

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION) CASE NO. R-2000-261
OF IDAHO CARRIERS BY RAIL FOR)
AUTHORITY TO INCREASE INTRASTATE)
FREIGHT RATES AND CHARGES AS)
AUTHORIZED IN EX PARTE 310)

IN THE MATTER OF THE APPLICATION) CASE NO. R-2000-262
OF IDAHO CARRIERS BY RAIL FOR)
AUTHORITY TO INCREASE INTRASTATE)
FREIGHT RATES AND CHARGES AS)
AUTHORIZED IN EX PARTE 313)

POST HEARING BRIEF

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POST HEARING BRIEF

Come now the Railroads of the State of Idaho^{1/} and in support of their application for the increases requested in the above dockets, respectfully submit:

I.

STATEMENT OF THE CASE

The Idaho Railroads are seeking a 7% increase in Idaho intrastate freight rates, comparable to that authorized by the Interstate Commerce Commission in Ex Parte 310 - Increased Freight Rates and Charges, 1975, Nationwide, in Cause No. R-2000-261. Most of the Ex Parte 310 increases have been in effect since April 27, 1975, with the balance in effect since July 9, 1975 (Tr. 108). The increase sought in Cause No. R-2000-262 is comparable to the increase authorized by the Interstate Commerce Commission in Ex Parte 313 - Increased Freight Rates and Charges--Labor Costs--1975 where 5% took effect June 20, 1975, (Tr. 109) followed by a 2.5% increase which took effect October 11, 1975 (Tr. 114).

^{1/} The Burlington Northern, Inc., the Camas Prairie Railroad Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Spokane International Railroad Company, the Union Pacific Railroad Company and Washington, Idaho and Montana Railway.

While the increases sought are the same as those granted by the Interstate Commerce Commission and subject to the same exceptions and holddowns, the detailed justification for these increases, which are based on additional labor, fuel and material costs not covered by the existing rate structure, is contained in the testimony of the various witnesses presented by applicants at the hearing on this matter. The revenue need is not based on financial reverses of the Northeast bankrupts or any expenses not applicable to Idaho railroads. (Tr. 537-538). The identity of the requested increases to those granted by the Interstate Commerce Commission is due to subjugation of the Idaho Railroads to the same economic forces as the rest of the Nation's railroads generally. Applicants seek to recover for the same categories of additional expenses for which they are not being compensated by the Idaho intrastate rate structure at present.

By seeking the same increases intrastate as are in effect interstate, they are also seeking to leave the rate structure in balance between interstate and intrastate rates on the same or related commodities. This proceeding is not the place to review alleged individual disparities in the rate structure. When such disparities come to light, railroads make every effort to reach a mutually satisfactory solution with the shipper,^{2/} which may involve changes in a number of factors other than the level of the rate itself. Generally proposed rate changes are in combination with other factors. Failing in agreement, either shippers or carriers are free to present specific proposals to the

^{2/} Tr. 292-3, Zizek; Tr. 130, 153-5, Melcher; Tr. 385, Hjelm.

Commission where the disagreement over a proper rate structure on a particular movement or on a particular commodity generally may be resolved.

The Commission must assume that the present rates were just and reasonable when established. Increased costs not covered by those rates have been shown by Witnesses Halpin, Kauders and Nance. Yet while the Idaho railroads have been faced with substantial increased labor, materials and fuel expenses which exceed the increases sought here, they have received no additional compensation from Idaho intrastate shippers to cover those expenses, although the increased costs have been borne for an extended period.

The issue before this Commission should be whether shippers and receivers in Idaho intrastate commerce should bear their fair share of these increased expenses, as those same shippers do on their shipments in interstate commerce, or whether the Idaho Railroads must bear these additional costs not covered by a rate structure producing an inadequate rate of return and thus have an even less adequate rate to continue to support continued operations, maintenance and replacement of equipment and facilities. The record shows both that the Idaho railroads have a need for the additional revenue as shown by their sub-marginal rates of return and that no showing has been made to excuse any of Protestants from bearing their fair share of these increased expenses through evenly applied rate increases.

II.

RESPONDENTS' REVENUE NEEDS

Respondents' revenue needs are set forth both in the testimony of Witness Halpin, demonstrating the increased expenses which the carriers have incurred and the need for

additional revenue to cover those increased expenses, and in the testimony of Witnesses Kauders, Nance, and Harwood.

Mr. Halpin's testimony regarding rates of return places the financial needs of applicants and the objections of protestants in context, particularly his Exhibit 12 which shows that applicants' rate of return on shareholders equity is lower than that of Protestants even on a like-with-like basis (Tr. 539). Respondents have borne the expenses justifying the increases sought for an extended period of time and have no means of recouping these costs on past shipments. There is no justification for depriving them of these badly needed increases to cover known costs. The fact that applicants may have received increases in the interim covering still earlier costs does not justify denial of the increases sought herein.

A. The Increased Costs Respondents Have Experienced.

Witness Halpin sets forth increased expense categories which justify these applications as follows:

"Ex Parte 310 (Docket R-2000-261)

1. Increase in fuel costs from May 10, 1974 to October 1, 1974.
2. Increase in Material and Supply Costs from April 1, 1974 to October 1, 1974.
3. Increase in Payroll Taxes, January 1, 1975.
4. Cost of supplemental sickness benefits - union agreements in 1973.
5. Cost of increased vacation allowances and paid holidays under union agreements in 1971 and 1972.

6. Increase in equipment rents, state and local taxes, and fixed charges based on first six months 1974 with first six months 1973.

7. Increase in loss and damage, personal injuries, insurance and pension, 1973 vs. 1972.

Ex Parte 313 (Docket R-2000-262)

1. Wage increase of 10 per cent effective January 1, 1975.

2. Wage increase of 5 per cent effective October 1, 1975.

3. Increase of 20 per cent in health and welfare benefits effective January 1, 1975.

4. Increase in payroll taxes as a result of wage increase effective October 1, 1975."

These are actual recurring expenses which the Idaho railroads are experiencing on a continuing basis and will experience indefinitely for the future. The latest of the expenses supporting the Ex Parte 310 increases was realized October 1, 1974 and the latest expense covered in Ex Parte 313 increase was realized on October 1, 1975, although the heavy preponderance of these increased expenses were experienced far earlier in each instance.

The Idaho railroads have been facing these same increases on their intrastate traffic as on interstate traffic (Hennessey Tr. 189). There is no increment in the Idaho intrastate rate structure to compensate the Idaho railroads for these expenses. In addition to these expenses, the carriers must also absorb other expenses which have yet to be presented as a justification for a general rate increase.

There is no evidence of record from Protestants contradicting the impact of the expenses as set forth by Witness Halpin. To a limited extent, the Commission staff

attempted to quantify these expenses. However, to that extent, it shows that the increases sought herein are justified.

The Commission's staff did not present an evaluation of the expenses underlying the Ex Parte 310 increase with the exception of the loss and damage portion in Staff Exhibit 611 which was not received (Tr. 547).

Witness Ainsworth presented a study reviewing the increased labor costs (Staff Ex. 612) which on its face shows a labor increase of 7.04%. However, on cross-examination, he admitted that he had not included increased labor expense for the entire payroll expense (Tr. 519). Witness Halpin reviewed Exhibit 612 pointing out the omission showing that when properly computed, the revenue need would be 7.59%, which is slightly less than the Ex Parte 313 increases sought (Tr. 532).

Thus, the record shows a real and unchallenged revenue need of Respondents which is greater than that which they seek to obtain through this proceeding. While at least one Protestant (Tr. 467) is concerned about the effect of the increase on railroad traffic, this is a matter better left with railroad management which has the responsibility to protect that revenue and the affected shippers to negotiate such rate revisions as might prevent diversion of specific movements which might be endangered, thus permitting the increases to apply to other movements of the same commodity. Certainly rail management can be expected to act to prevent diversion where their action can be justified. They should not lower all rates on a commodity to protect an uneconomic movement.

C. The Rate of Return of Idaho Railroads is Inadequate.

Both Witness Halpin (Ex. 1 and 11) and Brown (Staff Ex. 607) produce evidence showing the rate of return of the applicant Idaho railroads on various bases in addition to which Witness Halpin has demonstrated the substantive marginal rate of return of the railroad industry and its effect on the Idaho railroads on Page 19 through 29. He sets forth the rate of return on net worth of leading corporations and of the Idaho Class I railroads in his Exhibit 1 in an Exhibit comparable to Staff Exhibit 607. In each instance the Exhibits show that the rate of return of the Class I railroads of the State of Idaho, computed at 6.0% by Witness Halpin, is far less than the industries represented by Protestants or by other transportation companies and utilities. For example, the following taken from Staff Exhibit 607 show the rate of return of principal industries represented by Protestants and those regulated by this Commission.

<u>Number</u>	<u>Industrial Group</u>	<u>Rate of Return</u>
2	TOTAL MINING	25.9
3	Sugar	22.4
8	Chemical products	19.0
16	Common Carrier trucking	16.2
18	Shipping and other transportation	16.1
20	Lumber and wood products	15.7
50	Telephone and telegraph	10.4
51	TOTAL PUBLIC UTILITIES	10.4
52	Electric power and gas	10.4
65	Air transport	6.3
69	TOTAL TRANSPORTATION	5.8
70	Class I Railroads	4.3

When with this Exhibit the comparison of the Idaho railroads with railroad nationally fails to establish that the Idaho railroads are obtaining a satisfactory return on their investment or that their rates on Idaho are excessive, particularly when the cost study of Witness Kauders (Ex. 3) which shows that Union Pacific, the principal Idaho intrastate carrier, is losing substantial amounts of money on its

Idaho intrastate traffic and will continue to do so even if these increases are granted.

This Commission has approved levels of rates of return on shareholders' equity as high as 13%, Intermountain Gas Co. v. Idaho Public Utilities Commission, ___ Ida. ___, 540 P. 2d 775 (1975). The record shows that applicants have a need for additional revenue to cover the expenses which are not encompassed within the present rate structure that any peculiarities of a particular movement which would reduce the cost are taken care of in the basic rates themselves, which to the extent that they justify a lower charge will result in a lesser dollar increase than would otherwise be applicable to shipments and that there is no financial reason for denying the increases sought.

B. These Increases are Faced by Railroads When Transporting Shipments in Idaho Intrastate Commerce

The expenses discussed by Witness Halpin are system expenses of the Class I railroads in Idaho. However, as explained by Witnesses Hennessy, Harwood and Barry, intrastate and interstate operations are so intermingled that it is impossible to separate them. The same additional expenses which have been found to warrant an increase on rates on interstate commerce are met with intrastate shipments. A locomotive will pull both interstate and intrastate shipments which move on identical track being held together by the identical ties. The mixture of intrastate and interstate is found throughout the railroad industry in Idaho. There is substantially no plant devoted strictly to intrastate commerce.

The testimony of Witnesses Halpin (Tr. 45, 48), Fauth (Tr. 263) and Brown (Tr. 498) establishes that there is no universally accepted basis of allocating expenses or investment to strictly intrastate traffic. However, Witness

Kauders presented a Rail Form A application covering Union Pacific's operations in Idaho and showed a heavy and substantial loss (Tr. 53-61, Ex. 3), while Witness Harwood showed that the log traffic on the Camas Prairie was marginal (Tr. 309).

Aside from the law not requiring the impossible, it is not necessary to separate out intrastate and interstate expenses or investment on an arbitrary basis to justify this increase, for in past increases the Commission has not required such separation. In view of the commonality of expenses to both interstate or intrastate traffic, it is unnecessary to perform the arbitrary and hypothetical exercise since the increased expenses apply with equal force to both intrastate and interstate traffic.

III. APPLICABLE LAW REQUIRES THE APPROVAL OF THE RATE INCREASES SOUGHT HEREIN.

- A. In a general revenue needs proceeding a regulatory commission should concentrate its attention on the need of railroads for additional revenue.

The basis for the pending applications is the revenue needs of the rail carriers in the State of Idaho. This Commission should, therefore, focus its attention on the need of the Idaho Railroads for increased revenue on intrastate traffic to meet increased expenses. The United States Supreme Court recently reiterated this position in Aberdeen and Rockfish Railroad Co. v. SCRAP, _____ U.S._____, 45 L.Ed.2d 191, 212, (1975), hereinafter referred to as SCRAP II:

"...the general rule has been that the I.C.C. may confine its attention in general revenue proceedings almost entirely to the need for revenue and to any other factors that relate to the legality of the general increase as a whole; and it follows a fortiori that if attention is given to other issues, that attention may be of a limited nature."

Revenue needs of the Idaho Railroads should also be the focus of this Commission's attention as it considers these applications for general rate increases on intrastate traffic. The Idaho Statutes, as will be more fully developed in Part III B of this brief, require that rates charged by utilities be just and reasonable. Idaho caselaw confirms what the statutes imply: that reasonable rates mean rates which will allow railroads to meet increased expenses. Since increased expenses are the very basis of the Idaho Railroads' application herein, under Idaho law the principal focus of attention should be the revenue needs of the railroads.

There are practical reasons why this Commission should base its decision on the revenue needs of the carriers. If the Idaho Railroads are to continue to provide intrastate service and maintenance and to continue to invest in plant and equipment to handle Idaho intrastate traffic, that Idaho intrastate traffic must bear its fair share of the cost of providing intrastate transportation service. All Idaho interstate shippers have been paying these increases and doing so for a substantial period of time.

An earlier United States Supreme Court case stressing revenue needs, United States v. Louisiana, 290 U.S. 70, 75 (1933), a case cited and approved as recently as 1975 in SCRAP II, explained that the Interstate Commerce Commission's power to raise intrastate rates was granted for the following reason:

"... so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate." [Emphasis added].

As noted in Part II of this brief, the Idaho Railroads have demonstrated that they have serious revenue needs, and that they require increases of a general nature in the intrastate freight rates in the state of Idaho to meet costs the present rate structure was not designed to meet. These revenue needs should be the governing factor of

this proceeding^{3/}.

- B. The facts, the statutes and the transportation conditions for intrastate and interstate facets of this increase are comparable and mandate approval.

Under both Idaho law and Federal law rate increases on intrastate and interstate traffic, respectively, will be allowed only if they are shown to be just and reasonable.

Under Section 1(5) of the Interstate Commerce Act, 49

U.S.C. §1(5):

"All charges made for any service rendered or to be rendered in the transportation of . . . property. . . shall be just and reasonable. . ."

Section 61-301 of the Idaho Code states that all charges made by a public utility for any service furnished or rendered "shall be just and reasonable." Section 61-622 of the Idaho Code (Supp. 1975), states that no public utility shall be allowed to raise rates unless this Commission finds that such an increase is justified. To do so the Commission "shall establish the rates. . . in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable."

These statutory provisions and the enforcement thereof by the Public Utilities Commission insure that the intrastate rate structure in Idaho will be a reasonable rate structure. This being so, the Idaho Railroads should be compensated for the expenses involved in providing intrastate transportation service. Indeed, unless there is good

^{3/} As will be discussed later in Part IV of this brief, the Idaho Commission need not consider each individual rate on each individual commodity in intrastate traffic. The Supreme Court in SCRAP II, 45 L.Ed.2d at 210-211, for example, held that the ICC is permitted to find across-the-board increases in rates lawful after taking evidence, not with respect to any particular rate, but rather with respect to the reasonableness of the increases in general, leaving the specific allegations of unreasonableness to other proceedings.

cause shown, it would be unreasonable not to place on intrastate shippers their fair share of the revenue needed to offset increasing railroad expenses on intrastate traffic. A general increase in intrastate rates is the appropriate way in which to generate needed railroad revenues.

These general rate increases have been considered by a public body charged with the responsibility of seeing that rail rates are "just and reasonable." The general rate increases authorized by the Interstate Commerce Commission in Ex Parte 310 and Ex Parte 313 are just and reasonable and required to meet revenue needs. Transportation conditions with respect to interstate traffic to, from, and through Idaho are substantially the same as those for intrastate traffic within Idaho. (Tr. 186-187; 190-191; 306; 340-341; 347). The finding of the Interstate Commerce Commission should be persuasive that the same increases are just and reasonable for application to Idaho intrastate traffic.

Recently, the Nebraska Supreme Court in Nebraska Railroads of Omaha v. Nebco, Inc., 194 Neb. 322, 231 N.W. 2d 505, 511 (1975), considered the question of general increases on intrastate rates and quoted extensively from a United States Supreme Court case, Illinois Commerce Commission v. United States, 292 U.S. 474 (1934):

"It is plain from the nature of the inquiry that the rate level, to which both classes of traffic were raised, was found reasonable on the basis of the traffic as a whole. Where the conditions under which interstate and intrastate traffic moved are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately

bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues.'"

In the opinion of the Supreme Court of Nebraska, a state court operating under statutes similar to those of Idaho governing utility rates,^{4/} when transportation conditions are substantially the same both for intrastate traffic and interstate traffic, the two types of traffic and rates should not be viewed as separate fields but rather as two classes of rates and traffic "intimately bound together." Where traffic conditions for intrastate and interstate traffic are substantially the same, as here, and the general interstate rate increases have been found to be just and reasonable, it follows that the intrastate rate increases should be found to be just and reasonable.

Indeed, the Nebraska Supreme Court went much further than this when it held in the Nebco case that:

"...evidence of the existing rates for services, as established by the Interstate Commerce Commission, constitutes prima facie evidence of the reasonableness of those rates for the same services when performed in intrastate commerce in this state." 231 N.W. 2d at 512.

This state supreme court was of the opinion that general revenue increase proceedings before a state Public Utilities Commission corresponding to general rate increases authorized by the Interstate Commerce Commission do not require the

^{4/} It has already been shown that the Idaho Public Utilities Commission has a statutory duty to insure just and reasonable rates. The Nebraska Public Service Commission under Nebraska Revised Statutes, §75-118, has the power to fix all necessary rates, charges and regulations governing the transportation of freight and passengers by common carrier in Nebraska intrastate commerce. Section 75-126 of the Nebraska Revised Statutes prohibits common carriers from giving undue or unreasonable preferences to any person, and subjecting any type of traffic to any undue or unreasonable "prejudice, delay or disadvantage in any respect whatsoever..."

production of specific intrastate data relative to items such as revenue, costs, and expenses.

This Nebraska Supreme Court decision leads to the conclusion that a state Public Utilities Commission may rely upon a finding by the Interstate Commerce Commission that general rate increases on interstate traffic are just and reasonable as the basis for its own finding that corresponding intrastate general rate increases are just and reasonable unless there is valid rebuttal. This is especially so where the state commission involved has the statutory duty of insuring just and reasonable rates, as do both the Idaho Public Utilities Commission and the Nebraska Public Service Commission.

The United States Supreme Court has also recognized the interrelatedness of general rate increases on intrastate and interstate traffic where the transportation conditions for both types of traffic are substantially similar. The Court in United States v. Louisiana, supra, at 79, found it was unnecessary to review each particular rate, stating:

"It sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that it saves the rights of interested parties to test the reasonableness of any individual rate."

It is shown in the testimony of Messrs. Hennessy, Harwood and Barry (Tr. 186-187; 190-191; 306; 340-341; 347) that the operating conditions for rail carriers in Idaho for the transportation of intrastate traffic do not differ from the operating conditions for the transportation of

interstate traffic to, from and through the State of Idaho. Since both interstate rates and intrastate rates must be just and reasonable, and since transportation conditions for both types of traffic are the same, the Idaho Commission should, as the Interstate Commerce Commission did, approve the Ex Parte 310 and 313 rate increases as just and reasonable.

Of course, a necessary corollary of the responsibility of the Idaho Public Utilities Commission to fix just and reasonable rates is the duty of the Commission to fix such rates as will allow the utilities furnishing services "to make a just and reasonable profit or return on its investment." Application of Pacific Tel. and Tel. Co., 71 Idaho 476, 480, 233 P.2d 1024 (1951). The Idaho Railroads have shown in Part II of this brief that they should obtain increased revenues from intrastate traffic in Idaho. If, as the Idaho Supreme Court has said, that intrastate rates must be sufficient "to pay for the upkeep of the plant or system, and the legitimate expense necessarily connected with the operation" of this system, Idaho Power and Light Company v. Blomquist, 26 Idaho 222, 141 P. 1083, 1092 (1914), then this Commission must grant the general rate increases requested by the Idaho Railroads on intrastate rates. Otherwise, the Commission will fail its duty to establish intrastate rates sufficient to pay the legitimate expenses connected with operating an intrastate railroad transportation system. Nowhere is there any allegation of excessive profits on the part of the Idaho Railroads.

Indeed, the rates of return on book investment for the four Class I railroads in Idaho in 1974 were far below that level of rates of return expressly approved by the Idaho Supreme Court. In Intermountain Gas Co. v. Idaho Public Utilities Commission, _____ Idaho _____, 540 P.2d 775, 789 (1975), the Idaho Supreme Court expressly held that the Public Utilities Commission in allowing an overall rate of return on investment of 8.73% had neither abused its authority nor made findings unsupported by substantial evidence. The four Class I railroads of Idaho had overall rates of return on book investment much below that of the 8.73% approved not only by the Idaho Public Utilities Commission in the Intermountain Gas Co. case, but also by the Idaho Supreme Court.^{5/} The following list consists of the overall rate of return on book investment for the four Class I railroads of Idaho for the year 1974:

1. Burlington Northern, Inc. - 2.95%
2. The Milwaukee Road - deficit.
3. The Spokane International Railroad - deficit.
4. The Union Pacific Railroad - 6.19%

The information in the preceding list is from the testimony of Mr. Halpin, which testimony also pointed out that the average rate of return on book investment for all four

^{5/} It should be noted that the Supreme Court of Idaho set aside all orders of the Idaho Public Utilities Commission in its decision in Intermountain Gas Co. Even though the Supreme Court expressly found that the IPUC properly ruled with respect to allowable rates of return, the Court also found that a divestment order of the Commission deprived the utility of due process. The Court held it could not uphold in part and remand in part and, therefore, it must set aside all orders of the Commission.

Class I Idaho Railroads was only 3.96% for the year 1974.
(Tr. 41).

As for the rates of return on shareholders equity for the Idaho Railroads, a rate of return calculated on a different basis from that of overall rates of return, Exhibit No. 607, presented by the Commission staff, indicates the following 1974 rates of return for three of the Class I Idaho Railroads:

1. Union Pacific Railroad - 8.30%.
2. Burlington Northern, Inc. - 5.18%.
3. The Milwaukee Road - 3.38%.

The Commission staff did not show a rate of return on shareholders equity for the Spokane International which became a Class I railroad in 1974.

In the Intermountain Gas Co. case, 540 P.2d at 789, the Idaho Supreme Court found no irregularity in a decision of this Commission allowing a return to equity capital in a range of 13.0% to 13.5% for a utility. Thus, the rate of return on shareholders equity of the Idaho Railroads is far below the permissible range approved by the Public Utilities Commission of the State of Idaho, as reviewed by the Idaho Supreme Court.

Because the rates of return for the Idaho Class I railroads on both book investment and on shareholders equity are well below levels of rates of return adopted by the Idaho Public Utilities Commission in 1975 and approved by the Idaho Supreme Court, and far below those of protestants (Exhibits Nos. 11 and 12), this Commission should hear no protests that the Idaho Railroads are making excessive

profits, that their freight rates are unreasonable, or that they do not need the rate increases herein requested. Present rates of return are already far below the levels approved by the Idaho Public Utilities Commission as being just and reasonable. With the onset of increased costs from many sources, these rates of return will assuredly decrease unless past increases in expenses arising from intrastate transportation services are covered by increased revenues -- a revenue need that can only be met by a general rate increase on intrastate Idaho traffic.

IV. PROTESTS AGAINST THE GENERAL INTRASTATE RATE INCREASES SOUGHT BY THE IDAHO RAILROADS ARE LEGALLY INSUFFICIENT AND LOGICALLY UNSOUND.

Representatives of four industries, the phosphate rock industry, the fertilizer industry, the sugar beet industry, and the sawlog industry, protest against the general rate increases sought by the Idaho Railroads.

- A. Individual rates are not appropriate subjects to be considered in general revenue proceedings, unless the increase itself is the cause of unlawfulness, nor is evidence relating to the profitability of rates on particular commodities or particular movements a sufficient basis upon which to deny a general rate increase.

Many of the representatives of the protesting industries argue that intrastate rates on the traffic their companies ship are already sufficiently high, without supporting evidence. Such positions misconceive the nature of a general rate increase before either the Interstate Commerce Commission or this Commission. The United States Supreme Court in SCRAP II, 45 L.Ed 2d at 210-211, quite clearly holds that across-the-board increases in rates may be approved after consideration of evidence regarding the

reasonableness of the increases in general, and that evidence concerning specific rates need not be considered. In United States v. Louisiana, 290 U.S. at 77, the same Court stated the appropriate doctrine in this fashion:

" . . . it is enough if the Commission in the first instance, makes such inquiry and investigation as would enable it to say that the prescribed increases when applied to members of the group would generally not exceed a reasonable maximum."

Applying this doctrine to protestants in this proceeding, their arguments based on evidence concerning individual rates or movements are irrelevant, unless protestants can establish that rate disparities are caused by the increase itself. No such showing has been made in this proceeding.

Protests based on evidence concerning individual rates or individual movements do not rest upon a sound foundation. Under the laws of Idaho, the Idaho Public Utilities Commission has the duty and responsibility to insure that rates are just and reasonable. Therefore, the present intrastate rate structure must be presumed to be just and reasonable for traffic carried on the Idaho Railroads. Any favorable circumstances relating to transportation conditions for specific movements in intrastate traffic have been taken into account by the basic intrastate rate structure. Important facts relating to specific movements or individual rates are already reflected in the basic Idaho intrastate rate structure because this set of facts constitutes one element of reasonableness and this Idaho intrastate rate structure must be presumed to be reasonable. Given this, the fact that revenue needs of the Idaho Railroads are the focus of this proceeding (Tr. 13), and the fact that the Idaho Railroads have demonstrated a compelling

need for the additional revenue sought herein, protests based on evidence relating to individual rates or individual movements are without merit. Certainly, such arguments do not form a basis upon which the general rate increases sought herein should be denied.

- B. Denial of general rate increases on intrastate traffic based upon alleged adequacy of earnings generated by interstate transportation of manufactured products is contrary to law.

This type of argument was frequently made in this proceeding by protestants. See, for example, the testimony of Mr. Gilbert Zizek. (Tr. 284-285). In Exhibit FMC 210 Mr. Zizek compares the per ton mile earnings of phosphorous, a manufactured product, in interstate traffic with the per ton mile earnings on phosphate rock in intrastate traffic. Such a comparison cannot form the basis for a denial of the proposed general rate increases on intrastate traffic because rates on each movement should stand by themselves. That is, given the fact that the Idaho intrastate rate structure must be presumed to be just and reasonable^{6/} the need for an intrastate rate increase on phosphate rock must be justified by revenue needs stemming from the transportation of that rock. This the Idaho Railroads have done. But, there is a corollary -- that is, opposition to an increase in intrastate rates on phosphate rock cannot be based upon alleged adequacy of revenues from interstate transportation of phosphorous. The rates on phosphorous exist under a

^{6/} If the interstate rate is unreasonable, it falls within the province of the Interstate Commerce Commission to cure that unreasonableness by a means tailored to the interstate rate.

separate rate structure, the interstate rate structure. Moreover, the two commodities, phosphate rock and phosphorous, are different in nature and cannot logically be compared. Intrastate rate increases will be granted under a just and reasonable basic rate structure where railroads demonstrate that the revenue needs arise from intrastate transportation service. This rule, derived from the foregoing discussion, comes directly from a United States Supreme Court case, Chicago, M. & St. P. Ry. v. Public Utilities Commission of the State of Idaho, 274 U.S. 344 (1927). The court held that this Commission cannot require railroads to apply rates which fail to return adequate revenue on intrastate movements of sawlogs on the ground that the revenues from the intrastate log haul combined with revenues from interstate hauls of manufactured wood products were adequate. This principal was stated by the court in the following language:

"The carriers cannot maintain interstate lumber rates higher than otherwise justified by showing that they suffer loss or have inadequate returns from the intrastate transportation of logs. The State has no power to require petitioners to haul the logs at a loss or without compensation that is reasonable and just, even if they receive adequate revenues from the intrastate log haul and the interstate lumber haul taken together." 274 U.S. at 350-351.

Thus, denial of general rate increases on intrastate traffic, such as raw materials like phosphate rock and sawlogs, based upon the alleged adequacy of earnings generated by interstate transportation of manufactured products is contrary to law.

- C. The protests of the various industries shipping goods intrastate on the Idaho Railroads are without merit.

1. The Phosphate Rock Industry.

The first witness for the phosphate rock industry was Mr. Gerald W. Fauth, a hired consultant. Mr. Fauth presented testimony on costs relating to a study done by one of his associates of the phosphate rock movement from Gay to Don which is but one of several Idaho intrastate phosphate rock movements.

At the very outset, Mr. Fauth's cost study suffers from a very basic defect. As pointed out by Mr. T. J. Halpin, a cost witness for the Idaho Railroads, Mr. Fauth did not base his cost study on the fully allocated costs of the railroad operation in moving phosphate rock from Gay to Don. (Tr. 535). Rather, Fauth's study was based on variable costs. The Idaho Railroads, however, face many other costs beyond those claimed by witness Fauth. The full range of costs faced by Idaho Railroads on intrastate movements includes not only the variable costs of operation, but also total maintenance and upkeep on plant and equipment, and similar costs. Fauth's failure to base costs in his study on fully allocated costs is a critical flaw because "the railroads cannot stay in business indefinitely unless they recover the full cost, including -- the fully allocated cost plus a profit." (Tr. 535). Indeed, Mr. Fauth admitted in his testimony that, if a railroad does not earn its fully allocated cost on all its traffic, that it will go broke. (Tr. 262). Fauth's study, even if correct, fails to form a basis for a finding that phosphate rock rates are unreasonably high.

In addition to this basic conceptual defect in Mr. Fauth's cost study, that study suffers from numerous other errors and inaccuracies. In terms of railroad operations, Mr. Fauth's cost study fails to take account of the following: unloading delays at plants (Tr. 522); expenses deriving from the storage of cars designated for service on the phosphate rock movement in the interim between rock movement seasons (Tr. 523-524); damage to, and destruction of, cars (Tr. 524-525, 525-527); switching expenses (Tr. 526); and, the fact that Union Pacific must pay wages for the equivalent of about 330 miles on a total Gay to Don movement, a movement actually constituting approximately 60 to 63 miles in length (Tr. 254), as compared with the wages that must be paid a road crew on an interstate movement from Pocatello to Green River, a sum equivalent to wages for 245 miles, the actual distance of that interstate move (Tr. 527).

Mr. Fauth's cost study also suffers from various errors in preparation, these errors being noted by Mr. Halpin in his rebuttal testimony. These errors include: basing costs on 370 cars in the phosphate rock pool as opposed to the figure of 420 cars which are now in the pool (Tr. 533); failing to take account of the fact that the cars utilized in Fauth's study were near the end of their useful lives and would have to be replaced by more expensive cars (Tr. 534-535); the exclusion of general overhead from the calculation of cost per car in FMC Exhibit No. 209, which inclusion would increase this cost by about 18% (Tr. 535); and adjusting station clerical costs and train supplies and expenses on the basis of costs for two small railroads, principally iron ore carriers (Tr. 535). The net result is that Fauth's study is valueless to establish even variable costs, and the

validity of his study cannot be tested. (Tr. 536).

Mr. Fauth improperly compares revenue cost ratios for the Gay to Don movement of phosphate rock on the Union Pacific for 1974 with the revenue cost ratios on phosphate rock movements, West to West, in the Interstate Commerce Commission burden study. (Tr. 224). The burden study shows a ratio of 51.2^{7/} while the Fauth study claims ratios on the Gay to Don movement alone of 139.5 and 136.1. However, as Mr. Halpin testified 92% of the cars of phosphate rock upon which the West to West burden study is based were cars on Idaho intrastate movements. (Tr. 536). Thus, far from showing that the Gay to Don phosphate rates are inflated, the burden study, an impartial study, shows that these rates are depressed.

The only other witness discussing the phosphate rock movement to any extent was Mr. Gilbert Zizek. Mr. Zizek's testimony primarily concerned comparisons of the intrastate movement in Idaho of phosphate rock with interstate movements of phosphorous. As previously shown, such testimony is unsound and cannot, according to law, be a basis for denial of intrastate general rate increases.

Mr. Zizek's testimony also clarified several other points. FMC's ability to compete in particular markets is determined not only by transportation costs but also, and significantly, by the costs of electricity and other major inputs. (Tr. 295). Zizek admitted that phosphorous is a very different commodity from phosphate rock for many reasons, having vastly different transportation characteristics and must be shipped under water tank cars which return full of water to reduce chances of combustion. (Tr. 282).

^{7/} This is 51.2¢ revenue for each \$1 of cost.

2. The Fertilizer Industry.

The only witness for the Idaho intrastate fertilizer industry was Mr. A. G. Stoeger. Mr. Stoeger's main concern was possible diversion of fertilizer traffic now handled by railroads to motor carriers in the event of a rate increase. (Tr. 466). If there is a serious problem of diversion in some specific intrastate traffic, like fertilizer, then this special, particular problem is appropriately handled through individual carrier/shipper negotiations. (Tr. 113). A good example of this type of individual rate negotiation is the movement from Wooley Valley, Idaho to Silver Bow, Montana, and to Leaf, Wyoming. Present holddowns on rates on phosphate rock on this interstate movement were published because the receiving chemical company needed to remain competitive. (Tr. 544-545). In the case of rates on sawlogs on Union Pacific in Southern Idaho there is a proposed rate increase (Tr. 120), agreed to by a prime shipper, coming before this Commission at a hearing later on in December. Thus, if there is some similar problem on intrastate rates on fertilizer, the appropriate manner in which to handle this is negotiation between the carriers and shippers and publication of new individual rates. If, however, even with rate negotiations, it is uneconomic for railroads to haul certain traffic, then diversion of that specific kind of traffic to motor carriers will occur as a function of the economic market. In either case this general revenue proceeding is not the appropriate place to deal with specific problems such as Mr. Stoeger raises.

As to the general rate increases sought herein by the Idaho Railroads, Mr. Stoeger admits that he would expect no one to do exactly what the Idaho Railroads will be forced to do if these increases on intrastate freight rates are not granted -- that is, charge "a non-compensatory rate" for intrastate transportation services. (Tr. 475).

3. The Sugar Beet Industry.

Mr. W. H. Cowles was the first witness on behalf of the sugar beet industry in Idaho; and he appeared protesting only the proposed general rate increase on intrastate traffic corresponding to Ex Parte 310, but not the proposed rate increase on intrastate traffic corresponding to Ex Parte 313.

Mr. Cowles (Tr. 410) refers in his testimony, as does Mr. Hagemann in his testimony (Tr. 450), to a petition for review of the Interstate Commerce Commission Order placing sugar beets back within the scope of Ex Parte 310 pending before the United States Court of appeals for the District of Columbia. The fact that there is a petition for review pending before the Court of Appeals does not provide any basis for denial of general rate increases sought by the Idaho Railroads in this proceeding. The sugar beet industry has been paying the Ex Parte 310 increase on interstate traffic since the June 10, 1975 Order of the Interstate Commerce Commission took effect. (Tr. 448). The sugar industry has borne the increase authorized in Ex Parte 310 on interstate traffic since June of this year. The Idaho Railroads, on the other hand, have borne the burden of increased expenses of providing transportation service both for interstate traffic and for intrastate traffic, the increased expenses on the latter having not been met by a corresponding

increase in intrastate rates, up to the present. Until such time as this Commission approves the general rate increases sought herein on intrastate traffic, the Idaho Railroads will continue to bear these increased expenses of providing intrastate transportation service. Further, in the unlikely event that the Interstate Commerce Commission's Order of June 10, 1975, is reversed by the United States Court of Appeals in any respect, any reduction in the increase applying to the transportation of sugar beets would automatically take effect vis-a-vis intrastate traffic by virtue of the way in which the tariffs for the railroads are published pursuant to orders of this Commission. (Tr. 420).

The balance of the testimony presented in behalf of the sugar beet industry, both by Mr. Cowles (Tr. 409, 433, 435) and Mr. Hagemann, the other representative of the sugar beet industry (Tr. 455), refers to certain favorable transportation conditions allegedly enjoyed by sugar beet movements. The extent that such favorable conditions actually exist with respect to sugar beet movements is unclear. As the testimony of Mr. Hennessy indicates, sugar beets are primarily carried on local trains and such local trains are more expensive to run than are through trains which handle primarily interstate traffic (Tr. 207), but this is unnecessary to determine in this proceeding. This claim of alleged favorable transportation conditions with regard to sugar beet movements in Idaho forms no basis for denial of the general rate increases on intrastate traffic relating to sugar beets, for the basic intrastate rate structure will have taken account of any favorable transportation conditions with regard to individual movements of particular commodities. The percentage nature of these general increases

maintains the existing relationship between intrastate rates on various commodities and movements. Thus, if favorable transportation conditions do occur on sugar beets, application of the general percentage increases will result in a lower absolute rate for sugar beet movements than for other movements.

4. The Sawlog Industry.

Of all the shippers of intrastate sawlogs in Idaho, only one company, Potlatch Corporation, appeared before this Commission to protest the general rate increases corresponding to Ex Parte 310 and Ex Parte 313 applied for by the Idaho Railroads on intrastate traffic. Mr. Robert Hjelm, Manager of Rates and Transportation for the Potlatch Corporation, was the only representative on behalf of this company.

Mr. Hjelm's testimony in opposition to the Idaho Railroads' request for general intrastate rate increases on sawlogs fails to establish any basis upon which denial of the general rate increases could be predicated.

Mr. J. H. Harwood of the Camas Prairie Railroad testified that, at the present intrastate rate, that the Camas Prairie was failing to obtain revenue needed to meet expenses. (Tr. 309). In answer to a question as to how the Camas Prairie will get money to cover additional wages and additional expenses arising from just the log movement, Mr. Hjelm stated that the Camas Prairie had received a 7% increase under Ex Parte 305. (Tr. 380-381). The Ex Parte 305 increase, however, was designed to cover only certain expenses, and not the increased expenses which the Idaho Railroads seek to cover in this proceeding.

Additionally, while it is true that Potlatch Corporation does have its own locomotive which pulls cars

over their unloading track, the Camas Prairie does any switching, such as switching out various kinds of logs for their unloading, or switching of certain cars into outbound trains (Tr. 307). The switching performed by Potlatch is intraplant in nature for which a tariff charge must be collected if performed by a railroad (Tr. 307).

Potlatch opposes the increase based in part on Exhibit 302 comparing rates on logs on the Camas Prairie with those on Union Pacific in Southern Idaho, and yet Mr. Hjelm admitted that Potlatch Corporation has not complained to this Commission regarding the relationship between the log rates on the Camas Prairie and the log rates on the Union Pacific from McCall (Tr. 384-385). Further, there is presently an application before the Idaho Public Utilities Commission by Union Pacific Railroad Company to increase the rates on sawlogs in Southern Idaho above and beyond those increases requested in this proceeding (Tr. 120). The requested increase on sawlogs was deferred by this Commission pending a hearing which will commence December 17, 1975. Exhibit 302 does not justify a denial of the increase as to sawlogs generally or as to the Camas Prairie. It indicates that the Southern Idaho rates may be too low, particularly in view of the revenue needs of the Camas Prairie.

- D. The materials presented by the staff members of this Commission illustrate certain basic propositions on which the Idaho Railroads base their applications for general rate increases on intrastate traffic corresponding to Ex Parte 310 and Ex Parte 313.

The first staff witness was Mr. C. T. Brown who offered various staff exhibits, Exhibits Nos. 601 to 610, and presented testimony explaining these exhibits and concerning various other matters herein. The staff exhibits

and testimony presented by Mr. Brown generally show that the Idaho Railroads are subject to increased expenses (Tr. 499), that the Idaho Railroads have much lower rates of return on shareholders equity compared with other industries (Tr. 505, and Staff Exhibit No. 607), that passenger service has a very minimal affect on operating ratios (Tr. 507), and that Mr. Brown, like Mr. Halpin and Mr. Fauth, could not provide a cost study separating intrastate expenses from interstate expenses on rail traffic (Tr. 498).

The final testimony on behalf of this Commission's staff was presented by Mr. Brent Ainsworth who showed that under the increased expenses to be covered by the Ex Parte 313 increases the revenue need based on increased labor expenses alone would be equal to 7.04% (Staff Exhibit No. 612). Mr. Halpin noted in his testimony that the precise figure would be 7.59% because of additional payroll taxes and health and welfare benefits that would accrue (Tr. 533).

Overall, the staff exhibits and testimony really support the need of the carriers for general rate increases, said need having already been established in Part II of this brief. The fact that the protests are without merit, that the staff material and testimony support the Idaho Railroads' request for a general rate increase, and the fact that the railroads of Idaho have proved their revenue needs lead to the inexorable conclusion that these general rate increases on Idaho Intrastate traffic corresponding to the Ex Paete 310 and Ex Parte 313 increases should be granted by this Commission.

V.

PROPOSED ORDER

At the conclusion of the hearing Commissioner Shurtliff requested that the briefs contain a proposed order (Tr. 547). We submit that the Commission should enter an order substantially as follows:

O R D E R

IT IS THEREFORE ORDERED that the Applicants, namely: The Burlington Northern Inc., the Camas Prairie Railroad Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Spokane International Railroad Company, the Union Pacific Railroad Company and Washington, Idaho and Montana Railway, be, and the same hereby are authorized to increase intrastate rates and charges by applying the Ex Parte 310 and Ex Parte 313 tariffs to Idaho intrastate traffic subject to the same exceptions, limitations and refund provisions, where applicable, as are contained in said tariff.

AND IT IS ORDERED that said increase shall become effective upon not less than 15 days' notice to this Commission and the public by appropriate tariff filing.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this ____ day of _____, 1975.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to:

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Peter W. Hohenhaus

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One of the Attorneys
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