Approved 3-30-84
Date

MINUTES OF THE House COMMITTEE ON Agriculture and Livestock.

The meeting was called to order by the Chairman, Bill Fuller at
Chairperson

9:00 a.m. ~~p.m.~~ on March 21, 1984 in room 423-S of the Capitol.

All members were present except: Rep. Arbuthnot

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Margaret Gentry, Committee Secretary

Conferees appearing before the committee:

Senator Gannon
Phillip Corby, Kansas Grain and Feed Dealers (Evans Grain Co.
Otto Gehrt, Kansas Grain and Feed Dealers (Garvey Elevators
Tom Tunnell, Kansas Grain & Feed Dealers
Nancy Kantola, Kansas Co-op Council
Bill Green, Corporation Commission
Pat Hubbell, Kansas Railroad Association

The meeting was called to order by the Chairman, who reminded the Committee that a joint meeting with the Senate Committee is scheduled for Thursday, March 22nd, at noon in the old Supreme Court Room.

The Chairman called for discussion or action on the ten sets of minutes which had been distributed at the previous meeting. It was moved by Rep. Apt and seconded by Rep. Roenbaugh, that they be approved. Motion carried.

The Chairman opened the hearing on SCR 1658, and asked staff to explain the Resolution. Raney Gilliland explained that the Resolution merely memoralizes Congress and the President to amend the Staggers Act of 1980 to provide for full disclosure of rail contract rates; and for railroads to justify to the Interstate Commerce Commission that the return on a line is less than the overall rate of return of the railroad before they can abandon that line.

Senator Gannon told the Committee that there are a lot of local elevators in the state that are in trouble because of the Staggers Act. He said that the small and medium elevators cannot compete with the subterminals because they lack the expertise to negotiate contracts. Because of this, he said there is a lot of shipping by motor carrier which causes extensive wear and tear on the state highways. He stated that for a time, the sub-terminals will offer more for the grain but after the collapse of the small elevators the rates will not be as lucrative.

Phillip Corby, Chairman, Transportation Committee, Kansas Grain and Feed Dealers Association, appeared in support of the Resolution. He spoke of the services the local elevators provide, in addition to the storage of grain. He said they have great difficulty in dealing with competitive rates. (See Attachment 1.)

Otto Gehrt, Garvey Elevators, Inc., Hutchinson, appeared as a member of the Grain and Feed Dealers Association. He told the Committee that Senator Gannon had touched on many of his concerns. He said that as a result of the Staggers Act, producers who have traditionally used the local elevators now must decide whether to expand on-farm storage capacity so as to market grain on a year around basis. If that happens, the local elevator may no longer exist to service the needs of the producer. (See Attachment 2.)

Nancy Kantola, Kansas Co-op Council testified that since the passage of the Staggers Rail Act of 1980, many of her grain marketing members have struggled to remain competitive with larger terminal shippers. She said that the preferential rates provided to large terminals is causing much concern. (See Attachment 3.)

John Blythe, Kansas Farm Bureau, said that they and the American Farm Bureau support the concept of the Resolution. He commented that the U. S. Department of Agriculture in cooperation with Senator Kassebaum, had held meetings in Hutchinson, where grain shippers had indicated problems with the Staggers Act.

Bill Green, Administrator of the Transportation Division of the State Corporation Commission, appeared in support of SCR 1658. He said the KCC wants to retain jurisdiction over intrastate rail rates in Kansas, and that under the Act cannot make the specific conditions of the contract public. (See Attachment 4.)

Tom Tunnell, Grain and Feed Dealers Association, told the Committee that his members have a serious problem with the Act because of the secrecy of the contracts and the fact that they are unable to compete. He said this Resolution offers a chance for the people of Kansas to make a statement to Congress.

Pat Hubbell, Kansas Railroad Association, appeared in opposition to SCR 1658, explaining that the Staggers Act was enacted in 1980 in an effort to avoid nationalization of railroads and to help make them more competitive with other modes of transportation. He explained that railroads are trying to attract more traffic through contracts and mechanisms they were not permitted to use before. He pointed out that no producers were appearing on their own behalf at this hearing.

Mr. Hubbell stated that Dr. Sorensen of KSU had recently written an article which said that this system is more responsive to market conditions and that transportation rates have been reduced to the benefit of the producers.

Mr. Hubbell pointed out that there is no requirement for their competitors to make their rates public. Concerning abandonment, he said that no railroad is in a position to abandon lines which are making a profit. He said abandonment is a lengthy process through the ICC and must be fully justified. He expressed the view that railroads should be allowed to make a profit in the areas they serve.

Mr. Hubbell said there had been discussion about the contention that KPL was a captive shipper, but the fact is they did it to themselves by contracting for 40 years with one mine. He pointed out that the railroad did not tie them to the contract.

Mr. Hubbell distributed statements from M.C. Keener, Independent Salt Company (Attachment 5); Robert S. Cartmill, Lincoln Grain (Attachment 6); and Brian G. McDonald, Union Pacific System, (Attachment 7). He urged members to read the statements.

The Vice Chairman noted there had been reference to barge and truck rates and the fact that they do not have to disclose. He observed that barge rates are traded on an exchange like commodities, and suggested it might work for railroads as well.

A member of the committee inquired how much track had been abandoned since the Act was passed. Bill Green said that between 1980 and 1984, there were three abandonments for 110 miles; and that currently two more are in the process for 63 miles.

The Vice Chairman said that a few years ago there were efforts to force disclosure of selling price in terms of foreign sales and the grain industry resisted that. He asked Mr. Corby if that was consistent with this Resolution. Mr. Corby said the ones who did not want to disclose were the large export companies--not the grain elevators.

The Vice Chairman asked if it wouldn't be a simple mathematical problem to solve if a reasonable profit plus the cost of transportation determines the price of grain. Mr. Corby said they can come close but the problem is fluctuation and they have not been able to raise their price enough to find their bottom line.

After further questions, the meeting was adjourned at 10:00 A.M. The next meeting is scheduled for 9:00 A.M., March 22, 1984, Room 423-S.

Hearing

Before The

House Agriculture & Livestock Committee

March 21, 1984

on a Resolution SCR 1658 to Amend the

Staggers Rail Act of 1980

Statement

of

Phillip Corby

Chairman, Transportation Committee

Kansas Grain and Feed Dealers

Association

(1)

Attach. 1

I am Phillip Corby, Traffic Manger, Evans Grain Co., Salina, Kansas. I am Chairman, Transportation Committee of the Kansas Grain and Feed Dealers Ass'n. I am here today representing that organization in support of the Resolution to amend the Staggers Rail Act of 1980.

The elevators in Kansas play a vital part in handling the vast quantities of grain harvested at various times during the year. For instance, during wheat harvest one of the important concerns of the farmer is to get his wheat from the field to cover in the local elevator and get back to the field in as short a time as possible. The original movement of wheat is by farm vehicle from the field to the local elevator. Once the grain is ripe, the farmer wants to accomplish harvesting as quickly as possible. The local elevator provides a place where farmers can deposit grain until they decide whether to sell, enter a government program, or leave their grain in open storage. Besides being a depository for grain the elevators sell seed grain, fertilizer, chemicals, and other products the farmer needs. One other service they provide which is of paramount importance is that from time to time they extend credit to the farmer. These elevators are located on rail lines and depend on competitive rates and rail service to enable them to provide the various services.

Passage of the Staggers Rail Act of 1980 either eliminated or drastically changed the rules the elevator industry had grown up under. The worst provision of the Staggers Act is allowing contract rates. The Interstate Commerce Commission in establishing procedures under the Act has allowed these rates to be secret.

The first step necessary to protest a contract rate is to prove that it discriminates against a particular elevator. But if the rate is secret there is no possible way to object or even know what the competition is doing. We support requirement for full disclosure of economic terms of contracts. Along with full disclosure of contracts we believe the Staggers Act should be amended so that the Market Dominance provisions would not apply to grains and soybeans. Reasonable rates should be required and methods spelled out so an elevator can file protests and expect a fair hearing. Because the Staggers Act does not have specific conditions embodied in it and because the Interstate Commerce Commission as constituted will take no actions to protect the shipping public, we believe the Act must be amended to clearly provide the rules in such a way as to preclude the Interstate Commerce Commission from abandoning their duty to the shipping public.

The National Grain and Feed Association has studied these problems, and after long deliberations has proposed a group of amendments to the Act. These amendments touch upon all problems listed in your proposed Resolution and offers remedies to them. The Kansas Grain and Feed Dealers Association has studied these proposed amendments in depth and fully support them. A copy of the proposed changes is attached. We fully support your Resolution.

NATIONAL
GRAIN & FEED
ASSOCIATION

December 30, 1983

TO: EXECUTIVE STAFF AND PRESIDENTS OF AFFILIATED GRAIN AND FEED ASSOCIATIONS

Transportation, particularly rail transportation, is a subject of growing concern to the grain and feed industry. Since the passage of the Staggers Act in 1980, numerous rail transportation problems have arisen that may seriously threaten the maintenance of a competitive marketplace. In many cases, these problems are perceived as resulting from the ICC's administration and interpretation of the law.

In response to industry's concern, the National is committed to an intensive effort to obtain changes in existing law. Enclosed with this letter are the legislative amendments that we will be seeking. While many of the statutory changes appear technical, the purpose and intent of each change also is explained in more practical terms. This language has been carefully reviewed by the National's Transportation Committee and is entirely consistent with the National's transportation policy.

In the near future, the National will be contacting congressmen and offering this language as a package of suggested amendments. We will then work toward additional congressional support and recognition of the transportation problems that now exist. In this effort, the National needs and seeks the support of the affiliated associations. If the changes that will be proposed are consistent with the views of members of your association, we would sincerely appreciate receiving a letter expressing your support.

If your association can support these changes, we would also appreciate hearing from you as to your willingness to cooperate with the National in its efforts to contact congressmen on this subject. We foresee that many of these contacts could be made by mail or telephone.

Finally, as we try to obtain support for these suggested amendments, it is critical that we be able to offer examples of the kind of problems confronting shippers. If your members have had experiences with rail transportation that relate to the amendments in the enclosed document, we would appreciate your sharing them with us.

If you have any questions about these proposed amendments, please call Ms. Bonnie Sullivan, Dr. Kendell Keith or Kenneth Dorsch of our staff. Thank you for your cooperation.

Sincerely yours,

Alvin E. Oliver
Executive Vice President

TRANSPORTATION POLICY

Concern - The rail transportation policy of the Staggers Act, as presently interpreted and implemented by the ICC, has led to anticompetitive practices in rail freight.

Objective - Amend the act's rail transportation policy to reflect shipper concerns and to provide for a more balanced interpretation of current law by the ICC.

TITLE I - RAIL TRANSPORTATION POLICY

AMENDMENTS TO RAIL TRANSPORTATION POLICY

SEC. 101. Section 10101a of title 49, United States Code, is amended as follows:

(a) By amending clause (6) to read as follows:

"(6) to maintain reasonable rates and conditions for transportation, when the forces of competition have failed to produce such a result;"

(b) In clause (13) by striking out the word "unlawful" and substituting in lieu thereof the word "unreasonable," and

(c) By striking out "and" at the end of clause (14), changing the period at the end of clause (15) to a semicolon, adding the word "and" thereafter, and adding to said section the following paragraph:

"(16) to provide protection to shippers of grain, soybeans and sunflower seeds against unreasonable railroad rates and practices or those practices which are unreasonably discriminatory."

UNREASONABLENESS & DISCRIMINATION

Concern - To maintain the competitive relationships between competing shippers, a standard of reasonableness should be established to allow rail rates to be challenged at some level.

Objective - The elimination of market dominance standards as they apply to rate challenges, and the substitution of a standard of reasonableness.

STANDARDS FOR RAIL RATES ON GRAIN

SEC. 202. Chapter 107 of title 49, United States Code, is amended by inserting after section 10701a a new section as follows:

§ 10701b. Standards for rail rates on grain

(a) A rate established by rail carrier for the transportation of grain, soybeans and sunflower seeds shall be just and reasonable.

(b) In determining the reasonableness of rates for the transportation of grain, soybeans and sunflower seeds, the Commission shall give due consideration to the rail carrier's cost of providing the service and to the need of shippers and receivers of grain for rates reasonably related to rates on the same commodity to or from competing points.

(c) The provisions of § 10709 shall not apply to the determination of the reasonableness of rates on grain, soybeans and sunflower seeds under this section.

PROHIBITION AGAINST UNREASONABLE
DISCRIMINATION BY COMMON CARRIERS OF GRAIN

SEC. 212. Section 10741, United States Code, is amended by inserting at the end thereof the following new subsection:

(g) In interpreting subsection (b) of this section, the Commission shall apply such standards and principles as were applicable under section 3 and section 3 (1) of the Interstate Commerce Act prior to the enactment of Public Law 94-210.

JOINT RATES, THROUGH ROUTES AND DIVISIONS

Concern - The failure by carriers to maintain joint rates and routes threatens our integrated rail system and the ability of shippers to market their products unimpeded by artificial barriers.

Objective - The institution of compulsory joint rates and routes where none exist and, if necessary, the resolution of carrier disputes through a process of binding arbitration.

Section 10705, Title 49, United States Code, is amended by adding the following language at the conclusion thereof:

(i) Notwithstanding any other provisions of this subtitle, including the provisions of subsection (a)(1) of this section, commencing 90 days after enactment of this provision it shall be unlawful for any rail carrier which can practicably participate in a through rail route (except for a rail carrier providing only switching services with respect to any such through route) between any origin and destination to fail to provide and maintain at least one through route between such origin and destination, which destination is not served by such originating carrier, and to fail to provide and maintain joint classifications and joint rates with respect to any such through rail route. Notwithstanding any other provisions of this subtitle, including the provisions of paragraph (c) of this section, the Commission shall, upon its own initiative or upon complaint, prescribe such through routes, joint classifications, joint rates (including, when appropriate, maximum or

minimum rates or both), the division of joint rates, or the conditions under which those routes must be operated.

(1) Any rail carrier which can practicably participate in a through route or joint rate under this subsection may not refuse to do so on the grounds that it has been unable to agree upon a division of joint revenue. In the event that two or more rail carriers cannot agree on a division of revenue under joint rates established pursuant to this subsection, their exclusive remedy shall be as provided in this subsection.

(2) In the event an action is commenced under this subsection to compel the institution of a through route, joint classifications, or conditions of operation, such action shall be resolved through binding arbitration. Such arbitration shall be referred directly to the American Arbitration Association to be arbitrated under rules as the American Arbitration Association shall promulgate for this purpose subject to reasonable discovery as presently provided for in the Federal Rules of Civil Procedure. Arbitration awards made by the American Arbitration Association under this subsection shall not be reviewable by the Commission; nor shall such awards be reviewable in any court of competent jurisdiction except as provided for in the Federal Arbitration Act. Awards made by the American Arbitration Association under this subsection shall be enforceable as if such awards were entered by order of the Commission.

OPEN ACCESS

Concern - Shippers face anti-competitive blocking or rolling back of entry, and, therefore, do not have open access to switching at an economical cost.

Objective - In order to protect competition in all markets where more than one rail carrier is physically present, open access to switching at an economical cost must be the right of every shipper. (See modified § 11103 under "Entry" on page 7.)

ENTRY

Concern - Railroad mergers have resulted in a lessening of intramodal competition in the rail industry which, in turn, leads to inadequate protection of shippers.

Objective - To encourage new rail entry through the acquisition of trackage rights.

§ 11103. Use of transportation facilities

(a) The Interstate Commerce Commission must require transportation facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, to be used by another rail carrier or person proposing to become a rail carrier if the Commission finds that use to be practicable without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the carriers cannot agree, the Commission must establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a carrier may begin to use the facilities of another carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another carrier or a person proposing to become a rail carrier under this section is entitled to recover damages from the other carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

(c)(1) The Commission must require rail carriers to enter into switching agreements to provide open access within a terminal to all carriers serving that terminal, where it finds such agreements to be practicable, and where such agreements are necessary to provide competitive rail service. The carriers entering into such an agreement shall establish the conditions and compensation based on cost plus a reasonable profit applicable to such agreement, but, if the carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Commission must establish such conditions and compensation.

EXEMPTION

Concern - The ICC may consider exempting grain from regulation as it has already exempted boxcar traffic and export coal movements.

Objective - To expressly exclude grain, soybeans and sunflower seeds from the exemption provisions of the Staggers Act.

"Section 10505(g) of title 49, United States Code, is amended --

(1) by changing the period after the word 'subtitle' to a comma, and (2) by inserting after the word 'subtitle' the following language:

"or (3) with respect to grain, soybeans and sunflower seeds."

CONTRACT RATES

Concern - The ICC's implementation of the contract provision of Staggers does not permit full disclosure of all economic terms included in rail grain contracts and is contrary to the intent of Staggers.

Objective - To provide for the full disclosure of all economic terms of rail grain contracts as was the intent of Congress in the passage of the Staggers Act.

Section 10713(b) of title 49, United States Code is amended as follows:

Insert (1) after (b) and insert subsection (2).

(2)For contracts involving grain, soybeans, and sunflower seeds, the following provisions shall apply:

(i) The essential terms of the contract to be made available in general public tariff format shall include (A) the specific origin(s) or destination(s) served directly by the contracting carrier(s) in a given State, such origins or destinations may be identified by so stating; or, origins or destinations may be identified by reference to station numbers set forth in identified published tariffs; (B) duration of the contract, including provisions for optional extensions; (C) the

actual rates to be charged, including volume requirements, discounts, and penalties for non performance; (D) free time and demurrage agreements; (E) credit provisions; (F) car supply provisions and allowances; (G) renewal amendment provisions; and (H) any other provisions which might be construed by any reasonable person to involve the economic obligations of the contracting parties or the rights conferred on any shipper entitled to proceed under subsection (d)(2)(B) of this section. The Commission shall administer the provisions of this subsection in a manner designed to fully implement the rights conferred under said subsection.

(ii) Any amendment or supplement to a contract, including extensions of the contract, changes of origin or destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for purposes of this section.

(iii) Within 60 days of the effective date of this amendment, the Interstate Commerce Commission shall adopt rules to require that the essential terms of contracts, as defined herein, shall be made available to the general public

in tariff format, and the Commission shall adopt procedures to ensure that such essential terms are made available in tariff format to the general public for inspection no later than the second business day following the day on which such documents are filed with the Commission.

(iv) If a railroad fails to file the essential terms of a contract in tariff format as required herein or in violation of any rules which the Commission may prescribe therefor, and such violation is called to the railroad's attention by the Commission, the railroad shall have seven days in which to correct the violation. If it does not do so, the contract shall be deemed void ab initio and the railroad shall collect at its published rate. A correction made under this subsection shall automatically extend the time periods set forth in subsection (3) of this section by seven days.

DUAL ORIGINAL JURISDICTION

Concern - The absence of technical and administrative expertise within the ICC and the bias of certain commissioners has impeded the fair resolution of shipper/carrier disputes.

Objective - To provide for dual original jurisdiction in cases of shipper/carrier disputes so as to allow shippers the option of filing complaints either before the ICC or before an appropriate court, which would use arbitration procedures to resolve technical or economic issues.

Chapter 105, Section 10501, Title 49, United States Code, is amended by inserting after section 10501(a)(2) a new subsection as follows:

(a)(3) The Interstate Commerce Commission shall not have exclusive original jurisdiction regarding any issue arising under this Act, as amended. A complaint hereunder may be filed either before the Commission or before a district court, at the complainant's sole discretion, which district court shall be that required under 28 U.S.C. § 1391 or in the District of Columbia. In resolving any technical or economic issue(s), the court before which a complaint is filed may refer such issue(s) to a special master appointed by the court or to a special panel created for such purpose by the American Arbitration Association. Complainant(s) and defendant(s) shall each appoint one arbitrator to such special panel; and the two arbitrators so selected shall select a third

arbitrator for such special panel. No appeal from a decision of such arbitrators shall be allowed except as provided by the Federal Arbitration Act, 9 U.S.C. §§ 1-14.

RAILROAD ABANDONMENT

Concern - The potential abandonment by railroads of profitable branch line trackage.

Objective - The substitution of a reasonable cost standard for the ICC's present reliance on opportunity cost when acting upon abandonment applications.

Section 10904(d)(1) of title 49, United States Code, is amended by adding the following language:

"In meeting such burden, the applicant shall demonstrate, to the exclusion of a showing of lost opportunity costs, that the line sought to be abandoned is producing no lower a level of revenue than the revenue produced for that railroad(s) as a whole as determined by the Commission under Section 10904(a)(2). If the Commission has not made a revenue determination the applicant may request such a determination from the Commission, and the Commission shall provide it within 30 days of receiving a request therefore."

(2)

STATEMENT OF

OTTO E. GEHRT

FOR

THE KANSAS GRAIN AND FEED DEALERS ASSOCIATION

BEFORE THE

HOUSE AGRICULTURE AND LIVESTOCK COMMITTEE

AT TOPEKA, KANSAS
MARCH 21, 1984

Atch. 2

My name is Otto Gehrt. I am employed as General Traffic Manager for Garvey Elevators, Inc. at Hutchinson, Kansas. I am also a member of the transportation committee for The Kansas Grain and Feed Dealers Association, on whose behalf I appear here today.

The Staggers Act of 1980 has had a profound effect upon the grain producer and the grain trade since its' passage. The producer who has traditionally brought his grain to the local elevator, purchased his feed, seed, fertilizer, other products and services at that elevator, is now faced with a major decision. Should he expand his on-farm storage capacity to store his total production to be able to market his grain at the best price on a year around basis? In so doing, the country elevator may no longer be there to service the needs of that producer.

The Staggers Act has, through its' contract rate provisions, created a large variance in prices which elevators can offer the producer for his grain. A large elevator with the capability of loading unit-trains or multiple shipments may be in a position of offering a certain carrier a large volume of grain for a drastically reduced rate. The small country elevator who is unable to offer this large volume to that carrier cannot hope to receive that same rate. Since the grain is generally valued at the destination price, less freight and a reasonable return for handling, the price which the country elevator is able to offer the producer is going to be less than the price which can be offered by the large elevator who has been favored with a contract rate. Even if the smaller elevator had the means to expand his facility, there is no assurance that the same level of rates could be negotiated. Since the terms of contracts are secret and there is no effective means to determine what they are,

how can the elevator operator wishing to expand make a prudent decision? Full disclosure of the economic terms of a contract are necessary to allow the owners of grain elevators to make their own decision on the direction they will take, whether it be for expansion, liquidation, or somewhere in between.

Country elevators have served the producer well, offering a full line of agricultural services. Their "bread and butter" has been and continues to be the handling of grain. Without the ability to compete in the merchandising of grain, the end result could be the demise of the country elevator who also provides the other services such as storage, writing warehouse receipts, cleaning seed, etc.

Another area which needs to be addressed is market dominance, where an elevator or any other business is served by only one carrier. Trucks are not a viable competitor for long-haul grain traffic. Since only a few cents per bushel may determine which elevator receives a producers' grain the elevator who is located on only one rail line is really at the mercy of that line since there is no effective competition. This manager should be able to challenge the reasonableness of his rate.

Cancellation of joint line rates and routes is another area of concern which must be addressed. Much of the grain produced in Kansas, because of geographic location, must move over the lines of more than one railroad to reach its' destination. For example, wheat produced at a location served by one carrier only, destined to a purchaser at a location not served by that carrier, necessarily involves the movement by the second carrier. By cancellation of the joint rates and routes, that Kansas wheat has effectively been eliminated from that particular market.

The over-pricing of reciprocal switching by some lines has also stifled competition. The switching road can eliminate another road from effectively competing for the business which is generated on the switching road.

Adequate notice of rate changes, as written into the Staggers' Act, is almost meaning less. Tariffs are often not received for days after the rate has gone into effect. This needs to be corrected.

More protection needs to be given the small elevator on the branch line. With the emphasis today on contract rates with which this small elevator cannot compete, we may see many more abandonments in the near future.

In summary, our position at the Kansas Grain and Feed Dealers' Association is the same as that of the National Grain and Feed Association.

I thank you for the opportunity to appear before you and urge you to adopt Resolution SCR-1658.

OEG:vt

House Ag and Livestock Committee
March 21, 1984
Nancy E. Kantola, Executive Vice President
Kansas Cooperative Council

(3)

Mr. Chairman and Members of the Committee:

My name is Nancy Kantola. I am the Executive Vice President of the Kansas Co-op Council. Our association is comprised of over 230 marketing and supply, rural electric, telephone and credit cooperatives.

Since passage of the Staggers Rail Act of 1980, which deregulated railroads, many of our grain marketing member co-ops have struggled to remain competitive with larger terminal shippers. This has not been easy for them for reasons which I will outline.

Through interpretation by the Interstate Commerce Commission, knowledge of rates and parties involved in contracts has been lawfully withheld. Large terminals may be receiving highly preferential rates through contracts, which receive no public or competitor scrutiny. When this occurs, it becomes impossible for many of the smaller country elevators to establish competitive cash grain bids.

Railroads argue that terminals should receive better rates due to their ability to load quickly and efficiently the 54 to 108-car "unit trains," which in many cases have a single destination. Country elevators, do however, have the ability to contribute to efficiency and cost savings for the railroads which serve them.

The manager of our member co-op in Bird City recently completed an economic impact study to determine how the demise of country elevators would affect Northwest Kansas. If I may, I would like to share some of his findings.

Atch. 3

Nine counties, including Cheyenne, Rawlins, Thomas, Wallace, Decatur, Sheridan, Gove, Logan and Sherman were surveyed, where it was found that railroads and grain elevators together pay $1,395,000 annually in property taxes. The elevators' share of that amount is $738,000 or 53%. In that geographic area, terminal elevators are receiving rail rates estimated to be 25¢ per bushel less than those being offered to smaller grain shippers along branch lines of the same railroads. Owners and operators of these smaller facilities have worked tirelessly to negotiate better rates. They have developed plans for working together to load "unit trains" with single destinations, thereby saving time and costs for the railroads, only to receive no response or see preferential rates given to the terminals.

In addition to the forseeable loss of property tax revenue from small elevator collapse, there is also an increased cost of highway maintenance to consider.

Gene Pianalto, general manager of Four Circle Co-op in Bird City, points out that in the past year, Department of Transportation contracts for five major highways in and around the Colby area, have averaged $3,880/mile/year. An increased flow of heavy truck traffic brought on by the movement of grain to terminals is expected to increase highway maintenance costs two to three times this rate. It is estimated that to receive the higher prices offered by terminals, grain may be trucked an average of forty miles beyond local markets.

To summarize this situation producers in that area of the state may realize a 5¢ per bushel profit now on their grain, but after the closing of their local elevators, can expect a property tax shift equal to a 20¢ per bushel increase in production costs.

For many small shippers across the state, the deregulation of the nation's

railroads has been beneficial. Prior to Staggers, transportation rates over $1.00 per bushel were not uncommon. Now, rates in the mid-70¢ range can be successfully negotiated.

I urge your support of SCR 1658, because we believe it to be a necessary "first step" in correcting and clarifying an issue that must be dealt with for the sake of the country elevator and producers.

Thank you for your time. I would be happy to respond to questions.

State of Kansas

JOHN CARLIN — Governor
MICHAEL LENNEN — Chairman
R. C. "PETE" LOUX — Commissioner
PHILLIP R. DICK — Commissioner
JUDITH A. Mc CONNELL — Executive Secretary
BRIAN J. MOLINE — General Counsel

State Corporation Commission

Fourth Floor, State Office Bldg.
Ph. 913/296-3355
TOPEKA, KANSAS 66612-1571

STATEMENT ON SCR 1658 PRESENTED BY THE STATE CORPORATION COMMISSION OF KANSAS ON MARCH 21, 1984 TO THE HOUSE COMMITTEE ON AGRICULTURE AND LIVESTOCK

(4)

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM BILL GREEN, ADMINISTRATOR OF THE TRANSPORTATION DIVISION OF THE STATE CORPORATION COMMISSION. I AM HERE TODAY REPRESENTING THE COMMISSION IN SUPPORT OF SCR 1658.

SINCE THE ENACTMENT OF THE STAGGERS RAIL ACT, THE COMMISSION HAS BEEN ATTEMPTING TO MEET THE REQUIREMENTS OF THE ACT IN ORDER TO RETAIN JURISDICTION OVER INTRASTATE RAIL RATES IN KANSAS. THE COMMISSION IS CURRENTLY PROVISIONALLY CERTIFIED BY THE INTERSTATE COMMERCE COMMISSION (ICC). THE COMMISSION HAS FILED REGULATIONS THIS LEGISLATIVE SESSION WHICH WILL BRING THE COMMISSION INTO COMPLIANCE WITH THE ACT AND RESULT IN GRANTING THE COMMISSION PERMANENT CERTIFICATION BY THE ICC UNDER THE STAGGERS RAIL ACT.

ONE OF THE CONDITIONS REQUIRED UNDER THE STAGGERS RAIL ACT IS THAT THE RAILROAD MUST FILE WITH THE COMMISSION THE SPECIFIC TERMS OF THE CONTRACT AS WELL AS A SUMMARY OF THE CONTRACT. THE COMMISSION, HOWEVER, CANNOT UNDER THE ACT, MAKE THE SPECIFIC CONDITIONS OF THE CONTRACT PUBLIC.

Atch. 4

THE COMMISSION, SINCE THE FILING OF THE FIRST RAIL CONTRACT RATE, HAS EXPRESSED ITS DISPLEASURE WITH THE INABILITY OF THE COMMISSION TO MAKE CONTRACT RATES PUBLIC.

IF AT THIS TIME YOU HAVE ANY QUESTIONS, I WILL ATTEMPT TO ANSWER THEM.

PAS

Mr. Chairman, and Members of the Committee: (5)

This statement is rendered on behalf of the Independent Salt Company, P.O. Box 35, Kanopolis, KS. 67454. I am the manager and I have been handling the distribution, sales and traffic, for this company for the past 30 years. I am familiar with the shipping problems.

We are a small Kansas business, producing and shipping rock salt from Kanopolis, Ellsworth County, Kansas, since 1915. We do ship commercial and agriculture salt by both rail and truck, but are basically a rail oriented plant and operate most efficiently with 75% rail shipments and 25% truck shipments.

Inequities and inefficiencies that were developed in the published rate structure, prior to the Staggers Act, created conditions that caused our traffic flow to reverse, to where we are now shipping over 60% truck. We have some hope that proper utilization of the freedom provided by the Staggers act may partially restore our much needed rail traffic.

We are a small Kansas shipper, competing with major producers and conglomerates such as Morton Thiokol, Cargill, International, Domtar, Carey (Canadian Pacific), American (Cudahay) and foreign imports. All have a great deal more political and economic clout than we do. We do understand and sympathize with the small Kansas shippers supporting this resolution.

We completely disagree with their proposed solution. We feel that the provisions of the Staggers Act provides us with tools to better compete in the land of giants. I feel that if more shippers, and for that matter more rail carriers, spent more time trying to utilize the advantages provided by this act, rather than concentrating on the disadvantages, viable and more nearly equal rates and service could and would be provided.

Anyone that has tried to implement rate reductions, prevent rate increases, or establish any special services or guarantees, knows that the formidable opposition that can be generated by competitors, can and has created gross inequities in the published tariffs. The tremendous pressure that major shippers could put on rate committees had a very adverse effect on most of the proposals presented by small shippers. The confidentiality provided in the Staggers Act allows rail carriers to provide equal, or even better contracts to small shippers, without the constant concern of economic reprisals from major and more diversified shippers.

Att. 5

I have found that the carriers are now much more receptive to considering rate levels and service action to protect even small moves against loss to other carriers, that they were when full public disclosure of all levels of rates and service was required. I really believe the small shipper can now negotiate into a much better competitive position that they could before.

Full disclosure of all economic terms of rail contracts could destroy the three years of negotiating and facility installations, those of us who are trying to use this tool, have accomplished. It would also be in even more conflict with the totally deregulated truck movement of our agriculture shipments. We are now in the position of having identical product require regulated motor carriers when moving to commercial accounts and move by totally deregulated carrier when moving as feed ingredient. Mixed usage loads can be a nightmere. We certainly do not need similiar conditions in our rail shipments.

I cannot believe "market dominance" is a significant problem in todays truck and barge competitive environment.

There is a political mandate to remove as much government as possible from the market place. Government or public dictation of how and where a private business should operate, regardless of economic conditions, can no longer be accepted. In this case, any mandatory requirement that may nesessiate additional "make up" rates to cover losses, create an additional form of taxation or subsidy that other shippers cannot afford.

I do agree that it is essential to have better notice of general rate increases. With proper reaction from the carriers, this can be handled by individual contracts or shipping agreements, and or a reasonable time provided by ICC rule.

It is more important to a majority of the shipping public, including small Kansas shippers, to keep the rail carriers viable and able to compete, than it is to try to continue the methods and requirements that caused widespread equipment shortages, service failures, rate inequities and bankruptcies.

Thank you for allowing me to present my views in support of the Staggers Act and to record that all small Kansas shippers are not in accord with the proposed resolution.

INDEPENDENT SALT COMPANY

M. C. Keener, Manager

Mr. Chairman, and Committee Members:

(6)

Commercial grain handling in Kansas and in the United States has been a static art for eighty years or more. There was some simple arithmetic progression of scale when wagons changed into trucks and later with the conversion from box cars to hopper cars of about a decade ago. Basic grain elevator design remained essentially unchanged, though construction materials shifted from metal clad wood to concrete thirty or forty years ago. Conceptionally, the business remained unchanged.

A perceptible evolution is now pushing the industry into a new and different era, and it is coming from multiple directions:

1. Mechanical and electronic developments which make grain handling safe and more efficient.

2. The adoption of economies of scale which result in lower unit operating costs and more money paid to farmers for their grain.

3. The conceptual alterations made by the industry which immediately flow from adopting the first two items above.

4. A next and new generation of ideas and practices which logically flow from embracing the first three items listed. Some of these new ideas and practices dovetail into grain transportation - railroads and how they move grain.

Atch. 6

Grain rate contracts may quite accurately be described as the next logical progression in the line of single box car shipments changing to single hopper car shipments changing to multi-car shipments changing to 54, 75 or 120 car unit train shipments.

The truth is that the farmer in his production efforts adopted technology, adopted economies of scale and embraced new concepts before the rest of us did. Railroads may have known how to do some things better but couldn't because of over regulation. Many of the congestion and transportation problems associated with grain movements in the 1970's were visible manifestations of the fact that farmers were better at their job than the rest of us in the marketing chain were at ours. So the grain handling and grain transportation industries have some catching up to do. It is needed, it is warranted and it is past time. Efforts to do so should be applauded - not hamstrung.

Dr. Orlo Sorenson, well known agricultural economist from Kansas State University, recently published a work paper on the Staggers Act in which he said:

> "In summary, the evidence that I see indicates that the Staggers Act has contributed to an environment for innovation in rail transportation of grain. The whole system has become much more flexible and more able to respond to market conditions. As a result transport rates have been reduced and this has benefited Kansas producers. Different economic conditions may modify the relative benefits accruing to farmers, shippers, and carriers from time to time as short run demand and supply conditions change but, this is to be

expected in a market economy. If artificial competitive restrictions do not emerge this should not be of great concern."

In fairness to Dr. Sorenson I should also add that I know he continues to study rate contracts and that he has some concerns about them. We think it wise that the jury remains out on these issues until some new and open minded research is undertaken by institutions like Kansas State University to quantify the benefits to farmers which occur when grain handlers and railroads adopt those new techniques and concepts of which I spoke earlier. I know of one such study already underway at Iowa State University and I know that work is already being done at K-State by Dr. Sorenson and his staff. We should remember that in these matters it is for the farmer that we all work - you folks, grain handlers, and the railroads. The focus should be on the farmer.

Lincoln Grain recently combined all four of the new technical and conceptual elements previously mentioned into a new grain facility at Colby, Kansas. If somebody wants to change the rules, we are quite prepared to let the farmer choose, to let the farmer vote his pocketbook.

My associate, Mr. Dave Bastress, as our Vice President of Transportation, is in almost daily operational contact with all of the railroads which traverse or connect the State of Kansas. In this capacity he is certainly qualified to make a few comments about a little recognized

aspect of grain rate contracts and the Staggers Act. His comments follow.

Grain handlers, perhaps naturally so, appear to take the Staggers Act and grain contracts personally. In all of the meetings, hearings and testimony their expressed concerns can be quickly catagorized as "I worry more about what some competitor is doing or might do than anything else. Therefore I want to change the rules so that nobody can compete better than I can."

But, in their wisdom, the U.S. Congress had something more in mind with the Staggers Act than one remote grain company competing with another. So does the ICC. A major thrust behind Staggers is to make the railroads compete with each other. Under old ICC regulations, they did not always do so. Prior to Staggers and contracts, through their rate bureaus and published tariffs, there was what could be called open, condoned collusion. Railroad "A" would establish a rate at point "X" and railroad "B" would then put in a rate at point "Y" fifteen miles away that was just enough to comfortably divide the territory. Nobody's rate was lower than it had to be. Efficiency did not count for anything. There was no give and take, no flexibility. In a state, like Kansas, where there are five major railroads, where they often run parallel to each other just a few miles apart and where they bisect each other or compete

head to head in a number of places. This made for a very comfortable rate environment for the railroads.

It is not anymore. Post Staggers, every railroad is attempting to draw traffic to their line. Every railroad has to and does consider, to the best of their ability, what other railroads are doing or might do. Because of confidential contracts they can never be sure. They are the ones who are really competing. Confidential contracts keep railroads on their best behavior with the result that every railroad must and does keep their best grain rates forward at every location every day. The fact that farmers are mobile in their grain deliveries and can find and deliver to the best market on any given day is part of this "keep them honest" equation.

We calculate that since the Staggers Act, the average single car wheat rate across the entire state of Kansas was down approximately 34% from what it was before. Staggers has also fostered new developments and economies of scale and which have lowered many effective rates even further. This is of incalculable benefit to Kansas farmers and grain consumers everywhere.

One can always say that Carter's grain embargo or a recession or anything else might have had something to do with these rate improvements. Maybe they did. But so did Staggers, so do confidential contracts and there is no doubt

about it. The U.S. Congress and the ICC are not doing all that badly.

There will probably always be some grain handler somewhere who prefers less than full competition. Maybe there are even some railroads who would too. But the railroad competition which results from the Staggers Act in its present form carries a broad public and farmer benefit. This broad benefit should not be obscured or neglected when measuring any narrow aspects of Staggers.

Mr. Bastress and I had the privilege not long ago of participating in a debate on the Staggers Rail Act before Ag Economists from the principal land grant colleges across the grain belt. A major grain company was opposed to about the same Staggers Act items that you have in the resolution before you. Their representative spoke for twenty-five or thirty minutes on his company's particular conception of how the future ought to be. But he did not mention farmers one single time. We took the other side in this debate attempting to focus on farmers.

We also recently testified in Washington before the House Committee on Energy and Transportation of the United States Congress, chaired by Congressman Florio of New Jersey on these same Staggers Act issues. I would like to read into your record our brief statement which is part of the Congressional record.

"Mr. Florio, Mr. Cartmill.
Statement of Robert Cartmill

Mr. Cartmill, Mr. Chairman, I appreciate the opportunity to submit our written testimony which we have already done, and we will stand on that testimony as submitted with just a few extra comments. I am here today on my own. I speak only for myself and for Lincoln Grain, the company I represent. Our company is, though, simultaneously a member of both the National Grain and Feed Association and the Kansas Grain and Feed Association. We value our memberships in these groups primarily because they are broad enough to accommodate some contrasting views. And that is the job we want to do today, to present a contrasting view.

Mr. Florio. To both the previous positions?

Mr. Cartmill. Yes, sir. While we respect what these gentlemen have said or might say, a contrasting view is important. While many of us can nitpick the Staggers Act or how it is being implemented, we perceive and see a greater good taking place because of the Staggers Act out in rural America. This is because of and directly attributable to the Act. Grain handlers now see more incentives to improve their facilities, to become more efficient, to mesh gears better with the grain railroads, to adopt economies of scale. This combined result means lower handling and transportation costs for the farmer's product, which means increased value and higher prices paid to farmers.

I would give you one example. Because of the Staggers Act our company felt that it made economic sense to build two new grain elevators, state of the art, during the past 18 months. One of them happens to be in Northwest Kansas, where we load 75 car train loads at the rate of one car every 7 minutes. We employ contract rates and every possible efficiency we can bring to bear. Farmers come from 75 to 80 miles away to market their wheat. Just 2 days ago I was in Colby, Kansas. I met with the Mayor of Colby, who happens also to be a wheat farmer himself, and a number of other wheat farmers out there. According to them and not according to me, this new grain elevator is generally credited with raising

the price of wheat in Thomas County, Kansas by 25 cents a bushel. Thomas County, Kansas normally produces about 8 million bushels of wheat every year. This year happened to be a bumper crop and they raised 10. That comes out somewhere around $2 million, $2-1/2 million extra farm income in that one farm county. This elevator serves 8 other counties besides. The Mayor also talked about the ripple effect of this additional farm income passing through his community, and I will let you make that multiplication. It would be fair for me to say now that if Mayor Jim Kriss of Colby, Kansas were here today, his message to you and to this Committee would probably be please do not take any backward steps with the Staggers Act.

Thank you, sir."

We commend the Committee for looking deeper into these matters. Given the resolution you have before you, we would urge that you allow time for facts to emerge. That you harvest the facts and then go where the facts dictate.

We would doubt that it would be the intention of this body, or any government agency, to announce through a resolution such as you have before you that new mechanics and technology are okay but that the next step, economy of scale, is only maybe okay. Or worse yet, announce that other new and more efficient concepts are out of bounds even though they benefit farmers.

LINCOLN GRAIN
Robert S. Cartmill

Statement of
Brian G. McDonald
Market Manager - Food Grains
Union Pacific System

(7)

Good morning. Mr. Chairman and members of the Committee, my name is Brian McDonald and I am Market Manager of Food Grains for Union Pacific System. I am appearing today to present the Kansas Railroads' views on the Staggers Rail Act.

America's rail industry, like the rest of the nation's economy, is slowly recovering from the 1981-82 recession. Believe me, those were tough times for the railroads. Over a two-year period, rail carloadings fell 18 percent nationwide. Even now, carloadings are below the 1980 level.

What saw the railroads through the recession was the Staggers Rail Act. The ratemaking and service freedoms of the Act have enabled carriers to respond more quickly and effectively in the marketplace. In addition, carriers have been able to compete more successfuly with truck and barge lines to recapture market share. <u>What's more important, rail rates overall have declined since the Staggers Act was passed--not increased</u>.

Attach. 7

Unlike the 1970's, there have been no major railroad bankruptcies. Even Conrail is now earning a profit and has several prospective buyers. Nevertheless, the railroad industry continues to earn only a marginal return on investment. The railroads' rate of return--only 2.1% in 1982--is not adequate to ensure long-term profitability and continued investment in rail operations. Inadequate railroad revenues explain at least in part recent investments by CSX and Burlington Northern in non-rail companies.

If the Staggers Act is left in place, the railroads are confident that earnings will improve. We believe that as business comes back to the railroads, return on investment will rise, and shippers generally will benefit from lower rates and better service.

Amending the Act as advocated by Concurrent Resolution No. 1658 would return the railroads to oppressive ICC regulation. Market share would fall since carriers would not be allowed to compete freely in the marketplace. Although rates would be more uniform, the rate structure as a whole would rise since there would be fewer shipments to cover operating expenses.

Even selective changes to the Act are premature. On the one hand, things are just beginning to settle down from the recession. On the other, ICC implementation of many of the Act's provisions is not complete. The railroads, our shippers and the Commission all need more experi-

ence with deregulation before a decision is made to scrap the Staggers Act.

Contracts

A good example of the need to hold off action on Staggers is contract rate disclosure. We recognize that information revealed in contract summaries may not be sufficient for grain shippers to determine whether there are adequate grounds for filing a complaint.

Last November, the Second Circuit Court of Appeals struck down the Commission's test for access to contract information as too restrictive. The Court's decision found that discovery can be denied a party having standing to challenge a contract only if the Commission determines the contract in question does not affect the complainant. Because of this ruling, the ICC must come up with more lenient disclosure regulations. We believe that the new rules will satisfy the needs of both railroads and shippers by balancing greater access to contract information with safeguards to protect contract confidentiality. Legislation could not produce such a mutually favorable result.

We would note that that enactment of the proposal advanced by the concurrent resolution has serious drawbacks. Mandatory disclosure of all contract terms would effectively put an end to contract ratemaking. Since contract agreements would be public information, there would be little, if any, difference between contract rates and published tariffs.

Railroads would be reluctant to enter into contracts providing rate and service concessions since other railroads, and truck and barge competitors would be quick to match rates. Pressure from other shippers would be intense. Why would any business put an innovative price/service package together if it would simply drive down the whole rate structure? Shippers would likewise be reluctant to enter into binding contract agreements since they would be able to get the same terms without contract obligations.

Full disclosure would also place railroads at a competitive disadvantage with motor and water carriers. Our competitors have long held contract authority and have never been required to disclose contract terms.

Rate Reasonableness

Maximum rate regulation, the second issue addressed by the concurrent resolution, is a particularly controversial area of regulatory reform.

As with contract rates, we believe legislative action is premature. ICC guidelines for coal rates are only proposed rules and not final regulations. Since the Commission has been struggling with the coal rate issue for nine years during which a variety of proposals have been advanced, it is doubtful that the current proposal will be the final word on maximum ratemaking. Further, the Commission has made no determination that the coal rate guidelines should apply to commodities other than coal.

There are important benefits from the flexibility afforded by the Staggers Act, as well as the Commission's realization that differential pricing is key to railroad revenue adequacy. Carriers must be allowed to base rates on the demands of the marketplace. This is to the benefit of both the railroads and rail shippers because, as I mentioned earlier, the railroads can then attract new shippers and keep rates on all traffic down.

Differential pricing is especially important to Kansas grain shippers. The average revenue/variable cost ratio on Kansas grain is below both the threshold for ICC review and the level at which carriers recover their full fixed and variable costs of providing the service. To the extent that rates on other commodities above the threshold are forced down by new regulation, Kansas grain shippers would have to pay more to move their grain by rail, or switch to truck or barge service. Coal shippers would also suffer since even under a cost-based pricing scenario, traffic diversion and a smaller traffic base would force coal rates up.

We do not believe that the potential abuses cited by shippers will occur. Rates as a whole have declined since the Staggers Act was passed, and coal rates have increased by only 0.3% per year in real terms.

Over the past three years, it has been the marketplace rather than ICC regulation that has prevented sharp

rate increases. We do not believe that heavy-handed regulation should be reimposed.

Joint Rates/Reciprocal Switching

The proposals as to joint rates and reciprocal switching made in the concurrent resolution would cause tremendous problems for all railroads. Mandatory joint rates wherever lines intersect and join are frankly impossible. One of the pro-shipper provisions of the Staggers Act was the elimination of antitrust immunity for railroads to collectively set single and joint line rates. The purpose of the provision was to increase rail-to-rail competition. Its effect is that carriers must negotiate each rate individually with their connections. Obviously, as the number of rates increases, so does the burden of negotiating rates. Mandatory joint rates wherever carriers intersect would literally add millions of new rates, each of which would have to be set individually by the participating carriers. It would take months to quote a shipper a rate, by which time the traffic would be long gone. We feel the resolution's proposal is totally unworkable.

Joint rate and route closures are best dealt with by the railroads themselves. The massive cancellations are largely over now and carriers are beginning to sit down at the bargaining table to work out joint rate agreements. Union Pacific and Southern Pacific, for example, have negotiated an arrangement whereby routes and gateways first

closed by SP will be reopened. Negotiations with other carriers are underway.

Providing additional rail carriers entry of to lines owned by a single railroad would create an operating nightmare. Carriers would not only have to take care of their own trains but those of their competitors. Pricing and accounting for trackage rights operations would also be a tremendous undertaking. And there would be labor problems.

More importantly, extensive trackage rights would be paramount to confiscating private property. Each carrier maintains and pays taxes on its right of way. It has incentives to invest in its system to serve its shippers and to attract new business -- incentives which trackage rights would destroy. We can only see a system of trackage rights leading ultimately to a nationalized, taxpayer-financed rail system.

Shipper concerns about reciprocal switching should be alleviated by the recent Delaware & Hudson ICC decision in which the Commission indicates that it will grant requests for preservation or establishment of reasonable reciprocal switching arrangements. With regard to increases in reciprocal switching charges, carriers have been trying to recover a greater share of switching expenses. For years, railroads have absorbed switching costs and lost money; now carriers are trying to get rates up so that they can at least break even on this traffic.

Intermodal Competition

One of the railroads' chief objectives when the Staggers Act was before Congress was to secure provisions which would allow carriers to compete more effectively with truck and barge lines. Rail shippers wholeheartedly supported our efforts.

Two of the most important changes were the establishment of the jurisdictional threshold and authority to enter into contract rate agreements. Both removed segments of traffic from ICC regulation. Through contracts, carriers are able to offer rate and service incentives on truck and barge-competitive freight in exchange for a commitment to ship by rail. The jurisdictional threshold, in conjunction with a ten day reduction in the notice period for rate changes, enables carriers to respond more quickly to their truck and barge competitors.

Despite the change in the notice period, the railroads remain at a competitive disadvantage. Railroads must still give 20 days' notice of rate increases and 10 days' notice of rate decreases. Motor contract carriers and unregulated motor and water carriers, our principal competitors, do not have to provide any notice of rate changes. Further, the Commission has proposed reducing the notice period for motor common carriers to five days for rate increases and one day for new rates and rate decreases. Our notice period, assailed as too short in the concurrent reso-

lution, is in fact too long to permit pure intermodal competition.

The rail industry is presently permitted to implement rate increases to recoup inflationary cost increases on one day's notice. Due to the concerns of shippers, however, the Commission is presently considering increasing the notice period to ten days. Again, the Commission is addressing, not ignoring, the views of rail shippers.

Grain and Oilseeds Exemption

The concurrent resolution advocates restricting the Commission's exemption powers by prohibiting the ICC from deregulating grain and oilseeds. The railroads have a number of concerns about such a prohibition.

Restricting Commission authority to exempt grain would encourage other interest groups to seek similar limitations on other commodities. Such restrictions could make the ICC's exemption authority meaningless. In addition, since neither the Commission nor the railroads have given any indication that they are in favor of such an exemption, we do feel a prohibition would serve any purpose. Most rates for grain and oilseeds fall well below the jurisdictional threshold and are thus already free from ICC rate regulation.

Shipper-Owned and Leased Equipment

Point eight of the concurrent resolution addresses problems caused not by the Staggers Rail Act but by the

1981-82 recession. Since 1933, the Commission has held that carrier-owned equipment has loading priority over shipper-owned cars since railroads have a common carrier obligation to invest in and supply the equipment necessary to move the traffic they hold themselves out to carry. Like other issues addressed by the resolution, disputes about use and compensation for shipper-owned and leased equipment are being or have already been resolved outside of the legislative arena.

In the 1970's, some shippers invested in rail cars to ensure equipment would be available when they needed it. The railroads were faced with a brief, unexpected upswing in demand for some types of equipment, especially covered hoppers. Beginning in 1981, however, carriers were faced with tremendous car surpluses. Private cars became unattractive both because of the car surplus and because compensation rates for shipper owned or lease cars rose dramatically. Carriers, as authorized by the Commission, loaded their own equipment before using shipper-owned cars.

Shipper groups upset with the railroads' practice filed complaints with the Commission about both use and compensation for private equipment. These complaints generated negotiations between shippers and the railroads and have produced an interim agreement on the compensation issue for tank cars and boxcars. A similar agreement is expected shortly for covered hoppers. Further, the Commission has

stated its intention to initiate a rulemaking proceeding to devise a new formula for private car compensation for the long term.

Litigation with respect to loading private cars has found that carriers may by contractual agreement waive their right to load their own equipment before that of shippers. What this will likely mean for the future is that before shippers invest in equipment, car loading agreements will be negotiated with carriers.

New legislation to deal with these problems would muddy the waters just as the disputes are being cleared up. No statutory compensation and use system is needed.

Abandonments

On the last issue addressed by the resolution, the railroads believe that a return on investment standard for abandonments would be unfairly restrictive. Were the railroads now earning adequate revenues, this proposal would not be so serious. But with a return of only 2.1 percent, this restriction would in fact inhibit the rail industry's ability to reach the revenue adequacy benchmark for long-term viability.

A number of criteria go into a determination that a branch line should be abandoned. Aside from return on investment is consideration of the level of capital spending needed to keep the line in operation. Under the resolution's proposal, a branch line with a rate of return above that for

the railroad as a whole could not be abandoned even if the trackage required total reconstruction in six months. In order to abandon the line, the railroad would first have to rehabilitate the trackage so that the line's return on investment would fall below that of the entire railroad. This would not make any sense.

Carriers will not abandon truly profitable lines. It is not our interest. However, it is imperative that the railroads be allowed flexibility to rationalize their systems and shed unprofitable trackage.

Conclusion

The railroads hope that the Committee will think again about the need for the concurrent resolution. Shippers' concerns are receiving the attention and consideration of both the Interstate Commerce Commission and the rail carriers. No legislative solutions are needed.

It is important to remember that the Staggers Act was a compromise. The legislation gave the railroads new freedoms but balanced these with favorable changes for shippers.

Thank you. I would be happy to answer any questions you may have.