

History and Regulation of Trailer-on-Flatcar Movement

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"Piggyback," the popular name for trailer-on-flatcar (TOFC) movement, has been one of the greatest technological innovations in land transportation of recent years, although the idea is not of recent origin. Piggyback development represents an attempt on the part of the railroads to bolster their declining revenues and to reclaim traffic lost over the last few years to the trucking industry. It represents an example of coordination of transport facilities, routes and rates.

Each unfavorable ICC decision has arrested the development of piggyback for a temporary period thereafter. The Container Case in 1931 killed the incentive for use of containers because the Commission set an unprofitable rate for shippers. The rules laid down in Ex Parte 129 (1939) were favorable to the development of piggyback service, but it was not until the New York, New Haven and Hartford decision in 1954 that certain principles were established which encouraged piggyback development. Piggyback carloading surged forward thereafter in spite of subsequent ICC investigations.

•**TRAILER-ON-FLATCAR** or "piggyback" as it is commonly called refers to the movement of loaded or empty highway trailers on railroad flatcars. The term also embraces the transportation of steel containers on flatcars. Steel containers are also utilized on ships ("fishyback") and on planes ("birdyback"); however, only trailer-on-flatcar (TOFC) or piggyback will be discussed in this paper, although the general principles of economy and efficiency are the same.

Trailer-on-flatcar movement represents a coordinated form of transportation which combines the best features of each transportation medium, motortruck with rail. The combination of a motortruck on a railroad car gives the shipper the advantage of a shipment subject to careful handling characteristics of the motortruck coupled with low cost characteristic of the railroad.

The piggyback movement has been beneficial to the shipper, the motor carrier, the railroad and the public. The railroads were able to reclaim some competitive traffic from motor carriers by developing this system. Truck operators, on the other hand, by cooperating and coordinating their service with the railroads have retained some traffic which might have been diverted to private carriage. Both the shipper and the general public have profited by less damage to goods transported, which has been one of the important advantages of the piggyback operation.

Piggyback utilizes two methods: (a) lift arrangements for handling and securing regular highway semitrailers on railroad cars, and (b) steel freight containers which can be readily shifted from truck to railroad car and the reverse. Both methods have prospered because each has useful characteristics. However, the container is so adaptable to transfer between transport media that the piggyback operation may become

predominately a containerization movement. Some authorities feel that piggyback is just a phase of development in which the ultimate result will be almost complete use of the container. Such a development is more likely to occur with standardization of the container so that it can be used interchangeably in through movements between motor, rail, air and water traffic.

The Bureau of Public Roads is interested in the development of piggyback insofar as it has implications for the planning, location and design of our highway systems. This paper is one aspect of a TOFC study necessary to understand the relevance of the changes in movement patterns and intermodal transfers that may result from such developments.

HISTORY

Piggyback is not new. As early as 1843, sectionalized canal boats were transferred on flatcars between Philadelphia and Columbia, Pa., and between Hollidaysburg and Johnstown, Pa., as parts of a Philadelphia-Pittsburgh water service. By 1880, farmer's trains on the Long Island Railroad transferred loaded produce wagons from points on Long Island to the East River. Special boxcars built for the teams accompanied the flatcars on the same train (27, p. 2).

The New York Central pioneered container service¹ which it began March 19, 1921, between Cleveland and Chicago.

The Boston and Maine established rates on containers between Boston and Springfield and Worcester, Mass., effective March 21, 1927. The Lehigh Valley established container service January 9, 1928, over four different routes and on March 26 additional services were added to another point. Container service was established by the Pennsylvania over three routes on June 20, 1928, and within several months additional routes were added.²

Experience with highway semitrailers on flatcars dates from May 1, 1926, when the Chicago North Shore & Milwaukee Railroad began handling "semis" on flatcars for its own convenience in order to improve its less-than-carload service (29). On April 1, 1932, the North Shore invited over-the-road carriers to ship semitrailers by train between Chicago, Racine and Milwaukee at a rate a little lower than what it cost the trucker to move the same trailer over the highway. Other railroads such as the Chicago Great Western; the New York, New Haven & Hartford; the Chicago, Burlington & Quincy; the Denver & Rio Grande Western; and the Chicago, Rock Island & Pacific inaugurated a piggyback service during the 1930's (29).

ICC Regulation Halted Container Development

The piggyback idea had caught on and the container service was particularly popular until an Interstate Commerce Commission (ICC) decision in 1931.³ The container operation eliminates much of the intermediate handling between store door and store door effecting to the shipper a saving in packing, saving in freight charges, expedition in service and absence of loss and damage claims.⁴

The ICC initiated an investigation on its own motion, "into the rates, charges, rules, regulations and practices of common carriers by railroad. . . incident to the use of 'container equipment'. . .,"⁵ which interrupted the trend in container service development. Many feel that this caused a setback in piggyback operations.

Investigation revealed that the container service, where operated by the New York Central, made rapid strides in attracting tonnage. During the two-week test period in which a comparison was made between container and boxcar movements, it was found that containers carried three to six times as many pounds (depending on routes)

¹ICC Docket No. 21723, In the Matter of Container Service, 173 I.C.C. 377, April 14, 1931, at p. 384.

²See note 1 supra, p. 385-386.

³See note 1 supra.

⁴See note 1 supra, p. 403.

⁵See note 1 supra, p. 380.

Cents Per 100 lbs

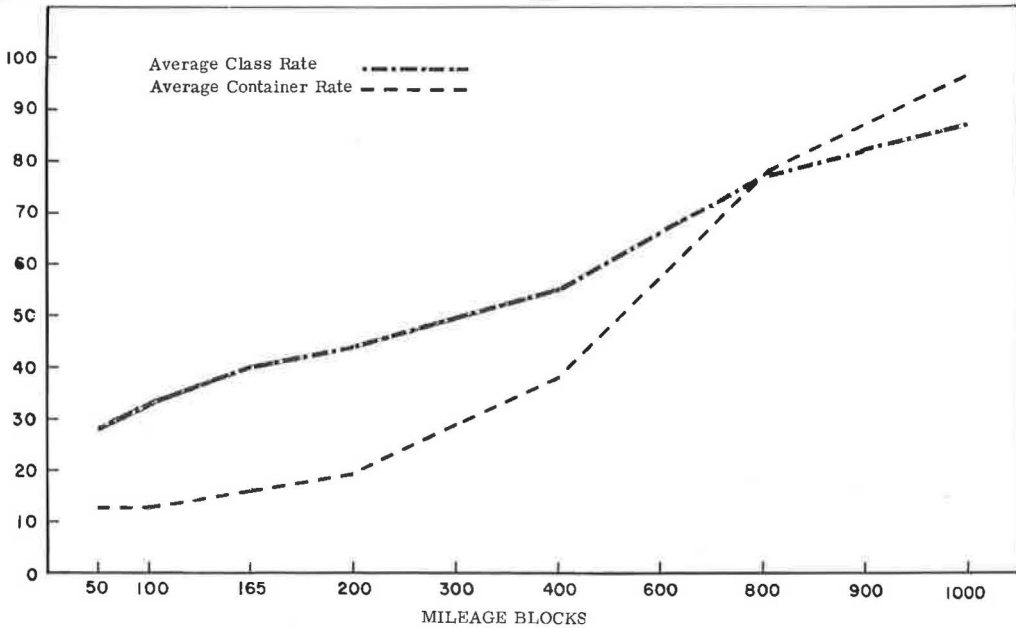


Figure 1. Comparison of class rates and container rates by mileage blocks (Average in Cents per 100 Pounds).

as boxcars. "The movement in boxcars between New York and Cleveland amounted to 312, 103 pounds, whereas, the containers attracted 1, 355, 509 pounds. Between New York and Buffalo the freight in boxcars amounted to 454, 533 pounds, as compared to 1, 157, 686 pounds in containers. Between Cleveland and Buffalo the boxcars attracted 194, 205 pounds of freight and the containers 1, 104, 574 pounds."⁶

Evidence showed that container movement on the majority of the routes of the New York Central was better balanced than boxcar movement. The cars were also more fully utilized. An analysis of the movement of merchandise freight showed that the loading of less-than-carload freight averaged 5.6 tons per car, whereas container operations averaged 11.3 tons per car.⁷ Although gross revenue of boxcar traffic exceeded that of container traffic, expenses also exceeded those of container traffic so that the net revenue was \$2.18 per ton greater for container than for boxcar traffic.⁸

The New York Central began its container services by charging regular less-than-carload rates. Then it raised its rate base on the principle of railway mail rates, i.e., flat rate per mile applied on the net weight of the container irrespective of the nature of the commodities loaded into it. After several rate revisions between 1922 and 1928, the rate was established at 5 cents per mile, minimum \$8.25 per container. The lowest weight provided for was 4,000 lb, and for each additional 500 lb, or fraction thereof, up to 10,000 lb, the rate was increased by 0.25 cents per mile. As a result, the unit charge, reduced to cents per 100 lb, became relatively less as the weight increased.⁹

⁶See note 1 supra, p. 397.

⁷See note 1 supra, p. 397.

⁸See note 1 supra, p. 398.

⁹See note 1 supra, p. 385.

The commission attacked the charges for container service on the basis that they were lower than for class rates and that the carrier charged proportionately more for short hauls than for long hauls: "For example, between Baltimore and Philadelphia, 113 miles, the 10,000-pound container rate of 9 cents is 8 cents per 100 pounds lower than the contemporaneous sixth-class rate of 17 cents. Between Pittsburgh and Buffalo, 271 miles, the similar container rate is 21.7 cents per 100 pounds as against the sixth-class rate of 21.5 cents."¹⁰ Figure 1 shows that the container rate was considerably below the class rate up to the 800-mi point. Beyond 800 mi, the container rate was slightly higher than the class rate. The Commission's decision rejected the method of charging for container service then employed by the railroads and substituted instead a formula based on the classification of freight in containers. The Commission applied two factors in developing the formula which it tied to the classification principle. The opinion specified that: "The container rate could not be less than (1) the contemporaneous carload rate on the highest rated commodity loaded in the container, and (2) the rate on the next class lower than the any-quantity rate on any commodity loaded in the container which is accorded an any-quantity rating in the governing classification; . . . subject to a minimum weight per container of 4,000 pounds."¹¹

The majority of the Commission held the container rates then charged to "be unreasonable, unjustly discriminatory, and unduly prejudicial" because they varied with weight of loading, and charges so determined were not warranted by differences in the cost and quality of the services.¹² Commissioner Eastman concurred only in part with the decision; he disagreed with the conclusion that the differences in loading did not show a difference in cost or character of service. He said: "Differences in cost of transportation inevitably attend differences in loading. The situation is like that which exists in the case of car loading. . . the unit cost constantly decreases as the car loading increases."¹³

Shippers testifying in favor of the container service stressed its expedited movement and many said that they would continue to use containers even if the rates were the same as the rates of less-than-carload freight in boxcars, because the saving in packing and freedom from the annoyance of loss and damage claims would make the service economical.¹⁴ However, the formula derived by the ICC decision was so unattractive to shippers that demand for container service ceased.

Many authorities have commented on the effect of the container decision in 1931 on piggybacking. The Senate study attributed to this ICC decision the decline in shipper interest: "this resulted in the end of the container service for that era. . . It is interesting to note that economy was denied in favor of compliance with rate tradition. Cost related ratemaking, had it been our policy, would have fostered this progressive step in 1931" (25, p. 654). The report also said: "The 1931 decision because of a ritualistic interpretation of the Interstate Commerce Act denied the benefits of innovation to carrier and shipper to our national detriment." (25, p. 666)

PLANS OF OPERATION

Piggyback operation has evolved into five major plans, with different variations (Table 1).

Plan I. Railroad Flatcars, Motortruck Trailers

The railroad transports motor carrier trailers over a portion of the motor carrier's trip in what is frequently referred to as a "substituted service." The motor carrier solicits and bills all freight at motor carrier tariffs from points of origin to destination included in the truck operator's certificate of authority. The articles comprising the

¹⁰See note 1 supra, p. 414.

¹¹See note 1 supra, p. 448.

¹²See note 1 supra, p. 443-444.

¹³See note 1 supra, p. 449.

¹⁴See note 1 supra, p. 403.

shipment determine the truck rates, but the motor carrier pays the railroad a flat fee per trailer based on weight and distance irrespective of the individual commodities therein. Thus the railroad shares in a "division of rates" only as to the entire shipment, not as to the individual commodities carried. Furthermore, since the charges to the public are on published motor carrier rates, the shipper does not share in any reduced cost by reason of a partial rail movement at cheaper rates.

The motor carrier performs pickup and delivery service at railroad piggyback terminals and any road-haul service required before and after the rail movement. A rail car simply carries the trailer for part of the way. The trailers are loaded and unloaded at TOFC terminals by Teamster Union labor under the supervision of the railroads. Charges for this service vary, and in some cases, are in addition to the line-haul charge.

The name of the shipper, the shipper's bill of lading, and origin and destination of shipment are not known to the railroad, as the only contact by the railroad is with the motor carrier tendering the shipment to the railroad. Therefore, the motor carrier is responsible to the shipper for loss and damage claims for which he may in turn hold the railroad liable if it was directly responsible for the damage.

Plan II. Railroad Door-to-Door Operation

In this all-rail plan, the railroad deals directly with the shipper, furnishes all equipment, both highway trailers and rail flatcars, and bills the goods at railroad published minima and tariffs. The railroad provides pickup and delivery service at each terminal either by railroad-owned tractors or by contract with local draymen.

Plan III. Shipper Trailers, Rail Cars

The railroad transports trailers either owned or leased by the shippers at a flat rate per mile. The shipper delivers the loaded trailers to the railroad which places

TABLE 1
PIGGYBACK PLANS

Plan	Originator	Who Supplies Equipment and Transfer	Who Delivers and Picks Up	Basis of Rate
I	Motor carrier	Motor carrier; motor carrier loads and unloads trailer on railcar; rail carrier furnishes flatcars	Motor carrier	Motor carrier rates; blanket divisional basis for all freight in the vehicle (not on individual articles)
II	Rail carrier	Rail carrier	Rail carrier	Railroad commodity rates.
III	Shipper or forwarder	Shipper or forwarder furnishes trailer (owned or leased), railroad furnishes flatcars, & rail carrier loads and unloads trailers	Shipper or forwarder	Flat rate; 60-percent rule applies.
IV	Shipper or forwarder	Shipper or forwarder furnishes flatcar and trailer	Shipper or forwarder	Flat rate; 60-percent rule applies
V	Motor carrier	Motor carrier	Motor carrier	Rail carrier tariff for joint motor-rail rates

Source: National Transportation Policy, p. 674.

them on and removes them from the rail cars. The shipper picks them up at the railroad terminal. The rates apply on total weight of not more than two highway vehicles from one shipper to one consignee on one day or one bill of lading. Not more than 60 percent of the total lading may consist of any one commodity.

Plan IV. Shipper Trailers, Shipper Cars

Plan IV is an extension of Plan III. The railroad transports trailers owned or leased by the shippers on flatcars also owned or leased by the shippers at a flat charge per car whether trailers are loaded or empty. The shipper takes his trailers to and from the rail terminals and loads and unloads cars. The railroad performs terminal-to-terminal line haul movement only.

Plan V. Joint Rates, Truck-Rail-Truck

Each transport medium has an opportunity to perform a truly coordinated movement on through routes under joint rates, either class or commodity. The railroad transports a motor carrier trailer up to a certain point beyond which the motor carrier resumes its responsibility and moves the trailer the remaining distance to its destination in an end-to-end service. This plan is an offshoot of Plan I in that the equipment is owned, respectively, by the same transport media as in Plan I, but instead of the motor carrier performing only local service at origin and destination points the motor carrier transports the trailer to another more distant point beyond the railroad terminus. In effect, this plan extends the territory of each participating carrier into that served by the others; it permits each participant to handle shipments originating in or destined to the other's territory; and allows each to sell for the other.

These basic plans have many variations. Some are a combination of features of Plans II and III. In some instances under Plan II, for example, special rates are applied depending on how much responsibility the shipper assumes from the normal railroad operation. For example, the railroad furnishes trailers or containers and shippers or receivers move them to or from the TOFC terminal, putting on or removing from flatcar, at either the origin or destination, or both. These variations of Plans II and III are referred to as Plan II 1/2.

Some rates restrict the terminal area. Still others apply only when the shipper picks up the empty trailer at the ramp and delivers the loaded trailer at the same location. In some instances allowances are made for use of shippers' trailers (27, p. 11).

Development of the Plans

Piggyback plans developed more or less in chronological order. Although Plan I was initiated by the Chicago, Great Western Railway Company in March 1936 and by the New York, New Haven and Hartford Railroad Company in 1937, piggyback was not significant until after the ICC decision in the New Haven case in 1954 (27, p. 3). Plan II came into service in 1955, Plan III in 1956, Plan IV in 1958, and Plan V in 1958 (22, p. 25). The varying combinations of Plans II and III, designated as II 1/2, evolved in February 1964 when it was initiated by the Missouri Pacific Railroad (11, p. 98).

According to both ICC reports and Association of American Railroads (AAR) records all the various plans have grown, but some more than others. Plan II predominates and Plan III is second. Plan II 1/2 is third; Plans I, V and IV follow in that order (Table 2).

ICC statistics agree in general with data in Table 2 reflecting the relative importance of the plans (1, p. 1). However, ICC data show Plan II 1/2 as the least important in railroads using the plans, whereas, other reports indicate it is significant next to Plans II and III.

Since Plan II is a railroad-owned and operated version, it is probable that the railroads will promote this particular operation. However, it is more profitable to the shipper to use Plan II than Plan I because the movement is at the cheaper railroad tariff rather than the motor carrier tariffs of Plan I on which bill of lading the traffic originates and moves.

TABLE 2
NUMBER OF RAILROADS BY PLAN IN EACH REGION AND DISTRICT
OCTOBER 1964

Region or District	Total Railroads Having TOFC ^a	No. Railroads by Plans Operated					
		I	II	II½	III	IV	V
Eastern	13	9	13	8	11	7	9
Allegheny	6	5	6	6	6	4	5
Pocahontas	2	2	2	2	2	0	1
Total eastern district	21	16	21	16	19	11	15
Southern district	12	10	12	9	12	7	9
Northwestern	6	4	6	6	6	5	4
Central western	13	10	13	8	12	10	8
Southwestern	7	2	7	5	6	5	4
Total western district	26	16	26	19	24	20	16
Total United States	59	42	59	44	55	38	40

^aThis list was edited to reflect the merger of three railroads with the Norfolk and Western: Nickel Plate Road, Pittsburgh & West Virginia Railway, and Wabash Railroad. Thus, this report shows 59 railroads whereas some sources will show 62 railroads operating TOFC in 1964.

Source: Compiled by author from Piggyback Routing Guide, Distribution Age, October 1964.

Plan IV is an extension of Plan III, but has not proved quite as popular, probably because the shipper provides both the trailer and flatcar. It is suitable for freight forwarders, but may be more trouble for individual shippers to acquire the flatcars than to use Plan III where the railroad furnishes the flatcars.

Plan V is preferable to Plan I in that the shipper has the opportunity to profit by the economy of cost. No savings in cost operation are passed on to the shipper under Plan I. Plan II is more desirable than III from the shippers' standpoint when shipping to customers because of the claim factor and more complicated billing procedures. However, Plan III is ideal for the shipper on interplant movements when the shipper is paying all charges. Plan III has been substituted by many shippers in preference to private carriage. The testimony of over 100 large shippers, telling how Plan III had been substituted by them for private carriage, would seem to indicate that Plan III has been a considerable deterrent to the erosion of common carrier transportation through private carriage. These shippers, representing our principal industries, testified and submitted evidence in Ex Parte 230 reflecting that Plan III is a logical development in providing transportation facilities tailored to the requirements of shippers. The national Industrial Traffic League strongly protested some of the proposed ICC rules in Ex Parte 230 as possibly interfering with the development and use of Plan III. It said, "While the League is in favor of the development and utilization of all forms of TOFC service, including Plan I, it objects to efforts to restrict or destroy plans favored by shippers, such as Plan III, while substituted service under Plan I is aided with more beneficial rules."

A summary of the relative advantages and disadvantages of the respective plans to the shippers, motor carriers and railroads is given in Table 3. Presuming that the shipper would pass on any saving in cost to the consumer of the product by selling it at a lower price, the general public would benefit by any degree to which piggyback incurs greater efficiency in transportation. In this sense, then, some plans of piggyback, such as Plans III and IV, which offer the service advantage of private carriage without comparable cost, are beneficial to the shipper and presumably society.

Plan V would be of greater value to the public than Plan I since Plan V requires the utilization of through routes and joint rates for its operation. Thus the efficiencies of each mode of transport would be utilized to a greater advantage. The transportation industry and society would benefit thereby.

Unfortunately, in spite of repeated ICC recommendations (15, p. 69) for a change in the Interstate Commerce Act, the carriers cannot be compelled to provide this coordi-

nated service at the present time. Under the provisions of Section 216 (c) coordination of through routes and joint rates by carriers is permissive but not mandatory. Until the Act is amended, according to the Commission's interpretation of this provision, there is no authority to compel coordination between modes. The public then does not obtain the optimum utilization of transportation facilities to the best economic advantage of each mode. According to the Commission, and many authorities, an amendment to the Interstate Commerce Act might aid greater coordination between the various modes of transport: rail, motor and water.

TABLE 3
ADVANTAGES AND DISADVANTAGES OF PIGGYBACK

Plan	Shipper	Motor Carrier	Railroad
(a) Advantages			
I	Service benefits of speed, dependability and safety of shipments	Economical to motor carrier as moves at motor carrier tariff rates on a flat charge	Any traffic acquired adds to gross revenue of railroad
II	(Same as Plan I)	Not available to motor carriers ^a	Most desirable for railroad as all equipment used is operated by railroad on rail rates
III	Provides more economical transportation than other plans in addition to speed, flexibility and safety of shipments	Not available to motor carriers	More revenue generated. Simplify terminal operations, increase utilization of flatcars, enable the railroads to offer better train schedules, lower their capital requirements, and relieve them of problem of handling forwarder traffic
IV	(Same as Plan III)	(Same as Plan III)	(Same as Plan III)
V	Beneficial if available	Beneficial if coordination with railroads can be arranged	Beneficial if coordination with motor carriers can be arranged
(b) Disadvantages			
I	Higher cost than other plans	Additional cost of \$5 per trailer incurred by the motor carrier if piggyback used in preference to over the road operation	Erratic volume. Motor carriers use for overflow traffic
II	Since railroad owns and operates all equipment no particular disadvantage	Not available to motor carriers	Not profitable for shorter hauls because of terminal expense
III	Must pay terminal charges and assume loss and damage claims. Limited to 60% mixture rule	Not available to motor carriers	Use of long flat cars required to meet 2 for 1 rule
IV	(Same as Plan III)	Not available to motor carriers	Could possibly interfere with rail interchange and car service problems
V	Limited application because Under Sec. 216 (c) of the Interstate Commerce Act through routes and joint rates are not mandatory	Limited application	Limited application

^aPlan II is a complete railroad operation.

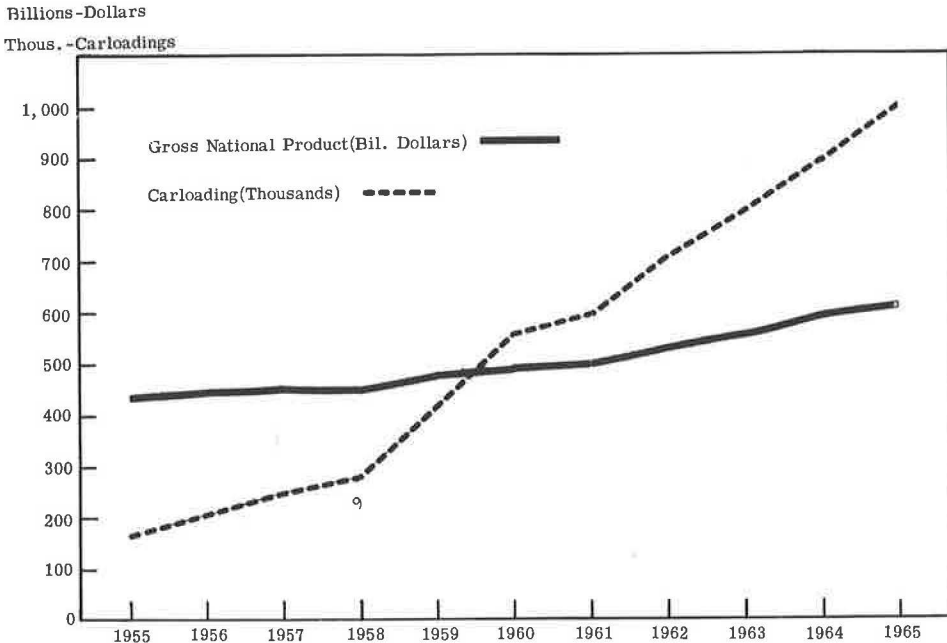


Figure 2. Piggyback carloadings and gross national product, 1955-1965.

GROWTH OF PIGGYBACK

The last 10 years have shown a spectacular growth in piggyback operation. With the decision in the New Haven case¹⁵ in 1954, which gave a stamp of approval to certain operations that had arisen, piggyback carloadings surged forward. Although the relationship to total carloadings is still only about 3 percent, the piggyback operation has been steadily increasing. Also, the proportion of piggyback loadings to total movement is not necessarily the controlling issue; the improved service rendered in lesser time for freight moved and smaller loss and damage claims render piggyback service important, perhaps out of proportion to actual tonnage moved.

Piggyback carloadings have increased much more rapidly than economic indicators during the same period. Piggyback carloadings have increased along with the gross national product and the growth in population, while total carloadings have decreased (Fig. 2). Piggyback carloadings increased more than 500 percent between 1955 and 1965. During the same 10-yr span, gross national product increased 32 percent and population increased 17 percent.

On the other hand, total carloading decreased 22 percent in 1965 from the 1955 level. Although some of this decrease can be attributed to bigger cars and thus a greater loading per car, a sizable portion can be attributed to the decline in ton-mile shipments by rail. In 1963 railroad ton-miles decreased 0.33 percent from 1955 and 4.05 percent from 1956, although the present level is considerably above that of several intervening years, especially 1958 when railroad ton-miles reached the lowest point since 1949.

More railroads introduced piggyback service during the 10-yr period. There were 59 railroads participating in piggyback service January 1, 1965, as compared to 32 in 1955 (Fig. 3). Figure 4 shows yearly piggyback carloading from 1955 to 1965. The greatest increase occurred between 1958 and 1959. The second greatest increase was between 1959 and 1960. Carloadings in 1959 were 50 percent more than in 1958, and

¹⁵ICC Docket No. 31375, Movement of Highway Trailers by Rail, 293 I.C.C. 93, July 30, 1954.

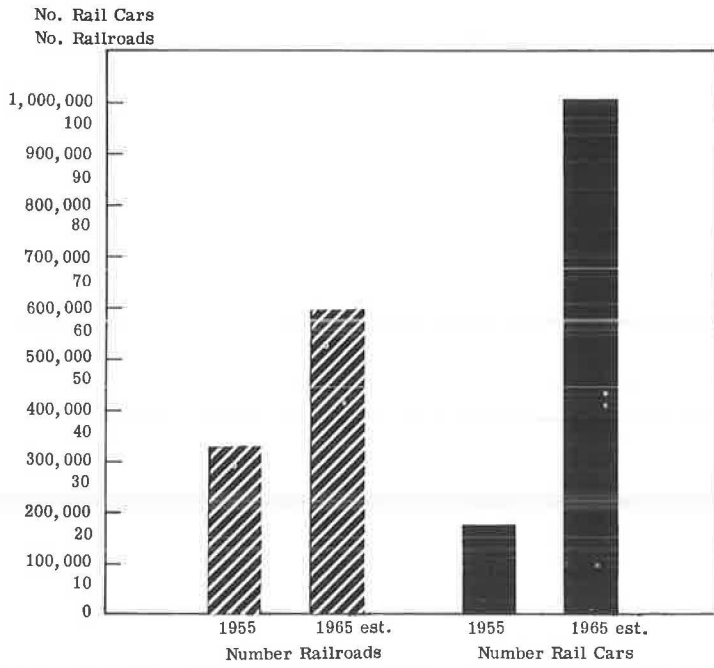


Figure 3. Piggyback service, number of railroads and rail cars, 1955, 1965.

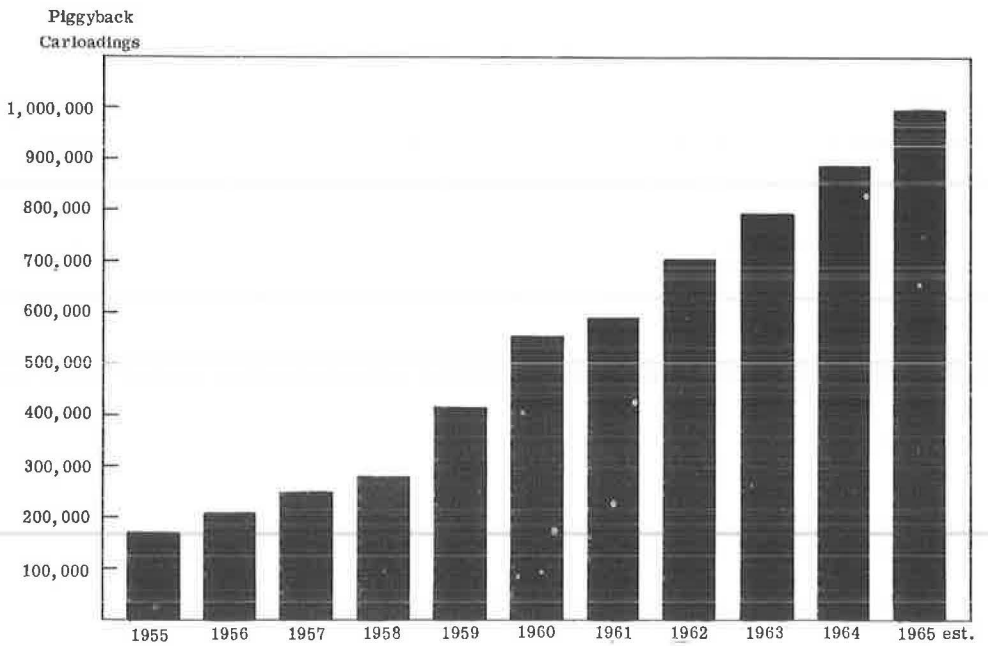


Figure 4. Piggyback carloadings, 1955-1965.

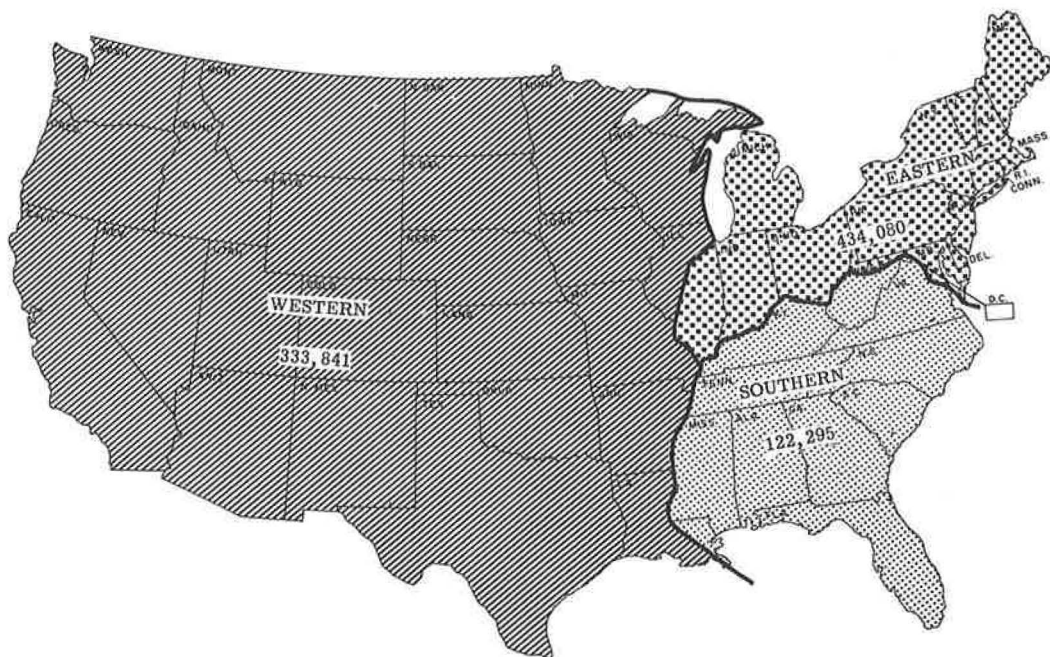


Figure 5. TOFC carloadings - U.S. - by districts, 1964.

in 1960, 33 percent over 1959. From 1962 on the increases have been fairly consistent at approximately 12 to 15 percent per year.

Piggyback growth is nationwide. However, due to the manufacturing and highly commercial area in the eastern United States almost 50 percent of the piggyback carloadings originated there in 1964. Almost 48.8 percent of the total piggyback carloadings originated in the eastern district, 27.5 percent in the southern district and 13.7 percent in the western district (Fig. 5). However, growth within each of these districts has been continuous over the 10-yr period with the exception of the western district, where a slight slump was noted in 1961 below the previous year's loadings. During the last few years the yearly carloadings increase was proportionately greater in the southeastern district than in the other two districts.

Piggyback is expected to continue to increase unless more unforeseen limitations are placed on it, artificially restraining the movement. One executive stated: "In 1975, it may account for 50 percent of the traffic now moving in boxcars" (13, p. 52).

ICC REGULATION

The ICC (charged with the regulation of transportation, rates, service and safety of the different transport media) was confronted with a technological innovation which was a hybrid operation utilizing two or more different media to complete a given transport movement. This innovation in transportation service and practices brought forth much controversy as varied interests wished to utilize and capitalize on this successful method of transporting goods. ICC not only examined the cases coming before it to determine whether or not the rates were just and reasonable, and therefore lawful, but it also exercised its general rule-making power in several investigations into rates and practices upon which it proposed certain rules.

Early Favorable Rulings

After the 1931 case on containers,¹⁶ there was a lull in piggyback activity for about five years. In 1936 the Chicago Great Western Railroad initiated two services, one an open-tariff¹⁷ substituted service¹⁸ and the other a coordinated rail and motor service, similar to what later was known as Plans I and V, respectively. Tariff publications for both of these services were approved by the ICC.¹⁹

After favorable decisions in the two Chicago Great Western Railroad cases in 1936, ICC initiated an investigation on its own motion into the tariffs and rules of practice pertaining to the substituted service utilized by rail, motor and water carriers, both common and contract. ICC rendered a decision on this ex parte investigation in 1939 in which it established rules for furnishing a substituted service if the shipper authorized same. It required that a directory be published showing the points between which the service was to be performed and the carriers performing the service.²⁰ Thus this thorough investigation represented the third action of ICC on piggyback which was favorable.

Unfavorable Ruling by ICC

The Chicago Great Western Railroad wished to initiate another piggyback operation which was the forerunner of Plan II. This railroad next published a tariff effective May 29, 1939, for the transportation of freight in semitrailers on their own vehicles loaded on flatcars between Chicago and Council Bluffs, Iowa. Although the rail and motor carriers sought suspension of the docket, ICC refused to suspend, but on its own motion ordered an investigation with respect to the lawfulness of the charges, rules, regulations and practices. The carrier became discouraged, gave up and filed tariffs canceling their schedules under investigation. ICC discontinued the proceedings February 2, 1942.²¹

While the Chicago Great Western Railroad was shown as a participating carrier in the joint rates published by the truck lines and the actual rate situation remained the same, the lack of sponsorship by the railroad because of its inability to publish tariffs was reflected in dwindling interest in TOFC. The end result was that the piggyback operation had been set back again, in spite of the two favorable ICC decisions in 1936. Piggyback service was nominal for a period thereafter. Thus each time ICC rendered an unfavorable decision or engaged in another extensive investigation piggyback development was arrested for the time being.

The New Haven Case

Piggyback revived when injected with the stimulus of the New Haven decision by ICC on July 30, 1954.²² The modern legal history of TOFC virtually began with a ruling of the Commission on 20 questions presented by the New York, New Haven & Hartford Railroad Company. That company had filed a petition on September 30, 1953, asking for a declaratory order concerning legal regulations, limitations, and obligations incident to the transportation of highway trailers on railroad flatcars. ICC reframed the 20 questions into 12 questions which it ultimately considered. The major con-

¹⁶In the Matter of Container Service, see note 1 supra.

¹⁷The term "open tariff" means the offering of the service to the general shipping public at published tariffs.

¹⁸"Substituted service" means movement of the highway trailer on a rail flatcar is substituted for the over-the-road haul by the motor carrier.

¹⁹ICC Docket No. 4186, Trucks on Flatcars Between Chicago and Twin Cities, 216 I.C.C. 435, June 20, 1936 and I & S No. 4210, Motor-Rail-Motor Traffic in East and Mid-East, 219 I.C.C. 245, November 17, 1936.

²⁰ICC decision: Ex Parte No. 129, Substituted Freight Service, 232 I.C.C. 683, July 25, 1939.

²¹ICC Docket No. 28288, Trucks on Flat Cars Between Chicago and Council Bluffs, Iowa.

²²ICC Docket No. 31375, Movement of Highway Trailers by Rail, 293 I.C.C. 93, July 30, 1954.

clusions reached by the Commission, which it set forth as seven rules or principles, were the following.

1. The motor operation of trailers in collection and delivery service at the termini of the rail movement of trailers on flatcars is subject to regulation under Part I, the rail section, of the Interstate Commerce Act, and not under Part II, the motor carrier part.

2. Railroads may transport trailers of private motor carriers and freight forwarders on flatcars under provisions of rail tariffs open to the general public, without holding motor carrier operating authority under Part II of the Act.

3. The railroads may not legally transport trailers of motor common carriers under the so-called "open" tariffs, unless there is a through-route arrangement between the railroad and the motor carrier.

4. Since the provisions of the Act authorizing joint rate arrangements between rail and motor common carriers is permissive, rather than mandatory, the railroads may establish such arrangements with some and refuse to establish them with other motor common carriers.

5. The relation between a railroad and a motor common carrier whose trailers are moving in flatcar service is that of connecting carriers where the arrangement is for substituted rail-for-motor service.

6. The railroads may not legally establish through routes and joint rates with freight forwarders, an arrangement not authorized by the Act.

7. If a railroad makes trailer-on-flatcar service available to private carriers, it may not, by provisions in its tariff, deny the service to freight forwarders.

The New Haven decision, establishing the first comprehensive guide lines for piggyback operations, lent encouragement to the carriers to procure equipment and begin to develop extensive operations. The Transportation Act of 1958 also added impetus to piggyback development. The provisions of Sec. 15a (3) added stability to the transportation industry by removing the umbrella of regulation and encouraging each mode to develop according to its inherent advantages.²³

Stages of Development of ICC Regulation

Development of piggyback operations has been in stages, each stage directly related to ICC regulation. The Container Case decision had a definite deterrent effect on containerization and the piggyback principle in general. The investigation in 1939 into railroads owning and operating trailers discouraged at that time what later became Plan II, so the Chicago Great Western tariffs were suspended in 1942. From 1942 until 1954, piggyback activity was minimal. After the New Haven Decision in 1954, another era began for piggyback operations.

The recording of piggyback statistics by the AAR begins with 1955. But by the time carloadings became significant in 1958, ICC investigations again rendered some uncertainty, especially in controversies encountered over the investigation initiated by the Commission in Ex Parte 230.

AREAS OF REGULATION OF TOFC

ICC investigations and regulation of TOFC may be grouped into five general categories.

Substituted Service

The first type of TOFC service offered involved the substitution of truck trailers on flatcars for highway travel as part of the motor carrier movement. The legality of this type of service has been consistently upheld as long as certain basic principles

²³Sec. 15a (3), "Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the nation transportation policy declared in this Act."

were observed. The first case on this topic was a test case of the "open-tariff service" initiated before regulation of motor carriers under Part II of the Interstate Commerce Act became effective.²⁴ The Commission has held that the carrier must apprise the shipper of possible substitution of service by the tariff publications. The tariff must set forth the service, the routes over which it is performed, and the parties performing same under lawfully filed tariffs.²⁵ In a series of cases dealing with circuitry limitations of routes,²⁶ one of which was affirmed in a Federal District Court,²⁷ it has been ascertained that "the ICC has the authority to require that TOFC operations must bear some reasonable relationship to the authorized motor service for which they are substituted." The Commission has also ascertained that the motor carrier must provide adequate service to the intermediate points located on the motor carrier's authorized route.²⁸

Through Routes and Joint Rates

Since Sec. 216 (c) of the Interstate Commerce Act provides that common carriers may establish reasonable through routes and joint rates, the Commission has interpreted this to mean that through routes and joint rates are permissive but not mandatory as stated in several cases: "Permission granted motor common carriers by section 216 (c) of the Act to establish through routes and joint rates is not limited by anything contained in that section or in section 217 (a) except that the through routes and joint rates must be reasonable."²⁹

Just as in Plan I, the joint intermodal service of Plan V requires that the motor or water carrier can lawfully provide only such service as is authorized in their operating authority. The charges in Plan V service must also be just and reasonable, a division of the charge established jointly for the through service.

Commodity Rates

Under Section 1 (6) of the Act, the Commission has a duty to see that rates are based upon a reasonable classification of property and its prime concern has been with preventing exception (commodity) rates from reaching low volume levels that would jeopardize the basic classification structure. Consequently when rail carriers have attempted to reduce all-freight boxcar rates or motor carriers have published truck-load commodity rates in an effort to meet TOFC competition, the Commission has scrutinized them carefully to determine if these reduced rates were "just and reasonable." ICC frequently held them "unjust and unreasonable" even when evidence showed that out-of-pocket costs and a portion of fully distributed cost was met by the revenue obtained. In so doing the Commission attempted to protect the classification system,

²⁴See note 19 supra.

²⁵See note 20 supra.

²⁶ICC Docket No. M-3035, Substituted Rail Service by Red Ball Transfer Co., 52 M.C.C. 75, and 303 I.C.C. 421, March 3, 1958, Gordons Transports, Inc., v. Strickland Transportation Co., 318 I.C.C. 395, Oct. 15, 1962.

²⁷Strickland Transportation Co. v. United States, 219 F. Supp. 618, 1963.

²⁸ICC Docket No. MC-C-3514, Chamber of Commerce of St. Joseph, Mo. v. Red Ball Exp. Co., 91 M.C.C. 513, 1962.

²⁹I and S Docket No. 420, Motor-Rail-Motor Traffic in East and Midwest, 219 I.C.C. 245, 1936. ICC Docket No. MC-3362, Lubbock-El Paso Frt., Inc., Com. Car. Application, 27 M.C.C. 585, at p. 591, January 10, 1941. ICC Docket No. MC-30819, Lubbock-El Paso Motor Freight, Inc., Extension, 29 M.C.C. 281, June 6, 1941. ICC Docket No. MC-C-347, Consolidated Freightways, Inc., v. United States, 176 F. Supp. 559, Sept. 18, 1959.

but in several landmark decisions was overruled by the courts.³⁰ The Supreme Court recognized the principle enunciated by the minority view stated by Commissioner Webb in which he said: ". . .the Congress in delegating authority couched in such broad terms as 'just and reasonable,' intended the Commission to adjust its regulation in the light of changes in the industry and, whenever deemed necessary, to scuttle outmoded theories and practices without regard to their antiquity."³¹

Motor Carrier Exemptions in Terminal Areas

Section 202 (c) (2) of the Act places the regulation of motor vehicles in terminal areas engaged in pickup and delivery service under the respective section covering the transport medium by which the line-haul service is performed. ICC has held that whenever joint intermodal TOFC service is to be provided in lieu of an authorized all-motor operation, it is the motor carrier and not the line-haul railroad which is the primary carrier and which gives the terminal operations color under the law.³²

Allowances to Shipper

The Commission has been concerned with the question of what could be covered by allowances and what was the legal role of the trailer in TOFC service. ICC has said that where the carrier holds itself out to provide door-to-door services it could make reasonable allowances for shipper-performed pickup and delivery services.³³

PIGGYBACK LITIGATION

As piggyback carloadings increased, controversies over operating practices arose and consequently litigation ensued. Plans III and IV are greatly opposed by the motor carriers and have been the subject of continued investigation by ICC ever since the plans were first initiated and even since they have been declared lawful by the Supreme Court.

The Commission has frequently been criticized for its case-by-case method of ruling on practices arising in the transport industry, but in the case of piggyback development, it attempted to establish policy and set up rules of operation in a general investigation. There has been much contention from varied sources over the extensive investigation of the Commission and its decision in Ex Parte 230.

The Commission exercised its rule making power under Sec. 204 (a) (6), Sec. 304 (a) and 403 (a) to investigate the practices of the carriers and shippers utilizing piggyback service. It had a two-fold purpose in its complete investigation: (a) the investigation of some alleged abuses that had developed in TOFC practice and (b) the extension of TOFC service equally to all potential users on the same basis. The Commission under Section 2 of the Interstate Commerce Act is authorized to prevent unjust discrimination and under Section 3 undue preference. Under Sec. 15 (a) (2) it must see that rates are "just and reasonable." Sec. 216 (c), authorizing motor carriers to establish through rates and joint rates, was not mentioned, nor did the Commission, in relating its in-

³⁰1 and S Docket No. M-10415, Commodities - Pan Atlantic Steamship Corp., 313 I.C.C. 23, Dec. 19, 1960, reversed on appeal: The New York, New Haven & Hartford Railroad Co. v. United States of America, Civ. A. No. 8679, U. S. Dist. Ct. Conne, 199 F. Supp. 635, Nov. 15, 1961; affirmed by Supreme Ct. I.C.C. v. N. Y., N.H. & Hartford Railroad Co., et al, 372 U.S. 744, 1 & S No. 7131, All Commodities from New England to Chicago and St. Louis, 315 I.C.C. 419, December 28, 1961, reversed by Dist. Ct.: New York, New Haven & Hartford Railroad Co. v. United States of America, Civ. A. No. 9229, U.S. Dist. Ct. of D. Conn., July 23, 1963, 221 F. Supp. 370; affirmed on appeal to Sup. Ct. All States Freight, Inc., et al, v. New York, New Haven & Hartford Railroad Co., et al, 379 U.S. 343, December 14, 1964.

³¹ICC Case: 1 and S No. 7131, All Commodities from New England to Chicago and St. Louis, 315 I.C.C. 419, at p. 433.

³²ICC Case No. W-653, Cf. Pontin Lighterage & Transp. Corp. Com. and Contr. Car. App., 250 I.C.C. 441, August 17, 1942.

³³1 and S Docket No. 6340, Allowance for Use of Trailers, 299 I.C.C. 513, December 17, 1956.

vestigation to sections of the Act, bring into discussion either Section 5 on "Combinations and Consolidations of Carriers" or Section 5a on "Agreements Between Carriers." Apparently it was not concerned that piggyback would come within the purview of the provisions concerning the pooling of freight (Sec. 5 (1)) or that there would be any violation of "antitrust laws," as outlined in Sec. 5a (2). ICC relied solely on Section 2, which prohibits unjust discrimination between persons.

The Commission said: "It is our purpose and our hope to encourage the growth of this transportation phenomenon."³⁴ They further stated: "We think...it would be in the public interest to lay down, through formal rules, certain guidelines for TOFC service and practices. We visualize these rules as an aid in furthering, not restricting, the growth of piggyback, as providing some standardization of industry practices and as a means of insuring that this recent and valuable transportation development is made available to all persons who are able to make effective use of it."³⁵

BENCH MARK CASES

Eastern Motor Carrier Case

On September 4, 1958, the Eastern Motor Carriers Association, filed a complaint against the Baltimore and Ohio Railroad Company et al, claiming the rates and charges maintained by this railroad for Plans III and IV service between certain points in New England and trunkline territories and certain points in central and southwestern territories were unlawful and in violation of sections 1, 2, 3, 4, and 15 (13) of the Interstate Commerce Act, and that they constituted a destructive competitive practice in contravention of national transportation policy. ICC investigated the rates and practices of the carriers and shippers utilizing their services and examined carefully a great deal of cost data submitted both by motor carriers, shippers and the railroad defendant in this case. The Commission decided that the rail rates and charges and the rules in connection therewith were lawful.³⁶ The decision was affirmed by the District Court³⁷ and sustained by the Supreme Court of the United States.³⁸

However, while this case was under ICC investigation another proceeding was initiated July 17, 1959, involving Plan III rates and related rules and practices applying on freight, all kinds, generally within and between points in official, southern, and southwestern territories.³⁹ Basically, the rates under investigation were similar to those published in official territory and found lawful in the Eastern Central Motor Carriers case. There were 60 supplemental orders included in the title proceedings and the scope of the investigation included the lawfulness of the rates, charges, and practices relating to the schedules in the various orders—in other words, another thorough investigation. Division 2 of the ICC again rendered a favorable report on Plan III on June 24, 1965.⁴⁰

³⁴Ex Parte No. 230, Substituted Service - Charges and Practices of For-Hire Carriers and Freight Forwarders (Piggyback Service), 322 I.C.C. 301, March 16, 1964, at p. 322.

³⁵See note 34 supra, p. 323-324.

³⁶No. 32533, Eastern Central Motor Carriers Association, Inc. v. Baltimore & Ohio Railroad Company et al 314 I.C.C. 5, p. 6 June 19, 1961.

³⁷Cooper-Jarrett, Inc., et al v. The United States of America, U.S. Dist. Ct. W.D. Miss. 226 F. Supp. 318, February 6, 1964.

³⁸Cooper-Jarrett, Inc., et al v. U.S. et al. Affirmed per curiam, 379 U.S. 6, October 12, 1964.

³⁹There are five major freight-rate territories of the United States: Eastern Territory, Southern Territory, Western Trunk Line Territory, Southwestern Territory and Mountain-Pacific Territory. Eastern Territory is frequently referred to as "Official." It has three subterritories: the New England, Trunk-Line, and Central Freight Association. See Locklin, Philip D., Economics of Transportation, p. 181-182 and ICC Bureau of Statistics, Distribution of the Natural Resources of the United States by Freight Territories, Exhibit No. 1 in Docket No. 28300 (1941), following p. 3.

⁴⁰ICC Docket No. 33133, All Freight in Trailer on Flat Car—Between the East and Chicago and E. St. Louis, 325 I.C.C. 519, June 24, 1965.

Ex Parte 230

After the Commission had already rendered a decision in the Eastern Motor Carriers Association case (Docket No. 32533), declaring Plan III and IV lawful in respect to those rates, charges and practices and while it was investigating the companion case for other districts of the United States (docket no. 33133), the Commission initiated another investigation on its own motion. On June 29, 1962, it instituted a general investigation, designated as Ex Parte 230.⁴¹ After investigation for over two years, during which there were over 125 appearances with voluminous testimony and exhibits comprising 18 large volumes, a decision was rendered March 16, 1964, to become effective September 11, 1964.

There were 23 rules proposed at the prehearing conference, which were drafted by the Commission into eight rules with subsections, designed to become part of Title 49 of the U. S. Code. The Commission in its decision eliminated the designation of five plans as at present and instead set up two methods of offering TOFC service: (a) "Joint intermodal service," which would embrace the present industry Plans I and V, and (b) "all-rail TOFC service" which includes II, III and IV and variations thereof.

The new rules placed some restrictions on railroads and shippers, but opened the door wide to the motor carriers to engage in services not heretofore available to them. Rules 2 and 3 would extend Plans III and IV to contract motor and contract water carriers, as well as to common carriers in those fields. Contract carriers now have no access to TOFC service. Naturally the acceptance or rejection of the rules varied with the respective parties.

Court Appeals

The Ex Parte 230 decision was promptly appealed to two Federal Courts. Pending the outcome of these proceedings, ICC postponed the effective date of its proposed rules. Freight forwarders would have liked to see motor carriers confined to Plan V, so they filed a complaint November 16, 1964, appealing the Commission's refusal to declare Plan I of the piggyback operations illegal. The forwarder complaint also assailed what it called the "vacillating policy" of the Commission. It contended that, in some decisions, the Commission has declared that Plan I involves a "joint intermodal service," while other decisions have held that it is only a "substituted service."

A complaint filed by 21 western railroads⁴² in the U. S. District Court of northern Illinois principally attacked rules 2 and 3 which would require that TOFC service offered under open tariffs must be available to carriers as well as shippers. The decision, rendered August 20, 1965, set aside the Commission's order in Ex Parte 230 on the ground that four of the eight rules were unlawful. The three judge District Court held that "rules requiring railroads to make their trailer on flatcar service on open-tariff basis available on the same terms to motor carriers as to others were beyond power of Interstate Commerce Commission under Interstate Commerce Act provision prohibiting common carriers from charging one person more than another for like and contemporaneous service."⁴³

The Court in rendering its decision, assailed ICC for relying on Section 2 of the Interstate Commerce Act as authority for compelling the railroads to offer Plan III and Plan IV service to for-hire motor carriers. The opinion pointed out that Section 2 is not applicable to the situation in which the Commission was using it to support its contention in Ex Parte 230. The Court said: "This Section deals only with discrimination in rates, and does not extend to a discriminatory refusal to provide service at all."⁴⁴ The Court further commented on the fact that Section 2 was the only statute on which the Commission relied.

⁴¹ See note 34 supra.

⁴² Archison, Topeka & Santa Fe Railroad Co., et al v. United States of America et al, Civil Action No. 64 c-1442, 244 Fed. Supp. 955, August 20, 1963.

⁴³ See note 42 supra, p. 955.

⁴⁴ See note 42 supra, p. 962.

The Court commented on the fact that motor carriers and ordinary shippers are differently served under separate plans and thus this separation has foreclosed motor carriers from the use of the three open-tariff plans. The Commission made this ruling explicit a short time after motor carriers were first brought under Federal regulation. The Court said: "Since 1939, this ruling has been reaffirmed in subsequent decisions and observed in practice consistently down to the present time. The established principle and its supporting reasons have come to be summed up in the abbreviated statement that it is repugnant to the Interstate Commerce Act for a motor carrier to act both as a carrier and a shipper as to the same shipment."⁴⁵

The Court continued: "The new Rules promulgated by a majority of the Commission would work an abrupt departure from this established principle and from the settled practice."⁴⁶ The decision concluded: "It appears that neither the specific provisions of the Interstate Commerce Act nor its general underlying scheme confer authority upon the Commission to compel railroads to provide open-tariff TOFC service to motor carriers; on the contrary, the Act both in its specifics and general policy forbid such compulsion."⁴⁷

It is difficult to understand the Commission's complete change of attitude and diametrically opposite opinion in Ex Parte 230. After its consistent approach for over 25 years to the theory that "a carrier cannot act as a shipper for the same service," the opposite view now seems irreconcilable. Although the Commission in justifying its complete re-investigation said, in referring to earlier decisions, that "their pronouncements need to be reexamined in the light of modern developments," it would hardly justify a complete reversal of the principle enunciated in earlier cases. There may be some other explanation for the Commission's change of viewpoint on this basic principle of segregating the functions of a carrier and a shipper. One possible explanation would be that the change of personnel in Commission membership over the years has changed the thinking of the majority of the members.

The motor carriers, eager to participate to the fullest in every phase of piggyback operation, would naturally not submit meekly to the District Court ruling in favor of the railroads. The motor carriers promptly filed an appeal to the Supreme Court of the United States. ICC and the Department of Justice also filed appeals since the District Court ruling had overturned the Commission's decision with its proposed rules. The four pending piggyback cases on the Supreme Court docket are numbers 908, 909, 916 and 924. At this writing the Supreme Court has ruled that it would take jurisdiction of the cases but they have not been scheduled for hearing.

ADVANTAGES OF PLAN III OVER OTHER METHODS OF TRANSPORT

Plan III has proved to be a successful method of transport coordination, both from the standpoint of the railroad and the shipper; it is economical to both parties. The railroads are able to make available to the public inherent advantages of the rail line-haul operation, but without the expense and delay incurred in normal terminal service. The shippers by arranging for loading and unloading of the trailer on flatcars, have the equivalent special service which they would enjoy with private motor transportation. Many shippers of manufactured products have found Plan III service to be so satisfactory that they have eliminated private carriage or reduced it to short hauls.

Eastern Central Motor Carriers Decision

Evidence reported in one ICC decision stated: "Regular rail service does not provide comparable costs, flexibility, or speed of delivery. Plan II service provides flexibility and speed, but fails in the area of cost. Motor-carrier service also is more costly and does not have as much flexibility as private carriage provides. Plan III would

⁴⁵See note 42 supra, p. 962.

⁴⁶See note 42 supra, p. 962.

⁴⁷See note 42 supra, p. 970.

TABLE 4
COMPARISON OF RAIL LINE-HAUL EARNINGS PER CAR-MILE FOR
PLANS I-II-III TRAILER SERVICES

Between	Route (miles)	Revenue Per Car-Mile Available for Line-Haul Service		
		Plan I (\$)	Plan II (\$)	Plan III (\$)
Kearny, N. J. - E. St. Louis, Ill.	1,038	0.306	0.444	0.488
Philadelphia, Pa. - E. St. Louis, Ill.	960	0.307	0.337	0.487
Kearny, N. J. - Chicago, Ill.	903	0.305	0.357	0.487
Philadelphia, Pa. - Chicago, Ill.	825	0.305	0.421	0.485

Source: I.C.C. Docket No. 32533 exhibit No. 63, witness R. W. Talbot, April 8, 1959.
Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad
Company et al, 314 I.C.C. 5, June 19, 1961.

meet the speed, flexibility, and cost requirements, provided it is supplied at average cost of 25 cents a mile, which is on a par with this shipper's cost experience."⁴⁸ Also under Plans III and IV loss and damage claims are minor, and where "flexi-vans" or other containers are used in this service, they are practically nil. Railroad expenses for loss and damage, developed in a study and submitted in an ICC hearing, showed over a 46-month period an average of \$5.02 per flatcar or an average of about 13.8 cents per ton of goods transported. Studies of Plan IV service, made over a shorter period, showed loss and damage was much lower, averaging only 3 cents per ton.⁴⁹

Testimony and Statements Submitted

One shipper, making a comparison between transportation of drug and toilet preparations between Hillside, N. J., and St. Louis, Mo., showed the following rates by different modes of transport on a 70,000-lb shipment:

Private carriage	\$1.0744 cwt
Plan III	1.1071 cwt
Plan II	1.4000 cwt
Motor common carriage	1.4000 cwt

He testified that: "The same hundred weight charges result on the reverse movement. The \$0.03 cwt difference in favor of private carriage as against Plan III is deemed far from sufficient inducement to put us in the transportation business. The \$0.33 cwt difference between private carriage and Plan II or motor common carriage is, on the other hand, a very adequate inducement, and we have postponed our entry into the private carrier field only by reason of the Plan III rates."

This shipper stated in summary, "We sincerely believe that Plan III is a natural outgrowth of modern-day competition in the transportation industry. That its advent was inevitable, was realized with the general adoption of Plan I and Plan II. It holds forth great possibilities for shippers where there are volume movements adaptable to private carriage, and even more important, at the same time cannot fail to benefit the common carriage industry. It will stabilize common carrier rates and charges, deter shippers from entering the field of transportation, enable the railroads to capitalize on their currently unused capacity by making full use of their natural advantages, and

⁴⁸See note 36 supra, p. 28.

⁴⁹See note 36 supra, p. 28.

TABLE 5
COMPARISON OF RAIL LINE-HAUL EARNINGS PER CAR-MILE FOR PLANS I, II, AND III

Item	Kearny, N. J. & E. St. Louis, Ill.	Phila., Pa. & E. St. Louis, Ill.	Kearny, N. J. & Chicago, Ill.	Phila., Pa. & Chicago, Ill.
Plan I Trailer Service (\$)				
Avg charge per loaded trailer ^a	213.00	199.00	185.00	171.00
Revenue per loaded trailer-mile ^b	0.205	0.207	0.205	0.207
Revenue per loaded car-mile ^c	0.349	0.352	0.349	0.352
Revenue per car-mile loaded and empty trailers ^d	0.318	0.320	0.318	0.320
Avg loading and unloading cost to railroad ^e	0.012	0.013	0.013	0.015
Revenue per car-mile available for line- haul service ^f	0.306	0.307	0.305	0.305
Plan II Trailer Service (\$)				
Avg revenue per loaded trailer ^g	421.00	327.00	325.00	337.00
Revenue per loaded trailer-mile ^h	0.406	0.341	0.360	0.408
Avg terminal costs per loaded trailer-mile ⁱ	0.108	0.112	0.118	0.123
Revenue per loaded trailer-mile less terminal expense ^j	0.298	0.229	0.242	0.285
Revenue per loaded car-mile ^k	0.507	0.389	0.411	0.484
Revenue per car-mile loaded and empty trailers ^l	0.456	0.350	0.370	0.436
Avg loading and unloading cost to railroad ^e	0.012	0.013	0.013	0.015
Revenue per car-mile available for line- haul service ^m	0.444	0.337	0.357	0.421
Plan III Trailer Service (\$)				
Revenue per car-mile loaded and empty trailers	0.500	0.500	0.500	0.500
Avg loading and unloading cost to railroad ^e	0.012	0.013	0.013	0.015
Revenue per car-mile available for line- haul service ⁿ	0.488	0.487	0.487	0.485

^aBased on the Group III charge for trailers having gross weight of 38,000 lb (28,000-lb loading).

^bLine 1 divided by miles.

^cLine 2 multiplied by 1.7 trailers per flat car (avg experience Plan I service).

^dLine 3 less 9% (railroad transports empty motor-carrier trailers without charge up to 10% loaded revenue miles).

^eAverage railroad cost of loading and unloading trailers to and from flat cars.

^fLine 4 minus line 5.

^gLocal movements for December 1958.

^hLine 7 divided by miles.

ⁱIncludes trailer rental and average trucking expense at origin and destination for December 1958.

^jLine 8 minus line 9.

^kLine 10 multiplied by 1.7 trailers per flat car (avg experience Plan II service).

^lLine 11 less 10% (the movement of empty van trailers approximates 10% for the Plan II service on these routes.)

^mLine 12 minus line 13.

ⁿLine 15 minus line 16.

Source: Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company et al, Docket No. 32533, Testimony and exhibits, Exhibit No. 63.

we are certain, bring about improvements and efficiencies in all forms of transportation to the ultimate benefit of all shippers and carriers.⁵⁰

A comparison of Plans I, II, and III, was made by the Baltimore & Ohio Railroad in submitting information in the Eastern Central Motor Carriers Association case. Revenue per car-mile available for line-haul service by Plans I, II, and III between designated points is shown in Table 4.⁵¹ The average revenue from Plan III service exceeded that for Plan I by 59 percent and Plan II from 9 to 45 percent depending on the route.

There was very little difference as between routes in revenue generated by Plan III and Plan I service. Plan III service produced about 18 cents per car-mile more than

⁵⁰I.C.C. Docket No. 32533, Testimony of Bristol-Meyers Company, Inc., Eastern Central Motor Carriers Association, Inc., v. Baltimore and Ohio Railroad, et al.

⁵¹Docket No. 32533, exhibit No. 63, Witness R. W. Talbot, Eastern Motor Carriers Association.

TABLE 6

COMPARISON OF RATES BY DIFFERENT TRANSPORT METHODS FOR CHEMICALS, CHEMICAL PRODUCTS AND PLASTIC MATERIALS

From	To	Box Carload		Plan II		Plan III		Plan III		Truckload	
		Rate (\$)	Min. Wt. (lb)	Rate (\$)	Min. Wt. (lb)	A* (\$)	B** (\$)	Avg Total Cost Per 100 Pounds (\$)		Rate (\$)	Min. Wt. (lb)
Chemicals and Chemical Products											
Philadelphia	Chicago	1.27	30,000	1.32	25,000	412.50	.59	.85	1.32	25,000	
		1.22	36,000								
		1.12	50,000								
Plastic Materials											
Philadelphia	Chicago	.85	70,000	1.27	30,000	412.50	.59	.85	1.27	30,000	
				1.35	23,000				1.35	23,000	
Bristol, Pa.	Chicago	.85	70,000	1.36	23,000	412.50	.59	.85	1.36	23,000	

*Per car not exceeding 70,000 lb.

**Per 100 lb on weights exceeding 70,000 lb.

Source: Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, Docket No. 32533, Testimony and exhibits, Exhibit No. 224.

TABLE 7

COMPARISON BETWEEN BOX CAR AND "PLAN III MOVEMENTS OF FORWARDER AND SHIPPERS" ASSOCIATION TRAFFIC BETWEEN POINTS PUBLISHED IN SECTION 3 1/2, PRR TRUCTRAIN TARIFF 2170-G, ICC 3579

Movement	Box Car Movements (Jan. - Sept. 1958)					Plan III TrucTrain Movements (July - Oct. 1958)						
	Cars	Tons	Revenue (\$)	Tons Per Car	Revenue Per (\$)	Trailers	Cars	Tons	Revenue (\$)	Tons Per Trailer	Tons Per Car	Revenue Per Car (\$)
New York to Chicago	5,384	38,065	1,552,449	7.1	288.34	180*	90	2,477	40,635	13.8	27.5	451.50
New York to St. Louis	1,646	12,725	539,345	7.7	327.67	104*	52	1,510	26,988	14.5	29.0	519.00
Chicago to New York	1,276	14,034	520,930	11.0	408.25	78*	39	970	17,609	12.4	24.8	451.50
St. Louis to New York	273	2,098	105,407	7.7	386.11	126*	63	1,626	32,697	12.9	25.8	519.00
Newark to Chicago	205	2,648	77,838	12.9	379.70							
Chicago to Newark	341	2,643	88,866	7.8	260.60							
Phila. to Chicago	4,762	36,129	1,307,962	7.6	274.67	60	30	608	12,375	10.1	20.2	412.50
Phila. to St. Louis	2,192	16,572	641,152	7.6	292.50	6	3	90	1,440	15.0	30.0	480.00
Chicago to Phila.	4,121	35,051	1,302,106	8.5	315.97	58	29	647	11,963	11.1	22.2	412.50
Totals	20,200	159,965	6,136,055	7.9	303.77	612	306	7,928	143,707	13.0	25.9	469.63

*Trailers originating at and destined to points in the New York area move to and from Kearny, N. J.

Source: Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, Docket No. 32533, Testimony and exhibits, Exhibit No. 81.

Plan I regardless of route. However, the variation between routes for Plan III and Plan II service was much greater. The smallest difference between Plan III and Plan II revenues in the routes studied was between Kearny, N. J., and E. St. Louis, Ill., a distance of 1,038 miles, where the Plan III revenue was 4.4 cents higher per car-mile than Plan II, or 9.9 percent. The greatest difference was between Philadelphia and E. St. Louis where the difference in earning was 15.0 cents per car-mile, or 45 percent for Plan III service over Plan II (Table 5).

A comparison of rates between certain points on chemical and plastic material moved by boxcar load, Plan II, Plan III and truckload is given in Table 6. Truckload and Plan II rates ran the same (\$1.32 cwt) on a 25,000-lb minimum. The lowest minimum for boxcar load was 30,000 lb at \$1.27 per hundredweight. The average cost between terminals for Plan III was \$0.59 per hundredweight with average total cost \$0.85 per hundredweight.

Table 7 compares Plan III TrucTrain revenue with boxcar revenue between certain points during 1958. Revenue per car under Plan III TrucTrain movements ran \$469.63 on an average of 25.9 tons per car. Boxcar movements between the same points produced an average revenue of \$303.77, or an average of 7.9 tons per car. Thus, the Plan III revenue is about 55 percent higher than the boxcar due to ability to carry more tonnage per car.

TABLE B
COMPARISON OF PLAN III RAIL RATES WITH COSTS PER CAR AS OF JANUARY 1, 1959, FOR TWO TRAILERS LOADED ON ONE FLATCAR

Movement Between Chicago, Ill., and Eastern Cities	Route	Operat- ing Miles	Rate Per Ship- ment, Plan III (\$)	Motor Carriers' Costs (70,000 lb)			Railroads' Costs			Percent Proposed Rates of Out-of- Pocket Cost (70,000 lb)
				Out-of- Pocket (\$)	Fully Distri- buted (\$)	Percent Proposed Rates of Out-of- Pocket Cost	Out-of- Pocket (53,000 lb ^a , \$)	Fully Distrib- uted ^b (53,000 lb ^a , \$)	Out-of- Pocket ^b (70,000 lb, \$)	
Boston, Mass.	NH, Erie	1,215	494.50	491.88	672.14	101	316.01	452.80	341.31	145
East Cambridge, Mass.	B&M, D&H, LV, NKP	1,065	494.50	—	—	—	317.42	440.36	338.60	146
Springfield, Mass.	NH, Erie	1,122	445.50	—	—	—	326.65	455.25	350.20	127
Jersey City, N. J.	Erie	995	451.50	—	—	—	267.22	377.46	286.33	157
Jersey City, N. J.	Erie	955	451.50	421.32	569.22	107	—	—	—	—
Hoboken, N. J.	DL&W, Wab	893	451.50	—	—	—	295.33	398.00	314.94	143
Hoboken, N. J.	DL&W, NKP	902	451.50	420.06	561.26	107	263.79	364.95	282.78	160
Jersey City, N. J.	B&O	997	451.50	438.50	586.65	103	311.88	422.29	332.74	136
Jersey City, N. J.	LV, Wab	951	451.50	—	—	—	320.12	430.20	339.94	133
Jersey City, N. J.	LV, NKP	951	451.50	436.99	584.30	103	285.94	392.72	304.97	148
Kearny, N. J.	PRR	895	451.50	403.25	538.67	112	252.71	349.54	271.92	166
Philadelphia, Pa.	PRR	830	412.50	380.79	508.09	108	241.41	332.51	259.25	159
Philadelphia, Pa.	B&O	905	412.50	406.71	543.37	101	304.25	406.56	323.31	128
Philadelphia, Pa.	RDG, WMD, P&WVA, NKP	651	412.50	434.54	560.54	95	272.91	378.90	290.43	142
Baltimore, Md.	B&O	810	398.50	—	—	—	274.35	368.29	291.56	137
Baltimore, Md.	WMD, P&WVA, NKP	764	398.50	—	—	—	235.60	331.50	251.06	159
Washington, D. C.	B&O	773	398.50	—	—	—	256.60	347.27	273.09	146

^aAverage weight of Plan III TOFC shipments handled by nine railroads during study week November 9-15, 1958.

^bNo fully distributed costs computed by railroads.

Source: Docket No. 32533, Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table I, page 56.

COMPARATIVE RELATIONSHIP OF PLAN III RATES WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS

At each hearing on Plans III and IV services extensive cost data were introduced so that there is a wealth of material in the various ICC dockets pertaining to revenue and costs of service by truck, boxcar and the respective TOFC plans. In each case the examiner reviews the evidence, evaluates the component parts of the costs incurred, passing upon the appropriateness or reasonableness of each item and accepting, modifying or rejecting the particular item thus arriving at what he considers a more accurate total cost. Therefore, many of the tables in the printed reports show a column, "restated costs."

ICC Report on Docket No. 32533

The issue in this case was whether or not the rates for Plan III and Plan IV services met the ICC test of being adequate to cover out-of-pocket costs and contributed to fully distributed costs. Both the Eastern Central Motor Carrier Association and the railroads (Baltimore & Ohio Railroad et al) submitted comparative cost data relating Plan III and Plan IV to out-of-pocket⁵² and fully distributed cost.⁵³

The Commission after extensively examining cost evidence said: "The cost evidence indicates that the rates and charges exceed the cost of the services and provide a substantial contribution to the overhead burden."⁵⁴ It concluded that "(1) the

⁵²The term "out-of-pocket cost" is used to designate those costs which the Commission considers to vary with output. "The out-of-pocket costs...reflect the costs which over the long-run period, and at the average postwar density of traffic, have been found to be variable with traffic changes. They include 80 percent of the freight operating expenses, rents, and taxes (excluding Federal income taxes) plus a return of 4 percent after Federal income taxes on 50 percent of the road property and 100 percent of the equipment used in freight service." ICC Statement No. 3-61, Dec. 1961, p. 3.

"Constant costs are those expenses which are incurred on behalf of the operation as a whole, inasmuch as they can be avoided only by abandoning the entire operation, or, at least, very substantial portions of it. They cannot be traced to particular units of output, or classes of customers. They continue to exist irrespective of whether or not any given unit is produced."

⁵³"Fully distributed" cost is the sum of the direct or out-of-pocket cost (as defined by the Commission) associated with the traffic under study plus a pro-rata share of the indirect or constant cost (also defined by the Commission).

⁵⁴See note 36, supra, p. 50.

TABLE 9
PLAN III FLEXI-VAN COSTS FOR MOVEMENT OF TWO FLEXI-VANS LOADED ON ONE CAR

Movement	Operating Miles	Rate per Shipment (\$)	Motor Carriers' Costs per Shipment (70,000 lb ^a)		Railroads' Costs per Shipment (56,000 lb ^b)		
			Out-of-Pocket (\$)	Fully Distributed (\$)	Net Revenue per Shipment ^c (\$)	Out-of-Pocket (\$)	Fully Distributed (\$)
Between Gibson, Ind., and:							
North Bergen, N. J.	938	451.50	382.79	523.57	436.80	202.79	312.45
Boston, Mass.	996	494.50	401.11	549.13	479.80	215.58	330.86
Springfield, Mass.	897	445.50	369.83	505.50	430.80	213.56	319.23
Selkirk, N. Y.	802	394.50	339.82	463.63	379.80	186.06	282.49
Syracuse, N. Y.	661	322.50	295.27	401.48	307.80	154.42	237.14
Rochester, N. Y.	575	282.00	268.09	363.57	267.30	143.40	217.75
Between East St. Louis, Ill., and:							
North Bergen, N. J.	1,153	519.00	450.72	618.33	504.30	241.40	371.97
Boston, Mass.	1,211	600.00	469.04	643.89	585.30	254.20	390.42
Springfield, Mass.	1,112	551.00	437.76	600.26	536.30	252.18	378.77
Selkirk, N. Y.	1,017	500.00	407.75	558.39	485.30	224.68	342.03
Syracuse, N. Y.	876	428.00	363.20	496.24	413.30	193.03	296.66
Rochester, N. Y.	790	389.00	336.02	458.33	374.30	182.01	277.27

^a Costs based on 1957, adjusted to January 1, 1959.

^b Average weight of flexi-van traffic loaded on one car—costs for year 1957.

^c The New York Central reduced revenue by \$14.70 revenue debit for payments to NYC Transport for handling flexi-van between railroad cars and van terminal.

Source: Docket No. 32533, Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table III, page 58.

TABLE 10
COMPARISON OF PLAN IV RAIL RATES WITH COSTS PER CAR FOR SHIPMENTS IN TWO TRAILERS LOADED ON ONE FLATCAR PROVIDED BY THE SHIPPER

Movement Between Philadelphia and Texas Cities	Route	Operating Miles	Rate per Shipment (\$)	Motor Carriers' Costs per Shipment (70,000 lb) ^a			Railroads' Costs per Shipment ^b			Percent Proposed Rates of Out-of-Pocket Cost
				Out-of-Pocket (\$)	Fully Distributed (\$)	Percent Proposed Rates of Out-of-Pocket Cost	Out-of-Pocket (53,000 lb ^c , \$)	Fully Distributed (53,000 lb ^c , \$)	Out-of-Pocket ^d (70,000 lb, \$)	
Dallas	PRR, MP, T&P	1,682	666.80	—	—	—	350.66	525.42	383.52	174
Dallas	PRR, STLSW	1,720	666.80	—	—	—	355.40	531.34	389.75	171
Dallas	PRR, MP	1,666	666.80	487.61	728.86	137	—	—	—	—
Houston	PRR, MP	1,810	708.40	—	—	—	362.59	545.20	397.75	178
Houston	PRR, MP	1,864	708.40	530.39	796.88	134	—	—	—	—
Houston	PRR, STLSW, T&NO	1,792	708.40	—	—	—	378.88	564.85	414.42	171
San Antonio	PRR, MP, T&P, MP	1,895	751.60	—	—	—	395.22	592.60	431.76	174
San Antonio	PRR, MP	1,879	751.60	533.63	802.04	141	—	—	—	—
San Antonio	PRR, STLSW, T&NO	2,007	751.60	—	—	—	412.80	616.61	452.28	166
Fort Worth	PRR, MP	1,687	877.60	494.31	739.51	137	—	—	—	—
Galveston	PRR, MP	1,823	708.40	521.53	782.80	136	—	—	—	—
Laredo	PRR, MP	2,031	812.00	566.48	854.26	143	—	—	—	—

^a Costs for year 1957, adjusted to wage and price level as of November 1, 1958.

^b Costs for year 1957, adjusted to wage and price level as of January 1, 1959.

^c No movement of Plan IV traffic—costs based on the average Plan III weights.

^d No fully distributed costs computed by railroads.

Source: Docket No. 32533, Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table V, page 60.

rail rates and charges on loaded or empty trailers and containers, moving in Plan III and Plan IV TOFC service and the rules in connection therewith, and (2) the assailed freight-forwarder volume commodity rates, are lawful, or not shown to be unlawful, as the case may be.⁵⁵

The Commission in its report stated that there were deficiencies in the cost data of both Eastern Central and the railroads concluding that Eastern Central had overstated cost while the railroads had understated them. Some of these data indicating the costs reported by the respective carriers and restated by the Commission are given in Tables 8 to 14. However, in spite of the overstated costs by Eastern Central, Plan III and Plan IV charges set forth exceeded out-of-pocket costs and provided a contribution to the overhead burden, with the exception of several routes.⁵⁶

⁵⁵ See note 36, supra, p. 5.

⁵⁶ See Table 8 (Route between Chicago and Philadelphia) via RDG, WMD, P and WVA, NKP and Table 11 (Route between Springfield, Mass., and Chicago and East St. Louis).

TABLE 11
COMPARISON OF PLAN III RAIL RATES WITH COSTS OF SHIPMENTS OF 70,000 POUNDS
FOR TRAILERS LOADED ON TWO RAILROAD-OWNED CARS

Movement	Route	Operat- ing Miles	Railroads' Out-of-Pocket Costs ^a				Motor Carriers' Out-of-Pocket Costs ^b	
			Rate per Shipment (\$)	Load (lb)	Two Trail- ers—Two Flatcars (\$)	Restated Cost of Two Trailers— Two Flat- cars ^c (\$)	Load ^d (lb)	Two Trail- ers—Two Flatcars (\$)
Between Chicago and:								
Boston, Mass.	NH, L&HR, DL&W, NKP	1,192	494.50	38,100 ^e	439.64	479.14	47,275	773.74
Springfield, Mass.	NH, L&HR, DL&W, NKP	1,099	445.50	38,100 ^e	430.66	490.66	47,275	734.14
Hoboken, N. J.	DL&W, NKP	902	451.50	40,700 ^e	321.78	356.78	47,275	583.36
Jersey City, N. J.	LV, NKP	951	451.50	42,100 ^e	345.06	375.49	47,275	604.24
Jersey City, N. J.	B&O	997	451.50	53,000	390.26 ^f	390.63	—	—
Philadelphia, Pa.	B&O	905	412.50	53,000	375.69 ^f	376.06	—	—
Baltimore, Md.	B&O	810	398.50	53,000	338.65 ^f	339.02	—	—
Washington, D. C.	B&O	773	398.50	53,000	318.11 ^f	318.48	—	—
Between East St. Louis and:								
Boston, Mass.	NH, L&HR, DL&W, NKP	1,392	600.00	38,100 ^e	504.54	548.94	47,275	858.92
Springfield, Mass.	NH, L&HR, DL&W, NKP	1,299	551.00	38,100 ^e	495.58	565.54	47,275	819.32
Hoboken, N. J.	DL&W, NKP	1,102	519.00	40,700 ^e	386.92	431.89	47,275	668.52
Jersey City, N. J.	LV, NKP	1,151	519.00	42,100 ^e	409.90 ^f	445.22	47,275	689.38
Jersey City, N. J.	B&O	1,102	519.00	53,000	435.88 ^f	436.25	—	—
Philadelphia, Pa.	B&O	1,010	480.00	53,000	421.33 ^f	421.70	—	—
Baltimore, Md.	B&O	915	446.00	53,000	384.31 ^f	384.68	—	—
Washington, D. C.	B&O	868	446.00	53,000	360.66 ^f	361.03	—	—

^a Cost for year 1957 (for B&O costs see footnote f).

^b Cost for year 1957 adjusted wage and price levels November 1, 1958.

^c Costs for B&O restated to include 37 cents omission for switching of cabooses—costs for other railroads restated to wage and price levels of January 1, 1959, and applicable costs at total origin and destination for loading, tying down, untying, and unloading trailers.

^d Net loading at 70,000 lb loaded in two trailers and handled on two flatcars, or 47,275 lb including weight of trailer.

^e Average net load—one trailer and contents.

^f Cost for year 1957 adjusted to January 1, 1959, for average loading of 53,000 lb in two trailers excluding weight of trailers.

Source: Docket No. 32533, Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table VI, page 61.

TABLE 12
COMPARISON OF PLAN IV RAIL RATE WITH COSTS PER CAR AS OF JANUARY 1, 1959, FOR SHIPMENTS OF
60,000 POUNDS IN TWO TRAILERS LOADED ON ONE FLATCAR PROVIDED BY THE SHIPPER

Mileage Blocks via Actual Routes	Clejan, 37 Tons			Rail Trailer						
	Proposed Rate (\$)	Out-of- Pocket (\$)	Percent Out- of-Pocket of Rate	Fully Distrib- uted (\$)	85-Foot, 47 Tons			75-Foot, 52 Tons		
					Out-of- Pocket (\$)	Percent Out- of-Pocket of Rate	Fully Distrib- uted (\$)	Out-of- Pocket (\$)	Percent Out- of-Pocket of Rate	Fully Distrib- uted (\$)
2,200	924	423.57	216	559.25	471.53	196	717.11	495.45	166	741.03
2,250	924	432.06	214	582.77	481.03	192	731.72	505.50	183	756.19
2,300	924	440.48	210	696.26	490.51	188	746.31	515.53	179	771.33
2,350	924	448.89	206	709.80	500.00	185	760.81	525.56	176	786.47
2,400	924	457.29	202	723.32	509.49	181	775.52	535.59	173	801.62
2,450	924	465.70	198	736.84	518.99	178	790.13	545.64	169	816.76
2,500	924	474.10	195	750.35	528.48	175	804.73	555.67	166	831.92
2,660	924	500.99	184	793.80	558.85	165	851.46	587.78	157	880.39
2,740	924	514.43	180	815.22	574.04	161	874.63	603.84	153	904.63

Source: Docket No. 32533, Eastern Central Motor Carriers Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table VII, page 62.

The Commission stated: "... even complainant's cost data for shipments of 70,000 pounds, ... with the exception of movements between Chicago and Philadelphia and between East St. Louis, on the one hand, and Boston and Philadelphia, on the other, over four-carrier routes, indicate that the Plans III and IV charges set forth therein exceed out-of-pocket costs and provide a contribution to the overhead burden. A similar showing is made with respect to Plan III charges in the costs restated by us. . . . except between Springfield, Mass., on the one hand, and Chicago and St. Louis, on the other. . . . Likewise, such a showing with respect to Plan IV charges is made in the costs submitted by the railroads [Table 12] and in all of the costs [Tables 13 and 14] which include those submitted by the respondent and protestants and restated by us. For shipments of 53,000 pounds, it is shown that the Plan III charges will exceed the out-of-pocket costs submitted by protestants by percentages from 35 to 79. . . and the rates also exceed the fully distributed costs by amounts ranging up to 30 percent,

TABLE 13
COMPARISON OF OUT-OF-POCKET COSTS OF PLAN IV TOFC RATES WITH THOSE OF
MOTOR CARRIERS BETWEEN THE SAME POINTS (70,000-lb load)^a

From	To	Route (miles)	Revenue (\$)	Railroads ^b (\$)	Motor Carriers ^c (\$)	Restated ^d by ICC (\$)	Revenue to Restated Costs (%)
Jersey City	Chicago	997	403.50	253.84	316.00	274.50	147
	Cincinnati	760	317.20	203.58	262.97	219.33	145
	Columbus	694	267.08	189.58	247.58	203.97	131
	Dayton	741	317.20	199.55	258.54	214.91	148
	East St. Louis	1,102	469.74	276.11	343.60	298.95	157
Philadelphia	Indianapolis	870	353.72	226.91	280.64	244.94	144
	Louisville	887	399.00	230.51	292.56	248.90	160
	Chicago	905	365.75	234.33	295.59	253.09	145
	Cincinnati	668	290.37	184.07	241.52	197.92	147
	Columbus	602	232.74	170.07	226.14	182.56	127
Baltimore	Dayton	649	290.37	180.04	237.10	193.49	150
	East St. Louis	1,010	431.97	256.60	322.40	277.53	156
	Indianapolis	778	324.38	207.40	267.16	223.52	145
	Louisville	795	364.67	211.00	271.12	227.48	160
	Chicago	810	353.02	214.18	273.22	230.97	153
Washington	Cincinnati	571	237.21	163.58	218.92	175.34	135
	Columbus	506	205.58	149.71	203.77	160.20	128
	Dayton	553	237.21	159.68	214.72	171.15	139
	East St. Louis	915	399.25	236.45	300.25	255.42	156
	Indianapolis	682	291.22	187.04	244.79	201.18	145
Washington	Louisville	698	299.01	190.43	248.52	204.90	146
	Chicago	773	353.02	206.34	264.60	222.37	159
	Cincinnati	534	237.21	155.65	210.29	166.72	142
	Columbus	469	205.58	141.87	195.14	151.59	136
	Dayton	516	237.21	151.84	206.10	162.54	146
Washington	East St. Louis	878	399.25	228.60	291.40	246.80	162
	Indianapolis	645	291.22	179.19	236.16	192.57	151
	Louisville	661	299.01	182.58	239.89	196.28	152

^aThe Commission evaluated differences in cost estimates between two media and made determination on 3 factors in which they varied: (a) cost of placing empty rail cars at origin and loaded cars at destination, (b) line-haul costs, and, (c) cost of loss and damage claims.

^bUsing terminal cost of \$42.41; car-mile cost of 13.16069 cents; ton-mile cost of 0.22988 cent.

^cUsing terminal cost of \$85.84; car-mile cost of 13.99071 cents; ton-mile cost of 0.26615 cent.

^dUsing terminal cost of \$42.41; car-mile cost of 14.34996 cents; ton-mile cost of 0.25513 cent.

Source: Docket No. 32533 Eastern Central Motor Carrier Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table VIII, page 63.

TABLE 14
COMPARISON OF OUT-OF-POCKET COSTS OF PLAN IV TOFC RATES WITH THOSE OF
MOTOR CARRIERS BETWEEN THE SAME POINTS (50,000-lb load)^a

From	To	Route (miles)	Revenue (\$)	Railroads ^b (\$)	Motor Carriers ^c (\$)	Restated ^d by ICC (\$)	Revenue to Restated Costs (%)
Jersey City	Chicago	997	362.00	229.49	—	247.64	146
	Cincinnati	760	295.60	184.68	234.29	198.51	149
	Columbus	694	248.40	172.20	220.66	184.82	134
	Dayton	741	295.60	181.09	230.37	194.57	152
	East St. Louis	1,102	421.00	249.34	—	269.41	156
Philadelphia	Indianapolis	870	324.00	205.48	257.00	221.31	146
	Louisville	887	356.40	208.69	260.51	224.84	159
	Chicago	905	332.00	212.09	—	228.57	145
	Cincinnati	668	267.20	167.28	215.29	179.45	149
	Columbus	602	220.40	154.80	201.67	165.77	133
Baltimore	Dayton	649	267.20	163.69	211.37	175.50	152
	East St. Louis	1,010	391.00	231.95	—	250.33	156
	Indianapolis	778	295.60	188.08	238.00	202.24	146
	Louisville	795	328.00	191.30	241.51	205.77	159
	Chicago	810	319.00	194.13	—	208.07	153
Washington	Cincinnati	571	223.60	148.94	195.27	159.34	140
	Columbus	506	197.60	136.65	181.85	146.06	135
	Dayton	553	223.60	145.54	191.55	155.61	144
	East St. Louis	915	357.00	213.99	—	230.64	155
	Indianapolis	682	266.00	169.93	218.19	182.35	147
Washington	Louisville	698	274.00	172.96	221.49	185.66	148
	Chicago	773	319.00	187.14	—	201.21	159
	Cincinnati	534	223.60	141.95	187.63	151.67	147
	Columbus	469	197.60	129.66	174.21	138.19	143
	Dayton	516	223.60	138.54	183.92	147.94	151
Washington	East St. Louis	878	357.00	206.99	—	222.97	160
	Indianapolis	645	266.00	162.93	210.55	174.68	153
	Louisville	661	274.00	165.96	213.85	177.99	154

^aThe Commission evaluated differences in cost estimates between two media and made determination on 3 factors in which they varied: (a) cost of placing empty rail cars at origin and loaded cars at destination, (b) line-haul costs, and, (c) cost of loss and damage claims.

^bUsing terminal cost of \$40.98; car-mile cost of 13.16069 cents; ton-mile cost of 0.22988 cent.

^cUsing terminal cost of \$77.39; car-mile cost of 13.99071 cents; ton-mile cost of 0.26615 cent.

^dUsing terminal cost of \$40.98; car-mile cost of 14.34996 cents; ton-mile cost of 0.25513 cent.

Source: Docket No. 32533 Eastern Central Motor Carrier Association, Inc., v. Baltimore & Ohio Railroad Company, et al, 314 I. C. C. 5, June 19, 1961, Table IX, page 64.

TABLE 15
COMPARISON OF COSTS WITH REVENUES AND PERCENTAGE RELATIONSHIP OF RATE TO COST
AS RESTATED BY THE EXAMINER—WITHIN EASTERN DISTRICT

General Traffic	Docket 28,300 (miles)	Revenue per Car Group I Rates (\$)	*Unadjusted Out-of-Pocket Cost per Car ^a (\$)	*Percent Rate to Cost ^b	*Adjusted Out-of-Pocket Cost per Car ^c (\$)	*Percent Proposed Rate to Cost ^d	Percent Rate to Cost with Return of Empty Trailer ^e
Chicago to New York	890	455.50	370.03	123.1	397.05	114.7	110.5
East St. Louis to New York	1,040	523.00	424.00	123.4	455.57	114.8	110.4
Chicago to Baltimore	767	492.50	325.78	123.6	349.06	115.3	110.1
East St. Louis to Baltimore	891	450.00	369.39	121.8	397.44	113.2	108.5
Chicago to Buffalo ^f	525	284.00	238.71	119.0	254.65	111.5	105.4
East St. Louis to Boston ^f	1,211	608.00	465.52	125.2	484.58	125.5	119.0
Chicago to Boston ^f	1,012	498.50	413.93	120.4	444.65	112.1	106.4

^aThe corresponding unadjusted costs on meat traffic range from \$244.90 to \$499.80 per car.

^bOn meat traffic, range is from 116.0 to 121.4 percent.

^cAdjusted to reflect decreased tons handled per through train mile and increased number of diesel units used on trains handling TOFC shipments. The adjusted costs on meat traffic range from \$261.64 to \$536.42 per car.

^dOn meat traffic, range is from 108.5 to 112.9 percent.

^eOn meat traffic, range is from 101.3 to 115.2 percent.

^fVia New York Central Railroad; other mileage not made part of this record.

Differ slightly from columns shown in recommended report due to correction of mathematical errors.

Source: Docket No. 33133, All Freight in Trailer On Flat Car—Between the East and Chicago & East St. Louis, 325 I. C. C., June 24, 1965, Table 1, page 616.

except for the circuitous routes between Springfield, Mass., and Chicago and East St. Louis. On these movements the rate fails to cover the fully distributed costs by 2 percent and 1 percent, respectively. The Erie's operating witness testified that severe weather conditions were experienced during the switching study at Chicago, and the New Haven had a low volume of cars handled in the study at Springfield, thus contributing to the failure of the shipments from Springfield to cover fully distributed costs.⁵⁷

The Commission's report further showed: "The charges for flexi-van service for movements of 56,000 pounds [Table 9] exceed the out-of-pocket costs by amounts ranging from 102 to 130 percent, and exceed the fully distributed costs by 35 to 50 percent. . . . Evidence shows that Plan IV charges for movements of 53,000 pounds exceed the out-of-pocket costs by 82 to 99 percent, and exceed the fully distributed costs by 22 to 32 percent [Table 10]."

ICC Report on Docket No. 33133

In a subsequent docket when ICC again investigated Plan III rates on freight of all kinds and found them "just and reasonable" with one exception⁵⁸ there were extensive data showing costs and revenues, some of which were summarized in its report. The report shows a⁵⁹ comparison of costs with revenues and the percent relationship of rate to cost as stated by the examiner (Table 15). Revenue per carload and comparison of proposed rate to cost for distances from 25 to 2,000 miles is shown in Table 16.

In restating the cost evidence, the examiner found that in computing the costs of Plan III service all pickup and delivery expenses, acquisition, maintenance, and depreciation charges for trailers should be excluded. The examiner further found that substantially all the considered traffic moves in regularly scheduled through trains, and that the costs of such trains, as used by the respondents, rather than the costs of average weight trains, as used by the protestants, was proper. A factor of \$5.00 per car was included as an accurate approximation of loss and damage expenses. Empty return ratios of flatcars, ownership costs in computing line-haul expenses, wages and price levels were also considered by the examiner in restating costs.

⁵⁷See note 36 supra, p. 39.

⁵⁸The rate from St. Louis to Tulsa. See note 40 supra, p. 604.

⁵⁹See note 40 supra, p. 616.

TABLE 16
COMPARISON OF OUT-OF-POCKET COSTS WITH REVENUE, BY MILEAGE BLOCKS UP TO
2,000 MILES IN SOUTHERN REGION AND BETWEEN
OFFICIAL TERRITORY AND THE SOUTH

Short-Line (miles)	Revenue per Carload, Group I Rates (\$)	Out-of-Pocket Cost per Carload, General Traffic					
		All South (\$)	Percent Proposed Rate to Cost	Percent Rate to Cost with Return of Empty Trailer	Official, South (\$)	Percent Proposed Rate to Cost	Percent Rate to Cost with Return of Empty Trailer
25	119.00	52.55	226.5	162.7	58.08	204.9	159.9
50	119.00	61.07	194.9	144.8	66.67	178.5	142.7
75	119.00	69.58	171.0	130.5	75.26	158.1	128.8
100	119.00	78.10	152.4	118.7	83.84	141.9	117.4
200	154.00	112.17	137.3	112.9	118.20	130.3	112.1
500	284.00	214.35	132.5	116.0	221.22	128.4	115.8
1,000	504.00	384.61	131.0	118.5	392.89	128.3	118.6
1,500	756.00	554.91	136.6	125.1	564.59	134.3	125.3
1,800	908.00	657.09	138.2	127.1	667.61	136.0	127.4
2,000	1,008.00	725.21	139.0	128.1	736.29	136.9	128.5

Source: Docket No. 33133, All freight in Trailer On Flat Car--Between the East and Chicago & East St. Louis, 325 I. C. C., June 24, 1965, Table 3, page 618.

SUMMARY

The extensive cost information contained in these three cases⁶⁰ reporting the results of extensive investigation by the Commission over a 7-yr period (1958 to 1965) would seem to indicate conclusively that the rates quoted by the railroads for Plans III and IV services do, except in unusual circumstances, allay out-of-pocket costs and contribute to fully distributed costs. Therefore, it would appear that these plans would be economically desirable for railroad operating revenues. Testimony was heard in each of these cases to the effect that the railroads were able to retrieve some traffic from private carriage by utilizing these two plans. The testimony of shippers and shipper associations was extensive in their desire for the use of these plans.

CONTINUED ICC INVESTIGATION

There has been much criticism of ICC from the transport industry and shippers utilizing Plan III service for its continued investigation, since Plan III has been upheld by the Supreme Court in the Cooper-Jarrett case. Testimony in the three thorough investigations⁶¹ recently held by ICC all showed that Plan III service was being utilized by many shippers in preference to private carriage when common carriers, either rail or motor, did not serve their needs. It was contended there that Plan III has served to stem the tide of the movement to private economically unregulated carriage. Therefore, anything which would inhibit the full development of piggyback, and especially Plan III which has, more than any other plan, been responsible for helping prevent a further deterioration of the common carrier system, should be avoided.

Representative Celler, of New York, Chairman of the House Judiciary Committee, became very apprehensive about the ICC's investigation of piggyback practices and declared: "We must not hurt development in that important field. The new methods, new services, and new prices required if the railroads are to survive as a principal means of intercity transportation cannot thrive in an atmosphere of constant litigation and turmoil. . . . In today's buyer's markets, only the shippers, not ICC, will determine whether a given service is sufficiently flexible and reasonably priced. Back in the twenties, the railroads attempted a similar container service but ICC put a floor under the rates, which was unacceptable to the shipping public, and the containers were left to rust. A host of artificial proposed rules can be just as deadly." (24, p. 23690)

Commissioner Webb of ICC has frequently dissented from the majority view in favor of liberalizing rules pertaining to piggyback operations. "Piggybacking is the brightest

⁶⁰Dockets No. 32533, 314 I.C.C. 5, Decided June 19, 1961, Ex Parte No. 230, 322 I.C.C. 301,

⁶¹Decided March 16, 1964, and Docket No. 33133, 325 I.C.C. 591, Decided June 24, 1965.

See note 59 supra.

star in the transportation firmament. Its remarkable growth has been due to voluntary intermodal coordination, carrier-shipper cooperation, and a form of regulation which, until today, minimized compulsion and maximized competition. Viewing the dynamic growth of piggybacking in the light of the novel and onerous restrictions now decreed by the Commission, carriers and shippers may well conclude that nothing fails like success."⁶²

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