

would have the burden of proof. As I look at the legislation on page 7, it would appear that that is pretty well spelled out, the second paragraph, line 13. It says:

Any State administrator or regulatory agency of a State or person adversely affected by an order of the Commission may bring suit to obtain judicial review.

Is it not usually true the moving party has the burden of proof?

Mr. TIERNEY. I was referring to the statute as now written.

Mr. WATSON. Oh, as now written.

Mr. TIERNEY. As now written.

Mr. WATSON. This would clarify it. This would actually place the burden of proof upon the regulatory agency or the carrier or anybody else aggrieved by your finding.

Mr. TIERNEY. It would place it on the railroad, sir.

Mr. WATSON. Well, or State regulatory agency; anyone aggrieved, adversely affected.

Mr. TIERNEY. I think maybe you are looking at the judicial review provision.

Mr. WATSON. On page 7. Yes, that refers to judicial review.

Mr. TIERNEY. Yes.

Mr. WATSON. Suppose you have a State agency. Their jurisdiction would be totally removed now on the last train.

Mr. TIERNEY. On the last interstate train, yes; but what we are referring to there, sir, is the right of the States or the public to seek a judicial review of a commission's decision.

There has been confusion in this area. We have had different opinions from courts as to whether or not parties other than the railroads can seek judicial review of the Commission's decision in a 13a case. One court has held that only the railroads could seek that review, while other courts have held any party could.

Now, what we are seeking here is merely a clarification. The Commission has always contended in the past that anybody had a right to seek judicial review of these decisions. What we are seeking merely is a legislative clarification of this particular issue.

Mr. WATSON. Mr. Chairman, you recognize the fact that we are going to have a further study even if this legislation should pass, but just off the top of your head, what would give the Interstate Commerce Commission greater expertise and knowledge in the field of strictly an intrastate problem than a State regulatory agency?

Mr. TIERNEY. As far as the study is concerned, of course, we would be seeking and getting the cooperation and the benefit of the knowledge of the State people.

Mr. WATSON. Yes, I certainly would do that, but my question is what would give you better knowledge and expertise in this field than a State regulatory agency, which is right there on the scene directly involved, closer to the problem, and should be more familiar with all of the facets of the problem?

That is what we are trying to arrive at here.

Mr. TIERNEY. Of course, they might be more informed as to that portion of the interstate train, Mr. Watson, which is confined to that state. What we are looking at is an interstate train which goes through a number of states, which has a national flavor to it.

Mr. WATSON. In other words, if it is strictly an intercity-intrastate