MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

April 11, 1985

The twenty-second meeting of the Highways and Transportation was called to order at 12:40 p.m. on April 11, 1985 by Chairman Lawrence G. Stimatz in Room 410 of the Capitol Building.

ROLL CALL: All members were present except Senator Daniels who was excused.

There were visitor's in attendance. (SEE ATTACHMENT)

CONSIDERATION OF SENATE JOINT RESOLUTION 38: Senator Hammond, Senate District 9, was the sponsor of this resolution. He stated that this resolution asked that the Senate and the House go on record supporting the Anti-Monopoly Railroad Act, which was an amendment to the Sherman and Clayton Anti-trust Acts, which made it possible for competition in the area where there were single carriers. He said that they were not trying to regulate the railroad, all they wanted to do in the amendment was to subscribe to the attitude that had been taken with this amendment to provide for competition where there was no competition in existence at the present time. They were concerned because the railroads had been out of regulation since 1887, but it didn't help the situation in Montana where there was no competition to bring about fair play between the shipper and the carrier. In 1948 the railroads were operating under partial exemption from the anti-trust laws and the railroad was subject to, at that time, to the ICC and this gave them the right to act in concert and fix prices for transportation services. The scope of this exemption was altered in the Staggers Railroad Act of 1980, but the partial exemption still remained. The only way the railroads could be regulated, as far as the single carrier and the captive shipper were concerned, was through the Sherman Anti-Trust Act or the Clayton Anti-Trust Act, and this had to be amended before that could be made possible, and the DeConcini Anti-Monopoly Act would do this.

PROPONENTS: Senator Hammond, Senate District 9, spoke in support of SJR 38.

Senator Smith, Senate District 10, spoke in support of SJR 38. He stated he was in full support of this resolution. He had some figures from the Transportation Division within the Department of Commerce, which were practiced by the Burlington Northern Railroad Company, as to the actual price per mile of grain being hauled. The grain was hauled on 52-54 car trains, and each car weighed an average of 196,000 pounds. Examples of these figures are as follows: $2.95 per mile from the Glasgow area, $2.48 from Missoula, $2.68 from Great Falls, $2.79 from Havre, $2.90 from Wolf Point. He stated that as you got closer to the west coast, where there was more competition as far as trucks were concerned, the cost per mile got lower. Figures for Colorado and Nebraska are as follows: $1.75 per mile from Denver,

$1.99 from Hemmingford, $1.65 from McCook, $1.59 from Copenhagen, and $1.91 from Omaha. He then noted that in every instance of per mile of haul, it was one dollar less per mile, and the reason he got as to why it was a dollar less, was do to competition. But he stated that basically they were still not hauling the grain below the out-of-pocket cost. He stated that he felt we were subsidizing the other areas where the grain shippers had the competition. He went on to say that their argument was that if they could find a way to transport the grain cheaper and be more competitive with the other producers in the nation and also the other producers around the world, it would benefit all the people in the State of Montana, not just the grain producers.

Bill Fogarty, Administrator of the Division of Transportation of the Department of Commerce, spoke in support of SJR 38. He stated that the Staggers Act and the ICC's interpretation of that act, had created some serious problems for captive shippers in states such as Montana, which were essentially served by one rail carrier. The ICC had remained unwilling to serious consider those problems. Mr. Fogarty stated that on a recent series of cases on market dominance and rate reasonableness, before the Interstate Commerce Commission, the ICC was asked to consider market dominance. They found in those cases, only one in fourteen times that there was market dominance and unreasonable rates, even though some of the rates that were shown ranged from 447% to 1018%, these were not rates in Montana. (SEE EXHIBIT 1) The ICC has not been protecting the interest of the shippers in States such as Montana. The Department of Commerce found that the concept of the bill was very simple, it would prohibit a rail carrier from denying shippers of certain bulk commodities such as coal, grain, and lumber, the right to use track to reach points where they have access to competitive railroads; where there was an intent by the originating carrier to monopolize. If these factors were shown, the shipper would have a right to seek a competitive field, and the monopolizing railroad would have to provide trackage rights, at reasonable costs, to the competing carrier. However, the original railroad would maintain the right to have the first right of refusal; which meant if the rate that the competing carrier gave to the shipper was lower than the originating carrier, that carrier could haul the commodity at the lower rate. If he did not want to haul at the lower rate, he would then ahve to get trackage rights to the competing carrier and reinvert to the reasonable cost. Burlington Northern has high per car mile earnings in Montana compared to some surrounding states. Under this bill, if the two railroads could not agree on a reasonable rate, the matter would be sub,itted toa master at the Department of Justice, not the ICC. States such as Montana then would at least have the opportunity for competing rail service. The structure would go a long ways to work providing a considerably priced rail service for shippers of certain bulk commodities, and help to derive competitive rail service to captive shippers in this country. With the passage of the Universal Trackage or the Railroad Anti-Monopoly Act, as it sometimes was called, competition may be enhanced which would reduce the rates and increase revenues to Montana shippers and producers. Mr. Fogarty pointed out that his department was not alone in supporting this concept; a group called RAM (Railroads Against Monopolies) supported this bill. It was also supported by some very

large shippers; W.R. Graze Company, the National Coal Association, the National Feed and Grain Association, the National Fertilizing Institute, and others who depend on the railroads and want to see reasonable rates. Mr. Fogarty submitted a sheet of comparisons of per car mile wheat rates. (SEE EXHIBIT 2)

Keith Kelley, Director of the Department of Agriculture spoke in support of SJR 38. He stated that the people in the agriculture community felt that the money that is spent to pay excessively high rates was money that left Montana. Presently, there are very serious financial conditions in Montana and anything that would give a reasonable rate and allow some of the money to fall back into the producers pocket would be nice. He stated that the dollar impact on an industry that was in very serious financial trouble, would be well worth it to get some relief in regards to rates that were being congregated now.

Terry Murphy, representing the Montana Farmers Union, spoke in support of SJR 38. He stated that his company had searched for a number of years to bring equity into rail freight rates.

Randy Johnson, Executive Vice-President of the Montana Grain Growers, spoke in support of SJR 38. He stated several reasons why his organization supported SJR 38, the first being that at their convention their membership passed a resolution supporting the concept of universal trackage rights, as did the national association. The second being that the resolution would have the capability to induce some competitiveness in Montana, which would give incentive for better rail rates. This resolution could provide access for Montana producers to markets that we do not have access to presently.

Ralph Yaeger, Administrative Assistant in the Department of Commerce, and representing the Government Council on Economic Development, spoke in support of SJR 38. He stated that the council became intensely aware of the problems captive shippers face in Montana after analizing two sectors of the state's economy; natural resources and agriculture. Because of the economic and social benefits that could be provided to shippers with the passage of the railroad anti-monopoly act, he stated that the council strongly recommended a do pass on this resolution.

Representative Nathe, House District 19, wished to go on record as being in support of SJR 38.

Senator Tveit, Senate District 11, wished to go on record as being in support of SJR 38. He stated that he had problems with freight rates in his area, and he strongly supported this resolution.

OPPONENTS: Leo Berry, representing the Montana Railroad Association, spoke against SJR 38. He stated that this resolution strongly encouraged the passage of a federal act, and there were questions as to whether or not the proponents of the resolution favor the shippers access to the existing rail lines or whether they favor other railines, and what the consequences of those individual activities might be. He stated that there were differentiating rates from different

areas, and a number of factors that caused the differentiating rates, but the question he brought up was if other rail users would have the right to come into an area, and which areas would they go into? He stated they were likely to go into a area with a high profit. Another point he made was how you would cut the cost of hauling a particular commodity, primarily the labor cost. He encouraged the committee to amend the resolution to make it more positive.

Lisa Swan, representing the Union Pacific in Montana, with the Corrette, Smith, Pohlman, and Allen law firm in Butte, MT, spoke against SJR 38. She stated that the Union Pacific was in opposition to this resolution because it supported the DeConcini bill and the House bill in Congress. They oppose these Congressional bills because of the extensive trackage rights that are given not only to other railroads but the shippers as well. The Union Pacific had run into many operating problems and safety problems because of having to shift crews around and working under time schedules, and they felt that allowing these bills would encourage shippers to use non-union people, and non-trained people. The other concern of the Union Pacific was the investment factor, they invest approximately $35,000 per track mile, per year on the railroad lines they have at the present time. The formula that the bill in Congress had set up did not allow them to recoop those investments by allowing people to use their tracks; therefore, the Union Pacific would begin to pull back and not move into new areas and not be willing to invest and maintain their tracks in the same manner as before.

Questions from the committee were called for.

Senator Shaw asked Senator Smith if the figures he gave were a ton mile rating or hundred weight rating? Senator Smith replied it was a 196,000 pound car and a 52-54 car unit train.

Senator Williams asked Senator Smith what the total cost would be per mile for a 52-54 car unit? Senator Smith replied it would be a dollar cost per mile for that car, so you multiply the rate per mile by the number of cars and you would get the total cost.

Senator Williams asked Joe Brand what he thought this resolution would do to the labor cuts and safety problems? Mr. Brand replied that he was at the hearing as an observer, he knew nothing about the bill, and his organization was neutral towards this resolution.

Senator Weeding asked Leo Berry if the committee decided to amend the resolution as he proposed, would he still be an opponent? Leo Berry replied that if they chose to pass the bill, then he would request to amend it as suggested, but the Railroad would still be an opponent.

Senator Tveit asked Leo Berry how complicated the rate structure was over a period of time? Leo Berry replied that he could not answer the questions on freight rate structures because of lack of knowledge.

Senator Shaw asked Leo Berry what the rate per mile was for coal trains? Leo Berry replied he did not know.

Senator Farrell asked John Delano if he knew what the rates per mile were for coal trains? Mr. Delano replied that the average rate in Montana was 1.6 cents per ton mile for coal trains. He also stated that coal is handled a lot different than the way grain is handled, and that has to be taken into consideration.

Senator Williams asked Lisa Swan if the $35,000 per mile investment she mentioned was just Union Pacific or was it the entire railroad industry? Lisa Swan replied that it was only the Union Pacific's investment figure.

Senator Williams asked Senator Hammond if he would have any objection to the amendments Leo Berry proposed? Senator Hammond replied that he would not.

In closing, Senator Hammond passed out the Congressional Bill for the committee to look at. (SEE EXHIBIT 3) He stated that this resolution provided for the captive shipper to get a bid from someone else and that the rail carrier had the right of first refusal. This resolution was to bring about some reasonable rates for all the areas that were under a financial impact at the present time. Senator Hammond stated the bill addressed all of the problems and he hoped they could all be worked out. There would be consideration of investment and what the cost was and then they would try to derive what would be a reasonable rate. Senator Hammond also stated there was no desire to regulate the Railroad industry, but merely to provide the captive shipper with remedy under the anti-trust law.

The hearing was closed on SJR 38.

ADJOURNMENT:

The meeting was adjourned at 1:20 p.m.

LAWRENCE G. STIMATZ
Chairman

ROLL CALL

HIGHWAY AND TRANSPORT. COMMITTEE

49th
~~48th~~ LEGISLATIVE SESSION -- 1985 Date 4-11-85

SENATE SEAT #	NAME	PRESENT	ABSENT	EXCUSED
#7	SENATOR STIMATZ	X		
~~#25~~	~~SENATOR MANNING~~			
#27	SENATOR BENGTSON	X		
#8	SENATOR DANIELS			X
#32	SENATOR FARRELL	X		
#42	SENATOR HAGER	X		
#48	SENATOR LYBECK	X		
#23	SENATOR SHAW	X		
#3	SENATOR TVEIT	X		
#39	SENATOR WILLIAMS	X		
#26	SENATOR WEEDING	X		

Each day attach to minutes.

DATE 4-11-85

COMMITTEE ON Highways and Transportation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Lisa Sloan	UP RR	SJR 38		X
Terry Murphy	MT Farmers Union	✓	X	
D Roulean	Commerce	✓	X	
B. Fogarty	Commerce	✓	X	
Randy Johnson	Montana Grain Growers Assn	SJR 38	X	
Bob Stephens	" " " "	✓	✓	
[illegible]	BLM			X
Ralph Yraegers	Coal. Council on Economic Dev	✓	✓	

(Please leave prepared statement with Secretary)

SUMMARY OF ICC DECISIONS IN SECTION 229 CASES HANDLED BY G.W. FAUTH & ASSOCIATES, INC.

ICC Docket No.	Abbreviated Name of Proceeding	Service Date	Commodity	ICC Determined Revenue/Cost Ratio Range	Complainant's Determined Revenue/Cost Ratio Range	ROI Range Based on Complainants' Cost Development
ICC Found Market Dominance, But Found Rates were Reasonable						
38188S	Westinghouse Electric Corp. v. A&S	05/16/84	Elect. Mach.	244% - 603%	244% - 603%	71% - 534%
38059S	W.R. Grace & Co. v. SCL	02/23/83	Phos. Rock	189%	257%	97%
38058S	Farmland Ind. v. SCL	02/23/83	Phos. Rock	171% - 176%	226% - 239%	77% - 85%
38087S	Salt River Project v. SP	05/27/83	Fuel Oil	179% - 293%	202% - 312%	-
38086S	Salt River Project v. ATSF	04/24/83	Fuel Oil	177% - 294%	197% - 295%	137% - 212%
39060	Petition of DRGW, et al. to Review Utah	03/02/83	Coal	209% - 224%	264% - 295%	81% - 98%
39020	Petition of CO to Review W.VA	03/18/82	Coal	236% - 307%	236% - 307%	72% - 115%
38084S	IMC Corp. v. BN, et al	11/09/82	Bent. Clay	214% - 237%	215% - 238%	-
ICC Found No Market Dominance						
38238S	McGraw Edison Co. v. A&S	09/14/83	Elect. Mach.	-	176% - 342%	43% - 164%
38088S	Arizona Public Service Co. v. ATSF, et al.	02/18/83	Fuel Oil	178% - 326%	192% - 319%	-
38125S	General Electric Compay v. B&O	10/22/84	Meth. Chloride	-	168% - 242%	55% - 150%
38262S	Eli Lilly v. BN, et al.	02/06/84	Nitric Acid	297% - 500%	310% - 626%	235% - 463%
37891S*	Commonwealth Edison Co. v. A&R., et al	05/17/84	Nuclear Waste	447% - 1018%	447% - 1018%	212% - 575%
ICC Found Market Dominance And Rates Unreasonable						
38186	Pennsylvania Power & Light v. Conrail	07/24/84	Coal	278% - 624%	278% - 624%	74% - 354%

* Found Rialroads have Market Dominance over Government Shipments, But Rates Reasonable

COMPARISON OF CAR MILE EARNINGS
REVENUE IN CENTS/CWT
FOR CARLOADS OF WHEAT
FROM MONTANA TO PORTLAND
VS
COLORADO, KANSAS, AND NEBRASKA TO HOUSTON

Montana Minimum Weight 196,000
CO, KS & NB Minimum Weight 190,000
Rate/Cwt

Single Car
Revenue/Car/Mile

Miles Not Over	Rate	Montana	Rate	CO, KS & NB	Difference Amount	Difference % Increase
750	158	422	101	262	60	61.07
800	152	379	105	253	126	49.80
850	162	381	128	290	91	31.38
900	158	348	104	221	127	57.47
950	163	341	138	227	64	23.11
1000	163	324	138	261	63	24.14
1050	174	326	138	250	76	30.40
1100	196	353	174	305	48	15.74
1150	196	337	161	267	70	26.22

26 Cars Vs 27 Cars
Revenue/Car/Mile

Miles Not Over	Rate	Montana	Rate	CO, KS & NB	Difference Amount	Difference % Increase
750	135	361	95	246	115	46.75
800	134	335	--	--	--	--
850	138	325	114	258	67	25.97
900	135	297	--	--	--	--
950	139	290	123	247	43	17.41
1000	144	286	123	233	53	22.75
1050	146	274	123	223	51	22.87
1100	176	317	161	282	35	12.41
1150	176	302	145	240	62	25.83

52 Cars Vs 54 Cars
Revenue/Car/Mile

Miles Not Over	Rate	Montana	Rate	CO, KS & NB	Difference Amount	Difference % Increase
750	120	321	95	246	75	30.49
800	120	300	98	236	64	27.12
850	123	289	98	222	67	30.18
900	120	264	97	206	58	28.16
950	124	259	106	213	46	21.60
1000	129	256	106	200	56	28.00
1050	136	255	106	192	63	32.81
1100	161	290	144	253	37	14.63
1150	169	290	128	212	78	36.79

Authority: BN 4022 D Items 1205, 2000-2015, and 2610-2615
BN 6033 - Mileage (Dated: 2-28-85)

EXHIBIT 3

HIGHWAYS AND TRANSPORTATION

By Mr. DECONCINI:

S. 447. A bill to amend the Sherman Act to prohibit a rail carrier from denying to shippers of certain commodities, with intent to monopolize, use of its track which affords the sole access by rail to such shippers to reach the track of a competing railroad or the destination of a shipment and to apply Clayton Act penalties to monopolizing by rail carriers; to the Committee on the Judiciary.

RAILROAD ANTIMONOPOLY ACT

Mr. DECONCINI. Mr. President, I am reintroducing today a bill titled the Railroad Antimonopoly Act of 1985. It is similar in principle to the bill I introduced during the past Congress as S. 2416. The goal of the bill is to foster competition in the rail industry and bring fair treatment to captive shippers, and ultimately the public, through clearly bringing the rail industry within the scope of the antitrust laws.

The heart of the bill provides that it shall be unlawful for an owner rail carrier to monopolize or attempt to monopolize by denying or threatening to deny to any shipper or another rail carrier the use on reasonable terms of a railroad facility which is the sole facility over which such shipper can move bulk commodities by rail to connect with the track of competing rail carrier or to reach the destination of shipment.

As a result of the Staggers Rail Act of 1980, the industry has been largely deregulated. Railroads no longer operate under the tight regulatory controls that marked their historical development in this country. In the 4½ years since passage of the Staggers Rail Act of 1980, two significant changes have occurred which make it imperative that the antitrust laws be amended to avoid serious injury to the distribution system of many shippers which are heavily dependent on rail transportation.

First, there has been a significant reduction in the number of railroads and hence a reduction in rail competition since passage of the act. Deregulation of the airlines and the trucking industry has resulted in new entries and new competition in these fields. Deregulation has thus met the objective of providing the public with increased competition. Deregulation of railroads, however, has led to an unprecedented series of mergers resulting in less competition than ever before.

Second, the Commission has used its power to exempt certain classes of commodities and certain transportation services from regulation to a point where the carefully constructed remedies for captive shippers under the Staggers Act will soon be irrelevant, even if the Interstate Commerce Commission could be persuaded to administer the act the way it was intended.

The result has been that some large volume shippers, heavily dependent on rail for distribution of their products, have less rail competition and an ineffective remedy under the Staggers Act. Another large segment of rail shippers has no remedy at all under the Interstate Commerce Commission because they have been exempted by order of the Commission.

The antitrust laws, as presently written and construed, do not appear to provide adequate protection against abuse of market power. Since 1948, the railroads have been operating under a partial exemption from the antitrust laws. The Reed-Bullwinkle Act (49 U.S.C. 5(b)) gave the railroads, subject

to approval of the Interstate Commerce Commission, the right to act in concert to fix prices for transportation services. Although the scope of this exemption was altered in the Staggers Rail Act of 1980 (49 U.S.C. 10706), the partial exemption still remains.

It is true that the courts have held that Reed-Bullwinkle did not modify the Sherman Act prohibition against predatory or anticompetitive practices. See. *United States* v. *B&O R. Co.*, 538 F. Supp. 200 (1982). Consequently, rates designed to drive out competition from other carriers might well be within the scope of the present antitrust laws. But what of the situation where a single carrier serves a shipper who depends in large part on rail to distribute his products? May such a carrier charge whatever price it desires for rail transportation with impunity from the antitrust laws? May such owner-carrier prohibit another competitive carrier from using its tracks to reach the facilities of the shipper? Does such a railroad have the right to discontinue service if a shipper objects to any unilateral proposals which would be damaging to his business? Unreasonably high rates, discrimination, joint use of rail facilities have all been subject to regulation for nearly a century and have not been subject of antitrust investigations. The Interstate Commerce Commission is the exclusive agency empowered to enjoin railroad rates and practices. Section 16 of the Clayton Act expressly prohibits shippers from seeking an injunction against the railroads in courts.

Under today's climate of deregulation for the transportation industry, both the proponents of deregulation and the railroads have argued that the restraints of the antitrust laws should provide the necessary protection against abuse of market power—not an independent regulatory agency. This is what our amendment to the antitrust laws is designed to accomplish. There is no desire to reregulate the railroad industry but merely to provide the captive shipper with a remedy under the antitrust laws which will prevent abuses of market power.

These abuses are not hypothetical or theoretical. They have happened. Shippers have been faced with demands for unreasonable rates. Shippers have been threatened with discontinuance of service. In some cases, the railroads have taken the position that they are no longer common carriers and, therefore, they have no duty to serve the public. They have claimed that they have an unrestricted right to cut off service unless shippers comply with the unilateral demands of the railroads. Moreover, the railroads have refused to negotiate or arbitrate disputed issues. For example, on two separate occasions, one shipper's business was critically threatened when a railroad called one day to say that, effective the very next morning, it would provide no more service. The shipments involved perishable commodities. The shipper's entire distribution system would have come screeching to a halt without rail service. This happened during the term of an existing contract between the shipper and the railroad. The railroad wanted to extend unilaterally the existing contract. The railroad forced acquiescence by threatening to cut off service with no notice. The shipper had no choice but to agree to whatever terms the railroad demanded.

This type of behavior is unconscionable. The railroads hold the ultimate weapon against captive shippers by threatening to discontinue service. There is no fair negotiation between equal bargaining partners in such an unbalanced situation.

In a largely deregulated environment there are no fair arguments against antitrust coverage. Yet, with railroad transportation there is much confusion over the coverage of the antitrust laws. After years of operating in such a tightly regulated environment, railroads and shippers do not know the ground rules for deregulation. Abuses have been documented. The time has come to make clear that the railroads are subject to the antitrust laws and that certain practices are unlawful abuses of market power.

The bill I am introducing today is similar in principle to the bill, S. 2416, I introduced last Congress. That bill was the subject of hearings in September, 1984. I learned a great deal about this issue at those hearings and my desire to continue to press for antitrust coverage of the rail industry was only reinforced. As a result of the hearings, I have refined several of the specifics of my bill, but the goal remains the same: to restore competition to the rail industry and thus provide captive shippers with at least the opportunity to ship their commodities at reasonable rates.

This legislation has received support from many sectors of the economy: the coal industry, public utilities, forest products, agriculture interests such as growers and fertilizer producers, and the perishable food producers. I intend to push for hearings on the bill in the spring, at which all interested parties will be welcome.

I also applaud the efforts by Senators LONG, ANDREWS, and FORD to get at the problem of captive shippers through other means. I support their efforts and believe we are shooting at the same goal but taking different routes to that end. I look forward to working with them toward our mutual goals.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 447

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Antimonopoly Act of 1985".

SEC. 2. (a) The Congress finds that railroad rates and terms of service are best and most efficiently established in a competitive marketplace.

(b) The Congress finds that in many instances a competitive marketplace does not exist because of conditions such as those described below:

(1) The source of supply of a bulk commodity is served by a single rail carrier that has exclusive control of the railroad facilities from the source of supply to a point of interconnection with another rail carrier. Beyond such point of interconnection alternative rail routes exist to the destination to which the commodity is shipped, and such routes would be competitive were it not for the monopoly of the originating carrier over the movement from the source of supply to the point of interconnection. The originating rail carrier uses its monopoly to eliminate competition over the entire route and to assess charges or require other terms of service less favorable than those that would be assessed or required in a competitive environment for the movement over its track or railroad facilities from the source of supply to the point of interconnection.

(2) A similar situation exists where a delivering or connecting rail carrier has exclusive control of tracks or railroad facilities which give it a monopoly from a point of interconnection with another carrier to the destination of the movement or to a second point of interconnection with another carrier.

(3) Situations also addressed by this Act exist where a rail carrier has exclusive control over track or railroad facilities and monopolizes movements within the area of its exclusive control, or where two or more rail carriers have joint or mutual exclusive control over track or railroad facilities and so monoploize its use.

(c) The purposes of this Act are to restore, establish, or enhance competition by eliminating the ability of the originating, connecting, or delivering carrier, as the case may be, to assess charges or to require other terms less favorable than those that would be assessed or required in a truly competitive environment.

SEC. 3. The Sherman Act (15 U.S.C. 1) is amended by adding after section 8 the following new section:

"Sec. 9. (a)(1) It shall be unlawful for an owner rail carrier to monopolize or attempt to monopolize by denying or threatening to deny to any shipper or another rail carrier the use on reasonable terms of a railroad facility which is the sole facility over which such shipper can move bulk commodities by rail to connect with the track of a competing rail carrier or to reach the destination of shipment.

"(2) A violation of paragraph (1) shall not occur where an owner rail carrier permits, on reasonable terms determined in accordance with generally accepted principles regarding just and reasonable rental of track, another rail carrier offering competing service to use such sole railroad facility. If the owner rail carrier permits such use of the sole railroad facility by a rail carrier and resulting bona fide competition exists for the transportation of the shipper's goods, the carrier transporting shippers commodities shall not be restricted in its rates by any provision of this Act.

"(3) If the owner rail carrier does not offer use of its tracks to a competing rail carrier, as provided in paragraph (2), or if no competition materializes from any competing rail carrier, the owner rail carrier shall offer rates to a shipper for transportation of its bulk commodities over the sole

railroad facility at rates which are no higher than would yield a fair return on the proportion of the owner rail carrier's prudent investment in the sole railroad facility that the shipper's traffic bears to all traffic using such sole railroad facility.

"(b) It is unlawful for the owner rail carrier—

"(1) to condition the use of the sole railroad facility upon use of other facilities of the owner rail carrier, or

"(2) to suspend or threaten to suspend service over the sole railroad facility by reason of a shipper's asserting its rights under this section.

"(c) If connection with a water carrier exists at or within reasonable proximity of the first connection with a competing rail carrier, the shipper may elect to connect with the water carrier instead of or in addition to connecting with a competing rail carrier; provided that the cost of interconnection is no greater than would be occasioned by interconnection with the first competing rail carrier, or the owner rail carrier is reimbursed for the difference in cost.

"(d)(1) Any person injured in his business or property by reason of a violation of subsection (b) of this Act may bring an action therefor in accordance with the provision of section 4 of the Clayton Act.

"(2) Any person shall be entitled to sue for and have injunctive releif as provided in section 16 of the Clayton Act for threated loss or damage by reason of a violation of this section, notwithstanding any limitation contained in the proviso of such section 16 of the Clayton Act.

"(e) For purposes of this section the term—

"(1) 'rail carrier' means a person or persons providing for compensation railroad transportation in or affecting commerce;

"(2) 'owner rail carrier' means the rail carrier which owns or controls exclusively or jointly a sole railroad facility;

"(3) 'railroad facility' includes all facilities commonly included in the term 'railroad' which are necessary or practical for the movement of commodities over the sole railroad facility;

"(4) 'sole railroad facility' means a railroad facility which is the only facility by which a shipper can move bulk commodities by rail to connect with a competing railroad. Use of the sole facility 'to the destination of shipment' does not include use of railroad facilities beyond the point of connection or points of interconnection;

"(5) 'shipper' includes—

"(A) a person engaged in a business other than transportation who, in furtherance of such business, moves its own goods or arranges for transportation of commodities which it has sold; and

"(B) a person engaged in intermodal transportation who is a purchaser of rail service used in such intermodal transportation commonly called a 'shipper's agent';

"(6) 'bulk commodities' includes bulk goods moved in carload lots, such as coal, ore, grain, fertilizer, dry chemicals, primary forest or wood raw materials, and perishable commodities for human consumption when shipped in service which includes ToFC service;

"(7) 'primary forest or wood raw materials' includes logs, pulp wood, dressed or treated poles and saw mill or planing mill products;

"(8) 'service which includes ToFC service' means service to a shipper who customarily uses transportation by rail or trailers on flat cars (ToFC service) as a part of any given shipment, but does not exclude service to such shipper of some shipment by rail not employing ToFC service;

"(9) 'dry chemicals' means substances identifiable by chemical formulae and commonly described as chemicals, such as soda ash, silica gel, caustic soda, and sodium sulfate;

"(10) 'track of the competing rail carrier' means track subject to the competing carrier's use but does not include tracks jointly used by the rail carrier denying use of the sole facility; and

"(11) 'connect' includes connection from the point of origin, point of destination, and/or point of interconnection with another carrier.".

HB 1140

THE RAILROAD ANTIMONOPOLY ACT OF 1985

HON. JOHN F. SEIBERLING
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 7, 1985

● Mr. SEIBERLING. Mr. Speaker, today I have introduced legislation known as the Railroad Antimonopoly Act to correct anticompetitive practices in the railroad industry. By filling a gap in the antitrust laws, this bill would ensure that competition, not monopoly power, operates as the force which determines certain freight rates in the railroad industry.

The introduction of this bill builds on the momentum begun during the last Congress when Senator DENNIS DECONCINI and I proposed a similar measure which was the subject of hearings in both the House and Senate Judiciary Committees. I am pleased to note that Senator DECONCINI is again introducing the Railroad Antimonopoly Act in the Senate, and also that I am joined by Congressmen SYNAR, GLICKMAN, UDALL, ENGLISH, WATKINS, MCCURDY, and DORGAN as original cosponsors of this measure.

Railroad regulation began in 1887 and for almost a century, strict controls were justified on the theory that the industry had the characteristics of a public utility. However, because of changes in the marketplace and new demands on the transportation system, it became clear over the years that the regulatory approach was no longer working. Thus, in 1980, Congress passed the Staggers Act which sought to reduce the regulatory burden on the railroads which was hampering their ability to earn a profit. As a result, we are now witnessing the revival of that industry's economic health.

However, deregulation is not working in every circumstance. In fact, railroad shippers and customers which have no transportation alternatives are subject to the monopoly power of individual rail carriers without effective regulatory protection. Known as captive shippers, these companies are dependent upon rail for movement of their goods and are so situated that only a single carrier can provide that service. Although it was Congress' intent in the Staggers Act not only to free the railroads from restrictive regulation but also to protect captive shippers, the Interstate Commerce Commission [ICC] has failed to effectively provide any safeguard against monopoly power abuse.

Without strong marketplace discipline or meaningful regulation, captive shippers have no ability to bargain with the sole service railroad or successful challenge the rate imposed. As a result, captive shippers are forced to pay excessive and arbitrary rates for rail transportation. And ultimately, of course, so do the consumers of these captive services and products.

This problem is especially acute with regard to shippers of bulk products. Because of their location, volume, and the distance needed to be moved, such materials as coal, grain, fertilizer, and the like are almost totally dependent upon rail service. Other nonbulk transportation modes are simply not feasible. In the situation of coal, for example, the rail transportation costs can more than triple the mine price of coal. This is bad news to the Nation's consumers of coal-generated electricity.

My bill seeks to remedy this problem by restoring competiton in bulk commodity rail service in areas now served by only one railroad. The bill achieves this by making it a violation of the antitrust laws for a rail carrier to monopolize by failing to offer a captive shipper of bulk commodities competitive rates or by denying such captive shippers and other railroads access to limited stretches of its trackage in areas where that rail carrier has a monopoly. My bill would provide that if a sole rail carrier chooses not to offer a competitive rate, the shipper or another rail carrier could exercise trackage rights, at a reasonable rate of compensation, to assure competition. The penalties for the continued monopolization of such tracks would be those in the antitrust laws.

This bill is not designed to open trackage of a rail carrier to any other carrier who wishes to use the owner railroad's lines. The purpose of this bill is to prevent the owner rail carrier from both maintaining exclusivity of control and monopoly pricing.

I certainly believe that railroads should be able to make a fair profit on the services they provide. And this bill envisages a healthy common carrier railway system. However, a monopoly railroad's denial of competitive rail service is neither fair nor competitive, and thus diminishes the health of our entire economy. The Railroad Antimonopoly Act will restore an equitable competitive balance to the railroad industry and to our economy as a whole.●

NEWS

DENNIS DeCONCINI

Hart Senate Office Building, Washington, D.C. 20510

FOR IMMEDIATE RELEASE:
Thursday, February 7, 1985

Contact: Bob Maynes
Lynn Levins
202/224-7454

WASHINGTON--Following is the text of a statement delivered by Sen. Dennis DeConcini (D-Ariz.) at a press conference on Thursday, February 7, in the Russell Senate Office Building, Room 418, at 1:00 p.m., that announced the reintroduction of the "Railroad Antitrust Monopoly Act".

We are here today to announce the introduction of the Railroad Antimonopoly Act. It is a bill designed to clearly place the railroad industry within the scope of the antitrust laws. The end result, we hope, will be that competition will be fostered which will ultimately benefit shippers, consumers, and the railroads.

As a result of the Staggers Rail Act of 1980, the rail industry has been largely deregulated. The experience of the past five years has shown that it is imperative that the antitrust laws be made fully applicable to the railroads. Otherwise, serious injury may result to many shippers who are heavily dependent on rail transportation. The combination of a reduction in the number of railroads since 1980, and the ICC using its power to administer the Staggers Act in way that leaves many 'captive shippers' at the mercy of the railroads, dictates that an alternative restraint is needed to assure fair and orderly commerce.

Under today's climate of deregulation for the transportation industry, the antitrust laws should provide the necessary protection against abuse of market power. This is what our amendment is designed to accomplish. There is no desire to reregulate the railroad industry but merely to provide the captive shipper with a remedy under the antitrust laws which will prevent abuses of market power. To paraphrase Shakespeare, "It's okay to be a giant, but to use the power of a giant is tyranny."

These abuses are not hypothetical. They have happened. Shippers, particularly captive shippers, are routinely face with demands for unreasonable rates or service requirements. The shipper has no choice but to agree to whatever terms the railroads demands.

This type of behavior is unconscionable. In a largely deregulated environment there are no fair arguments against antitrust coverage. The rail industry has abused the trust bestowed on it by Staggers. While rail revenue has soared, making many of the major roads solvent enough to engage in acquisitions of unrelated industries, so too has the temptation for them to engage in unfair practices detrimental to shippers and, ultimately the consumer. Shippers must be permitted the opportunity to seek injunctions against unfair treatment, and then to present their case to a judge for final determination as to what will be reasonable terms of carriage. The has come to make clear that the railroads are subject to the antitrust laws.

-more-

Sen. Dennis DeConcini
February 7, 1985
Add One

We do not advocate a return to regulation by the ICC of the rail industry. We do advocate fair rules within which businesses dependent on rail transportation can operate. Air, motor and water carriers all are subject to competition from competing carriers as well as private transportation. This is because landing and navigation facilities at airports, the waterways and the highways are all public facilities open to anyone. Only in the case of rail transportation does one private company often control the sole access to a major shipper or a region. Competition has made deregulation work with respect to air and motor carrier transportation - competition is necessary to make the rail deregulation work.

# # #

NEWS | DENNIS DeCONCINI
Hart Senate Office Building, Washington, D.C. 20510

FOR IMMEDIATE RELEASE:
Thursday, February 7, 1985

Contact: Bob Maynes
Lynn Levins
202/224-7454

WASHINGTON--Senator Dennis DeConcini (D-Ariz.) and Congressman John Sieberling (D-Ohio) announced the reintroduction of the "Railroad Antitrust Monopoly Act" which is designed to assure that rail shippers with no other shipping alternatives are not charged unreasonably high rates.

The bill clearly places the railroads within the scope of the antitrust laws and is in reaction to steadily increasing freight rates. These increases have put onerous cost burdens on some segments of the economy and have resulted in higher costs to consumers.

In 1980, Congress deregulated the rail industry. The Interstate Commerce Commission was expected to protect captive shippers from unreasonable rate increases. Captive shippers of bulk commodities are particularly vulnerable to a railroad's monopoly power because these shippers are only served by one rail line, and rail is the only feasible means of moving the shippers' goods.

The bill, known as the Railroad Antimonopoly Act of 1985, is designed to restore competition to the railroad freight industry's hauling of bulk products such as coal, ore, grain, fertilizer, dry chemicals, primary forest products and perishable commodities.

"This bill restores needed competition to the rail industry," DeConcini said. "The ICC has failed to protect captive shippers. Where a railroad has a monopoly, as it often does in the bulk product field, there is neither competition nor the force of antitrust laws. We must protect consumers and restore protection to captive shippers by making the railroads subject to the antitrust laws as are other industries."

The bill ammends the Sherman Antitrust Act to make it an antitrust violation for a railroad to deny or threaten to deny to any shipper or another rail carrier the use on reasonable terms of a railroad facility which is the sole facility over which such shipper can move bulk commodities.

"My legislation will not prevent the railroads from recovering a fair return on their investment," DeConcini said. "It will make the railroads compete in the free market like any other industry. When the railroads have a monopoly they will have to be reasonable and can not gouge the shipper."

The Nation's utilities will be among the beneficiaries of the bill. The American Public Power Association, the National Rural Electric Cooperative Association, and the National Association of Regulatory Utility Commissioners have adopted resolutions calling for legislative action similar to the DeConcini-Sieberling bill.

# # #

FOR THE EXTENSION OF REMARKS
Thursday, February 7, 1985

THE RAILROAD ANTIMONOPOLY ACT OF 1985

John F. Seiberling

Today I have introduced legislation known as the Railroad Antimonopoly Act to correct anticompetitive practices in the railroad industry. By filling a gap in the antitrust laws, this bill would ensure that competition, not monopoly power, operates as the force which determines certain freight rates in the railroad industry.

The introduction of this bill builds on the momentum begun during the last Congress when Senator Dennis DeConcini and I proposed a similar measure which was the subject of hearings in both the House and Senate Judiciary Committees. I am pleased to note that Senator DeConcini is again introducing the Railroad Antimonopoly Act in the Senate, and also that I am joined by Congressmen Synar, Glickman, Udall, English, Watkins, McCurdy and Dorgan as original cosponsors of this measure.

Railroad regulation began in 1887 and for almost a century, strict controls were justified on the theory that the industry had the characteristics of a public utility. However, because of changes in the marketplace and new demands on the transportation system, it became clear over the years that the regulatory approach was no longer working. Thus, in 1980, Congress passed the Staggers Act which sought to reduce the regulatory burden on the railroads which was hampering their ability to earn a profit. As a result, we are now witnessing the revival of that industry's economic health.

However, deregulation is not working in every circumstance. In fact, railroad shippers and customers which have no transportation alternatives are subject to the monopoly power of individual rail carriers without effective regulatory protection. Known as captive shippers, these companies are dependent upon rail for movement of their goods and are so situated that only a single rail carrier can provide that service. Although it was Congress' intent in the Staggers Act not only to free the railroads from restrictive regulation but also to protect captive shippers, the Interstate Commerce Commission (ICC) has failed to effectively provide any safeguard against monopoly power abuse.

Without strong marketplace discipline or meaningful regulation, captive shippers have no ability to bargain with the sole service railroad or successfully challenge the rate imposed. As a result, captive shippers are forced to pay excessive and arbitrary rates for rail transportation. And ultimately, of course, so do the consumers of these captive services and products.

This problem is especially acute with regard to shippers of bulk products. Because of their location, volume and the distance needed to be moved, such materials as coal, grain, fertilizer, and the like are almost totally dependent upon rail service. Other non-bulk transportation modes are simply not feasible. In the situation of coal, for example, the rail transportation costs can more than triple the mine price of coal. This is bad news to the nation's consumers of coal-generated electricity.

My bill seeks to remedy this problem by restoring competition in bulk commodity rail service in areas now served by only one railroad. The bill achieves this by making it a violation of the antitrust laws for a rail carrier to monopolize by failing to offer a captive shipper of bulk commodities competitive rates or by denying such captive shippers and other railroads access to limited stretches of its trackage in areas where that rail carrier has a monopoly. My bill would provide that if a sole rail carrier chooses not to offer a competitive rate, the shipper or another rail carrier could exercise trackage rights, at a reasonable rate of compensation, to assure competition. The penalties for the continued monopolization of such tracks would be those in the antitrust laws.

This bill is not designed to open trackage of a rail carrier to any other carrier who wishes to use the owner railroad's lines. The purpose of this bill is to prevent the owner rail carrier from both maintaining exclusivity of control and monopoly pricing.

I certainly believe that railroads should be able to make a fair profit on the services they provide. And this bill envisages a healthy common carrier railway system. However, a monopoly railroad's denial of competitive rail service is neither fair nor competitive, and thus diminishes the health of our entire economy. The Railroad Antimonopoly Act will restore an equitable competitive balance to the railroad industry and to our economy as a whole.

OFFICE OF CONGRESSMAN JOHN F. SEIBERLING
1225 LONGWORTH HOUSE OFFICE BUILDING
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

Contact: Kay Casstevens
Phone: (202) 225-5231

PR 85-3

FOR IMMEDIATE RELEASE, February 7, 1985

SEIBERLING INTRODUCES RAILROAD ANTIMONOPOLY ACT

Congressman John F. Seiberling (D-OH) today introduced legislation in the House of Representatives to address anticompetitive practices in the railroad industry. Senator Dennis DeConcini (D-AZ) introduced identical legislation in the Senate.

Entitled the Railroad Antimonopoly Act of 1985, this bill would clarify the antitrust laws to ensure that competition, not monopoly power, operates as the force which determines railroad freight rates for bulk commodities.

Aimed at rectifying the situation facing shippers known as "captive shippers" because they are dependent upon single rail carriers for movement of their goods, this bill makes it unlawful under the Sherman Act for a rail carrier to monopolize by failing to offer a captive shipper of bulk commodities competitive rates or by denying such a captive shipper and other railroads access to limited stretches of its trackage in areas where that rail carrier has a monopoly. The bill provides that if a sole rail carrier chooses not to offer a competitive rate, the shipper or another rail carrier could exercise trackage rights, at a reasonable rate of compensation, to assure competition. The penalties for the continued monopolization of such tracks would be treble damages or injunctive relief.

Seiberling said he introduced the bill because "without strong marketplace discipline or meaningful regulation, captive shippers have no ability to bargain with the sole service railroad or successfully challenge the rate imposed. As a result, captive shippers are forced to pay excessive and arbitrary rates for rail transportation. And ultimately, of course, so do the consumers of these captive services and products."

Seiberling and DeConcini introduced similar legislation in the 98th Congress which was the subject of hearings in both the House and Senate Judiciary Committees.

Original cosponsors of the Seiberling bill are Congressmen Mike Synar, Dan Glickman, Morris Udall, Byron Dorgan, Glenn English, Wesley Watkins and Dave McCurdy.

# # # #

Statement by Congressman Mike Synar

February 7, 1985

Railroad rates charged to captive shippers are a serious problem for electric ratepayers across the country.

For example, in Oklahoma, consumers served by the Oklahoma Gas and Electric Company pay twice as much to get coal from Wyoming to Oklahoma as they pay for the coal itself. Since 1976, those same consumers have paid for a 265 percent increase in rail rates.

Also, the Western Farmers Electric Coop in Oklahoma estimates that each of its ratepayers in rural western and southern Oklahoma would save up to $300 annually if rail rates were brought under control.

The problem is equally serious nationally. Nearly 85 percent of all coal shipped nationally is "captive" and coal makes up 40 percent of all freight tonnage.

Two overriding national policies -- the Fuel Use Act and Clean Air Act -- combine to make many western state utilities dependent on low-sulphur Wyoming coal.

As important, the agriculture community across the country relies on railroads to get its products to market. As a farmer and rancher myself, I know the importance of rail transportation.

Unfortunately, Washington has not been able to respond effectively to the captive shippers' problems.

The ICC has not been doing its job: It will act to protect a captive shipper only if the rate charged is more than the cost of building a new railroad.

The Justice Department has not enforced existing antitrust law which could correct the problem (the essential facilities doctrine).

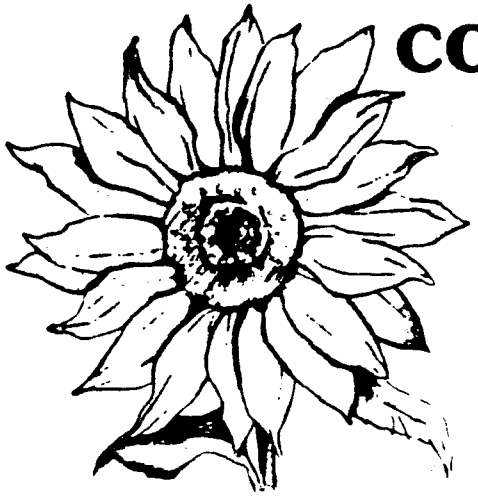
Congress failed to approve a coal slurry pipeline which would provide competition to the railroads.

The captive shippers have one last resort -- direct Congressional action -- and we have two options:

1. To reregulate by amending the Staggers Act, or

2. To provide an antitrust solution preserving deregulation and a free market.

The antitrust solution is greatly preferable. As the only Democratic member of both the Judiciary and Commerce Committees, I will fight to see that this approach is enacted into law.



CONGRESSMAN
DAN GLICKMAN

Fourth District-Kansas

STATEMENT BY REP. DAN GLICKMAN (D-KS) ON INTRODUCTION
OF LEGISLATION TO PROTECT CAPTIVE RAIL SHIPPERS

More and more, as railroads discontinue service in this era of deregulation, Kansas farmers find themselves in the growing population of captive shippers. Over 94% of country elevators were served by only one railroad a few years ago and that situation certainly hasn't improved. Only about a third of all terminal elevators were served by more than one rail company.

Of course, as this happens, the farmer no longer has much say about the amount he is charged to ship that grain. Farmers find this particularly troublesome since he cannot pass his increased cost of shipment on to the consumer. This added cost ends up meaning less profit for the farmer, who already is trapped between low grain prices caused by huge carryover stocks and a lack of farm credit and high cost of production. The ripple effect on rural America as one family farmer after another goes bankrupt is frightening, and, while this legislation being offered today speaks to only one tentacle of the octopus strangling American agriculture, it provides a means so farmers aren't unfairly gouged when it comes to moving their produce to market.

My colleagues whom I am joining in sponsoring this legislation have explained the provisions, so I will not get into that. But, as a member of both the House Judiciary and Agriculture Committees, I want to stress that unless some opportunity for relief for captive shippers is available under the antitrust laws as, this bill would provide, so captive shippers have access to trackage for their own cars or are sure of availability of "reasonable rates", farmers will continue to be confronted with limited--and costly--options for moving their production. The railroads may have grounds, in some instances, to abandon some routes. But the flexibility provided the railroads under the Staggers Act was not intended to be a license to gouge our farmers. This legislation aims at giving the farmers and other shippers of this country who have no option the protection they need and deserve under our antitrust laws. This bill will give them the legal means to protect themselves against forces they otherwise could not hope to overcome.

FOR RELEASE: FEBRUARY 7, 1985
FOR MORE INFORMATION: CHUCK TIMANUS 225-6216

FERTILIZER NEWS RELEASE

The Fertilizer Institute • 1015 18th St., N.W. • Washington, D.C. 20036
(202) 861-4900 • Telex 89-2699

Contact: Donald N. Collins
Thomas E. Waldinger

Antitrust Rail Bill Commended As Shipper Protection Measure

FOR IMMEDIATE RELEASE

WASHINGTON, D.C., February 7, 1985 -- Legislation to break the monopolistic power of railroads over unprotected bulk commodity shippers was greeted with strong support by the nation's fertilizer industry here today as Senator Dennis DeConcini (D-Ariz.) and Congressman John Sieberling (D-Ohio) announced plans to reintroduce the "Railroad Antitrust Monopoly Act."

"We commend congressional efforts to place the deregulated railroads under the nation's antitrust laws," said Gary D. Myers, president, The Fertilizer Institute. "Such efforts offer protection to those shippers subject to non-competitive and onerous rail costs."

The proposed legislation, Myers said, will help restore needed competition in areas where rail lines have been able to dictate the extent of rail service and to set uncontested rates. Many fertilizer shippers, he pointed out, are "captive" to one rail line, with no transportation alternative but to accept the railroad's shipping terms.

"This legislation will provide the final step in the rail deregulation process," Myers said, and added, "In the absence of regulation, the antitrust laws provide the means necessary to maintain a competitive environment."

- 30 -

John N. Thurman Vice President
Corporate Administration Group

GRACE

W. R. Grace & Co.
1511 K Street, N.W.
Washington, D.C. 20005

(202) 628-6424

February 7, 1985

The Honorable Dennis DeConcini
U.S. Senate
328 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator DeConcini:

I want to thank you and your colleagues for introducing today the Railroad Anti-monopoly Act.

This legislation is the free-enterprise approach to correcting the excessive rail rates charged captive shippers by allowing competition to set the rate.

W. R. Grace & Co. has substantial investments in coal and phosphate that are entirely dependent upon sole access railroads for transportation to market. The absence of competing rail service in these instances has allowed exorbitant rail rates to be established by the carrier owning the single essential facility. For instance, rail rates on the movement of coal from our mine in western Colorado to southeastern Texas have increased 130% over the last seven years, from $13.00 to $29.93 per ton. Similarly, since 1980, the price of surface mine coal in Colorado has increased at a rate of 5% per year, while interstate rail transportation costs have increased at a rate of 12.5% per year. The cost of transporting products often is the single largest cost item to the customers.

We believe the situation of monopolistic rail rates is best addressed by injecting the potential for competition into the rail service over these sole facilities. Your bill would allow competition to establish rail rates and other conditions of service.

By authorizing the option of trackage rights for a competing carrier to provide service over the sole facility, competitive service and freight rates are assured for the captive shipper. We endorse this approach which also allows the sole facility carrier to maintain the rail service by offering such a competitive rate. Adequate compensation for the exercise of trackage rights, a long-established practice in the railroad industry, is recognized.

Further, by mandating that the railroads hauling and controlling the distribution of coal are subject to the same competitive forces and laws that affect other industries, increased efficiencies in transportation will be realized.

Your bill will allow captive shippers to participate in a true competitive mode in contract negotiations for rail service. The only alternative to a highly regulated environment for monopoly rail service is a highly competitive environment. The Railroad Anti-monopoly Act assures such a competitive environment.

We look forward to providing testimony and other assistance in support of this legislation.

Sincerely,

John N. Thurman

JNT:dac/ljr

John N. Thurman Vice President
Corporate Administration Group

GRACE

W R Grace & Co
1511 K Street N W
Washington D C 20005

(202) 628-6424
February 7, 1985

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U.S. House of Representatives
1225 Longworth House Office Building
Washington, D.C. 20515

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Sincerely,

John N. Thurman

JNT:dac/ljr

legislate universal trackage rights.'

By E.K. Olsen

The number-one problem that faces coal producers today is the reduced demand for coal. It is looked upon as being caused by several factors. However, the result of this problem is a lower volume of deliveries on contract sales, fewer, if any, sales in the spot market, and much greater competition among coal mines for possible sales.

Despite all the effort that has been placed, and continues to be stressed, on controlling our costs so that we may market our product, we find ourselves hobbled by the high expense of transporting our product to the customer. It is a problem over which we have no control, yet one which has shut down several coal mines around the nation. I get upset when my company loses a sale and I learn we were the lowest bidder, FOB mine, and end up one of the highest for the delivered product.

A typical example is a recent spot purchase of some 250,000 tons of coal by Central Power and Light Co. of Corpus Christi, Texas. Thirty-six mines were invited to bid. These mines are located in the eastern, western and central part of the U.S., as well as South Africa, Colombia, Australia and Canada.

CP&L advised me that we were the lowest bid FOB mine in Colorado, where our mine is located, but we came in 14th place in the delivered price at the utility's plant.

The company reported to me that a surface mine comparable to ours in size, located in the mountainous regions of British Columbia, could truck the same quality coal to a railhead and transport it to Vancouver, where it would be rehandled into ocean-going vessels. The coal then would be shipped around the west coast of North America, down and through the Panama Canal, then up through the Gulf of Mexico to Corpus Christi. It would be unloaded and transferred onto barges and barged 20 miles up canals to Victoria, Tex., where it would be unloaded onto the ground, reloaded into trucks, and trucked six miles into the plant and unloaded into the plant's stockpile.

The coal would be rehandled five to six times, transported by four intermodal means, and delivered at a lower cost than our coal loaded directly into a unit train and unloaded directly onto a conveyor belt feeding the plant. Yet, we had the lowest price FOB mine.

I get upset when my company loses a sale and...we were the lowest bidder, FOB mine.

Olsen

Incidentally, the cars of the unit train are owned by the utility, and the first 16 miles of the rail haul from our mine to the utility are owned by Colowyo Coal Co. at a capital investment of nearly $20 million.

Now, while the Staggers Act is worthwhile, it does not address the basic problem, which is the railroads' monopoly position. Could you imagine what airline tickets would cost you if there was only one carrier per route?

The difference between airlines and railroads is that airlines don't have a monopoly, but railroads do. Airlines don't own the airports, or the airways, but railroads own the tracks and the yards.

If this monopoly could be broken, railroads would compete with each other and the marketplace would set the freight rates just as it does in the airline business.

One way to break the railroad monopoly, in our opinion, would be to legislate universal trackage rights. Trackage rights now exist between several railroads, either as a result of regulatory action, or under contracts negotiated between certain carriers under which the railroads are allowed to use the tracks of other railroads in exchange for adequate compensation.

If this limited concept of trackage rights were made universal, there would be no monopoly. Any railroad, anywhere in the country, could compete for any coal or other commodity shipments just as any airline can compete freely anywhere within the country. With free competition, there would be no need for regulation of freight rates.

There was a bill being considered in the last Congress that would have been one way of achieving universal trackage rights and doing away with the present monopoly stranglehold the railroads have on shippers. This bill was introduced to "amend the Sherman Act to prohibit a rail carrier from denying to any shipper of certain bulk commodities with intent to monopolize use of its track, which affords sole access by rail to such shippers to reach the track of a competing railroad for the destination of the shipment."

Each person should urge his congressman, or any group of people having political influence, to push for this bill.

E.K. Olsen is president and general manager, Colowyo Coal Co., Meeker, Colo. This article is adapted from his opening remarks at the Coal Mining Session, Sept. 26, at the AMC Mining Convention in Phoenix.

PRESS MATERIAL

Western Fuels Association, Inc.

PHONE 202/463-6580
(Orren Beaty)

KEN HOLUM—GENERAL MANAGER
1225 19th STREET, N.W., SUITE 700
WASHINGTON, D.C. 20036

FOR IMMEDIATE RELEASE

WASHINGTON, D.C., February 7 -- Introduction in both Senate and House of Representatives today of the "Railroad Anti-Monopoly Act" was hailed by Ken Holum, general manager of Western Fuels Association, Inc., which has been supporting the legislation.

Designed to restore competition in transportation by rail of bulk products such as coal, grain, ore, chemicals, fertilizer, forest products, etc., the bill was introduced by Rep. John F. Seiberling of Ohio and Senator Dennis DeConcini, both sponsors of similar legislation in the 98th Congress.

The bill is aimed at areas where a single railroad provides service to producers or users of such bulk products -- commodities which it is not economical to transport by other modes. Use of the single rail access by other railroads using that track is intended to ease the economic plight of "captive shippers." Denial of use of such trackage would be a violation of federal antitrust law.

Hearings were held on similar legislation (S.2417 and H.R.4559) in the House Judiciary Subcommittee on Monopolies and Commercial Law and the full Senate Committee on the Judiciary in September 1984.

Holum, who testified in both hearings in support of the bill, said enactment of this bill into law is necessary to discourage monopoly railroads from overcharging on coal transportation and increasing the cost of electricity to consumers.

###

Sunkist COOPERATING CITRUS GROWERS OF CALIFORNIA AND ARIZONA

February 6, 1985

The Honorable Dennis DeConcini
United States Senate
Washington, D.C. 20510

Dear Senator DeConcini:

On behalf of Sunkist I wish to express our appreciation for your sponsorship of the Bill, being introduced today, which will greatly assist in promoting competition and fair dealing in the transportation and distribution of fresh citrus fruit.

As you are aware, citrus fruit grown in the states of Arizona and California must move thousands of miles to big eastern markets. Rail service is essential if we are to continue to compete in such markets.

Fresh citrus along with all perishable commodities, have been exempt from all regulation by the Interstate Commerce Commission for over five years. After the merger of the Southern Pacific and Santa Fe Railroads, the entire growing area in Southern California and Arizona will be served by only one railroad. Your legislation will provide impetus for much needed competition for the movement of our commodity.

We applaud your efforts to find the solution to the problems deregulated shippers are facing, and we are confident your bill will meet with the support of your colleagues, including those who favor deregulation of transporation.

With all best wishes.

Respectfully yours,

William K. Quarles

William K. Quarles
Vice President
Government Affairs

WKQ:ft

SUNKIST GROWERS, INC. P.O. BOX 7888 VAN NUYS, CALIFORNIA 91409 (818) 986-4800

A. T. MASSEY COAL COMPANY, INC.

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RICHMOND, VIRGINIA 23261
(804) 788-1800

February 7, 1985

The Honorable John F. Seiberling
U.S. House of Representatives
1225 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Seiberling:

A. T. Massey Coal Company supports you and your colleagues in the introduction of the Railroad Anti-monopoly Act.

This legislation provides critical relief to coal producers and shippers who are captive to a single railroad for their transportation needs.

We believe this proposal is the necessary legislative complement to the continuing de-regulation of the railroads, which has been beneficial to many classes of service. But, the lingering question in the wake of this de-regulation is, "How do you de-regulate a monopoly?"

The concept embodied in your proposal, the provision of trackage rights to captive producers and shippers, under the auspices of the Sherman Act, provides a free market answer to monopoly de-regulation. It does not amend or detract from the 1980 Staggers Rail Act.

Your proposal will allow captive producers to benefit from competitive forces in establishing service and rates in railroad monopoly situations.

As you know, A. T. Massey has coal mining subsideries in the central Appalachian coal fields, as well coal export terminal facilities in Virginia and South Carolina. We, along with other coal exporters already have substantially lost the coal markets markets in Europe. These losses are largely on the basis of transportation costs out of the Appalachian coal fields.

I look forward to working with you and your colleagues on this important measure and to providing support in early hearings on this proposal.

Sincerely,

James M. Baylor

James M. Baylor
Senior Vice President

JB:dac/ljr

A. T. MASSEY COAL COMPANY, INC.

POST OFFICE BOX 26765
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RICHMOND, VIRGINIA 23261
(804) 788-1800

February 7, 1985

The Honorable Dennis DeConcini
U.S. Senate
328 Hart Senate Office Building
Washington, D.C. 20510

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