

much of the trouble in the past was due to the Government scheduling its own movements of grain so as to hit you at the time when the harvest is coming in.

The Commodity Credit Corporation is doing a much better job now of spreading their movements out, in timing, and so on.

We do not think that the situation today is nearly as bad as, let's say, it used to be. We think improvement is being made and we will continue to make improvement.

The CHAIRMAN. I would like to ask one question, if I may.

I asked Mr. Tierney this same question. In the light of the revised second sentence, which would read that a carrier filing notice may not discontinue a train except as ordered by the Commission pursuant to this paragraph, do you read the new third sentence to read that as to the discontinuance of a train at the end of a 30-day period, the infinitive "to permit" is implicitly modified by the phrase "by order" in every instance?

Mr. MOLONEY. Insofar as removing the train at the end of the 30-day period, I think it would call for a Commission order. But after the 30-day period, if the Commission institutes an investigation, then I think the statute would continue to operate as it does today.

The CHAIRMAN. Thank you.

Mr. SKUBITZ. Prior to the enactment of 13a(1), a discontinuance action, you would have to go before the State commission; is this correct?

Mr. MOLONEY. That is correct.

Mr. SKUBITZ. At that time, upon whom did the burden of proof fall?

Mr. MOLONEY. Upon the railroads.

Mr. SKUBITZ. In other words, by the passage of 13a(1), what we have done is not only taken the case out of the hands of the State commission, but we have shifted it to the Interstate Commerce Commission and we have also shifted the burden of proof; is this correct, in your opinion?

Mr. MOLONEY. No, sir; not exactly.

Mr. SKUBITZ. Let's not get the burden of proof and the burden of carrying on mixed up.

Mr. MOLONEY. To me it is very difficult to separate the two because as long as the burden of carrying on, the burden of going forward, exists, then for all practical purposes you have a burden of proof.

But from the technical standpoint and from the jurisdictional standpoint, such as obtaining an affirmative order, the placing of the burden of proof then creates serious problems.

Mr. SKUBITZ. I read your testimony before the committee on the railroad abandonment for some time. You have made quite an issue of that. It seemed to me you were trying to point out that the burden really shifted.

Mr. MOLONEY. I think this, fundamentally: That it is much easier for you to prove that you need something than it is for me to prove that you do not need it. But laying that aside, the Chairman of the Interstate Commerce Commission, as you appreciate, in his previous appearances before this committee—not referring to the present Chairman—commented on the fact that the railroads have voluntarily come forward with anything and everything that we have that will tend to show that these trains are not needed, and that the burden of