

ings in which the Commission undertakes an investigation. Under S. 2711, a carrier could not unilaterally discontinue a train or trains during the course of a Commission-instituted investigation and hearing or unilaterally discontinue a train or trains which the Commission has ordered to be continued for one year or less.

In our judgment, the Commission's jurisdiction cannot be defeated at present by the unilateral action of the carrier during the second, or investigation phase of a section 13a(1) proceeding as may be possible during the notice period, since the investigation is instituted by a Commission order which binds the carrier and subjects it to the penalties which I have just mentioned for violating an order of the Commission. We, however, would have no objection to having any doubt removed over the exercise of our jurisdiction in this second phase should the Committee feel this is required. More important, in our opinion, is that careful consideration be given to any amendments so that the Commission may administer the policy considerations expressed in this legislation in an orderly and practical manner. We believe that S. 2711 will render our administration of section 13a more difficult than under the present law unless certain additional changes are made.

As I have indicated earlier, under the present statute, the Commission's decision whether to institute an investigation is based solely on the notice and the supporting data submitted by the carrier and the representations of protesting parties. In the case of the protests, they are most often in the nature of requests that the Commission refuse to permit the discontinuance, and they contain little evidence of the need of the public for continuance of the service. In effect, the Commission's decision necessarily rests on (1) whether the carrier has made a convincing case for allowing the discontinuance to take effect without a hearing or further investigation, and (2) whether the protests are such as to indicate that a hearing would be useful and productive. In all cases in which there is any doubt as to the showing made by the carrier the Commission suspends the discontinuance of the train and sets the matter for hearing. This enables the development of a complete record with the right of cross-examination accorded to all parties. It provides the Commission with evidence of what public need is being served by the operations of these trains and how much of a financial burden their continued operation will cause the carrier.

Under S. 2711, the Commission would be required to issue an order in all cases and not just those cases where it proposes to hold an investigation and hearing. In those instances where the Commission institutes an investigation and requires the retention of the trains in service for the four-month period, S. 2711 would require no changes in our present procedures.

In those cases where the Commission decides that the rail petitioner's evidence constitutes a prima facie showing that the involved trains are operating at a loss sufficient to constitute a burden on interstate commerce and their service receives little patronage, S. 2711 would require the issuance of an order rather than the notice-procedure which the Commission has adopted as a means of notifying the public that an investigation will not be instituted. Our opposition to this phase of the bill is based on the additional time, effort and experienced personnel which would be required to draft the requisite orders, make service of such orders on the parties of record, and then defend them when they are judicially challenged. Since the Commission suspends the proposed discontinuances in all instances where there is any doubt as to the showing by the carrier, we feel that our available resources can better be utilized in those cases where the discontinuance has been suspended and a hearing ordered.

Since it is our understanding that the stated purpose of S. 2711 is simply to prevent a carrier from taking unilateral action to discontinue passenger service which has been the subject of a notice presented to the Commission and thus defeat the Commission's jurisdiction, it would seem to us that a simple amendment to section 13a, which indicates that a carrier may not do this in the absence of appropriate authority from the Commission or absent the carrier withdrawing its notice entirely, would accomplish the purposes of this bill.

While it is possible to offer a number of perfecting amendments to S. 2711 to accomplish the same objective, we believe that it would be simpler to amend section 13a in its present form. Accordingly, for the aforementioned reasons, we suggest the Committee consider inserting the following amendment to the present section 13a in lieu of the proposed amendments in S. 2711:

(1) The second sentence is amended by inserting after "may" a comma and the phrase "upon the expiration of, but not during, the notice period,"