

MINUTES OF THE MEETING OF THE JOINT APPROPRIATION  
SUBCOMMITTEE ON NATURAL RESOURCES  
January 23, 1981

The meeting was called to order by CHAIRMAN STOBIE. The meeting was held in Room 431 at 8:00 a.m. Roll call was taken with all members present.

The subcommittee returned to the Agriculture budgets in order to act on the divisions that were not completed.

DEPARTMENT OF AGRICULTURE:

PLANT INDUSTRY:

There was a call for discussion. It was pointed out that the new FTEs requested in the grain lab are very important. That it is a very critical department because every test that is held up slows down transportation of grain.

MOTION was made by REPRESENTATIVE MANUEL that we add two additional FTEs to the Grain Testing laboratory. MOTION PASSED UNANIMOUSLY.

MOTION was made by REPRESENTATIVE MANUEL to adopt the LFA Personal Services and add two Grain Lab FTEs. MOTION CARRIED UNANIMOUSLY.

Discussion: The remainder of this shows the big difference is in the Equipment where the Executive recommends purchasing seven cars for the field inspectors and the Legislative recommendation (LFA) is to replace a van and miscellaneous equipment. Seven inspectors are using their own personal cars but one problem is keeping true working mileage. The LFA recommendation for travel expenses will probably go down to \$25,000.00 from \$44,653.00 and Supplies and Materials will go up to about \$33,000.00 to buy gas if new cars are purchased. The OBPP (Executive Recommendation) includes insurance under Contracted Services and includes funds in supplies, repairs and maintenance for tires, gas, etc. BOB ROBINSON said that he would do a "Cost per Mile" analysis and bring a report back to the subcommittee before they make a decision on purchasing, leasing or paying for personal vehicle use. Motion was tabled until Monday.

SEVERAL WITNESSES appeared before the subcommittee with testimony. (See witness sheets attached)

TERRY WHITESIDE, MONTANA DEPARTMENT OF AGRICULTURE  
ROBERT BRASTRUP, MONTANA WHEAT COMMISSION  
BILL BRINKEL, WHEAT RESEARCH AND MARKETING COMMISSION

KURT W. KROSCHER, MONTANA RAILROAD ASSOCIATION  
JOHN DELANO, MONTANA RAILROAD ASSOCIATION  
TOM DOWLING, MONTANA RAILROAD ASSOCIATION

TERRY WHITESIDE, Unit Manager for Marketing & Transportation in the Department of Agriculture addressed the subcommittee first in reference to Rail Deregulation. Pressures of deregulation center around the burden of proof which was formerly the railroads responsibility to the individual transportation user, Mr. Whiteside speculates that there will be a lot of contract rates for the large shippers and the small shippers will be basically in a situation where they will be left out. The loss of the Milwaukee left the Burlington Northern with a dominant position if not a monopoly and now the only way to deal with a monopoly is in a watchdog fashion.

The matter that will be taken up in the Division is along the line of individual rate concerns. General rate increases will be relied on by the railroad much more than in the past. Mr. Whiteside stated that the problems of deregulation are horrendous and they don't even know under the laws what the obligations are of the common carrier to serve or whether they even have an obligation to serve. All of these things are being formulated at the Commission in their rule making proceedings.

KURT KROSCHER, OF BURLINGTON NORTHERN RAILROAD presented their side of this deregulation problem, commenting that he was not a commerce lawyer but could bring one in. Mr. Kroscher referred to a handout (EXHIBIT A) that gives the Basic Provisions of the Staggers Rail Act of 1980. This was enacted to free up many of the former regulatory impositions. He stated that many of the things that the Division was doing would be no longer necessary because mere formulas will solve a lot of the problems and that there are not going to be general increase cases as there have been in the past. There are going to be inflation based increases of rates. Mr. Kroscher said there is going to be a substantial decrease in the amount of regulatory or agency input that is going to be required, and that any additional money at this time might not be appropriate.

QUESTION by SENATOR SMITH directed to Mr. Kroscher asked if the producer does not have someone in the branch of government to intervene what kind of a chance does the producer have with a railroad that has a monopoly? That the freight rates are higher for transporting grain in Montana than possibly any place in the world.

ANSWER by KURT KROSCHEL was that since Senator Smith stated he knew Ralph Avery, Executive Director of Burlington Northern in St. Paul and you as a private citizen can go to the Burlington Northern.

SENATOR SMITH in reply stated that when he has appeared as a private individual he was completely ignored but when he appeared in Seattle as a member of the Montana Consumer Council he was much more effective.

SENATOR MANUEL asked who was going to watch that they use the right figures to get their raises. Also if they could abandon a branch line fairly easily.

MR. KROSCHEL stated that they were being watched by the Interstate Commerce and others. Also, that he was not all that familiar with the abandonment process.

TERRY WHITESIDE made the point that all rates that are in excess of 160% of variable costs may be challenged and that current rates may be challenged provided they are challenged by March 1981. The difficulty is that if they are not challenged by April, the rates will stand at any level they want.

MR. KROSCHEL challenged Mr. Whiteside's statement.

BOB ROBINSON, FISCAL ANALYST asked if Burlington Northern rates are now relative to the 160% variable costs.

MR. KROSCHELL stated that they would be glad to come back if it was this subcommittee's wish. In closing he said he does not think this is reason enough for granting money to a state agency. The Burlington Northern group was excused.

TERRY WHITESIDE said their studies indicate that the rates run between 265% and 300% variable which is the highest in the nation.

BOB BRADSTRUP, MONTANA WHEAT COMMISSION stated that their traffic consultant, Gene Radermaker is going to speak in Bozeman to the Wheat Committee his interpretation of the deregulation bill and then the committee will decide what they plan to do.

It was the wish of the subcommittee to have an evening meeting with witnesses representing all sides of this issue. The subcommittee will be notified of the time and place.

MR. BRADSTRUP told the group when they reduce the rates for wheat it affects all other commodities. That all truck rates are pegged to rail rates.

BILL BRINKLE, Representing the wheat research and marketing group in the Broadview area, stated that they are not totally against giving some money into the Department but feel that about 50% into transportation unit would be a fair figure since there were other expenses that were not necessarily related to wheat. But since he was one of 5 on the board he would like their opinion before stating a definite figure.

These witnesses were excused.

The evaluation of the witnesses' statements compared to the figures the subcommittee has, was discussed and how much should be allowed in the budget from the Wheat Research.

The meeting adjourned at 10:30 a.m.



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CHRIS STOBIE, Chairman

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# Basic Provisions of The Staggers Rail Act of 1980

The Staggers Rail Act of 1980 was signed into law by President Carter on October 14. The new law, while short of wholesale deregulation, nevertheless substantially eases the regulatory burden on the railroad industry, providing significant changes in rules governing ratemaking, car control and other areas of railroading.

Here is a summary of some of the law's key points:

## Ratemaking

Perhaps the most extensive changes in regulation provided by the Rail Act are in the provisions on railroad ratemaking. While protection for rail-dependent shippers was retained, the Congress clearly intended that the disciplines of the competitive marketplace would control most ratemaking. The new rate provisions curtail activities of rate bureaus and move to phase out general rate increases, but also offer a new measure of flexibility in the setting of rates and in the marketing of rail services.

● **Maximum Rates** — Nearly two-thirds of all railroad rates will be freed from maximum rate regulation under a provision that limits ICC jurisdiction to those rates where railroads exercise "market dominance" and charge a rate above a threshold level set initially at 160 percent of variable costs. That will rise 5 percentage points a year until 1984 when it will be dependent upon a "cost recovery percentage" to be determined by the ICC. That percentage can vary from 170 to 180 percent of variable costs.

● **Zone of Rate Flexibility** — A carrier can raise any rate by the percentage increase in the railroad cost index (which will be published quarterly by the ICC). For the first four years after enactment, rates can be raised up to 6 percent a year above the cost recovery index (with a cumulative maximum of 18 percent). After that, annual increases will be limited to 4 percent and be restricted largely to carriers not earning adequate revenues.

Shippers can still bring a complaint case on the 6 percent and 4 percent increases after the rate has gone into effect. But the ICC cannot suspend those increases and can only investigate those more than 20 percentage points above the threshold, subject to a maximum of 190 percent of variable cost. In a shipper-initiated complaint, the burden of proof is on the shipper. In an ICC investigation, the burden of proof is on the carrier.

● **Minimum Rates** — Railroads will be permitted to reduce rates more easily to meet motor and water carrier competition under a provision that any rate that contributes to the "going concern value" shall be considered reasonable. Going concern value has been defined as a rate that equals or exceeds variable cost.

● **General Rate Increases** — General rate increases are limited to joint rates and are to be eliminated completely by January 1, 1984, unless the ICC finds that elimination is not feasible. The ICC cannot eliminate them before April 1, 1982, but until they are, general rate increases are to be limited to recovery of inflation costs.

The ICC may institute an index system to supplant evidentiary requirements in a general rate increase. After elimination of general rate increases, the ICC could prescribe a percentage increase that individual carriers could accept or "flag-out."

The percentage prescribed by the ICC may be for a range broad enough to allow carriers to differentiate between commodities as necessary to recover inflationary cost increases.

● **Rate Bureaus** — There can be no discussion of, or voting on, single line rates and no discussion of, or voting on, joint line rates unless a carrier can "practicably participate in the movement." The definition of "practicably participate" will be left to ICC discretion.

No later than January 1, 1984, discussion of joint line rates will be limited to carriers forming part of a particular route. Transcripts or recordings of meetings and records of votes must be submitted to the ICC.

Protection will be granted from "parallel action" antitrust allegations where a carrier has a single line rate and participates in a competing joint rate.

● **Surcharges and Cancellations** — For the next 3 years, carriers may apply a surcharge to any joint rate that does not yield 110 percent of variable cost. Any surcharge must apply equally in dollar amounts to all routes between the points to which the surcharge applies to prevent predatory discrimination between routes.

Unless affected shippers and carriers consent, a carrier's revenues cannot exceed 110 percent of Rail Form A costs as a result of a surcharge, except that carriers with inadequate revenues may apply a surcharge to cover all costs of service on lines carrying less than 3,000,000 gross ton-miles (1,000,000 gross ton-miles if an adequate revenue carrier). Carriers earning adequate revenues may not surcharge traffic on lines carrying over 3,000,000 gross ton-miles per year.

Carriers may cancel the application of a joint rate to any route not providing 110 percent of Rail Form A variable costs. The ICC may reopen the route if shippers or carriers provide the cancelling carrier revenue equal to 110 percent of variable costs through a new rate, division or surcharge.

● **Divisions** — ICC proceedings will be expedited, with a 9-month limit for taking of evidence. Final action must be taken within 180 days after completion of a proceeding.

● **Contracts** — Contract rate agreements are specifically legalized, and all contracts must be filed with the ICC. Grounds for shipper complaint against a contract are severely restricted.

Service under contract shall be separate and distinct from common carriage by rail. Once approved, the ICC cannot require a carrier to violate the contract. Contract enforcement is restricted to the courts.

● **Discrimination** — Under the new law, the existing discrimination provision of the Interstate Commerce Act does not apply to contracts, surcharges or cancellations of routes, separate rates for distinct services, rail rates applicable to different routes, or business entertainment and solicitation expenses.

● **Investigation and Suspension of Rates** — Proceedings are reduced from seven months to five.

To get a suspension, a shipper must show likelihood it will prevail on merits; that it will suffer substantial injury, and that a refund is inadequate protection. If a suspended rate is finally approved, the shipper will be required to pay any undercharges resulting from suspension, plus interest.

● **Notice** — The notice period is reduced from 30 days to 20 days for rate increases and to 10 days for rate decreases.

● **Recyclables** — With the exception of iron and steel, rates for recyclables are to be limited to the average ratio of revenue to variable costs necessary for railroads to cover all costs and earn a reasonable return on investment.

• **Released Value Rates** — A carrier may establish deductibles and limit liability to pre-established values.

• **Savings Provision** — Any rate in effect on the date of enactment that is not challenged within 180 days and found to be unreasonable shall be deemed to be lawful and may not thereafter be challenged. A rate may not be challenged within the 180-day period unless the carrier has market dominance.

• **Intrastate Rates** — Federal standards and procedures will apply in intrastate rate cases.

• **Miscellaneous** — Existing law is repealed with regard to demand-sensitive and capital incentive rates.

## Management

Railroads have been restricted, far more than many other businesses, by regulations concerning their business practices and day-to-day management of their companies. The Staggers Act moves to alter some of these restrictions and return decision-making to management.

• **Car Service** — ICC car service orders will be restricted to emergencies having regional or national significance, but the ICC's authority to require joint use of terminals during emergencies will be expanded to include all facilities. Emergency services are to be performed by employees who would otherwise have performed the service if there had been no emergency.

Premium charges may be imposed for special services to improve car utilization.

Shippers are authorized to seek approval for agreements among themselves with respect to private car compensation. Approval having been received, they may negotiate with the railroads and, if they fail to agree, any party may petition the ICC to set compensation levels.

Incentive per diem is eliminated.

• **Cost Accounting** — A new board with a three-year life will be created to establish new cost accounting principles which will be implemented by the ICC. Carriers can adopt their own accounting systems as long as they meet the standards, but carrier systems must be certified by the ICC.

• **Business Entertainment** — Railroads may entertain customers on the same basis as other businesses. Previously, railroads were prohibited from engaging in normal business solicitation activities.

## Other Provisions

• **Abandonments** — Abandonment standards remain unchanged, but proceedings will be speeded up with unprotected abandonments permitted 75 days after application. Protested but uninvestigated abandonments will be permitted 120 days after application. The final decision on protested and investigated applications must be made within 255 days of filing.

The maximum time limit to effective date of a permitted abandonment is set at 330 days. The Act creates a mechanism that requires a railroad to sell a line approved for abandonment to responsible persons offering either to subsidize or acquire the line. If parties fail to agree on an offer for subsidy or purchase of an abandoned line, the ICC can establish terms and conditions.

• **Mergers and Other Transactions** — Carriers and shippers may jointly ask the ICC to provide alternative motor carrier service if a shipper is inadequately served.

A merger application of two Class I carriers is expedited without changing current substantive standards. However, the ICC must consider whether the transaction would have an adverse effect on competition among rail carriers in the region. Substantive standards for mergers not involving two Class I railroads are reduced.

• **Financial Assistance** — The Redeemable Preference Share program is extended for two years and an additional \$700 million is authorized, with \$200 million earmarked for reducing Conrail's labor force. The 3-R Act electrification loan guarantee authorization for Conrail is extended to include all railroads.

• **Conrail Studies and Emergency Funding** — USRA and Conrail each must submit a report to Congress covering the effect of different funding alternatives on the region. Each report shall include recommendations concerning projected funding requirements, Conrail structure, and legislative action necessary. Conrail is required to prepare special reports on alternatives to present labor agreements and on savings resulting from the Staggers Act, potential transfers or abandonments, other potential cost savings and potential revenue increases.

An additional \$329 million in government investment is made available to Conrail.

• **Rock Island and Milwaukee Amendments** — The ICC is empowered to impose fair and equitable labor protective conditions if negotiations fail.

Issues as to the constitutionality of the Rock Island and Milwaukee Acts are to be decided in the U.S. Court of Appeals for the 7th Circuit. The Act specifically provides for the availability of redress under the Tucker Act.

• **San Antonio Rate** — Rail coal rates to San Antonio may not exceed 162 percent of variable costs before September 30, 1987. After that, the rate can be raised by an amount equal to no more than inflation plus 4 percent per year until the CRP is reached.

• **Entry** — The standard for granting a permit for construction or operation of extensions or additions of railroad lines is eased. Once a permit is granted by the ICC, a railroad cannot refuse permission to another railroad to cross its line. The ICC may order reciprocal switching agreements.

• **Exemptions** — Existing ICC authority to grant an exemption from regulation when the transportation or service is of limited scope is broadened.

• **Feeder Railroad Development Program** — For three years following enactment, any "financially responsible person" (except Class I and II carriers) can acquire a rail line with a density of less than 3 million gross ton-miles per year upon an ICC determination (after a hearing) that: the carrier operating the line refuses to make reasonable efforts to provide adequate service; transportation over the line is inadequate for a majority of shippers using the line; sale of the line will not adversely affect the railroad operating the line — either financially or operationally; and sale of the line will be likely to result in improved transportation for shippers using the line. Payment must not be less than net liquidation value or going concern value — whichever is greater.

After three years, the density criterion is removed and any rail line can be acquired on the same basis. The ICC can also require the sale of lines proposed for abandonment. If a line is sold and the subsequent operator stops service, the selling carrier has the right to repurchase the line at the original selling price plus interest.

• **Powder River Loan Guarantee** — The Department of Transportation is directed to take final action on the Chicago and North Western's application for a loan guarantee to cover its share of construction and rehabilitation costs for its proposed rail line to the Powder River Basin within 75 days after issuance of a final environmental impact statement.

NAME: Carl W. Kroschel Bill No. Appropriation

*Milwaukee RR*

ADDRESS: Belling Mt DATE 1-27

WHOM DO YOU REPRESENT Mont R.R. Ass'n

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*also John Deane  
Mont R.R. Ass'n  
Tom Dowling  
Mont R.R. Ass'n*

NAME TERRY WHITESIDE Bill No. \_\_\_\_\_

ADDRESS \_\_\_\_\_ DATE 1-23-81

WHOM DO YOU REPRESENT MT Dept. of Agriculture

SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



NAME ROBERT BRASTROP Bill No. \_\_\_\_\_

ADDRESS GT FALLS DATE JAN 23-81

WHOM DO YOU REPRESENT MONT WHEAT COMM

SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Bill Brinkel Bill No. \_\_\_\_\_

ADDRESS Broadview DATE 1-23-80

WHOM DO YOU REPRESENT Wht - Research + Marketing

SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE \_\_\_\_\_ COMMITTEE \_\_\_\_\_

BILL \_\_\_\_\_ Date \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
<i>Jo Brunner</i>	<i>531 S Oakes - H</i>	<i>W. I. F. E.</i>		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.