

Carriers' Response to Emerging National Water Transportation Policy Issues

J. W. Hershey, American Commercial Lines

A multiplicity of separate efforts obscure the character of expected legislated statements of transportation policy. Such statements may modify the existing policy articulated in the preamble of the Interstate Commerce Act. The policy statement of the U.S. Department of Transportation discussed here reflects many aims and recommendations common to ongoing efforts of other federal proceedings.

The intensity of attacks on the business of moving goods by water, especially over improved internal waterways, has increased recently with new indictments of alleged inequities and resource misallocation. This is despite the fact that nowhere else in the world can a transportation system move such large amounts of bulk freight for such low costs in both fuel and money. A national resource of great value is being challenged, although this mode handles 16 percent of the nation's intercity traffic for 2 percent of its freight bill.

Consider the current efforts to develop a new national transportation policy, a section of which must be a water transportation policy. The authors are from the White House (the Office of Management and Budget), the Water Resources Council, the Department of Transportation (DOT), the National Water Commission, the General Accounting Office, the Senate Commerce Committee, the House Public Works Committee, the House Interstate and Foreign Commerce Committee, and the U.S. Army Corps of Engineers. However, there is little real interagency coordination, and it is often overlooked that we already have a carefully drawn statutory declaration of internal transportation policy, effective September 18, 1940, as the preamble to the Interstate Commerce Act as amended. This statement, which remains the only official pronouncement of force and effect of a broad national transportation policy says,

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages; or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to

encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.

It would require many volumes to describe the efforts and conclusions of the governmental bodies seeking to rewrite the rules and practices governing transportation of people and things. Some claim the system is archaic in management, procedures, and pricing, and there are plans to take the watch apart and play with machinery that makes it go. Perhaps the sheer verbosity of these efforts is due to the prevalence of experts. No one who has ever ridden a bus, plane, or railroad coach lacks a suggestion as to how the system can be improved. Likewise, every traffic manager is convinced that, given the chance, he could improve the service and lower the price, especially as it relates to his particular commodity. The essence of these efforts was expressed by Secretary of Transportation William T. Coleman in the Statement of National Transportation Policy of September 17, 1975, and in lobbying efforts on behalf of the deregulatory provisions of the Railroad Revitalization and Regulatory Reform Act of 1976. The DOT statement does not fully address the issues, which are far more complex than it suggests, and will be discussed below under three headings: (a) the superficiality of the discussions and recommendations involving competition, (b) the assumptions, particularly as to public investment in transportation, for which no foundation is laid, and (c) serious omissions of issues of great importance to the consumers and producers of transportation.

THE COMPETITION ISSUE

The crucial role of the government in regulating competition, whether under the antitrust laws or under the Interstate Commerce Act, is to outlaw as anticompetitive any conduct, device, or practice that, by force of inordinate power or leverage, prevents the competitive struggle from being decided strictly on the basis of efficiency and performance. Where efficiency and performance win in the marketplace, the public interest is advanced. Where leverage and dominant economic power

decide the competitive struggle, only the private interest is advanced.

The DOT policy for lessening economic regulation, although advanced as a modest proposal, in fact amounts to total deregulation. The various safeguards against discriminatory and predatory rate making would be weakened, and the transportation industry would enter a world in which there would be neither the present safeguards of the Interstate Commerce Act nor any of the tested protection of general industry antitrust laws. The proposal, in particular, grossly underestimates the extent of monopoly power still possessed by the railroads, particularly the prosperous railroads, in certain regions of the country where water transportation does not reach and for certain commodities moving such long distances that trucks are not an economically feasible alternative.

What is a better source of inspiration for changes designed to invigorate intermodal competition than the antitrust policies?

When we test the DOT's proposed policies against the competitive policies that apply where there is no Interstate Commerce Commission (ICC) regulation, it is apparent that the proposal is inconsistent with and alien to accepted national policy governing healthy competition.

The response of the water carriers can be simply stated: The Congress should not leave transportation with fewer safeguards against predatory competition than the carriers would have if they were manufacturers of goods in the unregulated economy. The Interstate Commerce Act should be clarified and strengthened in this vital regard.

Lessened Regulation Coupled With Collective Pricing

Allowing collective pricing without effective government regulation of the result is alien to the national policy on competition. It is contrary to the public interest to permit collective action among competitors under which prices are fixed unless the resulting prices are fully subject to government regulation. Yet the DOT policy minimizes regulatory restraints while making only minor adjustments in the operations of rate bureaus, chiefly safeguarding independent action, an objective that is nowhere in dispute. Railroads would retain the opportunity to exploit their monopoly powers—regionally and over long-distance hauls of certain commodities—with no effective restraints on collective pricing. Lessening rate regulation is acceptable only if it is accompanied by appropriate safeguards and treble damages for abuse of monopoly power.

Price Squeeze Anticompetitive Tactics

The DOT policy fails to provide safeguards against a common abuse whereby railroad control of a rate or a type of service offered on a connecting route to or from a port artificially suppresses water competition. Without specific and effective regulation, the railroad can manipulate its rate or its type of service to or from the port so as to eliminate any opportunity for a combined rail and water service that would compete with the all-rail overland alternative. The railroad, in effect, controls whether or not it has any competition. Permitting the exercise of such power without restraint is alien to the policies relating to competition as expressed in the antitrust laws.

Destructive Geographic Discrimination

The DOT policy weakens, if it does not entirely eliminate, safeguards against the use of geographical rate discrimination to eliminate competition and create a monopoly. It may be desirable and useful for a railroad to have greater latitude to lower or raise its rates, for example, to even out a seasonal load, but it should not be permitted to do so in a discriminatory fashion either between different shippers or against competitors. Competition is unquestionably the most powerful force in promoting efficiency in the economy, and water competition plays a major role in the promotion of efficiency in transportation (Table 1).

Absence of Damage and Penalty Provisions

A major difference between pricing in industry generally and in the less-regulated world proposed by the new DOT policy is the absence of effective damage provisions for the suppression of competition. A very important aspect of enforcement of the antitrust laws is the treble damage provision. Fear of these provisions enlists industry itself in a process of self-regulation. Without damage provisions a railroad or any other competitor has every incentive to suppress competition. For example, millions of tons of coal per year were diverted from Great Lakes shipping operators as long ago as 1967 by a railroad rate action that has now been found unlawful by a Cleveland federal court. The very worst that ordinarily happens to a railroad successfully suppressing competition is that it enjoys the traffic only for the length of the litigation leading to a cease and desist order, which is sufficient incentive to suppress all of the competition possible particularly when cases can be delayed as long as 10 years. Failure to address this problem makes the DOT policy fundamentally protectionist and alien to sound national competition policy. The use of the treble damage penalty could very well lead to an era of self-regulation that would relieve the ICC of much of its present case load.

FALSE ASSUMPTIONS ON PUBLIC INVESTMENT

It is often alleged that a major reason for the decline of the eastern and northeastern railroads is the massive public support for other modes. No explanation is offered for the fact that railroads in other regions of the country, in which public investment in other transportation modes is as great or even greater, are nevertheless in a flourishing financial condition.

It is encouraging to observe a beginning of recognition, at least by Secretary of Transportation Coleman, that it is a mistake to think that there are no subsidies to railroads. There should be a detailed study of federal aids to railroads to determine whether, in fact, the government has not been, at the very least, evenhanded in its aid programs among different modes.

The federal government has a wide variety of programs designed to assist business enterprises in the public interest. These programs are of various types and include direct grants such as subsidies for carrying mail, research and development expenditures such as those for agriculture and health, use and sale of government assets or services, loans, loan guarantees and insurance, and, finally, tax concessions. Hardly any sector of economic activity in the country does not enjoy the benefits of one or another of these programs. Aids to railroads have included grants of funds, grants of land

Table 1. Selected water-competitive rail rate reductions.

Commodity	From	To	Rate (\$/Mg)	
			Noncompetitive	Competitive
Acid, muriatic	Chattanooga	Chicago (2) ^a	3300	1470 ^b
Alumina	Baton Rouge (2) ^a	Listerhill, Ala.	1410	743 ^{c,d}
	Chalmette, La. (2) ^a	Kensington, Ga.	1450	1050 ^d
	Gregory, Texas	Listerhill, Ala.	2200	948 ^{c,d}
Aluminum billets and pigs	Alcoa, Tenn.	Riverdale, Iowa	2350	1750 ^c
	Omaha, Ohio	Chattanooga	2150	1480 ^c
Asphalt	Baton Rouge	Chattanooga	1800	1012 ^c
Calcium carbide	Calvert, Ky.	Louisville, Ky.	1820	570 ^{c,e}
Caustic soda, liquid	Port Neches, Texas	Lowland, Tenn.	1970	1405 ^c
Chloride, vinyl	Calvert, Ky.	Chicago	6240	1825 ^b
	Calvert, Ky.	Houston	5540	3040 ^b
	Lake Charles, La. (2) ^a	Calvert, Ky.	3620	2220 ^b
Coal	Palmer, Tenn.	Widows Creek Plant, Ala.	213	108
	West Kentucky	New Johnsonville, Tenn.	845	407
Coke and coke breeze	Chattanooga (2) ^a	Houston (165) ^f	3490	1360 ^b
Ethylene glycol	North Seadrift, Texas	Kingsport, Tenn. (2) ^a	2150	1210 ^{b,g}
	Texas City (13) ^a	Decatur, Ala.	1120	725 ^{c,h}
Gas, liquid, chlorine	Calvert, Ky.	E. St. Louis, Ill.	1700	910 ^c
	Vicksburg, Miss.	Calvert, Ky.	2420	1027 ^b
Grains, whole and soybeans	Various elevators	Southeast points (average)	2620	776 ^{b,c}
Iron or steel billets	Chicago	Anniston, Ala.	1920	1565 ^b
	Gary, Ind. (2) ^a	Fairfield, Ala. (2) ^a	1920	1120 ^{b,c,f}
Iron or steel scrap	Bessemer, Penn. (26) ^a	Calvert, Ky.	1910	1230
	Birmingham, Ala.	Chicago	2015	1680 ^c
	Nashville	Rockwood, Tenn.	702	318 ^{c,h}
Iron or steel slabs	Gary, Ind. (2) ^a	Ensley, Ala. (2) ^a	2050	1655 ^b
Iron or steel, wrought, tubular	Anniston, Ala. (3) ^a	Houston (23) ^a	2790	2305 ^b
Metallic alloys ^h	Calvert, Ky.	Ashland, Ky.	1145	955
	Calvert, Ky.	Burlington, Iowa	2280	1360 ^b
	Calvert, Ky.	Houston, Penn.	3060	1345 ^b
	Calvert, Ky.	Pittsburgh	2185	1250 ^b
Methanol	Bishop, Texas	Decatur, Ala.	3540	1760 ^b
	North Seadrift, Texas	Kingsport, Tenn.	4950	2370 ^b
Molasses, blackstrap	New Orleans (4) ^a	White Pine, Tenn. (2) ^a	2640	2040 ^b
Newsprint paper ⁱ	Calhoun, Tenn.	Houston	3330	2070 ^b
Phosphate rock	Florida points	Sheffield, Ala.	1330	1082 ^b
Pig iron	Birmingham, Ala. (10) ^a	Monaca, Penn.	3060	2240
	Gary, Ind. (2) ^a	Fairfield, Ala. (2) ^a	2320	1320 ^{b,c,f}
Pipe, wrought iron or steel	Preston, Tenn.	Corpus Christi	4720	3690 ^b
Salt	Louisiana	Charleston, Tenn.	1760	660 ^{b,c,e}
	Louisiana	Redstone Arsenal, Ala.	1670	716 ^{b,c}
Skelp, steel	Chicago (6) ^a	Birmingham, Ala. (30) ^a	2050	1124 ^{b,c}
Styrene	Baton Rouge	Chattanooga (3) ^a	2640	1626
	Houston (8) ^a	Decatur, Ala.	3080	1758
Sulphur	Port Sulphur, La.	Lowland, Tenn.	2710	1744 ^b
Toluene	Houston (7) ^a	Chattanooga (2) ^a	3580	1495 ^{b,c}
Zinc, pig or slab	Josephtown, Penn.	Chattanooga	2490	1435 ^b

Notes: 1 Mg = 1,102 tons.
Rates as of July 1, 1975.

^a Numerals in parentheses indicate total number of origins or destinations to which the competitive rates apply. The level of the noncompetitive rates shown is for the specific origins and destinations shown. For other points among which the competitive rate applies, the level of the noncompetitive rate might be somewhat different.

^b Higher minimum weight.

^c Multiple car.

^d Actual rate consists of two factors, the first factor applying on a specified minimum weight, the second factor applying on weight loaded in excess of the minimum. The rate shown is an average, calculated on a weight we would consider to be a reasonable carload, preserving, insofar as possible, comparability between the competitive and noncompetitive minimum weights.

^e Minimum annual volume.

^f Minimum monthly volume.

^g Ex-barge.

^h This is a general term that we apply to a group of commodities, such as ferromanganese, ferrochrome, and ferrosilicon-manganese. The lowest rate applicable on any given combination of these alloys is shown.

ⁱ Rates include off-track delivery charge.

and other property, tax exemptions, loans, loan guarantees, use of government-financed assets without payment and including maintenance thereof, research and development, and accelerated amortization and investment credits. Many of these programs, particularly the 5-year write-off of equipment, are far more favorable to railroads than are the similar programs applied to water carriers.

In the past 5 years the federal government, with the active aid and support in the Congress of the domestic water carriers, has adopted a variety of subsidy and subsidylike programs of enormous monetary value to the railroads. Among these are

1. The Regional Rail Reorganization Act of 1973 to revitalize the railroads in the Northeast and Midwest, which was first expected to involve \$1 700 000 000 and

is now estimated by Secretary Coleman to require about \$4 500 000 000;

2. Tax incentives to stimulate investment in freight cars, locomotives, and facilities, some of which are much more favorable than those available for water carriers, \$1 000 000 000 worth over the past 5 years (Table 2);

3. Relief from passenger losses of over \$400 000 000/year to enable railroads to concentrate on improving freight transportation (railroad losses on passengers from 1961 to the start of Amtrak totaled \$4 300 000 000);

4. Mandating expenditures from the Highway Trust Fund for grade-crossing eliminations to improve efficiency and safety (\$194 000 000 in 1973, a total of \$1 900 000 000 since 1961); and

5. The Railroad Retirement Act of 1974, which released railroad resources to improve efficiency of

Table 2. Analysis of railroad federal income tax.

Railroad ^a	Ordinary Income ^b (1)	Deferred Investment Tax Credit (2)	Tax Deferrals ^c		Other Tax Adjustments (5)	Actual Tax ^d (6)	Ordinary Income Before Tax ^e (7)	Actual Rate ^f (%) (8)	Nominal Tax ^g (9)	Difference ^h (10)	Balance ⁱ (11)
			IRS 167, (3)	IRS 184, 185 (4)							
Eastern											
B&O	53 250	-13 505	5 530	—	22 607	191	68 073	0.3	32 669	32 478	17 846
C&O	89 700	—	2 998	—	12 580	21 765	127 043	17.1	60 974	39 209	23 631
EL	-17 200	—	—	—	—	0	-17 200	0	0	0	0
GTW	-7 939	—	—	—	—	0	-7 939	0	0	0	0
N&W	99 841	—	6 519	3 731	17 594	24 074	151 759	15.9	72 838	48 764	20 920
PC	-198 024	—	—	—	—	-8 809	-206 833	-4.3	0	8 809	8 809
Southern											
ICG	21 026	—	—	—	3 512	3	24 541	0.01	11 773	11 770	8 258
L&N	37 007	5 242	6 773	685	-1 345	10 995	59 357	18.5	28 485	17 490	6 135
SCL	98 214	-7 395	10 949	3 650	-2 476	108	103 050	0.1	49 458	49 350	44 622
SR	92 849	—	10 812	6 477	908	5 784	116 830	5.0	56 072	50 288	32 091
Western											
ATSF	66 948	2 833	10 984	7 916	-1 590	7 903	94 994	8.3	45 591	37 688	17 545
BN	82 560	-1 633	10 155	—	-7 821	15 283	98 544	15.5	47 295	32 012	31 311
C&NW	-983	586	-2 418	—	-49	0	-2 864	0	0	0	-1 881
MILW	11 402	-1 767	4 180	3	-649	0	13 169	0	6 315	6 315	4 548
CRIP	-23 097	—	—	—	—	0	-23 097	0	0	0	0
MP	49 722	—	-695	6 804	-1 837	7 124	61 118	11.7	29 330	22 206	17 934
SLSF	16 322	-2 236	2 112	2 064	—	1 349	19 611	6.9	9 407	8 058	6 118
SOO	14 307	—	2 019	628	353	6 165	23 472	26.3	11 260	5 095	2 015
SP	88 232	—	14 442	2 653	—	4 529	109 856	4.1	52 724	48 195	31 100
UP	99 177	—	13 422	12 142	4 579	34 332	163 652	21.0	78 546	44 214	14 071

Note: Monetary values are in thousands of dollars.

^a B&O = Baltimore and Ohio; C&O = Chesapeake and Ohio; EL = Erie Lackawanna; GTW = Grand Trunk Western; N&W = Norfolk and Western; PC = Penn Central; ICG = Illinois Central Gulf; L&N = Louisville and Nashville; SCL = Seaboard Coast Line; SRS = Southern Railway; ATSF = Atchison, Topeka and Santa Fe; BN = Burlington Northern; C&NW = Chicago and Northwestern; MILW = Chicago, Milwaukee, St. Paul and Pacific; CRIP = Chicago, Rock Island and Pacific; MP = Missouri Pacific; SLSF = St. Louis-San Francisco; SOO = Soo Line; SP = Southern Pacific; and UP = Union Pacific.

^b As reported to ICC.

^c Under Internal Revenue Service rulings.

^d Current federal income tax liability.

^e Sum of columns 1 through 5.

^f Column 6 divided by column 7.

^g Federal income tax computed at 48 percent rate (less \$500).

^h Between nominal and actual tax (column 9 minus column 6).

ⁱ Unaccounted for (includes investment tax credit provisions not specified in ICC Annual Report except C&O, 3092, and N&W, 16 157, column 10 minus sum of columns 2 through 5).

freight transportation in the amount of \$285 000 000/year for 25 years, or a total of about \$7 000 000 000.

All these programs have been supported by water carriers. The water carrier industry has also supported the Surface Transportation Act that would make possible loan guarantees to railroads of \$2 000 000 000.

The railroads are not fatally disadvantaged by investments in navigable waterways. In any event, the navigable channels at seaports assist the railroads with their export traffic and the flood control measures protect railroad rights-of-way and marshaling yards, benefits that are not included in any of the above listings.

OMISSIONS

Anti-Common Carrier and Pro-Private Carrier Bias of the Department of Transportation

One of the principal reasons given for the proposed changes in regulation is to aid railroads to compete more effectively in the marketplace. But one major area of regulation is ignored: That is the extent to which government policies are anti-common carrier and pro-private carrier. The government artificially fosters private carriage at the expense of common carrier railroads, water carriers, and truckers, and its premises about the economics of private carriage are fallacious. The savings of private carriage are often achieved only by shifting substantial costs to common carriers and the economics of balanced ladings away from common carriers.

So far, there has been reluctance to suggest that the financial problems of the eastern railroads in a region that, paradoxically, accounts for more than half

of the value added by manufacture in the entire nation may be related to the extent of private carriage. Much of the profitable traffic in the region has been skimmed from the common carrier system altogether. Unquestionably, the long-continued diversion of huge blocks of the most profitable traffic to private carriers has contributed to the present problems of the railroads.

Major shippers hold common carrier certificates and contract carrier permits to make the diversion even more effective. These and other shippers diverting traffic from the for-hire market serve their own interests first and cut deeply into the traffic base of the common carrier rail-water-truck system by selecting only the most profitable movements.

Private carriage creates no new freight. Its spectacular expansion is at the expense of the rail-water-truck common carrier service. The assumption that there is an inexhaustible common carrier traffic base that can be diverted to private carriage without harm to the public interest is erroneous. For a time, such diversions can be absorbed without apparent harm to the common carrier, but there is now evidence that this trend has been allowed to go too far.

Figures on private transportation are not readily available, but, for a number of major commodities, it accounts for over half of all transportation services performed. One steel company had total transport revenues of \$638 000 000 in 1974 on which it earned \$155 000 000 in gross profits.

It is ironic that the major manufacturers of the Midwest and Northeast, many of which maintain massive rail, truck, and water private fleets, lead the fight for federal aid to rescue their common carrier railroads. The vision they describe of a closed-down Penn Central Transportation Company causing massive layoffs in steel and automobiles and a spreading darkness as utilities run

out of coal is terrifying, but they have not explained why, if common carrier rail service is so vital, they so vigorously oppose rate increases adequate to cover the expenses of such service.

If the common carrier share of the traffic base in the Northeast has now become so thin that rail operation cannot be sustained without taxpayer support, perhaps a turning point has been reached. It may be time to develop more balanced policies and reverse the trend to private carriage. The advantage of private carriage is largely in the artificial tailoring of its movements. For example, a big block of captive one-way traffic may exist; it would not be economical to haul it by itself. But, by using the exemptions from regulation and the certificates and permits of wholly owned transportation subsidiaries, the private carrier can bid for common carrier traffic to fill in the backhaul. Typically he has less than enough capacity to serve all his needs and uses the common carrier system for his peak and standby capacity. This shifts the cost of that capacity to the common carriers and their customers and leaves to the common carriers the unprofitable and hard-to-handle traffic. The private operation appears to be a marvel of efficiency, but the efficiency is an illusion if a large part of the costs are paid by others.

The savings are even more illusory if so much of the common carrier traffic is diverted that economies of scale are lost and rates for those who do not operate their own transport facilities are increased. The private advantage of a few becomes the financial disadvantage of the many. Finally, if enough traffic is withdrawn from the common carrier systems, the taxpayer must pay the bill to maintain essential public services.

The right to operate do-it-yourself transportation is important, and the way should always be open for private carriage. The threat to use private carriage is often a useful prod to improve the efficiency of common carriage. However, private carriage should be reexamined because of the distortions that arise from the costs that it shifts to others, its internal financial justification that often belongs to another era, and the extent to which it is undermining common carrier transportation systems on which the general public must depend. The Senate Commerce Committee study of 1961 recommended a clear and simple course of action: legislation restricting private carriers to the carriage of their own goods and forbidding them from entering the common carrier for-hire market. The DOT statement should have suggested that it is time to implement the recommendation of 1961.

Impact of Inflation

The most important issue facing transportation is the overriding fact that every mode of the transportation industry has been underpricing its product for years. Railroads and water carriers, for example, are much more capital-intensive than industry generally, and inflation has been especially devastating. They urgently need a process by which they can adjust freight rates so that the effects of inflation are properly reflected. The revaluation provisions of Part I of the Interstate Commerce Act should be used to determine a fair rate of return on investment for all modes.

A sound approach to this, which has the agreement of railroads, water carriers, truckers, freight forwarders, leading investors in transportation, and leading shippers, has been developed under the auspices of the Transportation Association of America as a direction to the ICC to adopt new standards for adequacy of revenues and earnings. This is expressed as follows.

The Interstate Commerce Commission shall, with respect to railroads, domestic water carriers, motor carriers, and freight forwarders, promulgate and thereafter continually maintain standards and procedures for the establishment of revenue levels adequate under honest, economical and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable and economic profit and/or return on total capital employed in the business, which revenue levels should provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital and cover the effects of inflation; such revenue levels should insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist in attaining such revenue levels.

Clearly, if the customers of the transportation industry do not pay the bills, there is no source of financing other than the public taxpayer. The proper pricing of transportation is therefore the most important consideration of all.