THE MINUTES OF THE MEETING OF THE JOINT APPROPRIATION SUBCOMMITTEE ON NATURAL RESOURCES
February 4, 1981

The meeting was called to order by CHAIRMAN STOBIE at 7:00 p.m. in the Scott Hart Building Auditorium. Roll call was taken with all members present.

The meeting was called for the purpose of discussing the "ROLE OF THE STATE IN FREIGHT RATE SETTING UNDER RAIL DEREGULATION". (EXHIBIT A)

Formal testimony by:

Paul Mills, Chief, Transportation Services Division, Office of Transportation, USDA.

Mel Sobolik, President, Montana Grain Elevator Association.

Terry Whiteside, Manager, Transportation Unit, Montana Department of Agriculture.

Ralph Avery, Assistant Vice President, Marketing Division, Burlington Northern Railroad Co.

Michael Rice, President, Transystems Co., Great Falls, Montana

Gene Radermacher, Traffic Consultant, Radermacher and Associates, Billings, Montana

John Finsness, Chief Attorney, North Dakota Public Service Commission

CHAIRMAN STOBIE stated that concern arose regarding the state role in the Staggers Rail Act (EXHIBIT B) during the appropriations process of examining the function and services of the transportation unit of the Department of Agriculture. The committee was unsure of the states' role considering the Staggers act and deregulation or reregulation of the railroad.

CHAIRMAN STOBIE stated that this meeting will try to examine the roll of the state and shippers given the current rail deregulation status.

PAUL MILLS, CHIEF OF TRANSPORTATION SERVICES DIVISION, OFFICE OF TRANSPORTATION, DEPARTMENT OF AGRICULTURE presented his statement. (EXHIBIT C)

MEL SOBOLIK, PRESIDENT, MONTANA GRAIN ELEVATOR ASSOCIATION then presented his statement. (EXHIBIT D)

TERRY WHITESIDE, MANAGER OF MARKETING & TRANSPORTATION UNIT OF THE DEPARTMENT OF AGRICULTURE presented his report regarding the Staggers Rail Deregulation Act. (EXHIBIT E)

RALPH AVERY, ASSISTANT VICE PRESIDENT, MARKETING DIVISION, BURLINGTON NORTHERN RAILROAD COMPANY testified next. Mr. Avery said that he was aware of the real or imaginary problems that the group here think they will have for the next few years. Stating that he will agree with Mr. Whiteside that we do not have deregulation, the law does not deregulate the railroad, but does give it rate freedom. Regarding the abuses heard of in the agriculture community, all the areas we refer to, west of the Mississippi River, all the freedoms that have been used since the act became effective have been for rate reductions except for the increase in December. We have one branch line abandonment proceeding going on in Montana now and that is the Red Lodge-Silesia. We do have other catagories that will be studied in the next few years and there is nothing unusal about that. There is nothering in the Staggers Act that changes that but it does change the time frame. If an application for a rate increase is not opposed the clock starts sooner. The parameters for the Commission deciding for or against an abandoment have not changed. As far as the unknown facts of the unknown environment in rate making that is pure myth. Grain rates are not deregulated and have to be published and are on file. There is no difference today with the old one except a reduction can be put into effect in 10 days notice and an increase in 20 days notice. He stated that he would like to see more deregulation than we now have.

Concerning the fear of the contracts in the agriculture community; I don't think we will ever get it because there is nothing to be gained by the carrier or the shipper. As far as market dominace is concerned I do not think we have it in Montana. I believe that sometime in 1979 and 1980 that we handled less than 50% of the grain moving out of the state, and when you are around 50 to 55 percent of the handled grain I don't think under any law you can be charged with market dominance.

In answer to the question to the Chairman as to what the role will be available to the state, Mr. Avery stated that it would be the same as it was prior to October 1980 if this bill does not change.

MICHAEL RICE, PRESIDENT, TRANSYSTEMS COMPANY OF GREAT FALLS, MONTANA made his presentation. Mr. Rice stated that this was

the first time somebody in the State of Montana recognized that there is some interdependence between rails and trucks. That he was not prepared to discuss traffic and rates and tariffs etc. One decision that is going ot have to be made is one that has been eluded all along, what is really deregulation. To look at it from the stand point of purpose is difficult. The purpose of it for railways is to increase rates and for trucks it is just the opposite. The contract aspect that everyone addresses does not bother me, he said but that the shipping community feels that way themselves. Bureaucracy treats those people as complete total imcompetents and they are not. Some are large organizations and some are not. As far as entering a new world that requires the expertise that the Department of Agriculture apparently has, I don't think they need that. Getting down to the question of the state and freight rates setting on the rail deregulation, he said he does not believe they have a position there. Under the deregulation act there isn't a great deal of power left to the state. The feds have taken care of that, and he believes that the state involves itself in too much conflict. They have to fit between consumer, depending on who you represent, the brokers, elevators, growers, the millers, all who have different interests. Historically state participation in rail rates have had little effect on trucks. Truck rates, number of trucks etc., vary according to two things, if the rail rates get a little high and they get down to the 50% or 55% of the market. A rail decrease puts a burden on the grain trucking but that is a market function.

He said that he believed if the state participates in transportation it shuld not be in rate setting per se. They should direct themselves to efficiency, then whoever chooses to ship makes contracts for transport and works within the confines of that efficiency. The Department of Agriculture or any traffic function under regulation or deregulation is not going to create freight.

Mr. Rice stated that he thinks the improvement in transportation from the state in reviewing regulation is nonsensical. He said that to his knowledge there has never been a plan or an attempt to create a transportation plan for the State of Montana, and thinks that the opportunity is gone now that they have lost one railroad. Highway transportation planning has never been done in this state. Nothing has been done in regards to grain and getting it to markets. Even with some anticipation of major rail abandonment he said he doubted that if there was any one person in the state looking toward any alternative than how are you going to oppose it.

The next person to testify was GENE RADERMACHER, TRAFFIC CONSULTANT, RADERMACHER AND ASSOCIATES, BILLINGS, MONTANA. (EXHIBIT F).

JOHN FINSNESS, CHIEF ATTORNEY, NORTH DAKOTA PUBLIC SERVICE COMMISSION. Mr. Finsness stated that he is not presumptious enough to insert himself in Montana's legislative process. He said he would like to tell about the reason for the situation in North Dakota. That they produce wheat too, and think they are in the same position, and that they don't plan to change the level of their effort because of the new rail act. They have funded the research institute involving transportation problems to the level of about $250,000 biennium $115,000 which is contributed by the North Dakota State grain growers. They also spend about $200,000 within the Public Service Commission.

The criticism he has with the railroad is that it took the interstate commerce commission many years to arrive at a formula to determine railroad rates, yet they didn't even know their costs. Now that they have a formula they are spending almost all of their effort within the transportation research institute to determine what railroad costs are so that they know what their situation is. They cannot complain about rail rates if they are at reasonable levels.

At this time the meeting was opened for questions by the committee.

SENATOR SMITH asked why midwest shippers ship their grain for less than we in Montana can ship it for and we ship it for half the distance?

MR. AVERY stated that they have some depressed rates on corn in the midwest to the pacific north coast. This was moving through the New Orleans complex or the Texas Gulf Coast, and much of it moved by water. They designed the rate structure to capture some of that and move it through the pacific northwest to make some contribution to overhead. They don't set the level of rates.

SENATOR SMITH asked if he saw greater reduction for those shippers where there is competition.

MR. AVERY said he doesn't see any higher rates for those who don't have it but as long as they can make some contribution to cover their overhead they will meet the truck competition and barge competition when they find it.

SENATOR SMITH asked Mr. Mills what effects after deregulation will protests have and who will the shipper protest too, and what effect will it have on rates and abandonment.

MR. MILLS said the avenue of protest is going to take a combined effort along with those involved in the rate itself along with the state agency to develop facts that can be presented to a regulatory agency such as interstate commerce commission.

REPRESENTATIVE MANUEL asked Mr. Avery about the 10 day and 20 day notices regarding rate increases or decreases, and what was it prior to that rule.

MR. AVERY stated that all rates did have to be on file 30 days prior to the effective date.

REPRESENTATIVE STOBIE asked Mr. Avery about the "I Gottcha" principle, what would be the competition?

MR. AVERY stated that the line surrounding certain farm communities and they must pay a ransom to get out. You must get better than 160% of variable costs to get out of the bulk of your traffic.

SENATOR SMITH stated that they are investigating a barge line transportation on the Missouri as one of the members of the five state transportation study. Those five states are North Dakota, South Dakota, Wyoming, Nebraska and Montana.

KENNETH D. CLARK presented comments concerning the costs of shipping from branch lines. His written statement was later provided as shown in EXHIBIT G. Mr. Clark represents the UNITED TRANSPORTATION UNION.

REPRESENTATIVE MANUEL called on Mr. Brinkle of the Wheat Research Marketing Committee on money that might be available to the Department of Agriculture.

MR. BRINKLE's comments are shown in EXHIBIT H.

There being no other questions or comments, it was moved and seconded to adjourn the meeting. The meeting adjourned at 9:15 p.m.

CHRIS STOBIE, CHAIRMAN

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SPECIAL APPROPRIATION SUBCOMMITTEE MEETING
February 4, 1981, 7:00 p.m.
Scott-Hart Building Auditorium

Subject: Role of state in freight rate setting under rail deregulation.

Formal testimony by:

Mr. Paul Mills, Chief, Transportation Services Division, Office of Transportation, USDA.

Mr. Mel Sobolik, President, Montana Grain Elevator Association

Mr. Terry Whiteside, Manager, Transportation Unit, Montana Department of Agriculture.

Mr. Ralph Avery, Assistant Vice President, Marketing Division, Burlington Northern Railroad Company.

Mr. Michael Rice, President, Transystems Company, Great Falls, Montana.

Mr. Gene Radermacher, Traffic Consultant, Radermacher and ASSOCIATES ~~Messmer Co.~~, Billings, Montana.

Mr. John Finsness, Chief Attorney, North Dakota Public Service Commission.

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RAILROAD BOOKSHELF

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 unprotested 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.

EXHIBIT 4

STATEMENT ON BEHALF OF

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE

APPROPRIATIONS COMMITTEE

MONTANA STATE LEGISLATURE

HELENA, MONTANA

Paul L. Mills, Chief
Transportation Services Division
Office of Transportation
U.S. Department of Agriculture
Washington, D.C. 20250

February 4, 1981

Staggers Rail Act of 1980

Last year Congress rewrote the book on federal economic regulation of surface transportation. It threw out much of the old regulatory scheme, which was based on the assumption that the government should play a substantial role in our transportation system. It has set a new course for us, making competition and self-reliance much greater factors in determining who gets the best transportation service, and who pays the most for whatever service is available.

One cornerstone of this new national transportation directive is the Staggers Rail Act of 1980. The Act itself is about what you would expect from nearly 2 years of deliberation and compromise by a cadre of hundreds of lawyers, economists, bureaucrats and lobbyists -- 71 pages of single-spaced, small typed, more or less incomprehensible legalese, cross-references, and jargon.

In assessing what all this means for agriculture, it is important to remember that a statute is only verbiage -- life is breathed into it by application and interpretation. Thus, when assessing the implications of the Staggers Rail Act of 1980 for agriculture, we will have to look at not only the law itself but also the manner in which the Interstate Commerce Commission is likely to apply it.

Recent statements of a majority of the Commission and some key staff aides indicate that the ICC intends to give the railroads

the broadest possible latitude in setting rate and service levels.

For example, the Commission is making it harder for a shipper to establish he is captive to a given railroad, and therefore entitled to some maximum rate protection. The Commission is doing this by repealing present regulations which presumed a shipper was captive if one railroad handled 70 percent or more of the shipper's traffic. Ex Parte 320 (Sub-No. 2), served December 11, 1980.

The surcharges provision of the law requires the Commission to provide shippers, threatened by surcharges, with the costs and revenues of the surcharging carrier for the route to which the surcharge applies. The Commission has indicated it may only provide general, perhaps systemwide cost and revenue data. Ex Parte No. 389, served October 28, 1980. This would make it extremely difficult for a shipper to show a specific surcharge is unreasonably high, and therefore illegal.

Recently, the Commission eliminated its notice and comment procedures for grants of exemption from regulation "except in the small number of cases where a potential for significant impact exists." Ex Parte No. 400, served December 29, 1980. Requests for exemption will be reviewed without prior public notice. Decisions granting exemption requests will be released in the Federal Register, to become effective 30 days after publication. Shippers will have 20 days after publication to ask for a

reconsideration. I suggest agricultural interests keep a close watch on the Federal Register for exemption notices, as the Commission is likely to have a very restricted view of where a potential for significant impact exists.

None of these actions is required by the new law. These are all steps the current Commission is taking to expand rail reform beyond that specifically required by that law.

The major consequence of the Staggers Act is a loss of stability in the railroad market. For decades rail transportation has been a relatively sedate business. Rates and services were matters of public record. Everything you wanted to know about railroading could be found in big ledgers called tariffs. Rate increases and service changes occurred infrequently and only after weeks or months of advance notice and review by the Interstate Commerce Commission.

Those days are gone, they are history. Change will be inevitable and rapid. The agricultural shippers who survive will be the ones with sufficient flexibility to adapt to that change.

The new rail regulatory reform legislation passed last year will require transportation users, particularly agricultural shippers and receivers, to reevaluate their operations and management approaches. To survive, these firms will have to learn to market within a new and uncertain environment, one without the stability, protection and assistance provided by federal regulation during the last 100 years.

While the Staggers Rail Act of 1980 can be accurately characterized as a major deregulation of the rail industry, let it be made crystal clear that it is not a total deregulation of that industry. For example, undue discrimination is still unlawful. With a Commission eager to remove itself from disputes, it may be necessary to resolve an undue discrimination complaint in the courts, but nevertheless, there is still need for transportation experts and legal counsel to aid shippers who may be the subject of perceived or actual discriminatory practices.

Moreover, although under regulation there really never has been a ceiling on how high freight rates could go - the criteria being only that they must be "just and reasonable", the new Act, as a general rule, does employ a statistical benchmark test of reasonableness. A rail carrier may establish any rate for transportation unless the carrier is determined to have market dominance over the traffic, in which case the rate must be reasonable. ICC will continue to have jurisdiction where rates exceed 160 percent of rail variable costs. This figure graduates to 180 percent after September 30, 1984. Once it is established that a new rate would exceed the threshold, the Commission may begin a proceeding to determine if the rate is reasonable. A suspension can be permitted when (a) it is substantially likely that the protestant will prevail on the merits, (b) without suspension, the proposed rate will cause substantial injury to the protestant, and (c) because of the peculiar economic circumstances of the protestant, a refund of illegally collected overcharges would not protect the protestant.

In addition, surcharges are now permissible on specific branchlines. This "add-on" rate can cover "100 percent of such carriers reasonably expected costs of continuing to operate such line." Clearly, rail costing capability is critical in this new environment.

Program Initiatives Needed

It is fair to ask the question: "Now that railroads are deregulated, is there any need to continue State and Federal programs originally established to represent farmers in the complex and technical arena of regulatory matters?" Let me answer that question by describing to you how we at the Office of Transportation perceive our role in the next few years.

I know this may sound sacrilegious to many agricultural interests but one of the primary focuses of the Office of Transportation in the next couple of years is to design and implement research and service programs which will make deregulation work. Simply put agriculture cannot afford to be a martyr and there will be very little comfort in extolling "I told you so's", should deregulation fail. Dr. L. L. Waters, a noted authority and a past President of the American Society of Traffic and Transportation recently remarked that "the pendulum of deregulation is to the extreme, and if there's something left after 5 or 10 years, it will swing back -- perhaps more stringent than ever before." My point is that if that pendulum is going to swing back, it should only swing back for just cause.

We therefore see an immediate need to establish a response to

deregulation programs which is composed of four parts: (1) a shipper technical assistance effort; (2) a program which will monitor, measure, and evaluate the performance of carriers within the new deregulated environment; (3) the development of methods to evaluate alternative public investment choices in transportation; and (4) an evaluation of new rural development opportunities arising from truck deregulation.

These programs have a dual purpose: First, to the maximum extent possible, improve inter and intra-modal competitive forces within transportation markets and secondly, establish mechanisms which will objectively measure the consequences -- benefits and dis-benefits -- of deregulation.

Technical Assistance

The primary objective of the proposed technical assistance effort is to develop and assist in the implementation of alternative shipper strategies within a deregulated environment. This program is sensitive to the fact that regulatory reform will require transportation users, particularly agricultural shippers and receivers, to re-evaluate their current operations and management approaches. To survive, these firms will have to learn to market within a totally new and uncertain environment; an environment without the stability, protection, and assistance provided by federal regulation the last 100 years. Deregulation will give considerable flexibility in rate and service matters to individual

truck and rail corporations. As a result, service and rates to shippers will be highly dynamic and local in scope. Rail and truck corporations acting in concert at the National or regional level will greatly diminish. Individual rail corporations will be forced, for really the first time, to market their services. To effectively market their services, rail corporations will have to gauge their competitive position almost shipper by shipper. Those shippers which are not blessed with effective transport alternatives, i.e., "rail-captive", will be particularly subject to rail management rate and service "manipulation"; the "right" to finely-tune and manipulate shipper transport demands is an expected consequence of rail regulatory independence.

Shippers will be asking such questions as:

* Is the carrier under any legal obligation to serve me?
* If I've got a complaint, where do I go?
* How can I buy from a farmer today for delivery next month when I don't know what the freight rate will be next month?
* How do I know my competitor up the road isn't getting preferential treatment? If he is, what can I do about it?
* Is it going to be easier to abandon my line? Can I fight it at all?
* What do I consider in choosing another mode?
* Can I survive using just trucks?
* Should I lease or purchase equipment? If so, railcars or trucks?

* Should I relocate on a mainline?
* How do I go about negotiating a rate and service contract with my railroad?
* What about forming a shipper association or transportation co-op?
* Should I combine with my competitors and build a subterminal?
* Are there any federal programs which provide loans or loan guarantees for improvements in my facility, purchase of railcars or trucks, costs of relocation, or buying the branchline?

At the minimum, agricultural shippers and receivers will need to learn how to adjust if they are going to continue to service their customers. In addition, there is good reason to believe that many shippers, if given the proper management knowledge and tools, can take advantage of the flexibility provided by transportation regulatory freedom.

Monitoring Carrier Performance

Now that regulatory reform is legislatively accomplished, I would guess the "knee-jerk" reaction of many agricultural shippers and receivers--people that have fought deregulation for so long and hard--is likely one of mistrust, betrayal and futility and likely will be followed by attempting to institute defensive measures to maintain the status quo. It can be expected that all matters and kinds of subsequent transportation service problems will be laid at the feet of Congress. "Reparation", may be costly; e.g.,

"deregulation cost me my branchline", or "I'm out of business and 10 people are out of work because of deregulation."

Monitoring carrier performance in a deregulated environment must not be viewed as a "witch hunt" but rather as an information gathering effort designed to objectively judge whether or not deregulation is working; benefits as well as abuses must be documented. This monitoring will also permit quick adjustments to be made in regulations to better meet the Congressional objectives of deregulation.

A few key performance indicators to watch would include:

* adequacy of service, contracts versus common carrier
* rail versus truck market share, by commodity
* equipment purchases
* branchline abandonments, by carrier
* equipment utilization and transit times
* freight rates, by commodity and region
* equipment shortages, by region and time period
* rail rates of return on investment
* mergers and bankruptcies -- both rail and truck

Influencing Public Investments in Transportation Facilities

Transportation competition can also be promoted through public investment choices; that is, by dedicating public funds for the construction or improvement of a particular highway, rail line, public terminal facility, reductions in property or user taxes,

etc.. I'm suggesting that one of the decision criteria in public transportation investment choices should be its impact on improving transportation market forces.

Trucking Deregulation and Rural Development

Another "market improvement" program which I think is well worth exploring is the expanded opportunities now available to exempt truckers for backhauls to rural communities -- an opportunity provided for in the New Motor Carrier Act. This new regulatory freedom could be a boon to rural communities and the exempt agricultural trucking industry. Perhaps equally important, a financially healthier exempt trucking industry would be in a better position to compete with the railroads on out-bound agricultural shipments. Given the extreme independent nature of this segment of the trucking industry, however, assistance will be needed primarily of the type to assemble and dissiminate information in order for rural communities, shippers, receivers and truckers to take full advantage of this opportunity.

Summary

Over the years, we have been strong advocates of State participation in assistance to agricultural shippers and receivers. We work very closely with those States which have established an agricultural transportation capability and have attempted to serve those which have not. Suffice it to say that we cannot respond to everyone's needs because of severe limitations

of available resources.

Thus, it is imperative that States which have a choice make that choice in the context of achieving the best net benefit to society during this time of transition from regulation to a free market economy.

Smaller shippers and communities, particularly those in more rural and isolated locations, may be disadvantaged during this period of transition by scarcity of expertise and information relating to particular problems and opportunities.

It should be our objective to improve the ability of both public and private bodies in rural areas to function effectively in an environment of relaxed Federal regulation.

Grain Terminal Association
P.O. Box 671-59403 • 600 Sixth St. SW • Great Falls, MT

The explanatory report of the Conference Committee makes it clear that Congress's main goal in enacting the Staggers law is to provide "....the opportunity for the railroads to obtain adequate earnings." Numerous provisions of the Act are geared to acheiving that goal:

A. Railroads are given increased flexibility to raise rates to cover inflation, upgrade facilities, and improve profit margins.

B. Railroads and shippers are specifically authorized to enter into rail service contracts, which can be tailor-made to meet their mutual needs.

C. Railroads can publish rates which reduce their exposure to loss and damage claims, so long as they also publish full liability rates.

D. The Commission may exempt any rail service from regulation wherever it determines that regulation is not needed to prevent abuse of market power.

E. State authority over intrastate rates is limited to that authority which is consistent with ICC decisions.

F. Abandonment applications are subject to a new tight schedule for processing and approval.

Where a railroad is dominant rates exceed 160 percent of variable costs. The formula opens the door for all sorts of sleight of hand in classifying costs. What is the variable cost of adding one car of wheat to a train -- on a branch line, on a main line, for short distances, long distances? It's whatever the accountant says it is. The complexities in applying such a formula, and the opportunities for protracted litigation, can make one's bones rattle.

I look for a steady growth in the amount of agricultural commodities shipped under contract. The railroads will be interested in locking up traffic that might otherwise be diverted to trucks or barges. Many shippers will be anxious to move to the head of the line in terms of car supply and service. Also, the Commission is forcefully pushing contracts.

One well-regarded agricultural transportation expert sees two general types of rail service contracts.

One is what he calls the "over and above contract." This type contract will generally apply to the large shippers. It will provide for something extra

The recent offer by the Southern Railroad to assign fleets of cars to shippers for a set period of time, for their exculusive use, if those shippers agree to move a predetermined volume of goods over the railroad is an example. Another example would be a large volume unit train movement between two points, on a scheduled basis for a period of time, perhaps as much as ten years, with rate increases tied to the inflation index during that period. The Missouri Pacific has just signed such a contract between Kansas City and export points on the Gulf of Mexico. It will essentially allow both the shipped and carrier to pre-plan service, costs and investments.

The other type contract, he calls the "I gotcha". An example of this would be where the railroad would threaten to abandon a line unless the shippers on that line agree to invest funds for track rehabilitation and/or maintenance, and also agree to ship a set volume of tonnage via that railroad over a period of time. In this case, the leverage is largely on the railroads' side. He suggests that we will see a lot of these in the days ahead.

Mel Sobolik

DEPARTMENT OF AGRICULTURE

STATE OF MONTANA

CAPITOL STATION, HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(406) 449-3124

W. GORDON McOMBER, DIRECTOR

MEMORANDUM

TO: Natural Resource Sub-Committee of the Joint Appropriations Committee

FROM: Terry Whiteside, Manager
Marketing & Transporation Unit

DATE: February 3, 1981

RE: Staggers Rail Deregulation Act

The Staggers Rail Deregulations Act is a rewrite on the book of Federal Economic Regulation for surface transportation. The Act is about what you would expect from nearly two years of deliberation and compromise by a cadre of hundreds of lawyers, economists, bureaucrats, lobbists and other industry representatives - 71 pages of single-spaced, small typed, more or less incomprehensible legalese, cross references, and jargon.

This evening, I'm going to try to straighten out the mess of words for you as clearly and as concisely as I can. First, I will review the legislative history of the act. Then I will outline the key provisions. I will then conclude with a sketch of some of the implications for agriculture that I find in this law.

The legislative battle began in March of 1979, when the Department of Transportation sent to the Congress a legislative proposal to phase out all rail rate regulation over a five year period. The Senate Commerce Committee was the first legislative body to take up the DOT proposal. While the railroad industry gave the bill a general indorsement, most shipper interests argued that DOT was going too far, too fast. The Senate Commerce Committee agreed. It rejected the DOT bill and developed it's own modest regulatory reform package. The Senate Commerce Bill permitted railroads to raise rates to cover inflation and provide for a moderate increase in earnings, free of Inter-State Commerce Commission review. But the Commission was to retain its authority to review rate increase proposals which would substantially increase rail earnings, at the expense of shippers, to make sure these large increases were reasonable under the circumstances.

During floor consideration of the Committee Bill, the full Senate narrowly adopted a major new provision, sought primarily by Conrail. It permitted each railroad to place surcharges on its portion of joint line rates and on its lightly and moderately utilized single line routes.

Now the scene of action shifted to the House Commerce Committee. That committee vertually ignored the Senate product (accept for the surcharges) and approved a bill very similar to the DOT's original total rate deregulation package. Again there was a major floor amendment. This time the shipping community persuaded a narrow majority of the whole House to place a cap on the level which rail rates could reach before they become subject to ICC review. The threshold level has fluctuated from 120% up to 180% and was finally established at 160% of variable cost. At this point, the sponsors of the House Bill withdrew it from the floor and began to seriously negotiate a compromise with the Senate Commerce Committee and the shipping community. A toned-down version of House Committee Bill was approved by the House. It was further moderated by a Conference Committee of key House and Senate members. The Conference Committee Bill was approved by both houses of the congress and signed into law by President Carter October 15, 1980. What I have covered in the last three paragraphs covers a period of two years of back and forth negotiation and haggling.

Now let me shift gears and talk about the conference report itself.

The explanatory report of the Conference Committee makes it clear that Congress's main goal in enacting the Staggers Law is to provide "... the opportunity for the railroads to obtain adequate earnings." Numerous provisions of the act are geared to achieving that goal:

A. Railroads are given increased flexibility to raise rates to cover inflation, up-grade facilities, and inprove profit margin.

B. Railroad shippers are specifically authorized to enter into rail service contracts, which can be tailor-made to meet their mutual needs.

C. Railroads can publish rates which reduce their exposure to lost and damage claims, so long as they also publish full liability rates.

D. The Commission may exempt any rail service from regulation whenever or wherever it determines that regulation is not intended to prevent the abuse of market power.

E. State authority over intra-state rates is limited to that authority which is consistant with ICC decisions.

F. Abandonment applications are subject to a new type schedule for processing and approval.

In assessing what all this means for agriculture, it is important to remember that a statute is only verbiage - life is breathed into it by application and interpretation. Thus when assessing the application of the Staggers Rail Act of 1980 for Agriculture, we have to look at

not only the law itself but also the manner in which the Interstate Commerce Commission is likely to apply it. Today, there are twelve proceedings open in front of the Interstate Commerce Commission which deal with the very heart of the Staggers Rail Act of 1980. These ten proceedings will formulate such important subjects as:

1. Improvement of trailor on flat car (TOFC)/ Container on flat car (COFC) regulation.

2. Procedure governing general rate increases, railroad cost recovery procedures.

3. Market dominance determinations consideration of product compitition.

4. Coal rate guidelines nation wide.

5. Cost standards for railroad rates.

6. Railroad transportation contracts.

7. State intra-state rail authority.

8. Procedures for requesting rail varible costs and revenue determinations for joint rates subject to surcharge and cancellation.

9. Standards for rail revenue adequacy.

10. Cost ratios for recyclables.

11. Protests against tariffs and rules and practices governing procedures in certain suspension matters.

12. Western railroad agreement.

It is these procedings, and the future ones to come which will bear heavily on how Staggers Rail Act of 1980 is likely to be applied. The Montana Department of Agriculture is represented in all of these procedings in order to provide the input and the receive the input necessary to have the expertise available within the state.

Whereas agriculture shippers have traditionally relied on the Commission to look out for them, from now on agriculture itself must start to look out for the Commission.

Recent statements of the majority of the Commission and some key staff aids indicate that the ICC intends to give railroads the broadest possible latitude in setting rate and service levels.

For example, the Commission is making it harder for a shipper to establish that it is captive to a given railroad, and therefore entitled to some maximum

rate protection. The Commission proposed to do away with the present regulations which presumed shippers captive if one railroad handled 70% or more of the shippers traffic (Ex Parte 320(sub No. 2) served December 11, 1980). The Commission has taken a second look at that now upon objections from farm groups and has provided some interim rules before it develops its new market dominance rules.

The surcharge provision of the law requires that the Commission provide shippers, threatened by surcharge, with the costs and revenues of the surcharging carrier to which the surcharge applies. The Commission has indicated it may only provide general, perhaps system wide costs and revenue data (Ex Parte 389, served October 28, 1980). This would make it virtually impossible for a shipper to show specific surcharges unreasonably high, and therefore illegal without having cost expertise available to that shipper. Several weeks ago the Commission eliminated its notice and comment procedures for grant of exemption from regulation "except in the small number of cases where a potential for a significant impact exists," (Ex Parte 400, served December 29, 1981). Requests for exemption will be reviewed without prior public notice. Decisions granting exemption requests will be released in the Federal Register, to be effective 30 days after publication. Shippers will have 20 days after publication to ask for a reconsideration. I suggest that agricultural interests will have to keep a close watch on the Federal Register for exemption notices, as the Commission is likely to have a very restrictive view of where a potential for significant impact is.

None of these actions are required by the new law. They are all steps the current Commission in my opinion is taking to expand rail reform beyond that specifically required by that law.

The major consequence of the Staggers Act is the loss of stability of the railroad market. For decades rail transportation has a been a relatively stable business. Rates and services were matters of public record. Everything you wanted to know about railroading could be found in the big ledgers called tariffs. Rate increases and service changes occurred infrequently and only after weeks and even months of advance notice and review by the Interstate Commerce Commission.

Those days are gone; they are history, and all the wishing in the world isn't going to bring them back, at least not in the forseeable future. Change will be inevitable and rapid. The agricultural shippers who survive will be the ones with the suffient flexibility to adapt to that change. As the press release announcing the conference of state railway officials and the USDA Office of Transportation stated:

> The new truck and rail regulatory reform legislation passed last year will require transportation users, particularly agricultural shippers and receivers, to re-evaluate their operations and management approaches.
>
> To survive, these firms will have to learn to market within

> a new and uncertain environment, one without the stability, protection, and the assistance provided by federal regulation during the last 100 years.

The fact that rates will go up and abandonments will continue is so obvious that it only bears mentioning. The abandonment standards appear at first blush to remain unchanged. However, the proceedings will be speeded up with unprotested abandonments permitted 75 days after their application. However, the Commission again has started down a road which indicates that it is going far beyond the Staggers Rail Act and the criterion for abandonment is in fact changing materially. The Commission in a decision served November 19, conditionally approved a proposed abandonment by the Missouri Pacific on a line in Texas even though the railroad was not losing money by operating over the 27.2 mile branch line.

Basically the ICC found that the public interest would be better served if the Mopac had the opportunity to take up the track and use it in more profitable operation. Formerly, decisions were made upon the basis of public interest of the shipper, not the carrier. I think it is important to note that the Burlington Northern representative Mr. Dennis McCloud, on Saturday January 25, 1981 at the Montana Grain Elevators Association meeting in Great Falls, indicated that the Burlington Northern is now preparing a map which will show which branch lines will be eliminated and will under go study towards elimination. The map will pinpoint uneconomical branch lines throughout the system. This sentiment was also reorchestrated by Mr. John Willard in his recent press releases in meetings around the state.

Let's move on to another significant problem: How will agricultural shippers cope with the new reality?

As the Federal government moves towards less regulation of railroads, the number of rates and the frequency of changing existing rates and services will steadily increase. It will be up to shipper and State governments to analyze alternative methods of moving products, and to monitor rates charged competitors to make sure they are not getting illegally preferrential treatment.

Professor Harold Breimyer of the University of Missouri recently indicated:

> "The new rail law changes rate making rules. It first allows a great deal of rate making freedom. But then it reverses itself as Congress puts limits on exercise of that freedom, doing so by specifying formulas for maximum rates. Even though I was glad to see a limitation added, my smile was accompanied by tears. For what a formula! Rates are subject to ICC review, if,where a railroad is dominant, rates exceed 160% of variable costs. The formula opens the door for all sorts of slight-of-hand in classifying costs. What is the variable costs of adding one car of wheat to a train - on a branch line, on a main line, for a short distance, and long distances? It's whatever the accountant

> says it is. Complexities in applying such a formula opportunity for protracted litigation, can make ones bones rattle."

Perhaps Professor Breimyer's position doesn't pose an answer to dilemma od varifying rail cost data. However, it is incumbent upon those representing agricultural shippers interests to utilize the rail cost data and develop the cost data necessary to protect those shippers that it represents.

Clearly, a key provision of the contract is the section specifically authorizing rail service contracts. That section permits shippers and carriers to agree on the terms of the tranportation arrangement, free of government supervision, unless it is shown that the contract is completely out of line with ethical business practices. We will probably see a steady growth in the amount of agricultural commodity shipped under contract. The railroads will be interested in locking up traffic that might otherwise be diverted to trucks or barges. Savvy shippers will be anxious to move to the head of the line in terms of car supply and service. The Commission is also forcefully pushing contracts. A recent ruling states "...we do not think that a shipper should be able to invoke our jurisdiction merely because it has made a bad business decision - that is, an investment decision by which it in effect binds itself to rail service without taking advantage of the contractual protection that it could have secured...."

A shipper should not tie itself to a long term supply contract without assurances regarding the accompanying transportation rate. Supply contracts should be made contingent upon satisfactory transportation contract, or visa versa. (Ex Parte 320, (Sub. No. 2) served December 11, 1980).

The expertise that is required in contract negotiations is not present with the current rail shipper in the State of Montana. One has to look only to the San Antonio cases and their long term coal supplies from the Powder River Basin and the BN transportation rate case to understand the complexities of long-term contract rates for transportation.

There is a perception that agriculture transportation experts see two general types of rail service contracts. One is called "over and above contract" this type of contract would generally apply to the large shippers. It will provide for something extra. The recent offer by the southern railroads to assign fleets of cars to shippers for a set period of time, for the exclusive use, if those shippers agree to move a predetermined volume of goods over the railroads is an example. Another example would be a large volume unit train movement between two points, on a scheduled basis for a period of time, perhaps as much as ten years, with rate increases tied to the inflation index during that period. The Missouri Pacific has just signed one of those type of contracts between Kansas City and export points on the gulf coast. It will essentially allow both the shipper and the carrier to preplan the service, costs and investments.

The other type of contract might be called "I gotcha" an example of this would be where the railroad would threaten to abandon the line unless the shippers on that line agreed to invest funds for track rehabilitation and/or maintenance, and also agree to ship a set volume of tonnage by the railroad over a period of time. In this case, the leverage is largely on the railroads side. It is very possible that we will see alot of these in the days ahead. It is here where the State may be able to play a large role in effectuating both a profitable branch line for the railroad and a reasonable terms of shipment for and on the part of the shippers.

When rail transportation was a tightly regulated industry everyone in the same geographic area paid pretty much the same price and got the same service. Now the rail users have to compete with each other to get the best costs and service that they can.

This new competitive environment will be particularly hard on small agricultural shippers in nonmetropolitan areas. These shippers will be offered unfavorable contracts, subjected to substantial surcharges, and faced with expedited abandonment of rail service. They quite simply will be no longer be able to secure affordable, dependable railroad service on their own. They will have to find ways to work together with similarly situated shippers and turn to rail authorities and experts to assure any rail service at all.

We, in the State, have investigated cooperatively on facilities wherein the shippers get together with other shippers on their line, and purchase and operate the lines themselves. Another strategy which we have explored will be to team up with similar businesses on other branch lines and build a new coal facility on the nearest viable main line.

Individual rail corporations are now going to be forced, for the first time, to market their services. To effectively market their services, rail corporations will have to gauge their competitive position almost shipper by shipper. Those shippers which are not blessed with effective or any transport alternatives, i.e., "rail-captive", will be particularly subject to rail management rate and service "manipulation"; the "right" to finely tune and manipulate shipper transport demands is an expected consequence or rail reregulation. Let me give you some of the questions that have already been ask us in this office which we have assisted in answering for Montana transport users:

1. Is the carrier under any legal obligation to serve me?
2. If I have got a complaint, what are my rights, and where do I go?
3. How can I buy from a farmer today for delivery next month when I don't know what the freight rate will be next month?
4. How do I know my competitor up the road isn't getting preferential treatment? If he is, what can I do about it?
5. Is it going to be easier to abandon my line? Can I fight it at all?
6. What do I consider in choosing anyother mode?

7. Can I survive using just trucks?
8. Should I lease or purchase equipment? If so, rail cars or trucks?
9. Should I relocate on the main line?
10. How do I go about negotiating a rate and service contract with my railroad?
11. What about forming a shipper association or transportation coop?
12. Should I combine with my competitors and build a sub-terminal?
13. Are there any Federal or State programs which provide loans or loan guarantees for improvements in my facilities, purchase of rail cars or trucks, cost of relocation, or buying the branch line?

Very simply stated, Staggers Rail Act of 1980 is not total "deregulation", but rather it is a reregulation allowing the carriers more pricing freedoms and flexibilities. The maximum rate regulation still exists on rail rates but now depends upon the existance of market dominance for ICC jurisdiction. In another words ICC jurisdiction is precluded unless the carrier has market dominance. The burden for the determination of market dominance and for proof of allegation of excessive rates now lies with the shipper as opposed to the Four R Act where the burden of proof lay with the carrier to prove that the rate was below an unreasonably high threshold.

That market dominance determination will be one of the major emphasis this office will pursue during the next several years. Once a market dominance determination has been achieved then the shippers of this State can be protected underneath the maximum jurisdictions available under the Staggers Rail Act.

I have covered just breifly some of the major aspects of the Staggers Rail Act. I think it is important to note that the Staggers Rail Act is still a fluid document being interpreted daily by the Interstate Commerce Commission and the courts.

No doubt the rest of the speakers during this evening will outline the various aspects of the Act in more detail and I will leave that charge up to them.

It is doubtful that the Sraggers Rail Act of 1980 will be the last word in rail legislation. Whether the next rail act will be more, or even less, regulation is difficult to forecast at this moment. It is hard to imagine the next law will have the impact of the Staggers Act. Agricultural shippers should now be on notice from both the Congress and the Commission, that they are in fact on their own, and it is incumbent that on those matters of general transportation importance that this office maintain and indeed increase its vigilance so that the Montana shippers who have rate protection underneath the Staggers Rail Act are able to avail themselves to its various provisions.

Before The

EXECUTIVE AGENCY APPROPRIATIONS

SUBCOMMITTEE

Helena, Montana

February 4, 1981

Comments On

THE STAGGERS RAIL ACT OF 1980

(Railroad Regulatory Reform)

By:

GENE A. RADERMACHER

RADERMACHER & ASSOCIATES
3203 Third Avenue North
MTN Building - Suite 301
Billings, Montana 59101

GENE A. RADERMACHER'S [1] COMMENTS

ON THE STAGGERS RAIL ACT OF 1980

I have been asked by the Montana Wheat Research & Marketing Committee to make comments to this Committee about the Staggers Rail Act of 1980. I will do so along with predicting its effects on Montana industry, and offer my evaluation of our existing system that is designed to protect shippers' rights and privileges.

The Staggers Rail Act of 1980 was enacted on October 1 of that year, and was an act to reform the economic regulation of railroads. I want to emphasize that this is a reformation of regulations, and not deregulation, as this act is often referred to as. The provisions of the Staggers Rail Act of 1980 are in no way deregulation of railroads. As a matter of fact, in the entire seventy-one pages of this act, the word deregulation does not appear. It contains provisions that authorize the Interstate Commerce Commission to place in exempt status, certain commodities, under certain conditions, discussed later, but this act

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1/ Gene A. Radermacher is a Transportation and Marketing Consultant with offices in Billings, Montana. He has spent the last twenty-four years in the transportation business, including seventeen years with a major transcontinental railroad that owned a major trucking subsidiary. His functions were that of pricing and marketing for both the railroad and truck line. Many of those years he spent dealing with problems of freight transportation in Montana. Subsequent to that, he spent two years setting up a Traffic Department for a major grain merchandising firm on the West Coast that did a good deal of their business in Montana. This also dealt with railroads, truck lines and barge operations. After that task was completed, he set up a Transportation Consulting company in Billings, Montana, and has been earning his living at this business ever since. He performs services for a wide variety of clients throughout the United States and Canada, dealing with a variation of products and all modes of transportation.

basically changes present regulations under which railroads operate. It includes an imposition on certain shippers to initiate action if they want assurance that the Interestate Commerce Commission will maintain jurisdiction over certain traffic movements.

The Interstate Commerce Act, in all its regulations, was necessary to prevent monopoly power of railroads in our country. The Staggers Rail Act was designed to reform these Federal regulations, so as to allow carriers to:

1. Achieve financial stability.
2. Remain operative in the private sector.
3. Rehabilitate their system where necessary.
4. Provide a regulatory process that balances the needs of carriers, shippers and the public.

I emphasize the latter, which was one of the specific goals of Congress in passing this act. To provide a regulatory process that balances the needs of carriers, shippers and the public. Within this act, there are certain provisions that Congress feels will provide this balance. The Staggers Act contains seven different titles dealing with:

1. Policy
2. Inter-carrier practices
3. Accounting systems
4. Modernization
5. Con-rail
6. Property transfers
7. Other miscellaneous features

Title II of this act specifically relates to railroad rates and inter-carrier practices. It is in this title that Congress has

set down specific regulations that will continue to prevent the monopolistic power of railroads, especially in areas where movements of commodities are captivated to railroads, due to their far distant markets, or sheer volume of production. The traffic simply cannot reach normal marketing outlets without the service of railroads.

Under complete and total "exemption", rates on commodities that are captive to rail service would undoubtedly rise. Congress has imposed a restraining process, however, in giving the Interstate Commerce Commission jurisdiction over traffic where railroads have "market dominance" that is determined by traffic producing revenues in excess of 160% of carrier variable costs. This percentage is for the year 1981. It increases 5% each year for four years. If rates will produce revenues in excess of these "threshold levels", then the ICC can declare that railroads have market dominance over this movement and are within the jurisdiction of this law to impose adjustments.

The burden of proof, under the old rules, was on the shipper to prove that rates exceeded these threshold levels. Under this regulatory reform, the burden of proof is on the carrier to prove that the rate is below these jurisdictional thresholds, however, a shipper must initiate the action in the form of a complaint before the Interstate Commerce Commission.

As a matter of fact, Section 229 of the Staggers Rail Act requires a shipper to initiate action challenging any and all rates within 180 days of enactment of this law, in the form of a complaint alleging that revenues from rates assessed exceed these ratios. If no action is taken within this period, or if action is taken and the rail carrier is

found not to have market dominance, then the rate shall be deemed lawful and may not thereafter be challenged in the Interstate Commerce Commission or in any civil court.

Section 203 of the Staggers Rail Act is described as the Zone of Rate Flexibility. This is a complicated process for which rates will be increased due to inflation and other justifiable reasons. Any rates increased by carriers under this provision need to be policed by those who bear the freight charges to assure they do not exceed what Congress has allowed, and if they do, they must be challenged.

Section 208 of the Staggers Rail Act authorizes Contract Rates. Congress has imposed a stipulation that contracts must be filed with the Interstate Commerce Commission and, therefore, certain pertinent information is available to the public in these contracts. In the event a shipper feels that a contract contains destructive competitive practices, he must initiate action against this contract, by complaint, within thirty days of its filing, and force the ICC to make a decision based on the allegations made in that complaint. This is just another provision that requires an action on the part of a shipper.

Section 213 of the Staggers Rail Act is entitled Exemption. This section grants Interstate Commerce Commission authority to exempt from regulation, commodities when either:

1. The service or transportation is limited in scope.
2. Effective competition exists.
3. The regulation is not necessary to protect shippers.

This means that under these circumstances, the Commission has authority to deregulate, but only by specific commodities. Beans are an example

of a commodity being exempted and deregulated entirely. We produce beans in Montana that have primary markets in Colorado, Oklahoma and Texas. Final deregulation of beans took place the middle of last year. Let's look at what actually happened. Bridger, Montana, the center of production of beans in our state, had a rail rate to Denver, Colorado of 59¢ per hundred weight just prior to the exemption. The rate today is 98¢ per hundred weight, under exempt status, and that represents an increase of 66% in about nine months. The Commission saw fit to exempt this commodity, and this resulted in a 66% increase in the freight rates in a very short period of time. You can see under this section that it is again necessary to maintain a policing hand in this situation, in the event the Commission would extend exemptions to other agricultural commodities produced in our state. Personally, I don't believe these circumstances existed to exempt beans, but they were placed in that category under the old statute.

Section 214 of the Staggers Rail Act deals with the Interstate Commerce Commission's jurisdiction over intrastate traffic, that is traffic moving wholly within the borders of any state. The ICC now has jurisdiction over general increases on Montana intrastate traffic. Let's depart from agricultural commodities for a moment and discuss coal, and the rates that move this product from the coal mines to the two major power producing companies in our state. Since October 1, 1980, when this act became law, intrastate rates on coal have increased 36%. All this in a period of four months. The Montana Public Service Commission lost its authority over these rates, and they were increased immediately to the same level that would apply on interstate traffic.

As a result, production costs for power in our state will increase because of a major increase in the transportation costs of the coal.

There are numerous other provisions of the Staggers Rail Act, 29 to be exact, just under Title II, that will necessitate changes from past practices, such as:

1. Reciprocal switching
2. Car service compensation
3. Car service orders
4. Mergers

These practices affect both the both the day-to-day functions of transportation, aswell as long range procedures that will govern the movement of our commodities. Within many of these changed regulations, there are provisions that allow protection to the shipping public. The shipper must, however, possess the talent and expertise necessary to initiate action and prepare and present his material in a proper and timely manner, so as to protect his interests.

Never before have we experienced such drastic changes in the regulations governing the transportation of freight by rail. Never before has there been a greater demand for transportation expertise than today, when we are operating under the Staggers Rail Act. This act was designed to open up a great many economic opportunities for the railroads, and I commend Congress for having the foresight to take this action.

It is my opinion that the railroads will respond to these opportunities, but in this process we must maintain a check and balance system that keeps the provisions of the Staggers Rail Act in the "opportunity category", and insure our shipping public against these provisions becoming financial guarantees to the rail carriers.

The transportation expertise contained within Montana State government is presently limited to the Department of Agriculture, and is an asset to the shipping public under its present form. Matters of state-wide importance need to be dealt with by an entity with state-wide authority. Often times, my firm cannot get into such activity for lack of a client to fund such a program. The Milwaukee Road bankruptcy case is an example. Placing limitations on existing personnel, or the functions they now perform, would be a serious mistake during this era of the reformation of economic regulations of railroads.

I would urge you to very carefully consider the potential adverse affects on our shipping public, should this new law be allowed to be interpreted and implemented without the voice of competent people being a part of it.

NAME Kenneth D. Clark ~~BILL NO.~~

ADDRESS 322 N 9th st Miles City, Mt DATE 1-4-81

WHOM DO YOU REPRESENT United transportation union

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I as a worker on the railroad ~~want~~ want, to be able to put imput into this committee so that a good solid bill may come out.

the one problem that is of concern is the cost factor charged to single car set outs & pick ups. a crew that is called say to go from point A to point B for a distance of 124 miles, this means the crew is guvranteed 9 hrs and 55 min pay regardless of how quick they complete their trip for example a crew is called at point A for 8⁰⁰ am and finishes their trip at point B at 4⁰⁰ pm a total of 8 hrs

FORM CS-34
1-81

cmt

their pay wether they stip & pick up enroute or go stright through with out stopping will be the same, so ~~that~~ we are saying that the cost to the railroad for picking up the car amounts to zero cost except in the case of stopping at 3 or more points to pick up or set out then the rate goes from through freight rate to way freight rate which amounts to .56 a day increase which hardley makes a dent into the cost.

One other item to consider on operating contracts ~~that we live with~~ that we live with amounts to this we are paid my mileage the same as Railroads use in their freight rates. How are rates come out is we are paid miles or hours whichever is greater so taking into account the 124 miles run, the workmen has to work 9 hours and 55 minuets before any over time goes into effect. So the only other expense could be charged if the

(cont)

Crews where to go into over time and then ~~they could only get receive 2 hrs~~ the maxium over time they could receive is 2 hrs and 5 minutes.

In closing we feel the railroads have used us as a whipping post to make their rates as high a possible and we feel if the actual cost was put into the single car pick up there would be no ~~cost~~ additional cost to the shipper. With all the above mentioned conditions its very apparent that we need a strong department of ag transportation department to protect the Montana farmer from being ripped off by false cost charges.

Public Hearing on Transportation

February 4, 1981

There are two problems that have been discussed during this hearing.

1. What are the advantages and disadvantages of the deregulation of the railroads which could lead to a Department of Transportation?
2. Should a Department of Transportation be necessary, how would it be funded?

These comments are directed to number 2 dealing with the issue of funding. Earlier hearings a question asked of me was, "What per cent of transportation included wheat and barley. The Montana Wheat Research and Marketing Commission studied this recently and concluded the volume or per cent of total shipments would vary from year to year. The impact from wheat and barley would depend on production and markets this would not be stable from year to year. A definite per cent would be difficult to assume with the variation.

However, I would offer an example and a situation which raises further question. Suppose wheat and barley amounted to 40%. What is the remaining 60%? What part of the 60% is consumed with other agricultural commodities such as sheep, cattle, sugar beets and wood products? Where does the coal and other ore mined in Montana fit into the percentages?

Therefore, one must determine where all agriculture, mining and industrial production fit into the transportation system so they all share the costs. We feel the Transportation Department, whether in the Agriculture Department or assigned to another Department, should be funded by the legislature and not a special interest group such as Graingrowers of Montana under the Wheat Research and Marketing Commission.

NAME Viggo Andersen BILL No. _____

ADDRESS 1009 26th Ave. S.W., Great Falls DATE 2-4-81

WHOM DO YOU REPRESENT Montana Grain Growers Association

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: support adequate funding of transportation dept. in state govt.

FORM CS-34
1-81

1. Avery says rates are determined what traffic will bare.
2. Governor needs transportation expertise
3. Shippers have tried individually & thru organizations to work with RR & ICC with very little success. That is why state transportation office was formed. It has done well within the limits of its ability.
4. Montana economy totally dependent on transport of bulk commodities to distant markets - effects all segments of economy directly or indirectly. Should be properly funded & not by a single group.

Even if BN means well, with its size it is like an elephant walking among ants. The ants need a loud voice.

VISITORS' REGISTER

HOUSE [redacted] COMMITTEE

BILL _____ Date _____

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
JOHN DISWELL	2480 East Broadway.	PSC.		
J. W. GULLICKSON	323 So. 6th LIVINGSTON	UNITED TRANSPORTATION UNION		
Clarine Schlagel	Richland Mt	Opheim Branchline		
[illegible]	Wolf Point			
Kenneth Peck	Miles City MT	United Transportation Union		
Tom Dowling	Helena	Mont R.R. Assn		
Kendal Hanson	Willard (Fallon County)	Farmer		
[illegible]	Reserve MT	[illegible]		
[illegible]	Power-MT.	Sen. Burns		
Kathy Meador	3129th St. So Great Falls	Congressman Marlenee		
[illegible]	Helena	W.I.F.E.		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

My name is Mary Nielsen, and I represent Women Involved in Farm Economics as Transportation Chairman. I regret that I cannot attend this hearing in perso but on behalf of our organization, wish to have this testimony presented.

In the original Senate version of the Staggers Rail Act of 1980, a Shippers Needs Board was proposed. This was to be composed of the Secretary's of Agriculture, Commerce, Trasnportation and Labor, plus shipper representative and two representatives of two agricultural organizations.
It was intended to assist shippers with problems arising from the new legislation. This, unfortunately, was not included in the final version of the Bill.

Under recent reorganization, the Office of Transportation in the USDA -whose concerns were primarily for agricultural shippers,- is no longer in existence, having been absorbed into another Office, and therefore is less effective.

Agriculture is becoming increasingly productive, thereby contributing more to the balance of payments in international trade. Increasing amounts of those crops are travelling through our State, and shippers in the Midwest are paying rates lower than are Montana agricultural shippers in many instances. Experts estimate that more and more grain will be shipped from the Northwest ports.

South Dakota is already experiencing problems with the termination of service on the Milwaukee tracks West of Miles City. Last year our State officials fought hard - along with many other interested citizens- to keep the Milwaukee lines intact so that they may eventually be used to transport freight- whether coal or grain- to the West Coast!

At this time, the possibility of the State purchasing the Right of Way from the Milwaukee is being studied by legislators at the request of our Department of Agriculture's transportation department. Many agricultural organizations are looking at the possibility also, and some already support the concept- IT IS QUITE POSSIBLE THAT THIS IS ABSOLUTELY VITAL TO THE STATE OF MONTANA!! This is the third largest State in the nation, with the capability of producing quantities of quality agricultural products- and having some of the largest coal deposits- and yet- we have essentially ONE rail line crossing our state!!

The possibility of Rural Transportation Cooperatives has been suggested by the USDA, the National Council of Cooperatives, and several legislators, in order to assist rural shippers with problems caused by the new Rail Act and monopolistic situations. This presently is being studied by our State Transportation experts in conjunction with the USDA and our Congressional delegation. There are presently many problems being faced by agricultural shippers in this State. Hopefully, Montana can submit a program which could be instituted as a pilot program under this concept.

None of the advice and guidance to assist the State with its' unique problems would be available to the agricultural shippers without the services of Terry Whiteside and his staff. And yet- agriculture is the leading industry in the State. The more prosperous that the industry is, the more tax monies are available for our legislators to use for the business of the State. The amount of freight charges paid by agricultural shippers to move the grain to market is about 20-33% of the amount received for that grain. That percentage has increased by leaps and bounds the past few years, conributing to the increasing profits announced by the Burlington Northern last year. The net income reported by the Burlington Northern in 1979 was $175.6million- which was 53% greater than the $114.5 million postedin 1978. This 53% increase was made up with only a 16% increasein traffic, with coal revenue up 26% and grain up 37%. Montana grain producers undoubtedly contributed a disproportionate share of that increase.

WIFE sincerely hopes that the legislature will not be a shortsighted as the Bankruptcy Court Judge who allowed the Milwaukee to terminate service to this State at a time of increasing traffic movements. Not only agriculture, but the entire State benefits from the work of the Agriculture Departments' Department of Transportation,- and it is unthinkable that funding would be terminated. The Staggers Rail Act of 1980 has some very unfortunate provisions in it- at this time the State of Texas is endeavoring to prove that some sections are unconstitutional. It would be very benificial to this State if funding were available to institute similar actions on behalf of Montana shippers! Unfortunately it isn't, but nevertheless, laws that are made in Washington can be changed in Washington. In the event that proposals are brought before Congress to change the Rail Act, the State of Montana needs transportation experts to make sure that the changes do not adversely affect our shippers.