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PROCEEDINGS —

Twenty-fourth Annual Meeting

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TRANSPORTATION RESEARCH FORUM

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Twenty-fourth Annual Meeting

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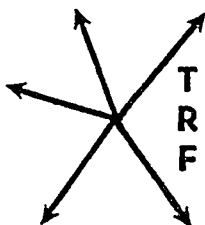
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TRANSPORTATION RESEARCH FORUM

Impact of Staggers Rail Act on the Branchline Abandonment Process

by Keith A. Klindworth*

INTRODUCTION

WITH THE PASSAGE of the Staggers Rail Act of 1980, significant changes were made in the federal system of regulating railroad companies. Regulatory control over railroad activities was significantly reduced with the railroads receiving greater pricing and service freedoms.

One of the regulatory changes made by the Staggers Act is in the process by which rail carriers are allowed to discontinue operations on unprofitable low traffic density branch lines. The abandonment of branch lines is an emotional issue for rural agricultural shippers who fear a major increase in their marketing costs, and rural communities and local governments which expect a crippling effect on other businesses and an accelerated deterioration of rural roads and bridges from diverted traffic. Underlying these fears is the realization that the abandonment of railroad branch lines nationwide, as measured by miles approved for abandonment by the Interstate Commerce Commission, has been steadily increasing over the past ten years. Table 1 shows that during the period of 1973-1975, an average of 1125 miles were approved for abandonment whereas during the period of 1980-1982 an average of 3424 miles were approved. In addition, denials of abandonment applications by the Commission throughout this period have been almost nonexistent.¹ Considering these trends, the statutory procedure by which railroads can discontinue and abandon service on low density lines is more important than ever to agricultural and rural interests in preserving service on their lines. By specifying the form of opposition which can be made and the time frame during which abandonment opponents must act, these statutory procedures can ultimately affect the substance and disposition of the abandonment proceeding before the Commission.

With the importance of the procedural process for rail line abandonments, the focus of this analysis is (1) to document the changes of the Staggers Act

on existing abandonment procedures, and (2) to measure the impact of these statutory changes by comparing sets of pre-Staggers and post-Staggers abandonment cases.

STATUTORY CHANGES OF THE STAGGERS ACT

The primary change made by the Staggers Rail Act of 1980 concerning branchline abandonment is in the abandonment process. This change can be characterized as one of procedure, or form, as opposed to substantive change in abandonment law which defines the abandonment right. In this specific instance, while abandonment procedures changed significantly, the substantive language in the U.S. Code concerning branch line abandonment remains largely unchanged by the Act.

Accordingly, the substantive language of the U.S. Code still requires that a rail carrier may abandon a line only if the ICC determines that the abandonment will be consistent with "present and future public convenience and necessity."² In addition, the burden of proof in abandonment proceedings before the Commission remains with the applicant for the abandonment application.³

Whereas the substantive law concerning abandonment remains largely unchanged by the Staggers Act, the procedural changes as itemized below, and illustrated in Figures 4 and 5 in flow-chart form, have been significant.

1. The ICC is longer required to undertake an investigation upon petition by an interested party on an application for abandonment.⁴

Prior to Staggers, an interested party could petition the Commission to undertake an investigation of the application with the only requirement that the order to conduct the investigation be served upon "any affected carrier not later than 5 days before the proposed effective date of the abandonment."⁵ If a petition was made and an investigation undertaken, the Commission would (1) postpone in whole or in part the effective date of abandonment, for (2) a reasonable period of time as was necessary to complete the investigation, and (3) the investigation could include "public hear-

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TABLE 1

**Number of Abandonment Applications Filed, and Cases Decided,
Decisions Rendered, Applications Withdrawn, Miles Requested and Miles
Granted of Cases Decided for Years 1973-1982**

Year	Number of Applications						Miles	Miles
	Filed	Decided	Denied	Granted	Partial	Withdrawn	Requested	Granted
1973	196	112	2	102	1	7	1367	1211
1974	100	57	1	48	1	7	781	554
1975	102	255	3	72	1	179	4731	1610
1976	142	153	6	129	5	13	2967	2419
1977	84	170	10	131	4	25	3118	1928
1978	136	129	4	110	7	8	2938	2554
1979	96	138	9	115	3	11	4414	3022
1980	132	151	2	125	1	23	7032	2479
1981	433	195	1	180	0	14	4562	3600
1982	96	377	7	332	1	36	5079	4194

Notes: The following cases have been filed but had not been decided as of April 18, 1983:
1982 5 cases

Definition of categories: Applications filed are number of applications filed during the year. Applications decided, denied, granted, and partially granted are the number of such decisions rendered during the specified year. Since an application may not be filed and decided within the same year, Applications decided and Applications filed for the same year do not refer to the same set of applications. Applications Withdrawn are the number of applications withdrawn by date of withdrawal (decision date). Miles Requested and Miles Granted are the miles from the set of cases decided during the year, not from the cases filed during the year.

Source: Office of the Secretary, Interstate Commerce Commission

ings at any location reasonably adjacent to the rail line" involved in the abandonment, which could be held at the request of any interested party or upon the Commission's own initiative.

Staggers changed this entire process. After Staggers the Commission has within its own discretion the option of whether to undertake an investigation and is not obligated even upon petition to undertake an investigation. In addition to making investigations optional, and as defined in the following section, Staggers substituted strict limits by which investigations had to be concluded for the rather vague "reasonable period of time" contained in pre-Staggers law.

2. Strict time limits have been placed on the ICC in disposing of an application for abandonment.⁶

One of the major changes of the Staggers Act is the establishment of strict time limits on most phases of rail abandonment. Now, for instance, if a pro-

test is received within 30 days of an application, the Commission must determine within strict time limits whether an investigation is needed. If an investigation is undertaken it must be completed within a certain time and a decision on the merits must be made by a certain number of days after filing of the application.

3. Language providing for local public hearings adjacent to the proposed rail line abandonment has been deleted.

Pre-Staggers language provided the Commission could hold "public hearings at any location reasonably adjacent to the rail line involved in the abandonment proceeding" as part of its investigation. This language was deleted by the Staggers Act and under present law, the Commission is only obligated to take into consideration "the application of the rail carrier and any material submitted by protestants."⁷

4. A carrier's compliance with systems map requirements may be viewed by the ICC if the carrier making an abandonment application is in bankruptcy.⁸

the hypothesis that one of the primary effects of the Staggers changes was to limit the length of process (interval between file and decision date) for investigated cases. Under this hypothesis, significant changes in length of process for the pre- versus the post-Staggers comparison would appear in the uninvestigated cases.

RESEARCH METHODOLOGY

The research method consisted of a statistical comparison of pre-Staggers and post-Staggers sets of abandonment cases. The data collection and refinement process is defined below:

1. Two sets of abandonment applications were compiled. Set 1 consisted of the population of all abandonment applications filed for a two-year period prior to Staggers from October 1, 1978 to September 30, 1980; and Set 2 consisted of the population of all abandonment applications filed during the two-year period after Staggers, from October 1, 1980 through September 30, 1982.

2. Since certain calculations required both a file date and decision date for an application, those cases of either Set 1 or 2 not decided as of April 18, 1983 were deleted. No cases in Set 1 and 5 cases in Set 2 were undecided as of April 18, 1983.

3. Since Conrail abandonment applications filed before December 1, 1981 under the Northeast Rail Services Act (NERSA) were subject to a special abandonment procedure, the Conrail applications were deleted from both Set 1 and Set 2. This adjustment was necessary so that the effect of the Staggers changes would be measured only in regard to those railroads subject to Title 49 U.S.C. jurisdiction, where the traditional abandonment procedures are cited.

4. Data were compiled for investigated and uninvestigated cases to test

RESULTS

Table 2 lists the number of cases in each category as defined in the research methodology. The cases have been summarized in three categories, total, investigated and uninvestigated applications, and within those categories subdivided into three railroad classes, all roads, all roads except Conrail, and Conrail. Data is provided in each of these nine categories for the pre-Staggers period (Set 1) and the post-Staggers period (Set 2).

Analysis of the number of applications for both time periods reveals a large difference in applications filed after Staggers as compared with before Staggers. The difference can be directly attributed to an increase in Conrail applications and more specifically to Conrail filings pursuant to the Northeast Rail Services Act in November of 1981, which required Conrail applications filed before December 1, 1981 to be granted by the Commission within 90 days, unless within that period an offer of financial assistance were made.⁹ Figure 1 below shows the number of applications for abandonment filed for all roads, all except Conrail and by inference, Conrail. Applications were constant across the four years with the exception of the surge of Conrail applications in late 1981. Because these applications were

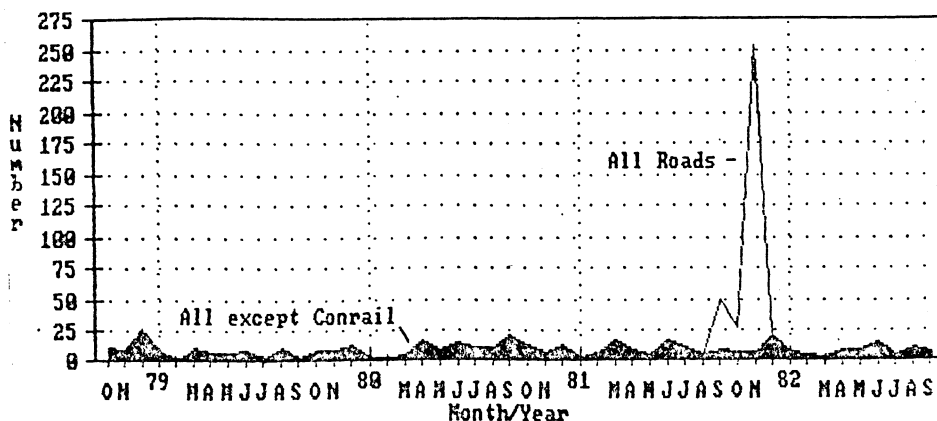
TABLE 2

Number of Applications, Cases Investigated, and Cases Not Investigated for Three Railroad Classes, Both Pre- and Post Staggers

Data Set	- Total Applications -			--- Investigated ---			-- Not Investigated --		
	All			All			All		
	All Roads	Except Conrail	Conrail	All Roads	Except Conrail	Conrail	All Roads	Except Conrail	Conrail
1 (Pre)	243	238	5	108	108	0	135	130	5
2 (Post)	541	233	308	72	71	1	469	162	307
Total	784	471	313	180	179	1	604	292	312

Source: Office of the Secretary, Interstate Commerce Commission

ABANDONMENT APPLICATIONS, ALL ROADS & ALL EXCEPT CONRAIL



* Difference is primarily Conrail filings in late 1981 pursuant to NERSA Act.

FIGURE 1

processed under the NERSA Act with different filing and processing requirements, they are excluded from the remainder of this analysis. Once these applications are removed, the number of applications for both periods are almost identical.

The change from mandatory to optional investigations has resulted in significantly fewer cases being investigated after Stagers contrasted to before

Stagers. During the two-year period prior to Stagers, the Commission investigated 45% of the cases filed, while after Stagers the Commission investigated 30% of all the cases filed.

Table 3 below is an analysis of the length of process for all applications, investigated applications, and uninvestigated applications for the two time periods.

As expected, Table 3 indicates that

TABLE 3

Analysis of Length of Process for All Railroads Except Conrail for Both Pre- and Post- Stagers

Analysis	All Applications		-- Investigated --		- Uninvestigated -	
	Pre- Stagers	Post- Stagers	Pre- Stagers	Post- Stagers	Pre- Stagers	Post- Stagers
Observ. (no.)	238.00	233.00	108.00	71.00	130.00	162.00
Minimum (days)	8.00	29.00	49.00	29.00	8.00	32.00
Maximum (days)	1043.00	474.00	1043.00	474.00	415.00	360.00
Mean (days)	196.62	95.50	352.44	183.79	61.34	55.76
Variance (days)	33905.30	6541.55	25967.20	6883.27	2057.38	1160.53
St. Dev. (days)	184.13	80.88	161.14	82.97	45.36	34.07
Co. Var. (%)	93.65	84.69	45.72	45.14	73.95	61.10

Source: Computed from data from the Office of Secretary, Interstate Commerce Commission

the establishment of strict procedural time limits for the abandonment process has significantly shortened the length of process, or the interval between file and decision dates. For the two-year period prior to Staggers abandonment cases averaged 197 days from file date to decision date, while after Staggers cases averaged 96 days. Figure 2 illustrates the declining length of process for all cases filed with the Commission over the last four years.

As further expected, the Staggers time requirements were found to have cut short the length of process for investigated cases, as opposed to uninvestigated cases. Note in Table 3, while the length of process for uninvestigated cases remained approximately the same for both pre- and post-Staggers time periods, the length of process for investigated cases was greatly reduced. Figure 3 illustrates the length of process for investigated as opposed to uninvestigated cases.

Not only have the time limits established for investigated cases by Staggers resulted in a shorter length of process for abandonment cases, but it appears that they have caused the abandonment process to become more predictable, with less deviation about the mean. This stability can be attributed mostly to a more predictable process for all abandonment cases, but especially for uninvestigated cases. It is interesting that investigated cases across both

periods had approximately the same coefficient of variation.

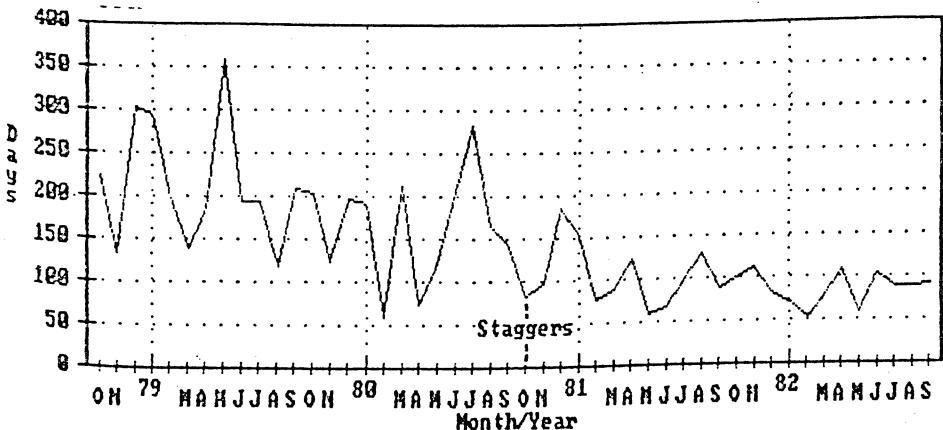
Due to lack of data on the extent of local public hearings held prior to and after Staggers, it is not known what effect the elimination of the hearing stage in the Commission's consideration of abandonment applications has had on abandonment applications. Although unquantified, the change may be significant to rural interests, as a recent law review article implied.

This change from prior procedure effectively reduces the public visibility of the abandonment application process with the prospect of less press coverage and the maintenance of opposition to the abandonment in less personal and less effective capacities.¹⁰

Especially for rural shippers who usually do not have the resources to contest a local abandonment at the Federal level in Washington, D.C. this change removes one avenue of protest and places overwhelming dependence on written submission by abandonment opponents.

Staggers left relatively unchanged the administrative regulation that each carrier file a current and complete systems diagram map designating all lines in its system by one of five categories required by 49 U.S.C.A. 10904 and defined in 49 CFR 1121.20.¹¹ It did allow a carrier's

LENGTH OF ABANDONMENT PROCESS,
ALL ROADS EXCEPT CONRAIL*



* Length of process is interval in days between file date and decision date.

FIGURE 2

TABLE 3

**Pre-Staggers and Post Staggers Comparison of Abandonment Applications
Filed and Cases Investigated and Uninvestigated for All Roads
All Except Conrail and Conrail**

Period: Year/Month	--- Applications Filed ---			----- Investigated -----			----- Uninvestigated -----		
	All Roads (no.)	All Except Conrail (no.)	Conrail (no.)	All Roads (no.)	All Except Conrail (no.)	Conrail (no.)	All Roads (no.)	All Except Conrail (no.)	Conrail (no.)
1978 - 10	12	12	0	6	6	0	6	6	0
11	10	10	0	2	2	0	8	8	0
12	27	27	0	17	17	0	10	10	0
1	9	8	1	5	5	0	4	3	1
2	2	2	0	1	1	0	1	1	0
3	11	10	1	2	2	0	9	8	1
4	7	7	0	2	2	0	5	5	0
5	8	8	0	6	6	0	2	2	0
6	9	9	0	4	4	0	5	5	0
7	4	4	0	2	2	0	2	2	0
8	11	11	0	4	4	0	7	7	0
9	3	3	0	1	1	0	2	2	0
10	9	9	0	4	4	0	5	5	0
11	10	10	0	3	3	0	7	7	0
12	13	13	0	5	5	0	8	8	0
1980 - 1	3	3	0	1	1	0	2	2	0
2	3	3	0	0	0	0	3	3	0
3	5	5	0	3	3	0	2	2	0
4	17	15	2	2	2	0	15	13	2
5	9	9	0	4	4	0	5	5	0
6	16	16	0	9	9	0	7	7	0
7	12	12	0	8	8	0	4	4	0
8	12	12	0	6	6	0	6	6	0
9	21	20	1	11	11	0	10	9	1
Total	243	238	5	108	108	0	135	130	5
Average	10.13	9.92	.21	4.50	4.50	.00	5.63	5.42	.21
10	13	13	0	5	5	0	8	8	0
11	8	8	0	3	3	0	5	5	0
12	13	13	0	9	9	0	4	4	0
1981 - 1	4	4	0	2	2	0	2	2	0
2	7	7	0	2	2	0	5	5	0
3	18	17	1	5	4	1	13	13	0
4	9	9	0	3	3	0	6	6	0
5	5	5	0	1	1	0	4	4	0
6	18	18	0	2	2	0	16	16	0
7	11	10	1	5	5	0	6	5	1
8	6	6	0	1	1	0	5	5	0
9	49	10	39	2	2	0	47	8	39
10	28	7	21	1	1	0	27	6	21
11	254	8	246	2	2	0	252	6	246
12	22	22	0	5	5	0	17	17	0
1982 - 1	8	6	0	2	2	0	6	6	0
2	5	5	0	0	0	0	5	5	0
3	4	4	0	1	1	0	3	3	0
4	10	10	0	4	4	0	6	6	0
5	9	9	0	1	1	0	8	8	0
6	16	16	0	6	6	0	10	10	0
7	6	6	0	3	3	0	3	3	0
8	11	11	0	4	4	0	7	7	0
9	7	7	0	3	3	0	4	4	0
Total	541	233	308	72	71	1	469	162	307
Average	22.17	9.33	12.83	2.63	2.58	.04	19.54	6.75	12.79

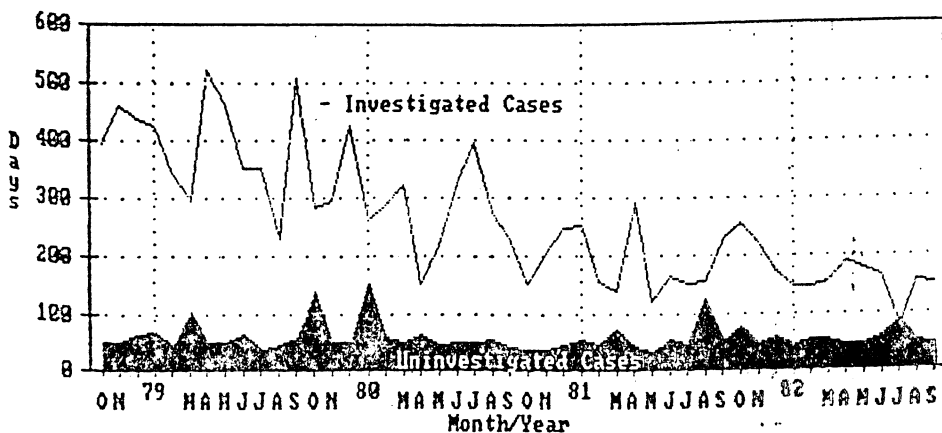
Note: Applications filed" refers to applications for abandonment filed in the specified period and decided as of January, 1983. "Investigated" are those of the applications filed which were investigated. "Average" is the sum of observations for all periods divided by the number of periods.

compliance with the systems map requirements to be waived by the ICC if the carrier making the abandonment application was in bankruptcy.

The long term significance of the category designations and the annual systems diagram map to rural shippers in forecasting future abandonment activity

in their areas appears marginal. If a carrier wants to seriously pursue abandonment of a line, it need only file an amended systems diagram map at any time listing its "targeted" lines in Category One.¹² An application for abandonment can then be filed by the carrier at any time and a certificate can be

**LENGTH OF ABANDONMENT PROCESS,
ALL ROADS EXCEPT CONRAIL***



* Length of process is interval in days between file and decision dates.

FIGURE 3

issued, and only if the application is opposed by a significant user or state or other political subdivision must the line have been "described and identified on the diagram map as Category One at least four months before the date on which the application was filed.¹³ The five category designations are not nearly as important as the date a line first appears in Category One, whether by annual or amended systems map, and the date an application for abandonment is filed.¹⁴

SUMMARY

The following conclusions can be drawn from this analysis of pre-versus post-sets of abandonment data:

1. With the exception of a large number of Conrail applications filed in 1981, the number of applications filed for abandonment for both periods was approximately the same.
2. Significantly fewer cases were investigated after Staggers compared with before.
3. The establishment of strict time limits for the abandonment process has significantly shortened the length of process for all abandonment cases in general, and specifically, for investigated cases.
4. Length of process for uninvestigated cases was not appreciably different.
5. The abandonment process has be-

come more predictable after the Staggers changes, with less deviation about the mean length of process.

The effect of Staggers on branchline abandonments has been that the law, while not changing the substantive criterion given the ICC by which abandonments are to be granted or denied, has by altering the procedural process reduced the percentage of investigated cases and resulted in a greatly shortened but more predictable abandonment process. Service on railroad branchlines can now be abandoned much faster and easier than was previously possible before the Staggers Rail Act.

FOOTNOTES

- 1 In 1981 the Commission was required to grant applications for abandonment filed by Conrail under the Northeast Rail Services Act within certain time limits unless an offer of financial assistance was made.
- 2 See 49 U.S.C.A. §10903(a)(2) (West 1981).
- 3 See 49 U.S.C.A. §10904(d)(1) (West 1981).
- 4 This is in direct contrast to language prior to Staggers in which the ICC was mandated, upon petition from an interested party, to conduct an investigation. See 49 U.S.C.S. §10904(C)(1) (Law Coop. 1979), amended by 49 U.S.C.A. §10904(C)(1) (West 1981).
- 5 49 U.S.C.S. §10904(C)(1) (Law Coop. 1979).
- 6 See P.L. 96-448, Title IV, §402(b), 94 Stat. 1941-42, (1980) codified at 49 U.S.C.R. §10904(b) and (c) (West 1981).
- 7 See 49 U.S.C.A. §10904(C)(2) (West 1981).
- 8 See P.L. 96-448, Title IV, §402(b), 94 Stat. 1941-42, (1980) codified at 49 U.S.C.A. §10904(e)(3)(B) (West 1981). Requirements may also be waived by the Commission under this section if the application was approved by the Secretary of Transportation as a part of a plan or proposal

TABLE 4

**Monthly Average Length of Process for All, Investigated, and
Uninvestigated Abandonment Cases, for Pre-Staggers and
Post Staggers Time Periods**

Periods Year/Month	All Cases			Investigated			Uninvestigated		
	All Roads (days)	All Except Conrail (days)	Conrail (days)	All Roads (days)	All Except Conrail (days)	Conrail (days)	All Roads (days)	All Except Conrail (days)	Conrail (no.)
1978 - 10	223	223	-	397	397	-	49	49	-
11	132	132	-	461	461	-	50	50	-
12	301	301	-	440	440	-	64	64	-
1	265	292	53	427	427	-	63	66	53
2	196	196	-	343	343	-	48	48	-
3	132	140	-	294	294	-	96	102	49
4	185	185	-	522	522	-	51	51	-
5	359	359	-	462	462	-	52	52	-
6	193	193	-	353	353	-	65	65	-
7	195	195	-	352	352	-	38	38	-
8	119	119	-	232	232	-	47	47	-
9	208	208	-	509	509	-	58	58	-
10	202	202	-	281	281	-	138	138	-
11	123	123	-	294	294	-	50	50	-
12	197	197	-	429	429	-	52	52	-
1980 - 1	190	190	-	260	260	-	156	156	-
2	61	61	-	-	-	-	61	61	-
3	212	212	-	320	320	-	51	51	-
4	75	75	77	152	152	-	65	63	77
5	121	121	-	217	217	-	44	44	-
6	207	207	-	327	327	-	51	51	-
7	281	281	-	397	397	-	51	51	-
8	164	164	-	275	275	-	53	53	-
9	140	145	43	231	231	-	40	40	43
10	82	82	-	152	152	-	39	39	-
11	99	99	-	202	202	-	37	37	-
12	186	186	-	249	249	-	44	44	-
1981 - 1	153	153	-	250	250	-	56	56	-
2	78	78	-	157	157	-	47	47	-
3	91	88	54	139	136	154	73	73	-
4	124	124	-	292	292	-	40	40	-
5	59	59	-	119	119	-	34	34	-
6	68	68	-	164	164	-	56	56	-
7	95	98	64	149	149	-	50	47	64
8	130	130	-	154	154	-	126	126	-
9	89	88	90	231	231	-	83	52	90
10	90	100	87	256	256	-	84	78	87
11	109	112	109	220	220	-	100	45	102
12	84	84	-	172	172	-	58	58	-
1982 - 1	72	72	-	146	146	-	47	47	-
2	55	55	-	-	-	-	55	55	-
3	78	78	-	154	154	-	53	53	-
4	110	110	-	190	190	-	47	47	-
5	60	60	-	179	179	-	46	46	-
6	103	103	-	165	165	-	58	58	-
7	90	90	-	75	75	-	105	105	-
8	89	89	-	155	155	-	51	51	-
9	91	91	-	149	149	-	47	47	-

Note: "Length of process" is the interval in days between the file date and the decision date for abandonment applications filed during the specified period and decided as of April 18, 1983. For periods (months) in which no applications were filed, a dash has been used to indicate no length of process could be calculated.

under §5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)).

9 See Northeast Rail Service Act of 1981, Subtitle E — Conrail of the Omnibus Budget Reconciliation Act, 95 Stat. 643, P.L. 97-35, 1981.

10 N.D. Law Review, Special Project, "Constituting the Burlington Northern's Proposed Rail Shipper in the Staggers Rail Act Era, Summer, Line Abandonments: Advocacy on Behalf of the 1982, pp. 239-281.

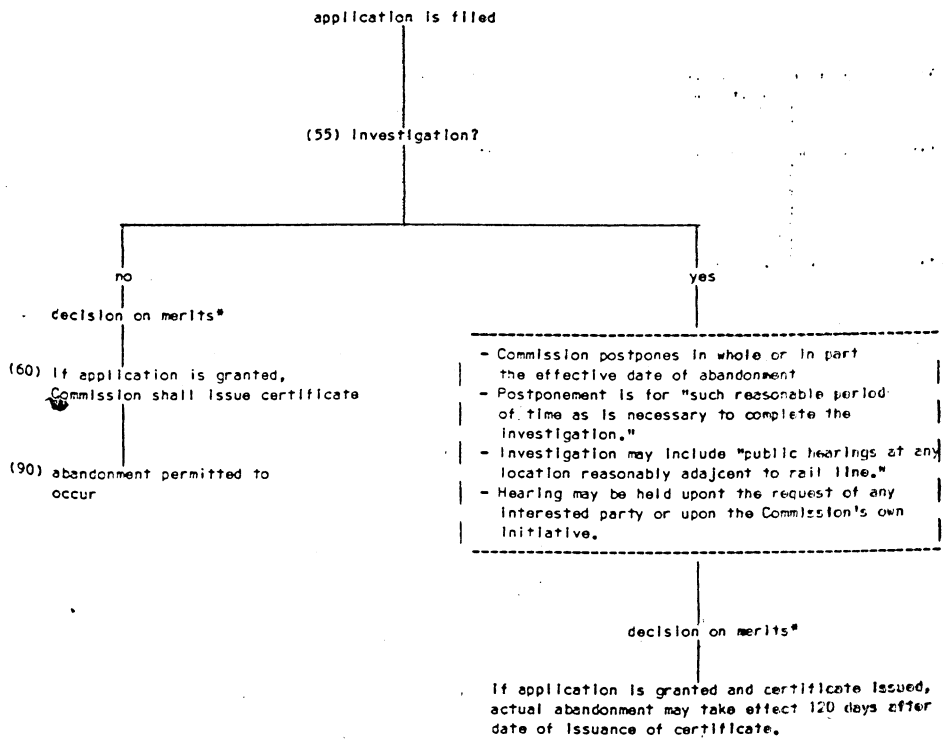
11 See 49 U.S.C.A. §10904(e)(2) (West 1981)

and 49 §CFR 1121.20.

12 See 49 CFR §1121.23(a) 1980 which provides that "amendments . . . [to a systems diagram map] . . . may be filed at any time and will be subject to all carrier's filings and publication requirements of §1121.22 as they apply to the amendment and each individual line which has been amended."

13 In one of the few denials in recent years, the Commission dismissed an abandonment application because a portion of the line had not been

PRE-STAGGERS ABANDONMENTS
— Procedural Process —
 (DAYS)



Notes: The 55 day deadline for investigations results from the statutory requirement that "an order to the Commission . . . (beginning an investigation) . . . must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period" (See source below). On a decision on merits the Commission has the option of issuing the certificate, issuing the certificate with modifications or refuse to issue the certificate. Time limit in days are deadlines for Commission action and do not prohibit earlier action by the Commission.

Sources: 49 U.S.C.A. §10903 and §10904, (Law Co-op, 1979), amended by 49 U.S.C.A. §10903 and §10904 (West, 1981).

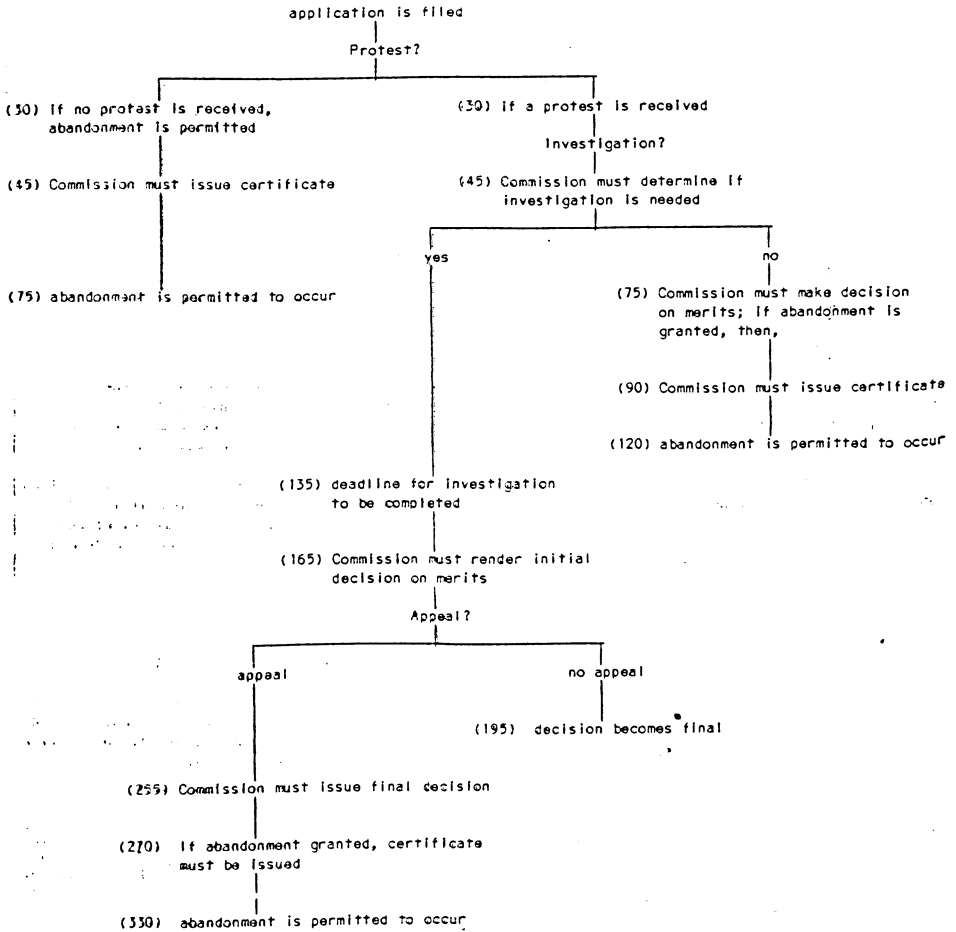
FIGURE 4

listed in Category One for at least four months prior to the filing of the application. See Docket No. AB-6 (Sub-No. 127) Burlington Northern Railroad Company — Abandonment — In Morgan, Scott and Green Counties, IL. Decided November 10, 1983.

¹⁴ The 4 month requirement originally appears in 49 U.S.C.A. §10904(c)(3)(B) (West 1981) and has been defined in 49 CFR §1121.23(d) as deemed to have commenced only for a line

designated on the carrier's systems diagram map as Category 1. Even if the application is opposed, the identification and description requirement may be waived under 49 U.S.C.A. §10904 if "the application was approved by the Secretary of Transportation as part of a plan or proposal under 5(a)(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), or the application is filed by a railroad in bankruptcy."

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Note: Time limits in days are deadlines for Commission action which establish the time frame during which the Commission must act. Source is 49 U.S.C.A. 10904 (West, 1981).

FIGURE 5