

Approved

Date

Fred Kerr
2/10/84

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Senator Fred Kerr at
Chairperson

10:00 a.m./~~p.m.~~ on Wednesday, February 8, 1984, 19__ in room 313-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Research Department

Conferees appearing before the committee:

Robert S. Cartmill, President, Lincoln Grain, Inc.
David C. Bastress, V.P. Transportation, Lincoln Grain, Inc.
Brian G. McDonald, Market Manager-Food Grains, UP System
M. D. Keener, Manager, Independent Salt Company, Kanopolis

SCR 1658

Senator Kerr called attention to Attachment 1 given him by Richard Kready, KPL, and asked the committee to consider if they wanted to amend SCR 1658 to include the regulation of rates of captive coal shippers as supported by Mr. Kready; thus, expand SCR 1658 to include issues beyond ag issues.

Attachment 2 as distributed by Robert Cartmill speaks to the contract rate aspects of this resolution. Lincoln Grain is a Kansas corporation having four terminals in Nebraska, one in Atchison and one in Colby. Mr. Cartmill said the farmer adopted technology and economies and embraced new concepts before the rest of the industry did. He feels since progress has been, and is being made in all areas, the industry is being pushed into a new and different era, which is coming from many directions:

1. Mechanical and electronic developments which make grain handling safer 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. 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.

He feels the grain handling and grain transportation industries have some catching up to do to keep up with the farmers technology. He feels such progress is past due.

He quoted from a paper recently given on the Staggers Act by Dr. Orlo Sorenson, Ag Economist, KSU, "...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 benefitted Kansas producers...Different economic conditions may modify the relative benefits accruing to farmers, shippers and carriers from time to time..."

Mr. Cartmill stated Dr. Sorenson continues to study rate contracts and has some concerns about them. He stated studies are underway at Iowa

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room 313-S, Statehouse, at 10:00 a.m. ~~xxx~~ on Wednesday, February 8, 1984, 19 .

State University and KSU. He stated that we all must focus on the farmer. He stated to incorporate the four points mentioned above, Lincoln Grain built a new facility at Colby, Kansas, where they can load 75 car train loads at the rate of one car every 7 minutes. They employ contract rates and farmers come 75 to 80 miles to the terminal which serves 8 other counties. He stated the Mayor of Colby has nothing but praise for the improved facility and for the financial gain to the area.

David Bastress stated a major thrust behind Staggers is to make the railroads compete with each other. "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..." "...In July of 1982, the Gulf Wheat rate from the Colby areas was \$1.28 per bushel. In January of 1983 Lincoln Grain opened its new elevator in Colby and by July of 1983 the tariff Gulf Rate had been reduced to 85¢ or a reduction of some 43¢ per bushel which is available to every shipper and is passed on to every farmer.." He stated the railroad competition which results from the Staggers Act in its present form carries a broad public and farmer benefit.

In closing, Mr. Cartmill commended the committee for looking deeper into these matters but urged that time be allowed for facts to emerge.

In Attachment 3 Brian McDonald pointed out the Staggers Rail Act saw the railroads through the recession. Carriers have been able to compete more successfully with truck and barge lines to recapture market share. Rail rates overall have declined since the Staggers Act was passed--not increased. He feels if the Staggers Act is left in place the railroads' earnings will improve. In amending the Act as advocated in SCR 1658 would return the railroads to oppressive ICC regulation. The ICC implementation of many of the Act's provisions is not complete and more experience is needed before the Act is scrapped.

Since a ruling last November by the Second Circuit Court of Appeals, the ICC must come up with more lenient disclosure regulations. "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."

Mr. McDonald stated carriers must be allowed to base rates on the demands of the marketplace. The average revenue/variable cost ratio of Kansas grain is below both the threshold for ICC review, as Mr. McDonald noted. The Act gives the industry freedom to keep the rates down and hold down the cost to the shipper. He stated one of the railroads' chief objectives when the Act was before Congress was to secure provisions which would allow carriers to compete more effectively with truck and barge lines and rail shippers supported those efforts.

Mr. McDonald stated carriers will not abandon profitable lines, but it is imperative that the railroads be allowed flexibility to shed unprofitable trackage.

Since shippers' concerns are receiving the attention and consideration of both the Interstate Commerce Commission and the rail carriers, he feels no legislative solutions are needed.

Note Attachment 4, the testimony presented by M. D. Keener. He stated his company is small and do ship commercial and agriculture salt by both rail and truck, but basically could operate more efficiently with 75% rail shipments and 25% truck shipments. But until the Staggers Act, conditions caused them to ship more than 60% by truck; they hope to increase their rail usage.

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Mr. Keener disagrees with SCR 1658 in that he feels the Staggers Act provides tools to better compete in the land of giants. He finds the carriers are now much more receptive to considering rate levels and service action to protect even small moves against loss to other carriers than they were when full public disclosure of rates and service was required.

He does agree that it is essential to have better notice of general rate increases. He feels 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.

Answering an inquiry, Mr. Cartmill stated the small county elevator performs several roles--merchandising and feed services, and there could be some role shifts as time goes on.

Senator Gannon stated there is concern for the elevators and branch rail lines, and where do we have to balance this for efficiency and negative fallout. Mr. Cartmill stated, "I think it is a concern for you--it is something that won't go away." He stated "back in the early 1900's everyone in Iowa was only some 7 miles away from a railroad--maybe this country doesn't need railroads so close together--something is going to change.."

Senator Gannon expressed concern over increased damage by trucks on our highways, and Mr. Cartmill stated he has heard talk about that, but the Colby facility has helped some farmers from having to travel 180 miles to Salina.

In answer to Senator Gannon's inquiry as to what amount they anticipate handling, Mr. Cartmill stated at this point they have not been in operation long enough to make a true statement. Senator Gannon stated we should have free enterprise and competition, and questioned Mr. Cartmill if he thought this is true competition. Mr. Cartmill stated these concepts started back in 1966 by the Cargill Company. Answering Senator Gannon's further question, "Once smaller elevators are out of business, would you still give these prices?", Mr. Cartmill stated that would be their intention. He stated grain handling serves industry and also the railroads.

Senator Norvell inquired, "What are you going to do when county elevators are gone and small towns are gone and you have a monopoly in Kansas?" Mr. Cartmill stated he feels the Act will generate competition and more facilities will be built and the present ones improved.

Mr. McDonald stated they did not have discriminatory rates--he stated large and small dealers are treated the same--both have the same options to do the same things at the same rates--his company has a common carrier obligation.

Senator Kerr stated the committee would consider this resolution further next Tuesday.

The meeting was adjourned.

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SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

10:00 a.m., Room 423-S

Wednesday, Feb 8, 1984

Date

NAME	ADDRESS	ORGANIZATION
BRIAN McDONALD	OMAHA, NE	UNION PACIFIC RR
MARY PAULIPS	OMAHA, NE	UNION PACIFIC RR
Michael C Gernow	Topeka	Ks Railroad Association
David C Bastress	Shawnee Mission, KS	LINCOLN GRAIN
KOBY CARMIL	LINCOLN, NE	LINCOLN GRAIN
Glenn Mantala	Topeka	Kansas Co-op Council
David M. Studebaker	Haven, Ks.	Farmers Coop Grain Co.
Tom R. Sumrell	Hutchinson	Ks Grain & Feed Assn
Mike Bean	Topeka	K L A
R. Johnson	KC Ks	Union Pacific System
Paul Humber	Topeka	Union Pacific System
BRYAN WHITEHEAD	KC K	BRAC
Leroy Jones	Overland Park	B. L. E.
Bill Green	Topeka	K. C. C.
Phillip Cosby	Salina	Emery Grain and Ks Grain & Feed Assn
Don Jacka	TOPEKA	STATE BOARD OF AGRICULTURE
Ed Brandahl	Omaha	Union Pacific R.R.
M. D. Koener	Kanopolis Ks	IND. SALT CO.
John Severe	Hutchinson	Ks Grain & Feed Dealers Assn
Bob Rocco	Kansas City Mo	Packard
Frank J. McBride	Salina Ks	Emery Grain Co
Emery McBride	" "	" "

Senate Concurrent Resolution No. 1658 could be amended to include the following:

- Line 37 Whereas the Staggers Act has allowed the ICC to approve unreasonable high rates on captive coal traffic; and
- Line 71 (11) To direct the ICC to interpret the Staggers Act in a manner which will be more receptive to the regulation of rates of captive coal shippers which was originally intended by Congress; and

AREA CODE (913) 296-6474

RICHARD D. KREADY

MANAGER OF GOVERNMENTAL AFFAIRS
THE KANSAS POWER AND LIGHT CO.

P. O. BOX 889
TOPEKA, KANSAS 66601

Atch. 1

REMARKS AND TESTIMONY OF

ROBERT S. CARTMILL
PRESIDENT
LINCOLN GRAIN, INC.

AND

DAVID C. BASTRESS
VICE PRESIDENT TRANSPORTATION
LINCOLN GRAIN, INC.

COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

KANSAS LEGISLATURE

TOPEKA, KANSAS

FEBRUARY 8, 1984

RSC

COMMERCIAL GRAIN HANDLING IN KANSAS AND IN THE UNITED STATES WAS 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 FORTY OR FIFTY 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 SAFER 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. 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, THOSE OF US IN GOVERNMENT OR THOSE 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 DUE. EFFORTS TO DO SO SHOULD BE APPLAUDED - NOT HAMSTRUNG.

DR. ORLO SORENSON, RESPECTED AND VETERAN 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 BENEFITTED 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, THAT HE HAS SOME CONCERNS ABOUT THEM, THAT THERE IS MORE

THAN JUST ONE SIDE TO THE ISSUE. WE THINK IT WISE THAT THE JURY REMAIN OUT ON THE ISSUES UNTIL SOME NEW AND OPEN MINDED RESEARCH IS UNDERTAKEN BY INSTITUTIONS LIKE KANSAS STATE TO ACTUALLY QUANTIFY THE BENEFITS TO FARMERS WHICH OCCUR WHEN GRAIN HANDLERS AND RAILROADS ADOPT THOSE NEW TECHNIQUES AND CONCEPTS OF WHICH I SPOKE EARLIER. ONLY THEN CAN FARMER BENEFITS BE WEIGHED AGAINST GRAIN HANDLER FEARS. 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. THIS WORK SHOULD BE ENCOURAGED. WE SHOULD REMEMBER THAT IN THESE MATTERS IT IS FOR THE FARMER THAT WE ALL WORK - YOU FOLKS IN GOVERNMENT, GRAIN HANDLERS, AND THE RAILROADS. THE FOCUS MUST 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. BUT WITH HIS NUMEROUS OTHER PREOCCUPATIONS, EVEN THE FARMER HAS NOT YET BEEN GIVEN THE FULL FACTS. HE NEEDS THEM.

MY ASSOCIATE, MR. DAVE BASTRESS, AS OUR VICE PRESIDENT OF TRANSPORTATION, IS IN ALMOST DAILY OPERATIONAL CONTACT WITH ALL OF THE RAIROADS 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.

DB

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, WITH A SPECIAL KIND OF WISDOM, THE U. S. CONGRESS HAD SOMETHING MORE IN MIND WITH THE STAGGERS ACT THAN ONE REMOTE GRAIN ELEVATOR 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 NO LESS THAN 54 PLACES, THIS MADE FOR A VERY COMFORTABLE RATE ENVIRONMENT FOR THE RAILROADS.

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 FOWARD 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 WHEAT RATES IN NORTHWEST KANSAS ARE DOWN AT LEAST 34% FROM WHAT THEY WERE BEFORE. IN JULY OF 1982, THE GULF WHEAT RATE FROM THE COLBY AREA WAS \$1.28 PER BUSHEL. IN JANUARY OF 1983 LINCOLN GRAIN OPENED ITS NEW ELEVATOR IN COLBY AND BY JULY OF 1983 THE TARIFF GULF RATE HAD BEEN REDUCED TO 85¢ OR A REDUCTION OF SOME 43¢ PER BUSHEL WHICH IS AVAILABLE TO EVERY SHIPPER AND IS PASSED ON TO EVERY FARMER. STAGGERS HAS ALSO FOSTERED THOSE NEW DEVELOPMENTS AND ECONOMIES OF SCALE ABOUT WHICH MR. CARTMILL SPOKE 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 ON THIS SCORE.

THERE WILL PROBABLY ALWAYS BE SOME GRAIN HANDLER SOMEWHERE WHO PREFERS LESS THAN FULL COMPETITION. YOU HEARD FROM THEM YESTERDAY. 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.

RSC

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. NOR DOES THE RESOLUTION BEFORE YOU. WE TOOK THE OTHER SIDE IN THIS DEBATE, ATTEMPTING TO FOCUS ON FARMERS. A COPY OF OUR EFFORT TO DO SO IS RESPECTFULLY SUBMITTED FOR YOUR CONSIDERATION. (SUBMISSION)

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 OPENING 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 RELATIVE 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. 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 OK BUT THAT THE NEXT STEP, ECONOMY OF SCALE, IS ONLY MAYBE OK. OR WORSE YET, EVEN BEFORE THE FACTS ARE IN, ANNOUNCE THAT OTHER NEW AND MORE EFFICIENT CONCEPTS ARE OUT OF BOUNDS, EVEN THOUGH THEY BENEFIT FARMERS. THIS WOULD BE THE WORST KIND OF "ARTIFICIAL COMPETITIVE RESTRICTION".

THANK YOU. MR. BASTRESS AND I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS.

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

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 successfully with truck and barge lines to recapture market share. What's more important, rail rates overall have declined since the Staggers Act was passed--not increased.

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.

STATEMENT

BEFORE THE

KANSAS SENATE COMMITTEE
ON AGRICULTURE AND SMALL BUSINESS

IN OPPOSITION TO

S C R 1658

On Behalf of

INDEPENDENT SALT COMPANY
KANOPOLIS, KANSAS

by

M. D. Keener, Manager

February 8, 1984

Atch. 4

Chairman Kerr
Committee Members

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.

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, than 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 than 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 nightmare. We certainly do not need similiar conditions in our rail shipments.

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

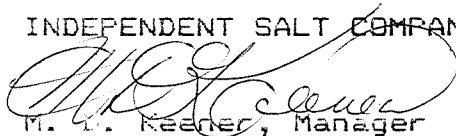
There is a political mandate to remove as much government as possible from the market place. Government or public dictation of how and where a private business should operate, regardless of economic conditions, can no longer be accepted. In this case any mandatory requirement, that may necessiate additional "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. L. Keener, Manager