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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 658

THE 25th ANNIVERSARY OF THE STAGGERS
RAIL ACT OF 1980--A REVIEW AND LOOK AHEAD

WRITTEN SUBMISSION
OF JOHN D. FITZGERALD

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This is the written submission by John D. Fitzgerald,^{1/} on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), in response to Notice of Public Hearing (Notice), issued by the Surface Transportation Board (Board) on September 14, 2005. 70 Fed. Reg. 55205-6 (Sept. 20, 2005). Employee organizations, such as UTU/GO-386, are "interested persons," and have standing to participate, although not specifically invited by the Notice, at 1-2:^{2/}

Interested persons, including large and small rail customers, large and small railroad companies, representatives of local communities, and state and federal government officials, are invited to participate.

UTU/GO-386 at the time Staggers Rail Act of 1980 was under

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^{2/} Cf. Ex Parte No. Rail Rate Challenges Under the Stand-Alone Cost Methodology (Stand-Alone), decision served April 22, 2005. Some 11 entities, specifically named in the decision, including UT/GO-386, filed notices of intent to speak at the hearing. All were granted, with the sole exception of UTU/GO-386. Stand-Alone, 1, 3-4.

consideration was represented by M.M. Winter. The present incumbent, John D. Fitzgerald, became chairman of UTU/GO-386, upon the retirement of Mr. Winter in 1993. He is familiar with legislative developments, particularly since becoming Local Chairman in 1975, and Asst. General Chairman in 1981.

I. Concern for Review of Staggers Act. Public awareness that the Board intended to review the Staggers Act, enacted October 14, 1980, became visible in early 2005, when Board Member Mulvey announced the desirability of a 25th anniversary Staggers Act review, and also a 10th anniversary review of the STB itself (created January 1, 1996), during a speech given at nearby Portland, OR, on February 17, 2005; and Chairman Nober did the same at San Antonio, TX, on February 24, 2005, except that Chairman Nober did not mention a 10th anniversary review of Interstate Commerce Commission Termination Act of 1995 (ICCTA).

Board Member Mulvey is understood to have emphasized the 25th anniversary of the Staggers Act, as a Board objective in subsequent addresses given April 4, April 19, June 13, and September 8, 2005; and he called for a 25th anniversary Staggers Act review by the Transportation Research Board (TRB), affiliated with the executive branch through the U.S. Department of Transportation.^{3/}

^{3/} Examination of Chairman Nober's published speeches does not indicate further mention of the 25th anniversary of Staggers Act, prior to institution of this proceeding on September 14. Review of the Mulvey and Nober speeches is based upon the visual slides, as they have not posted the actual texts. It is understood that Member Mulvey, during public discussions conducted March 15, 2005, by Assn. for Transportation Law, Logistics & Policy, expressed the view that TRB should undertake review of the 25th anniversary of the Staggers Act.

The U.S. Congress enacted legislation on August 20, 2005, to study rail transportation and regulation since enactment of Staggers Rail Act of 1980, authorizing to be appropriated \$1.8 million for the purpose. SAFETEA-LU, § 9007. It is unknown whether this project will be a traditional executive branch attack on the Congressional agency regulatory process, with the hiring of university economists and others, which seem to have characterized prior studies. The current administration in the budget earlier this year proposed legislation for authority to sunset agencies, which may be renewed again.^{4/}

II. Staggers Act-Regulatory Features. Apart from the rail transportation policy, Staggers Rail Act has some six titles, of which only two (Titles II and IV), apart from technical costing, may be said clearly to deal with railroad regulation. The critical deregulation legislation was not the Staggers Act, but rather the prior 4-R Act enacted four years earlier in 1976. For example, market dominance was initiated by Congress in the 4-R Act, and only fine-tuned by Staggers; likewise, the exemption power was created by the 4-R Act, and only fine-tuned by Staggers. The watershed year was 1976, not 1980. For a detailed history of the 4-R Act and Staggers Act, see: Stone, Richard D., The Interstate Commerce Commission and the Railroad Industry (Praeger, 1991).

The major regulatory change brought about by Staggers was in the area of rail ratemaking, particularly contract rail rates. The

^{4/} See: Skrzyki, Cindy, Sunset Law for Agencies on the Horizon (Wash. Post, July 26, 2005).

former ICC had encouraged contract rates, but the carriers were reluctant to employ contracts extensively absent clear statutory authority, perhaps due to antitrust issues incurred by the shipping industry, even with regulatory approval.

Staggers made no meaningful substantive change for railroad line abandonment approvals; indeed, Staggers extended employee protection for certain bankruptcy abandonments. The spin-off of line segments to non-carriers seeking to become carriers preceded Staggers, and was not first authorized by Staggers. Employee protection for line sales involving non-carriers was discretionary prior to Staggers, and remained discretionary after Staggers. The former ICC rarely exercised its discretion in favor of employee protection in such situations, unless agreeable to the carriers, either before or after Staggers.^{5/} The mandatory prohibition of employee protection for non-carrier acquisition of rail lines did not occur until creation of the STB at the end of 1995. See: Class Exem. for the Construction of Connecting Track, 1 S.T.B. 75, 85 (1996); Class Exem. for Acq. or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996).

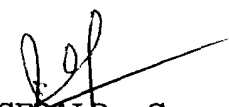
Although Staggers Act did not itself substantially revise the statutory provisions involving line sales by class I rail carriers to newly-formed non-carrier entities (the so-called §10901 pro-

^{5/} See: Prairie Trunk Railway-Acquisition and Operation, 348 I.C.C. 832 (1977), aff'd People of State of Ill. v. United States, 604 F.2d 519 (7th Cir. 1979); Railway Labor Executives Ass'n v. Durango & Silverton, 363 I.C.C. 841 (1981), aff'd Railway Labor Executives' Ass'n v. United States, 697 F.2d 285 (10th Cir. 1983); Class Exemption-Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 819 (1985), aff'd Illinois Commerce Com'n v. ICC, 817 F.2d 145 (D.C. Cir. 1987); Knox & Kane R. Co.-Petition for Exemption, 366 I.C.C. 439 (1982).

cess), railroad employees have been harmed by the manner of administering these provisions by the former ICC and the present STB.

III. Staggers Act-Employee Protection. Staggers Act devoted Title V to Conrail employee protection; protective conditions involving Milwaukee and Rock Island employees were contained in Title VII; employee protection was included in many other provisions of the Staggers Act, such as rate bureaus (§219), bankruptcy (§227), reciprocal switching (§223), railroad construction (§221), feeder development (§401), and exemptions (§213).

IV. Rail Rate Provisions. Rail employees desire a prosperous industry, with maximum employment opportunities, fair wages, and safe conditions. We desire harmonious relations with shippers, ports, and communities, under reasonable and non-discriminatory rates. Railroad employees do not look with favor upon those entities seeking private or exclusive rail operations, so as to secure more favorable treatment than those not financially positioned to conduct their own carrier operations. On behalf of UTU/GO-386, we request an opportunity to respond to various shipper proposals to revise Staggers Act provisions as they pertain to the shipping public.


JOHN D. FITZGERALD, Gen. Chmn.,
UTU/GO-386, Vancouver, WA.
October 12, 2005