish to eliminate a transportation system which may be the most fuel efficient option. We in agricultural communities do now wish to be forced to accept increased transportation costs in order to benefit the nation's railroad system.

As I said before, our legislative committee has been considering the problems of the railroad industry. We have introduced and advanced legislation, LB 507, which will allow Nebraska shippers and railroads to work out solutions to the problem of branch line abandonment. The Nebraska Legislature did not have time this legislative session to take a vote of the full body on this matter. It will be considered in the next legislative session, which begins in January.

It is my hope that railroads and shippers will be able to help re-establish a healthy railroad industry, and that we will do all we can to continue to support the small agricultural communities which are so dependent on rail transportation of their products. I would also hope the U.S. Senate and your committee would move slowly and with a great deal of caution in consideration of this legislation. This will allow states like Nebraska the time to fully consider their options and develop their solutions. Rapid de-regulation of railroads could create a burden on our resources

which would do more harm to the agricultural community. I would hope that you can help relieve some of the burden of regulation which makes it difficult for railroads to become competitive with other transportation methods, but I believe some careful thought will be necessary in order to protect Nebraska's rural economy from bearing the expense of railroad deregulation. I urge you to proceed slowly in your consideration of this regulation.

Sincerely yours,

MAURICE A. KREMER.

STATEMENT OF LLOYD C. SHALLA, GENERAL MANAGER, ON BEHALF OF OMAHA PUBLIC POWER DISTRICT

Omaha Public Power District is a public corporation and political subdivision of the State of Nebraska with principal offices at 1623 Harney Street, Omaha, Nebraska 68102.

Omaha Public Power District is engaged in the generation, transmission, distribution and sale of electric energy in thirteen counties of eastern Nebraska and serves approximately 200,000 electric customers.

Omaha Public Power District owns and operates two coal-fired steam-electric generating stations known as the Nebraska City Power Station and the North Omaha Power Station. The Nebraska City Power Station, located approximately five miles southeast of Nebraska City, Nebraska, has one generating unit with a nominal rating of 575 MW. The District has agreements for the delivery of approximately thirty million tons of low-sulphur Wyoming coal for the operation of the Nebraska City Power Station during the years 1979 through 1998. The coal is to be transported in single line unit train service, in District-owned cars, via the Burlington Northern Railroad, from Gillette, Wyoming to Nebraska City, Nebraska, a distance of approximately 655 miles. The North Omaha Power Station, located in Omaha, Nebraska, has five generating units with an aggregate capacity of 629.6 MW. The District has agreements for the delivery of approximately seven million tons of low-sulphur Wyoming coal for the operation of the North Omaha Power Station during the years 1979 through 1989. The coal is to be transported in single line unit train service, in carrier-owned cars, via the Union Pacific Railroad, from Hanna, Wyoming to Omaha, Nebraska, a distance of approximately 650 miles.

Over the next fifteen years approximately forty-six million tons of coal, valued at approximately 1.4 billion dollars, are expected to be delivered to the Nebraska City Power Station. Approximately twelve million tons of coal, valued at approximately 0.5 billion dollars, are expected to be delivered to the North Omaha Power Station. In view of the large investment the District expects to make on the purchase and transportation of coal the District has a strong interest in any matters that affect the purchase and transportation of coal.

Omaha Public Power District supports the concept of railroad regulation. However, in areas where true competitive modes of transportation exist railroad deregulation legislation may promote efficiency and lower costs, to the benefit of the railroads and the shipper/consumer. However, Omaha Public Power District strongly objects to the legislation's treatment of the captive shipper, who relies entirely on rail transportation for shipping coal, as in the case of the Omaha Public Power District. Transportation costs are already a major part of a utility's fuel costs and the District is concerned about the effect of further increased costs on its customers. The termination of maximum rate regulation on coal traffic would allow railroads to raise rates of captive shippers beyond that which is reasonable and cost-based in order to subsidize a market or commodity which is less profitable. The District, therefore, strongly recommends that the legislation be modified in order to allow the Interstate Commerce Commission (ICC) to retain its authority to prescribe maximum rates in the case of captive shippers.

Omaha Public Power District also strongly recommends that the ICC retain its authority to suspend rates and investigate rate increases in order to further protect the captive shipper. If the ICC can not suspend an unreasonable rate imposed on a captive shipper, there is nothing to prevent the railroad from imposing the rate and forcing a utility to litigate in order to obtain a refund.

In conclusion, Omaha Public Power District supports the concept of railroad regulation. However, if there is to be a deregulation bill, it must provide full protection for captive shippers in the areas of maximum rate regulation and rate suspension and investigation. Omaha Public Power District feels, in any legislation, the ICC must retain its role and authority as an independent regulatory agency in order to guarantee captive shippers adequate recourse and to assure that transportation rates, rules and practices are not discriminatory.

Position Paper on Railroad Deregulation

We recognize the necessity of preserving a financially health rail system in this country and the need for railroads to earn reasonable profits on all of their traffic, including coal. In those situations where true competitive circumstances exist, we support the recent administration bill to deregulate the railroads. However, we strongly object to such legislation to the extent that it would permit the railroads to contine their recent efforts of looking to captive coal traffic as the sole source of their hoped-for additional profits.

As a result of planning decisions made over the previous 10 years, Iowa Power and our customers are heavily committed to western coal as an energy source. We are captive shippers of the railroads in the truest sense of the word. Other than by rail, there is no present alternative available to transport our coal. In addition, we have invested millions of dollars in rail-related facilities, such as coal cars and unloading facilities. Since we must obtain our coal supplies through long term contracts with mine operators, we are restricted for all practical purposes to dealing with a single railroad.

Because of the low cost of handling coal, it has historically been profitable traffic for the railroads. The growth of the western coal market presents a tremendous opportunity for the western rail carriers to obtain significant financial benefits from this traffic. However, from our own recent experiences as well as those of other similar captive shippers, we can see no indication whatsoever that the railroads will be content to charge reasonable, cost-based rates. In case after case the railroads appear to be bent on exploiting their monoply power by opting to reap huge short-run windfall profits on coal traffic.

Instead of attempting to halt such a trend, the administration bill would eliminate what little protection shippers now have against railroad exploitation. Transportation costs are already a major part of our fuel costs. We are very concerned about the effect of further increased costs on our electric utility customers. Eventually, exorbitant rail rates on coal would force the development of transportation alternatives, such as coal slurry pipelines, mine-head generation and coal gasification. We feel that these alternatives should be provided for in any rail deregulation legislation. It is especially important that slurry pipelines be given strong support in order to provide a viable alternative to rail transportation for captive customers. Since these alternatives are not currently available, however, protection must be given to captive customers.

In summary, Iowa Power fully supports a strong and healthy rail system. To the extent competitve forces exist, we feel deregulation should be carefully examined. However, any deregulation bill must include and contain full protection for captive coal shippers against the exploitive practices of the railroads.

Statement of Harry R. McMahon

1. Identification, Background and Qualifications.— My name is Harry R. McMahon. I live at 657 Main Street, Manilla, Iowa 51454, P.O. Box 298.

My interests are rooted in a lifelong study of railroads, principally American. My qualifications include duty at The Transportation School, Fort Eustis, Va. At that time, The School was formulating "A Transportation Policy for The United States," in which project I participated. The regular staffwork was defining (and refining) the doctrines of military transportation as a function of logistics (which is defined as the art and science of supplying an army in the field).

My speciality was: The Transportation Net. (The Anatomy and physiology of the basic physical plant, and of the auxiliary facilities and services necessary in global operations.) I also served as a civil servant in Military Planning, Office of The Chief of Transportation, in the Pentagon.

Here today I represent the Audubon-Atlantic Branch Line Railroad Improvement and Maintenance Corporation, 207 Scott Street, Audubon, Iowa 50025, Mr. Perry Roberts, President, Telephone 712-563-2648.

2. My approach here today.—This Hearing is about "Deregulation." In order to speak on the subject, I must also bring in the antecedent, "Regulation", together with certain gray-area intermediates which I call "Alternatives." Accordingly, I shall speak here on the following topics: What Regulation Really Is. What Deregulation Really Is and Isn't. Alternatives that Could Be and Should Be Explored. One More Genuine Effort at Regulation. A New Idea on Freight Rate Increases. A New Idea on Truck Deregulation. And A New Application of an Old Idea to Relieve the Alleged Car Shortage.

3. What regulation really is.—As a young man, I was the authors' editor on a monumental work: "Engineering Valuation," Agg and Marston. McGraw-Hill 1937.

The authors traced the development of public utility regulation in England over a period of several centuries.

In case after case, the incumbent King granted a monopoly-franchise to a loyal retainer, who was to supply necessaries to the public. The King fully expected the Franchisee to serve the public faithfully and well, even at the occasional loss of some profit. Typically, when he faced the stark necessity of choosing between faithful performance and profit, he opted to take the profit. The King and the Public were thus short-changed.

Later Kings (and Prime Ministers) discovered a new element: Conflict of Interest Among free people, foreign and domestic. But the sole interest to the Franchisee is profit, even when that profit comes from squeezing the King and/or the People.

Here was a classic confrontation. The later Kings dissolved the confrontation by legislation defining the status of each of the three parties involved: The King (Crown); the Franchisee; and the People (Public). The legislation Declared that the Franchisee's business was "so affected with the public interest" as to require it to be operated in the public interest under strict regulation. With respect to railroads (and other carriers), this means that a railroad is a public utility, to be operated in the public interest under strict regulation. True, the utility is granted a monopoly, together with guaranteed adequate income and profit for the long term, subject prudent management; but the stark fact remains: The public interest is paramount.

What Regulation really is, then, is, first, the burden assumed by the King (Crown) to protect the Public against the depredations of the Franchisee, and, secondly, the action necessary to follow through.

What deregulation really is and isn't.—Advocates of Deregulation split over method. One faction would simply transfer Regulation to the Franchisees (Industry Self Regulation), calling the result "Deregulation." The other faction would simply repeal the statutes which support Regulation, leaving a vacuum.

Transfer.—Subjectively, Transfer calls to mind several slogans: "Fox Guarding Chicken Coop"; "Mafia Operating Law Enforcement"; and, "Rapists Providing Security for YWCA Encampment." Offensive as these slogans may seem to be, they reflect a basic truth: Whenever power is shoveled out indiscriminately, it will be seized by the least desirable of the contenders present, to the detriment of the public interest.

Fortunately, there is an objective approach to the analysis of Transfer. It lies in examination of three recent events: The Three Mile Island Nuclear Fiasco; The DC-10 Disaster in Chicago; and, the current Nationwide Gasoline Shortage. In each of these cases, the feds had exhausted themselves in a frenzy of pusseyfooting, leaving the field wide open for nobility of character as exemplified by the Franchisees. And did those worthies perform magnificantly? No, not really. At Three Mile Island, the monopolists covered up the situation for 3 days, and then worked frantically to assess the damage against the customers. In Chicago, the monopolists promptly fastened the blame upon the dead pilot and then called "All Aboard" to load the next flight. In the Nationwide Gasoline Shortage, the oil industry experts are standing down with respect to solving the problem, but they are straining mightily to prevent the enactment of the Windfall Profits Tax.

Analysis of these cases, and of many other similar cases, induces me to think that this country just isn't ready for Industry Self-Regulation. Therefore, I reject Transfer.

Repeal.—Repeal is a surgically clean operation that leaves a lovely wound. But repeal of the Statutes underlying Regulation would materialize the same conditions that the English struggled to eliminate centuries ago. The public interest would suffer. I reject repeal.

The bottom line.—Deregulation produces Anarchy. At best, it allows the Utilities to plunder the people. At worst, it also allows the Big Utilities to devour the Little Utilities, enlarging the monopoly and endangering the society. In sum, Deregulation negates the hundreds of years of progress that the English-speaking peoples have achieved in their struggle to breathe free. I judge Deregulation to be a snare and a delusion. (Add one more word: Abomination Unto the Lord.) It most assuredly is not a make-sense solution to our problems here today.

5. Alternatives that could be and should be explored.—There are four alternatives which I believe should be explored, and I discuss them below.

One more genuine effort at regulation.—Before taking the big jump into Deregulation, I believe that we should make one more genuine effort at Regulation.

I concede that there is need to lop off tons and tons of bureaucratic debris. But bureaucratic debris is only the symptom—it is not the problem. The problem that I see day after day is that this nation no longer has a distinguished corps of public servants, eagerly panting to be sent on the trail to serve the public interest. What I find, day after day, is that very few of the officials that I meet show any sign of

knowing what the public interest is. What I find is an attitude that if you are not a bureaucrat, you should not be taken seriously, and, further, that as a courtesy to the people who know, you should get out of the way and let them build their empire.

In advocating one more genuine effort at Regulation, I call for reorganizing the regulatory mechanisms to bring in new blood in effectives who can pass the saliva test for freedom from bias against the public interest.

Allow me to cite one pertinent case, to show what I mean: In January, 1977, The Milwaukee Road finally secured a long-sought federal loan. One of the officials told me that the loan was secured only after an agreement on a side deal was made, dictating the scenario that Management was to follow. Last fall, the Milwaukee got another federal loan. This time, an official said, the side deal required that the Milwaukee contract to use the Northwestern tracks, as a consequence of which the Northwestern was qualified to get a federal loan, $123,000,000 at 2.8 percent.

Currently, The Milwaukee is expected to shutdown presently, followed by directed service at government expense. And who has been designated to provide the directed service? The Northwestern, of course. Now, my information is that the Milwaukee's revenue on bridge traffic (through traffic) at Manilla is about $1 million a day, and my information, further, is that at the end of the directed service, the Northwestern will get to keep the bridge traffic, the $1 million a day cash flow, $365 million a year. It strikes me that this series of events means extraordinary good fortune for the Northwestern. So here I ask: With regard to the Regulation in this matter, how much of the Regulation was performed in the public interest, and was any of it otherwise?

A new idea on freight rate increases.—The Railroads clamor for a freight rate increase, at a time when service was never poorer. But there is a way to grant the increase, and to improve service sharply at the same time, How? Simply, you tie the freight rate to the standard of service performed. That gets railroad management directly involved in improving the service, which is not the case today. (The extra fare trains of yesterday operated upon that basis. Details upon request.)

A new idea on truck deregulation.—A State Commissioner told me that holders of truck route franchises operate only a small portion of their authorized routes; they use their certificates, he said, largely to keep out competition. He also said that one franchisee had two overload citations a day for a whole year, but Enforcement couldn't touch him because he was a National Committeeman. I recommend that the certificates be reviewed en masse, and that any certificates not operated be cancelled, and that certificates of chronic offenders also be cancelled. (Details on request.)

A new application of an old idea to relieve the alleged car shortage.—Bob and Ray had a radio skit in which listeners could hear the automobiles dropping into the ocean at the eastern end of an uncompleted bridge across the Atlantic; of course they were accepting traffic before they had a safe destination where the motorists could go. It is just as silly to ship grain to a port which can't unload the grain. The solution, ala the Late Mr. Joseph B. Eastman, was to get a commitment from the railroad that it can deliver on a specified date, and also a commitment from the consignee that he will unload on that date, subject to penalties on both consignee and carrier. Again, that brings consignee and carrier into responsibility for rapid handling so as to get fast turnaround. (Details on request.)

This completes my statement here today. If you desire further information, ask. Thank you for your courtesies in allowing me to appear.

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Knowing something [illegible] that if you are not a [illegible] further [illegible] should [illegible] their [illegible]

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