Approved Fred A Kerr 2/10/84
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS.

The meeting was called to order by Senator Fred Kerr, Chairperson at 10:00 a.m./~~p.m.~~ on Tuesday, February 7, 1984, 19__ in room 123-S of the Capitol.

All members were present ~~except:~~

Committee staff present: Raney Gilliland, Research Department

Conferees appearing before the committee:

John Scheirman, Chief of the Office of Rail Programs, KDOT
Phillip Corby, Traffic Manager, Evans Grain Company, Salina
Duane Morford, General Manager, Lorraine Grain, Fuel & Stock Co., Lorraine, Kansas
Joseph B. Gregg, Chmn, Legislative Committee, KC Board of Trade
Edward Greene, General Manager, Dodge City Co-op Exchange
Tom Tunnell, Exec. Vice President, Ks. Grain & Feed Dealers Assn. Hutchinson, Kansas
John Blythe, Kansas Farm Bureau
Gerald Riley, Kansas Wheatgrowers Association

SCR 1658

Senator Kerr stated the committee would be hearing from the proponents of SCR 1658. He called on Senator Gannon who illustrated by a hypothetical map how elevators along railroad lines are situated in comparison to a subterminal and the effect of their being bypassed would have in the long run. Since the passage of the 1980 Staggers Act, truck traffic has increased and in time he fears local elevators will go out of business and some branch railroad lines will be abandoned.

Senator Kerr called attention to Attachment 1 from Senator Nancy Kassebaum.

Attachment 2 was presented by John Scheirman, Kansas Department of Transportation. It sets out major rail issues of vital concern to Kansas, one of which is the Staggers Act. The other issues are the Proposed Santa Fe/Southern Pacific Rail Merger; Branchline Abandonments; Local Rail Line Rehabilitation and the Mid States Port Authority. He stated "Governor Carlin has recommended that Congress exercise its oversight function and study the impact of contract rates and other aspects of the Staggers Act upon the grain-producing states. There is a need for more extensive disclosure of contract rate information, in order to permit small shippers to determine whether they are suffering unlawful discrimination at the hands of rail carriers. States should have a more meaningful role in intrastate rail regulation than current ICC policy has allowed..."

KDOT feels a deep sense of concern about the future of rail service in Kansas and its impact upon agriculture and upon rural Kansas.

Phillip Corby presented his testimony as contained in Attachment 3. He stated elevators are located on rail lines and depend on competitive rates and rail service to enable them to provide the various services. They support the requirement for full disclosure of economic terms of contracts. They believe the Act must be amended to clearly provide the rules in such a way as to preclude the Interstate Commerce Commission from abaondoning their duty to the shipping public.

Attachment 4 contains the testimony of Duane Morford. He stated last harvest he was forced to move some 150,000 bushels by truck simply because he could not get rail cars. This cost him an additional $12,000 to $13,500 in transportation costs. If they have to go 100% to truck traffic, it will be from 9 to 15¢ more per bushel transportation costs. He fears "by not maintaining the track, by giving poor service and not providing cars

ordered, a railroad can create a set of facts that make abandonment a self-fulfilling prophecy, and there is nothing the shipper can do about it."

Joseph Gregg stated the KC Board of Trade favors the elimination of contract rates and there should be posted rates (Note Attachment 5 and he stated further testimony could be found in Tom Tunnell's presentation before the Subcommittee of the U.S. Senate on Commerce, Science and Transportation on September 1, 1983. He stated all rates used to be published by zones--contract rates are totally secret. He feels if towns in Kansas lose their elevators it will become a great handicap.

Ed Green distributed Attachment 6 which sets out why he supports full disclosure of contract rates. He cited samples of not building/and building additional car loadouts. He feels the grain facilities need to be upgraded and they should not have to fight secret contract rates. He stated local elevators are often the largest payers of local taxes in small towns. "The advantage of contract rates will become the net savings of large companies of the bonuses for their managers. And this will be at the local community's expense."

Attachment 7 contains Tom Tunnell's presentation. He also called attention to his complete presentation before the US Senate Subcommittee on Commerce, Science and Transportation on September 1, 1983. Answering Senator Karr's inquiry as to the total miles of railroad abandoned, Mr. Tunnell stated he did not know, but that in the last two years more miles of rail were abandoned than in the previous last ten years. That in North Dakota the Burlington Northern was wholesale abandonment and they have a very serious problem.

Answering Senator Arasmith's inquiry as to how many elevators have closed the last two years, Mr. Tunnell stated perhaps none due exclusively to the Staggers Act but there has been a drastic decrease in their business.

In answer to Senator Reilly's inquiry as to what progress is being made, Mr. Tunnell referred to the September 1, 1983 presentation and that Senator Kassebaum has a bill pending requesting the publication of contract rates within 60 days.

John Blythe stated the Kansas Farm Bureau feels the Staggers Act should be amended to address the problems of the grain trade. He commended the Senate committee for recognizing there is a problem.

Gerald Riley stated the KWG have a resolution and it concurs with SCR 1658; they support these resolutions.

Bill Green, KCC, stated KCC supports SCR 1658. He stated the KCC in order to be certified cannot make contract rates public, but they could make a summary available. The KCC wants to maintain jurisdiction of intrastate rates. Texas has challenged the constitutionality of the Staggers Act.

The meeting was adjourned.

######

SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

10:00 a.m., Room 423-S — Tuesday, Feb 7, 1984 (Date)

NAME	ADDRESS	ORGANIZATION
Tom R. Tunnell	Hutchinson, Ks	Kans Grain & Feed Assn.
John G. Severe	Hutchinson Ks	Ks Grain & Feed Dealers Assn
Duane Harford	Lorraine Ks	Lorraine Grain Fuel & S[illegible]
John R. Scheirman	State Office Building 8th Floor	KDOT
[illegible]	Topeka	Ks. Co-op Council
[illegible] Rantola	Topeka	Ks Co-op Council
Edward Green	[illegible]	[illegible]
Harold Deardoff	Hutchinson	Garvey Elevators Inc.
Kermit Haegren	Hutchinson	Collingwood Grain Inc.
Robert Broyles	✓	✓ ✓
Gary [illegible]	Atchison Ks	Lincoln Grain Inc
Paul A. Dunbar	Topeka, Ks	UP System
Frank J. McBride	Salina, Ks	Evans Grain Co
[illegible] McBride	Salina, Ks	"
Richard D. [illegible]	Atchison, Ks	Atchison Co. F.U. [illegible] Assn.
Peggy Peden	Ulysses Ks.	Ulysses [illegible]
[illegible]	Ulysses [illegible]	Ulysses Co-op
T.R. Henrickson	[illegible]	[illegible] Grain Co Inc
Robert Quanz	Slade, Ks	Quanz Grain [illegible]
Robert [illegible]	[illegible]	[illegible]
Vernon Kirchhoff	Cedar, Ks	Kirchhoff Grain Co.
Norbert Gerstenkorn	Conway Springs, Ks	Farmers Co-op Grain
Dale Studebaker	Haven, Ks.	Farmers Coop Grain Co.
Anthony Bergkamp	Garden Plain Ks	Farmers Coop Elev. Co
Robert Read	Cherryvale	Cherryvale Grain Co
Jim Weber	Salina, Ks	Wright-Lorenz Grain

Don Epps Prescott Az KSFA

Mike Beam	Topeka	KLA
[illegible]	[illegible]	[illegible]
[illegible]	K[illegible]	[illegible]
[illegible]	[illegible]	
[illegible]	4800 Main St K.C, MO 64112	Kochel Inc.
K[illegible]	K[illegible]	[illegible] Inc.
Frank [illegible]	Jewell	Jewell Agri-Service
Jerry [illegible]	Bennington, Ks	Bennington Agri Service
[illegible]	[illegible] Solomon, Ks	Solomon [illegible]
Max [illegible]	Minneapolis	Minneapolis Agri-Center
R[illegible]	Ada, [illegible]	Ada Grain [illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	K[illegible]
[illegible]	Minneapolis[illegible]	[illegible]
J.J. Irlan[illegible]	[illegible]	SF[illegible] Inc
[illegible]	[illegible]	[illegible]
Gary P [illegible]	Topeka, Ks	[illegible] TRANS SERVICES
John Blythe	Manhattan	[illegible]
[illegible]	Topeka	SFTC
[illegible]	[illegible]	Sff
[illegible]	[illegible]	[illegible]
Ethan [illegible]	Omaha [illegible]	UPRR
[illegible]	Topeka K.	Kansas Farmer Magazine
[illegible]	[illegible]	[illegible]

Attachment 1 2/7/

KANSAS LEGISLATURE TESTIMON.
BY
SENATOR NANCY LANDON KASSEBAUM
(February 7, 1984)

I appreciate the opportunity to submit a few comments for the record of this hearing on the Staggers Act. The Kansas Legislature is to be commended for their attention to this serious matter. While the resolution under consideration does not have any binding effect, it will certainly have an impact at the national level. It is important that Washington know what those closest to the problem are thinking.

As a farm-state senator, I fully realize the vital role that transportation plays in the agricultural base of our economy. For most Midwestern grain producers, transportation means railroads. Certainly in Kansas, there is no economical alternative to the railroads for wheat farmers attempting to sell their grain on the national or world markets.

It was with this understanding of the "captive" nature of wheat transportation that I approached the debate on rail regulatory reform in the late '70s. That such reform was needed appeared undeniable. Our nation's railroads were withering away under a classic case of over-regulation. Revenue-deficient railroads were forced to allow their track to deteriorate into dangerous condition With such regulation prevailing, railroads found it impossible to attract the capital necessary to make needed improvements and to upgrade their fleets.

During the debate on what would eventually become the Staggers Act, I had one overriding goal--the railroads must remain common carriers. I believed, and continue to believe, that Congress should do nothing to allow the railroads to impair their common carrier obligation. At the heart of that obligation is the duty to serve all shippers on a non-discriminatory basis. Without such a duty, the high entry barriers present in the railroad industry would allow incumbent carriers to abuse their market power. I believe that this could be

Atch. 1

true even in the absence of what we now call "captive shippers."

One of the central features of the Staggers Act was the authority that the railroads gained to contract with shippers for transportation services. These contracts have served a valuable function in allowing shippers and railroads to tailor their arrangements to the mutual benefit of both. The contracting authority in Staggers was granted with two important qualifiers, however--

-Such contracts must not impair the line's common carrier obligation, and

-The contracts must be entered into on a non-discriminatory basis among shippers.

In order to ensure that these qualifications were being met, I worked hard in Staggers to require disclosure of the "essential terms" of such contracts. Without such disclosure, I felt that the anti-discriminatory provisions of Staggers would be useless.

Unfortunately, I believe that the ICC interpretation of the phrase "essential terms" ignores the full purpose of the disclosure requirement. The ICC currently requires only that the commodity, the railroad, and the length of the haul be disclosed. This presumably means that the ICC believes that the name of the other party and even the true rate set in the contract are non-essential terms! Such disclosure probably serves the purpose of ensuring the first qualifier is met--no impairment of common carrier obligation. It does nothing, however, to permit private enforcement of the duty to enter into these contracts on a non-discriminatory basis. Under present ICC requirements, a shipper cannot possibly know whether a contract even exists involving his competitor, let alone whether it is discriminatory in nature.

Last September, I held a hearing of the Surface Transportation Subcommittee of the Commerce Committee in Hutchinson, Kansas. The purpose of this hearing

was to assess the impact of Staggers on grain transportation in the Midwest. Evidence was presented at the hearing which confirmed some of my original fears about Staggers. It appears that railroad contracts with grain elevators are being entered into on a very uneven basis. As one might expect, such contracts appear to be concentrated among the large elevators and terminals, bypassing the small country elevator. It is not hard to imagine the distress that a preferential contract with a large competitor can inflict on a country elevator. By entering into a contract for a few cents per CWT less than the "posted" price, the large elevator can outbid its small competitor for wheat from local producers. The country elevator's business quickly evaporates. With the contract remaining "secret," the small elevator cannot determine what improvements to its loading facilities, or other steps, it could make inorder to get a similar rate from the railroad. Nor can the country elevator even mount an effective legal challenge to the contract on the grounds of its discriminatory nature.

Some may ask what difference it makes if the small country elevators are disadvantaged as long as the farmer receives a few more cents per bushel. Those of us who have grown up in the Midwest have a keen understanding of the pivotal role played by such elevators in the long trip from field to table. A wheat producer at my Hutchinson hearing summed it up quite well. "Who will mix my feed," he asked, "with the country elevator gone? Who will lend me the money to buy the fleet of trucks needed to reach the regional elevator or terminal? Where will I be able to buy, without making a day-long trek, the million-and-one items of hardware needed to keep my farm going? Finally, who will provide the short-term storage I need during harvest or when I want to wait for a little better price for my wheat?" In short, I think it is clear that we cannot allow the small country elevator to vanish from the farmbelt.

We will all suffer the consequences of its demise.

The railroads represented at my Hutchinson hearing stated that the current plight of the small elevators was simply a result of paying attention to the largest shippers first. The railroads would, they said, eventually get around to contracting with the small elevators. I am afraid that we simply cannot wait to see if this "trickle down" theory works. Consequently, I have introduced S 2137. This bill would require that rail transportation contracts be made public no later than 60 days after being entered into. It is my hope that such disclosure will put some teeth into the anti-discrimination provisions of Staggers.

I fully realize that my legislation is not a panacea. Small elevators will still have a hard time in bringing an action under Staggers, even with contract information. I also appreciate the chilling effect that this could have on contracting practices. We recognized that problem during enactment of Staggers. Congress clearly made the choice, however, that such a consideration was outweighed by the need to ensure that railroads remained common carriers. My legislation is designed to restore that original balance that Congress attempted to strike.

One last point bears mentioning in this area. The Second Circuit recently rendered a two-part decision on the ICC's contract disclosure rules. First, the Court said that the Commission acted within its powers in defining the phrase "essential terms." Second, the Court rejected the ICC's creation of a heavy burden before a litigant could compel full disclosure of a contract. The Court said that anyone with "standing" could compel such disclosure. It is now up to the ICC to define "standing." I certainly hope that the Commission acts in a responsible manner that recognizes the legitimate purpose of the contract disclosure provisions of Staggers.

I have touched on only one aspect of the Staggers Act in my comments. The other areas dealt with in the resolution before the legislature are equally serious. I am working with Senator Danforth on a legislative proposal that will address several problem spots in the rail area. The rail regulatory reform wrought by Staggers has benefited agricultural shippers in the Midwest by the creation of a healthy railroad industry. We must continually be on guard, however, for areas in which it may affect those without the financial clout to protect themselves. It would be a sad day if we wake up to find a commodity as precious as wheat in the hands of a few very large terminals connected to one or two railroads. We must continue to "fine tune" the Staggers Act to prevent such an occurrence.

Attachment 2, 2/7/84

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612

JOHN B. KEMP, Secretary of Transportation JOHN CARLIN, Governor

February 7, 1984

A Statement on Railroad Deregulation and
the Staggers Rail Act of 1980

Presented at the February 7, 1984 Meeting of
The Committee on Agriculture and Small Business

Kansas Senate

Mr. Chairman, Members of the Committee, I am John Scheirman, Chief of the Office of Rail Programs, Kansas Department of Transportation. This office is focusing extensive efforts on five major rail issues of vital concern to Kansas, one of which is the Staggers Act. The other four are:

1. Proposed Santa Fe/Southern Pacific Rail Merger. We intend to defend the interests of Kansas in this matter, which may include retaining existing rail service on branchlines and parallel mainlines; maintaining the quality of service to Kansas shippers; improving existing service through the development of shorter and more efficient routes to regions served by the two carriers; protecting the public investment in former Rock Island lines in Kansas that may be affected by the merger; ensuring that other railroads serving Kansas are treated fairly and that competition is not unreasonably curtailed; preventing adverse impacts upon employment levels in Kansas; and allowing the Santa Fe and Southern Pacific railroads a reasonable opportunity to rationalize and strengthen their operations without unduly harming the public.

2. Branchline Abandonments. Maintenance of efficient, reasonably priced transportation for agricultural products is an important goal in KDOT's overall transportation planning process for Kansas. Light density rail branchlines serving rural areas have traditionally played a key role in meeting that goal. We are studying the impact of branchline abandonments upon agriculture, small shippers, rural communities, and our system of roads and highways, and are looking for ways to preserve such service where it is determined to be essential.

3. Local Rail Line Rehabilitation. A valuable tool in the effort to maintain and upgrade rail service in Kansas has been the federal Local Rail Service Assistant program. In each of the past three years, Kansas has received an entitlement grant and administered a rail line rehabilitation project. These projects include the Missouri-Kansas-Texas Railroad line from Columbus to Galena; the Oklahoma-Kansas-Texas line from Wichita to Riverdale; the Mid States Port Authority line from Esbon to Clay Center, including new interchanges at Clifton and Courtland; and the 1984 project which has yet to be selected. In addition, Kansas is presently under consideration for a discretionary grant to extend the Mid States Port Authority rehabilitation project from Esbon to Prairie View.

Atch. 2

In the period since Kansas first became eligible for these funds, our annual allocation has declined from about $1.5 million dollars to about one-third of a million dollars. Unless Congress acts to appropriate additional funding, this program will be discontinued at the end of the current fiscal year. We are very concerned about the impact on Kansas if the program is discontinued and no alternative source of funding is developed. These projects to rehabilitate segments of the state's rail infrastructure have been an important component in our efforts to maintain essential rail service.

4. Mid States Port Authority. In addition to rehabilitation funding under the program I have just described, the Mid States Port Authority in northern Kansas has been the focus of other efforts by the Office of Rail Programs in recent years. As an active party in the Rock Island bankruptcy proceedings, we have supported this quasi-governmental entity consisting of fourteen Kansas counties in its negotiations to buy the line from Clay Center to Hallam, Nebraska and Limon, Colorado utilizing a loan from the Federal Railroad Administration and possibly a state loan guarantee. We expect to see these negotiations finalized within the coming two to three months, resulting in restoration of permanent rail service on a major segment of former Rock Island trackage in Kansas.

As I mentioned earlier, the fifth major issue we are currently addressing is the Staggers Act. We have studied issues relating to the Staggers Act, beginning in 1979, prior to its enactment, and more recently in preparation for the oversight hearing last September. We have provided policy recommendations on these issues for consideration in forums including the National Governors' Association, the American Association of State Highway and Transportation Officials, and the National Conference of State Railway Officials.

This major development in the deregulation of the rail industry is of particular interest to Kansas because of the importance that export of agricultural products and import of coal for use by electric utility consumers have in the state. I would like to direct the remainder of my remarks today to the impact of the Staggers Act upon the transportation of grain.

There needs to be a balance between the interests of small shippers, grain producers, and rural communities on one hand, and those of the rail carriers, motor carriers and large regional shippers who have benefitted from deregulation on the other hand. The grain industry needs reliable, efficient transportation at reasonable rates.

The trend toward regional subterminals encourages trucking of grain from increased distances and threatens the traditional system of small country elevators who utilize local rail service to serve grain producers. This places an added burden on taxpayers through the increased use of heavy trucks on highways and local roads. The State of Kansas has devoted great efforts in recent years to preserving local rail service, and we cannot allow a wholesale abandonment of the branchline rail system to occur.

Actions on issues such as market dominance, joint rates and routes, and reciprocal switching should be carefully considered in terms of the increased regulatory or operating burden which they may impose on rail carriers, as well as the benefits they may offer to shippers and other affected parties. In making these judgments, it is also important to be aware that not all railroads are

alike. Rail carriers serving Kansas include the OKT and the Mid States Port Authority, both of which were organized with local shipper, state and federal assistance to maintain essential service formerly provided by the bankrupt Rock Island. The impact upon marginal operations such as these should be given special consideration in weighing the merits of any further changes in regulation of rail carriers.

The Staggers Act of 1980 sought to balance these interests by freeing the rail carriers from unnecessarily burdensome regulation and encouraging innovation in the marketing of their services and greater efficiency in their methods of operation, while also providing safeguards for shippers by prohibiting discrimination and destructive competitive practices. Shippers were given the opportunity to protest against such practices, and essential terms of contract rates were to be disclosed to aid in spotting discrimination.

Unfortunately, it appears that the statutory scheme, as it has been implemented by the Interstate Commerce Commission, has not adequately protected shippers of agricultural commodities in Kansas. This situation has become a cause for concern.

There is a special relationship in Kansas between the grain industry and the railroads. Country elevators and rail branchlines are important components in that system. Rail line abandonments are increasing, and may result in loss of competition, increased freight rates, and economic harm to rural communities.

Governor Carlin has recommended that Congress exercise its oversight function and study the impact of contract rates and other aspects of the Staggers Act upon the grain-producing states. There is a need for more extensive disclosure of contract rate information, in order to permit small shippers to determine whether they are suffering unlawful discrimination at the hands of rail carriers. States should have a more meaningful role in intrastate rail regulation than current ICC policy has allowed. These two initiatives by Congress would set the stage for further scrutiny of existing practices in the rail industry, moving beyond the largely theoretical criticisms of the Staggers Act that have been heard to date. Finally, in these oversight activities, issues related to grain transportation should be coordinated with those involving coal, which is another issue of current national, as well as local, concern.

There are many competing interests involved in rail transportation, ranging from those of grain producers and dealers to those affecting the economic survival of the nation's rail system. It is clear that these issues are not one-sided. The intent of Congress in the passage of the Staggers Act was to assist in the refinancing and rehabilitation of the rail system and allow it to remain economically viable in the private sector while continuing to serve the needs of the public. In Kansas, we know from our experience with the Rock Island bankruptcy that it is possible to have too much regulation. Rail carriers in the 1970's were in need of greater economic freedom and more efficient methods of conducting business if they were to continue fulfilling their historic role as common carriers without requiring enormous longterm financial subsidies from the government.

We believe that the Staggers Act is achieving the goal of Congress to revitalize the rail industry. At the same time, however, Congress established an important standard by which the limits of deregulation were to be defined. In Section 3, subparagraph 3, under the heading of Goals, the Act reads, "to

provide a regulatory process that balances the needs of carriers, shippers, and the public." In evaluating whether the Staggers Act has been successful, whether it has been properly implemented by the ICC, and whether it currently represents good public policy, it is helpful to focus on the concept of a proper balancing of competing public interests, and to ask how such a balance can most effectively be achieved if it does not presently exist.

While additional adjustments in Staggers may be appropriate, it may be premature to call for a rollback of deregulation involving the imposition of substantial burdens upon the industry. We have heard the recent reports of financial wellbeing in the rail industry but are not convinced that a return to a pre-Staggers environment at this time could be accomplished without harming the public interest. Rather, it appears that a process of further study and fine-tuning of the existing regulatory framework could result in the balancing of interests that is the key to current national transportation policy.

We do not have the evidence to establish that the Staggers Act has been a major cause of the current problems, or to assess whether the harm to shippers and communities is outweighed by benefits to the national rail transportation system in terms of increased efficiency and financial viability. However, we do recognize that the contract rates provision of the Staggers Act poses a potential threat to small grain shippers in Kansas, and that some corrective action by Congress is needed in order to mitigate any harmful impact.

Governor Carlin's position calls for greater contract rate disclosure and cites a general need for corrective action to protect agricultural shippers. The current language of the Staggers Act at 49 U.S.C. 10713(b) provides for the Interstate Commerce Commission to "assure that the essential terms of the contract are available to the general public." A rational reading of these words leads to the conclusion that the essential terms of contracts must include the economic terms, and that the ICC has failed to carry out the intent of Congress on this issue.

In conclusion, we feel a deep sense of concern about the future of rail service in Kansas and its impact upon agriculture and upon rural Kansas. Contract rate disclosure and efforts to prevent discrimination against shippers are needed at a minimum. As Governor Carlin has testified and the Kansas Corporation Commission has recommended, greater state regulatory authority over intrastate shipments should also be restored.

Additional steps may be identified as appropriate in the future. We will continue to monitor the adjustments being made by the rail industry, shippers, and agriculture to the deregulated rail environment. In considering particular remedies to the problems we have discussed, we will keep in mind the benefits which have occurred in the area of rail transportation as a result of deregulation. We would be happy to assist the Committee in obtaining additional information on these issues.

Attachment 3, 2/7-8-84

Hearing

Before the

Senate Agricultural Committee

February 7 and 8, 1984

on a Resolution to Amend the

Staggers Rail Act of 1980

Statement

of

Phillip Corby

Chairman, Transportation Committee

Kansas Grain and Feed Dealers

Association

Atch. 3

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."

Attachment 4, 2/7/84

REFORM OF THE STAGGERS RAIL ACT OF 1980

HEARINGS

Before The

COMMITTEE ON AGRICULTURE & SMALL BUSINESS

KANSAS STATE SENATE

On

KANSAS SENATE CONCURRENT RESOLUTION

On

Reform of the Staggers Rail Act of 1980

February 7, 1984

Topeka, Kansas

Statement of

DUANE MORFORD

on Behalf of

LORRAINE GRAIN, FUEL AND STOCK CO., a cooperative association, and KANSAS GRAIN AND FEED DEALERS ASSOCIATION

Atch. 4

STATEMENT OF DUANE MORFORD

on Behalf of

LORRAINE GRAIN, FUEL AND STOCK CO., a cooperative association, and KANSAS GRAIN AND FEED DEALERS ASSOCIATION

SENATOR KERR AND MEMBERS OF THE COMMITTEE:

My name is Duane Morford. I have been involved in agri-business for 15 years, the last seven and one-half of which I have spent as General Manager of The Lorraine Grain, Fuel and Stock Co. at Lorraine, Kansas. I am also a member of the Kansas Grain and Feed Dealers Association Transportation Committee. The Lorraine Grain, Fuel and Stock Company is a Kansas Cooperative Association which now has approximately 650 members. The association was formed in 1904 and for almost 80 years has served the farmer members in our community. My cooperative members own two facilities: a 660,000 bushel elevator at Lorraine, in Ellsworth County, Kansas; and a 200,000 bushel facility at Geneseo, located in Rice County, Kansas. The Lorraine facility is served by both the Santa Fe and the Burlington Northern, and is located at the head of the Galatia branch line of the Santa Fe. The Geneseo facility is located on the main line of the Missouri-Pacific Railroad.

We run a full service country elevator operation. We handle grain, feed, liquid feed, seed, petroleum products, bulk-liquid fertilizer, anhydrous ammonia, salt, chemicals and general merchandise. The bread and butter of our operation is a grain handling and storage business. Without this capability, I do not think we could remain in business.

I want to focus my remarks on section 10 of the proposed resolution, which concerns abandonment of branch lines.

I am concerned about the relative ease of which a railroad can abandon an agricultural branch line, even though a line may be profitable and abandonment is not in the public interest. I understand that the Interstate Commerce Commission has only recently denied its first abandonment application in the two years that have passed since the Staggers Act. With this one exception, the Commission has rubber stamped every application for abandonment.

Presently the Burlington Northern, which operates the line serving my facility at Lorraine, has listed our line which runs from Buhler to Ellsworth for abandonment. Burlington Northern marketing representatives have told me that it has been listed as Category 1, which I understand means that the line could be abandoned within the next year. An abandonment by the Burlington Northern would also cut off the Lorraine to Galatia branch line of the Santa Fe Railroad. Currently, the Santa Fe is operating over the BN line from Lyons north to Lorraine to serve the facilities located on the branch line. If abandonment is permitted, and the Santa Fe does not buy the access line, all of the shippers located on the branch line will be deprived of rail freight service and will face severe competitive disadvantages.

15 elevators affected also Frederick Lyons

There are eight agricultural shippers located on this branch line, including my facility at Lorraine. Other facilities on the line, from east to west are: Holyrood, Farhman, Hitchmann, Beaver, Susank, Stickney and Galatia. These facilities have a combined storage capacity of almost four million bushels of grain, and their facilities in the aggregate represent an original investment of approximately $5.3 million, which have a replacement value of about $8 million. Historically, the elevators located on this line ship 3.6 million bushels of grain annually, which represents 1,090 carloads. All of this grain can move and should move by rail. However, whether it does or not depends on whether the railroad wants the traffic.

We are concerned that railroads are using contract rates to draw grain into terminal facilities and use concurrent drop in carloadings out of branch lines to justify abandonment of their common carrier obligation to those branch lines.

Let me give you an example:

My facility at Lorraine will usually handle and move about 800,000 bushels of grain per year. Almost all of the grain has historically moved by rail. However, since the implementation of contract rates at various centers around my facility, a greater amount of this grain is moving by truck to these markets because of the great competitive advantage enjoyed by these terminals. Additionally, this last harvest, I was forced to move approximately 150,000 bushels by truck simply because I could not get rail cars. The railroad lost 45 carloads that it normally would have received, and I was forced to ship 150 truck loads of grain. I lost on the move as well. It cost my coop 8¢ to 9¢ a bushel more to ship by truck, an additional $12,000.00 to $13,500.00 in transportation cost, that would otherwise be profit to the cooperative and to the producer. I suspect that the railroad could use this decrease in carloads to help justify an abandonment later on.

In addition to not getting cars that I've ordered, the railroad can allow service to deteriorate or to become non-competitive, in order to lose business, and thereby justify a later abandonment. Consider the following. In 1981, from Lorraine, I shipped 133 cars on the BN, and only 52 on the Santa Fe. In 1982, the BN let its published tariffs become non-competitive. They were 9¢ per bushel higher than Santa Fe rates. Also, BN restricted weight on hopper cars to two-thirds capacity, because they chose not to repair a bridge at Medora, Kansas. As a result, in 1982, I only shipped 28 cars on the BN; 119 were loaded out on the Santa Fe. Again, I suspect the

BN can now use this decrease in cars to justify the proposed abandonment.

Speaking for myself and other shippers on the branch line, we do not want to see the line abandoned. We feel it not only would be detrimental to us but also to our producers. If we have to go 100 percent to truck traffic,it will be from 9 to 15¢ more per bushel transportation costs, and that cost will definitely have to be passed on to the producer, some of which will be able to go maybe to another country elevator that is on a rail line, but there will be some that will be far enough away that the distance and the time involved during the middle of harvest will prevent them from going and they will possibly still have to do business with our elevator even though they might have to take 15¢ less per bushel for their grain.

Since the ICC has only rejected one abandonment petition in almost two years, there is no reason to suspect we have any real chance of fighting the planned abandonment of our line. We thought we could show that we were a profitable line because we've always used the railroad. However, we have been informed by ICC counsel that line abandonment has been permitted by the ICC where the abondoning carrier was receiving profit from the branch line abandoned.

Rail service and the condition of rail facilities are being permitted to deteriorate substantially. When I order 11 cars and only get 4 to move grain, and I have to move the balance by truck, I am in a Catch-22 situation. I must move the grain, but by moving it by truck, my carloadings for the railroad go down. When my carloadings go down I give the railroad the opportunity to justify abandonment because the rail traffic isn't there anymore.

In conclusion, I have the genuine fear that under Staggers, especially as interpreted by the present ICC, any rail carrier will be permitted to abandon any line of railroad that it desires, even if that line of railroad

is producting adequate revenues under current Commission regulations. Even if the profitablilty of the line is at issue in an abondonment hearing, there are many things that the railroad can do to ensure that a line it wants to abandon is not producing revenue. The railroad can implement defacto abandonment by one of several means. While I am sure there are other factors, I have testified here today about how by not maintaining the track, by giving poor service and not providing cars ordered, a railroad can create a set of facts that make abandonment a self-fulfilling prophecy, and there is nothing the shipper can do about it.

I would urge you to back this resolution and to urge the President and Congress to take steps to correct some of the inequities that I feel have been allowed to take place because of the Staggers Act, and because of the ICC interpretation of the Staggers Act.

I want to thank you for giving me this opportunity to testify concerning what I believe is an extremely important issue to rural Kansas and also to all of rural America. Thank You.

Attachment 5, 2/7/84

My name is Joseph B. Gregg. I am submitting this statement on behalf of The Board of Trade of Kansas City, Missouri, Inc. The submittal before this subcommittee is to point out some of the defects of the Staggers Rail Act of 1980. They are the same problems which we cautioned about and spoke against before the Act was passed. I have been a member of the Board of Trade for 48 years, so I have seen all kinds of disruptions in the marketing chain over a long period of time, but I believe portions of the Staggers Act have burdened the grain trade with more problems than I have seen before.

During 1980, the Board of Trade was deeply involved in matters leading up to what is now called the Staggers Act. We raised strong objections to many points during the legislative proceedings. We were heard in part, but not enough to prevent some of the ills we are facing today. We spoke strongly against a number of matters, including Joint Rate-Route Cancellations, Rapid Tariff Changes, Reciprocal Switching and Contract Rates. We still object to these portions that are now part of the Act.

In allowing cancellation of joint rates and routes, the Act has precipitated battles among the railroads due to cancellations, some are in the courts. The cancellations have deprived shippers of routing gateways, economical competitive routes, and their right to route their own freight. The ICC is allowing these cancellations and furthers the practice of being neglectful in letting the shipper find the proper market for the grain. In allowing unilateral withdrawal of joint routes or joint rates, it was not intended to do away with the railroad competition, yet this is the result.

Atch. 5

We do not believe it was the intent of Congress for these cancellations to be an instrument for carriers to cushion themselves against competition. Fortunately, the Kansas City market has not been directly involved in such cancellations yet, but what it has done is to weaken the links of our national rail transportation system. It would be very difficult to operate, and we could not operated if a system came about where each railroad operated like a separate entity due to joint rate-route cancellations. There are many who believe that eventually this could create nationalization of the entire system. If joint rate-route agreements are to be terminated, they should be terminated by agreement of all parties, including the user of such a rate. The Staggers Act has allowed the cancellation of joint rates and joint routes and it should be rescinded. The same holds true as to cancellation of reciprocal switching agreements.

We believe the ICC abused the intent of Section 10505 when they exempted box car traffic from regulation. The opposition to this exemption was intense, but the ICC did not seem to care. The box car exemption was requested by Conrail; Conrail wanted it and Conrail got it. I would like to point out that Senator Zorinsky on September 30, 1980, (and it is quoted from the Congressional Register of that date) made the following remarks about the Staggers Act. "The mockery of reasonable deregulation." "It is a Conrail bailout". And these words are applicable today. The philosophy of the ICC apparently being very partial to Conrail and ignoring the needs of all shippers is unconscionable. Conrail was the first railroad to cancel joint route agreements and asked for box car deregulation, which was strongly opposed, but the ICC let Conrail prevail in both cases. Conrail should not be placed

beyond the law because it was a money loser. Government money involvement with Conrail should not be a determining factor. There have been at least 22 Federal Court hearings challenging the ICC action on box car deregulation, which makes on believe the ICC erred. I would like to point out that Chairman Taylor dissented in this matter. Ex Parte 346 (Sub-No. 8).

In 1980, we spoke out strongly pertaining to contract rates. We challenged contract rates because they would be discriminatory, especially against the small and captive shippers, but the law as it is now written allows contract rates. It permits a challenge to contract rates on agricultural commodities for reasons of discrimination, inability to fulfill common carrier obligation, or destructive competition. But actually, information released about contract rates is virtually secret and inadequate for a shipper to obtain information to determine if a challenge is warranted. I attach as an example, a contract rate summary, and if a shipper can determine from that document where he is being discriminated against, I fail to see it. I wish you would take a look at that and see if you can determine anything from that contract. I have seen these same kinds of contracts from other railroads, which say no more than this one. Even if the rate were public, what relief would the small shipper receive? Because as the ICC is constituted, I doubt very much if one would get any relief and the railroads would find a way not to give the small shipper a competitive rate. It was our opinion at the time that contract rates should not be permitted, and the same feeling exists today.

It is the belief of many that the ICC has not interpreted the Act as intended by Congress, but have made their own interpretations which have created many of these problems. It is the belief of many that the ICC is so pro-deregulation that they are ready to throw the baby out with the bath water. The Administration and Congress should be very careful as to what qualifications people have that are approved for the ICC. They certainly should have some type of transportation background and come from all segments of industry.

Let us not forget that all U.S. hard winter wheat is priced domestically and internationally on the basis of the Kansas City futures market. The railroads and the Commission must not do anything that would reduce the viability of this market.

We know we are not alone in our beliefs about the ills of the Staggers Act and that many others have told Congress the same story--especially during the Oversight Hearings on October 26, 1983.

Bad laws can be changed. This is one. Congress can do the changing.

Respectfully submitted,

Joseph B. Gregg, Chairman
Legislative Committee
The Board of Trade of Kansas City
Missouri, Inc.
4800 Main Street, Suite 274
Kansas City, Missouri 64112
(816) 753-7500

Attachment 6, 2/7/84

Testimony Presented to
Senate Ag Committee
February 7, 1984
Edward Greene, General Manager
Dodge City Co-op Exchange

Background: At Page City, Ellis, Iuka and Quinter.

Why I support full disclosure of contract rates:

Unit trains - 25-50-75 cars were first and I can accept this concept based on the economic advantage of their use. But contract rates have eliminated or curtailed their use.

Example: Rate was changed on a local basis in favor of gathering rate at terminals at Salina. We planned a 25 car loadout at Quinter but rate changed before construction started. Monument Grain Co. at Monument, Kansas was not so lucky - they built 25 car facility. 75,000 - 80,000

The real problem is at Colby and I understand at other locations.

Background Colby situation.

New track Oakley to Colby

Capacity of elevator west of Oakley and west of Colby

8 million	18 million

Wanted Rock Island Line but didn't get it. Had to justify investment in new track to Colby. Went after northwest volume with contract rates to Lincoln Grain. The effect was to bypass local elevators, who are both employers and taxpayers. Created a large volume of truck traffic on highways already in need of repairs. To be paid by taxpayers. This effects city and county, as well as state highways.

Keep in mind that many times the local elevators are largest payers of local taxes, and offer many services on a cost basis that will go down drain when the elevator is forced out of business because of unfair competition.

Once competition is removed you can bet that the advantage of contract rates will become the net savings of large companies of the bonuses for their managers. And this will be at the local community's expense.

Atch. 6

Attachment 7 - 2/7/84

KANSAS GRAIN & FEED DEALERS Association

1722 NORTH PLUM / A/C 316 662-7911 / HUTCHINSON, KANSAS 67501

STATEMENT OF THE

KANSAS GRAIN AND FEED DEALERS ASSOCIATION

TO THE

SENATE AGRICULTURE AND SMALL BUSINESS COMMITTEE

SENATOR FRED KERR, CHAIRMAN

RELATIVE TO

SENATE CONCURRENT RESOLUTION NO. 1658 - A CONCURRENT RESOLUTION

MEMORIALIZING THE PRESIDENT AND CONGRESS TO AMEND THE

STAGGERS RAIL ACT OF 1980

PRESENTED BY

TOM R. TUNNELL
EXECUTIVE VICE PRESIDENT

FEBRUARY 7, 1984

Mr. Chairman and members of the Committee:

My name is Tom R. Tunnell. I am Executive Vice President of the Kansas Grain and Feed Dealers Association, an organization of approximately 1,000 Kansas agricultural shippers. In the interest of time and because four members of my Association have already presented statements here today, I will keep my remarks brief.

When deregulation of our Nation's railroads was first considered by Congress several years ago, the members of the Kansas Grain and Feed Dealers Association opposed such legislation because of the feared result. Their concern was that orderly grain marketing

Atch. 7

from farmer to country elevator and country elevator to terminal elevator depended entirely on a fair, equitable and impartial rail pricing system. Our members feared that an unregulated rail rate making system would allow discriminatory pricing and service which would lead to the financial failure and eventual elimination of many country elevators. Because of this concern, the Kansas Grain and Feed Dealers Association, in 1979 and 1980, became actively involved in opposing rail deregulation in Washington, D.C. In fact, our Association spent more than $100,000 during its two-year lobbying effort and I might add, all money spent was received from our membership as special contributions.

In spite of our efforts, the Staggers Rail Act of 1980 was signed into law by President Carter. Now, a little more than three years later, we can see the results. I will not cite specific examples of how Staggers has effected Kansas grain shippers because Mr. Corby, Mr. Greene, Mr. Morford and Mr. Gregg have already done so. Instead, I would like to briefly discuss the impact the Staggers Rail Act has had on the people of Kansas.

Under Staggers, private rail contracts between shippers and railroads are allowed which enables railroads to "buy" traffic. They can structure pricing in such a way that it will draw freight to any given location. What this means is that traditional marketing patterns have in three short years been totally changed and disrupted in our State. As an example, I was told by a railroad official that in 1982, between 8 and 10 million bushels of wheat, that normally would have been shipped by rail from southwest Kansas was diverted by truck to a terminal in north central Kansas, some 180 miles distant, that had a particularly advantageous contract rate.

According to the Kansas Department of Transportation, one grain truck causes the same wear to roads and bridges as 9,600 cars. Because of the increased use of trucks attributable to the contract rate provision of Staggers, the Kansas Department of Transportation has estimated that damages to highways and bridges could well exceed $40 million dollars a year in our State alone. This is a substantial subsidy and price for Kansans to pay just to serve railroads and certain shippers who can contract for freight rates.

A second and final point I would like to make pertains to the impact upon Kansas communities caused by the abandonment of agricultural rail branch lines. In the first two years under Staggers, more agricultural branch line trackage was abandoned in Kansas than in most 10 year periods before Staggers. The Interstate Commerce Commission in its interpretation of the Staggers Act, has consistently demonstrated its intent to permit abandonment based on nothing more than non-standard economic data and no investigation into the availability of alternative means of transportation, consideration of the public good or the impact of abandonment on rural community development. I am sure members of this Committee are aware that once a small community loses its rail banch line and then its elevator, most other local businesses are not far behind.

In closing, on behalf of the members of the KGFDA, I would like to commend the members of this Committee for their sponsorship of Concurrent Resolution No. 1658 and further to encourage a strong recommendation for its adoption by the Kansas Legislature.

I have with me for your information a packet of statements that were presented by members of my Association and others before two recent Congressional hearings on the Staggers Rail Act, and I would be happy to respond to questions.

# # # # #