

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE TRANSPORTATION REGULATION BOARD

In the Matter of the Petition  
of Dahlen Transport, Inc., for  
the Establishment of Incentive  
Rates Based on Annual Volume  
Tender Applicable to Petroleum  
Products, Groups A, B, C and D.

FINDING OF FACT,  
CONCLUSIONS,  
RECOMMENDATION  
AND MEMORANDUM\_

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on Fay 8, 9 and 10, 1984, at the Office of Administrative Hearings in Minneapolis. The record closed on May 30 upon receipt of briefs.

The Petitioner, Dahlen Transport, Inc., was represented by Richard L. Gill, Gill and Brinkman, Attorneys at law, 1805 American National Bank Building, St. Paul, Minnesota 55101. Intervenor Consodel, Inc., G & T Trucking Company, Jensen Transport, Inc., Halberg Construction & Supply, Inc., d/b/a Kirscher Transport Company, Penrose Transport, Inc., Urban Transport, Inc., and Wayne Transport, Inc., were all represented by Robert S. Lee, Mackall, Crounse & Moore, Attorneys at Law, 1600 TCF Tower, 121 South Eighth Street, Minneapolis, Minnesota 55402. Intervenor Indianhead Truck Line, Inc., was represented by Larry L. Gass, 1947 West County Road C, P.O. Box 43355, St. Paul, Minnesota 55164-0355. Intervenor Mobil Oil Corporation was represented by Rex R. Anderson, Transportation Analyst, 5151 Belt Line Road, Suite 600, Dallas, Texas 75240. Intervenor Transport, Inc., was represented by Ronald B. Pitsenbarger, Business 94-South, P.O. Box 3966, Moorhead, Minnesota 56560. Intervenor Minnesota Commissioner of Transportation was represented by Special Assistant Attorney General Jean Stepan, 515 Transportation Building, St. Paul,

Minnesota 55155. Intervenor- Ruan Transport Corporation was represented by Kenneth L. Kessler, Attorney at Law, 666 Grand Avenue, Des Moines, Iowa 50309. Jerome E.. Pederson, participated in the proceeding on behalf of the Transportation Regulation Board, 795 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesot 55101.

Notice is hereby given that, pursuant to Minn. Stat. sec. 14.61 (1982), and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, 795 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101. Exceptions must be specific and

stated and numbered separately. Proposed Findings of Fact  
Conclusions and  
Order should be included, and copies thereof shall be served  
upon all  
parties. If desired, a reply to exceptions may be filed and served  
within ten  
days after the service of the exceptions to which reply is  
made. Oral  
argument before a majority of the Board may be per-mitted to all  
parties  
adversely affected by the Judge's recommendation who request such  
argument.  
Such request must accompany the filed exceptions or reply, and an  
original and  
five copies of each document should be filed with the Board.

The Minnesota Transportation Regulation Board will make  
the final  
determination of the matter after the expiration (of the period  
for filing  
exceptions as set forth above, or after oral argument, if such is  
requested  
and had in the matter.

Further notice is hereby given that the Board may, at its own  
discretion,  
accept or reject the Judge's recommendation and that said  
recommendation has  
no legal effect unless expressly adopted by the Board as its final order.

#### STATEMENT OF ISSUE

Should Dahlen Transport, --no., be permitted to offer its  
volume tender  
discount plan as an additional rate for the carriage of petroleum products?

Based upon all of the proceedings herein, the Administrative  
Law Judge  
makes the following:

#### FINDINGS OF FACT

##### Procedural History

1. Di January 19, 1984, Dahlen Transport, Inc. (hereinafter  
"Dahlen" or  
'Petitioner') filed a Petition for deviation from incentive rate  
levels with  
the Minnesota Transportation Regulation Board (hereinafter 'Board').

2. on February 8, 1984, Dahlen filed an amended Petition for  
deviation  
from the incentive rate levels.

3. On February 17, 1984, the Board mailed a Notice of Public  
Hearing to

72 petroleum carriers, four permit petroleum carriers and 15 interested parties. (At that date, the Board also published the notice in its Weekly Calendar. These notices announced that the hearing would be held on March 26 and 27. On March 1, Petitioner's attorney advised the Administrative Law Judge that counsel for the respective parties had agreed to a continuance to May 8.

4. On March 16, 1984, the Board sent the revised Notice of Hearing to the original mailing list, plus an additional four petroleum carriers and three permit petroleum carriers. The Board published the revised hearing date in its Weekly Calendar of March 16 and thereafter.

5. On May 1, 1984, Dahlen filed a Second Amended Petition for deviation from uniform incentive rates. On May 4, certain of the Intervenor's filed an objection to that Amendment, claiming inadequate notice and denial of due process. Following a conference telephone call among the parties, the Administrative Law Judge ruled that the Second Amended Petition could not be heard on the May 8 date, and gave Petitioners the opportunity to either continue the hearing to allow for additional notice of the amendment or go forward on May 8 under the term of the First Amended Petition. -Petitioner chose to go forward with the hearing on the terms of First Amended Petition.

6. At the start of the hearing, all Petitions to Intervene were granted.

7. The proposal by Dahlen was further amended during the hearing to exclude Class D products, and shipments of Class C commodities destined to job sites, from participation in the proposed plan.

#### Description of the Existing Rate System

8. (On September 11, 1962, the Minnesota Railroad and Warehouse Commission, in its Docket 8097, first allowed petroleum carriers to offer incentive rates. Essentially, these rates were designed to counter the impact of private carriage of petroleum products. This order was appealed to District Court, which ordered that it be vacated, but pursuant to stipulation of parties, on April 3, 1963, the Commission did enter an ex parte, emergency order allowing for incentive rates. Certain objecting carriers and railroads intervened, and lengthy hearings were held during the summer of 1963, resulting in the Commission's issuance of a order permanently allowing incentive rates. This Order was dated November 23, 1964, in Docket No. A-8119.

9. The rates allowed by the 1964 Order have been amended a number of times by the various regulatory bodies charged with rate responsibility (the

bodies have changed from time to time). Most recently, on May 6, 1981, the Minnesota Public Utilities Commission issued its order on Docket No. GR-80-165, which continued in effect the basic structure allowed by the permanent Order of 1964.

10. The basic petroleum rate structure existing today consists of two parts. First of all, there is a uniform regular rate, computed in cents per gallon, which is based upon the mileage that the product is hauled. Secondly, there is a "continuous service incentive rate", which is 82 1/2 percent of the regular rates for those shippers who can qualify for it. All petroleum carriers and permit (petroleum) carriers are required to adopt the regular rates and continuous service incentive rates. In other words, they are uniform across the State.

11. In order to qualify for the continuous service incentive rate, a shipper must agree to keep one tractor-trailer unit busy 132 hours per week, from midnight on Monday morning to noon on Saturday, for a minimum of 13 weeks. If the unit is not kept busy, then penalty charges are assessed against the shipper. There are a number of additional rules detailing the operation of this rate.

## Perceived Problems with Existing Incentive Rate

12. Virtually all of the witnesses, whether they favored or opposed Petitioner's new rate, agreed that competition from private carriage was damaging the common carriage industry for petroleum producers. Although this was the very reason given for the adoption of the original incentive rate, private carriage is a problem for common carriers, and has become worse in recent years.

13. The major event which disrupted the usefulness of the old incentive rate plan was the shift to 'rack pricing' by oil companies. This shift began in 1978, and by early 1981, it had been adopted by a majority of the oil companies. Prior to rack pricing, oil companies delivered their products to consignees on a freight prepaid basis, so that the freight rate was built into the product price. To the extent that the oil companies qualified for incentive rates, the savings were at least available to be passed on to the customers. Under rack pricing, the product is sold 'off the rack', and the responsibility (and cost) of transportation is borne by the purchaser. Since most purchasers cannot keep a truck going for the 13 weeks, 132 hours per week required to qualify for the incentive rate, they are forced to pay regular rates for their transportation. This has resulted in an increase in the use of private carriage by persons who believe that they can haul more cheaply themselves than through the use of common carriers.

14. The existing incentive rate requires virtually continuous use of equipment by the customer during the 13 week period, despite the fact that the common carrier itself may want to use the equipment to satisfy peak demands elsewhere. The existing incentive plan does not allow the carrier to do this.

15. The existing incentive plan does not allow transportation costs to be accurately determined prior to the hauling. Under the present plan, such

factors as standby charges and penalty charges cannot be determined until after the 13 week period is completed. Shippers, however, want to know precisely what the cost will be before they commit to shipping.

16. Finally, there have been abuses of the incentive plan, resulting in violations of law and the levying of fines. For example, a carrier may have given an incentive rate despite the fact that less than 132 hours per week were involved, or a carrier may have let a shipper use two or three different pieces of equipment (totalling 132 hours per week), but no single piece was used for at least 132 hours. This is being done for competitive purposes because shippers are demanding concessions from common carriers under the threat of using private carriage.

#### Dahlen Proposal

17. Dahlen has proposed to add a third rate to the existing two-rate structure. The rate would be available only for Dahlen. This third rate would be an incentive rate, based on annual volume tendered. Briefly, if a shipper qualified for the proposed rate, he would be allowed a discount from

the regular rate which would range between 95 percent and 82.5 percent of the regular rate. These discounts would be available for the movements of petroleum products, Groups A, B, and C (excluding transportation to job sites) based upon the annual volume tender of products, in gallons, to the carrier during a 12-month qualification period. Tie percentage of discount would be based upon the gallons shipped during the qualification period (the 12 months immediately preceding the period of the first shipment tendered under such a plan). The discounts would be as follows:

Qualification Period Gallons Tendered		Incentive Rate Level
Group A & B	Group C	(% of regular rate)
2,000 - 3,999 M	1,500 - 2,999 M	95 %
4,000 - 9,999 M	3,000 - 7,999 M	92.5%
10,000 - 19,999 m	8,000 - 14,999 M	87.5%
20,000 M and up	15,000 M and up	82.5%

The shipper would chose the date to commence service under the plan, and would notify the carrier of this choice. Rates for the subsequent 12 months would be based upon the discount applicable to the volume of the commodity tendered to the carrier during the previous 12 months (the qualification period). Upon the expiration of the initial 12 months under the plan, the incentive rate discount for the next 12 months would be based on the gallons tendered to the carrier during the just concluded 12-month period.

18. There are a number of rules proposed by Dahlen which would be applicable to the use of this rate. They are as follows:

(1) Annual volume rates are to be requested in writing showing the period to be covered, the gallons shipped during the qualification period, and a reference to the appropriate tariff item. This request: is to be made by the party paying the freight bill.

(2) Freight charges on all shipments in the tender are to be paid by the qualifying shipper or consignee. Freight charges include all accessorial charges applicable under the tariff.

(3) Shipments moving under this item will be allowed 2 1/4 hours combined for loading and unloading. Time in excess of the free time will be charged for under the detention rule.

(4) Carrier will be allowed 24-hour per day access to loading facilities.

(5) Upon meeting the qualifications of the shipper or consignee, the carrier will be allowed to key unload on shipments moving under this plan.

(6) "For determining qualifying gallons, interstate gallons may be used, provided they originate or are destined to points in Minnesota; and are handled under the volume tender.

(7) Shipments of Group D commodities, and shipments of Group C commodities destined to job sites are not included in the qualifying gallonage for the volume tender; and volume tender rates are not applicable to these product groups.

(8) The qualifying shipper or consignee must maintain a record of gallons shipped during the qualification period showing freight payments made.

(9) Volumes of A and E1 products may be combined with volumes of C products to make one qualification gallonage and one tender. This is done to, using a conversion factor of 1.33, that is to convert A and B gallons to C equivalent gallons, divide the A and B gallons by 1.33. To convert C gallons to A and B multiply C gallons by 1.33.

19. During the hearing, attention focused primarily on Rule 1.

20. Rule 1 sets forth the concept of the 'qualifying period' discussed earlier. In order for a person to qualify for the Dahlen rate, they would have had to have shipped, on Dahlen, an appropriate gallonage during the 12 months immediately preceding the first shipments under the incentive rate. The alleged purpose of this rule is to give the carrier a basis for determining whether the customer would qualify or not. A shipper would be able to combine the total gallons of A, B and C (except to job site) gallonage during the 12 month period, regardless of whether shipped on an intrastate or interstate basis. Dahlen alleged that the purpose of this rule was to permit the Department of Transportation to monitor and audit the use of the new incentive rule. Enforcement has been difficult under the existing plan, and when an audit has shown an illegal discount, rebillings for the additional amounts have led to "public relations" problems with shippers because they

were not anticipating additional charges. Dahlen believes that the strict application of the qualification rule will simplify enforcement by making it easy to determine whether or not a particular shipper ought to be granted the discount rate or not.

21. The principal argument against the plan, that it was discriminatory in favor of Dahlen and against small carriers with less operating authority, fewer terminals, and less equipment, will be discussed in the succeeding section dealing with the impact of the proposal.

#### Impact of Proposal

22. Dahlen presented financial data to demonstrate the impact of the proposed rate's adoption. For the period January 1, 1983 through December 31, 1983, the entire Dahlen system (both interstate and intrastate) had the following:

Revenues	\$15,734,556
Expenses	\$15,705,941
Operating Ratio	99.81%

23. The data set forth above was then adjusted to reflect known and certain cost changes from the actual data. These included a rate increase, a social security tax increase, a reduction in worker's compensation costs, an increase in health and welfare, and pension costs, a decrease in fuel costs, an increase in federal fuel taxes, and an increase in state fuel taxes. The net result of these changes is (for the system as a whole):

Revenues	\$16,206,593
Expenses	\$16,029,390
Operating Ratio	98.91%

24. Dahlen then allocated its revenues and expenses between Minnesota intrastate and others. The Minnesota intrastate data was further subdivided to show the existing rate structure by dividing it into regular rates and incentive rates. This data yielded the following:

DAHLEN MINNESOTA INTRASTATE ONLY

	Regular	Incentive	'Total
Revenues	\$2,540,983	\$1,167,638	\$3,708,621
Expenses	\$2,520,329	\$1,146,605	\$3,666,934
Operating Ratio	99.19%	98.20%	98.88%

25. Dahlen then set forth its estimates of revenues and expenses for one tender under each of the four levels of incentive rates.

Million Tender	Actual Operations	2 Million Tender	4 million Tender	10 million Tender	20
Revenues	\$3,708,621	\$36,844	\$71,736	\$169,580	\$319,509
Expenses	\$3,667,774	\$35,645	\$69,014	\$160,088	\$305,528
Operating Ratio	98.90%	96.75%	96.21%	94.40%	95.54%



As can be seen, the operating ratio is better under each of the tenders pursuant to the new plan than is the overall operating ratio under the old plan. Although the numbers do not match precisely due to rounding, the "actual operations" figures are taken from the total of both regular and incentive rates under the existing system for Minnesota intrastate petroleum operations only. In addition, the operating ratios for each of the tenders under the proposed plan are more profitable than either the regular or incentive portions of the Minnesota intrastate petroleum operations under the existing plan.

26. During 1983, Dahlen shipped for approximately 1600 different customers. While it has not done any specific study to determine how many of its present customers would fit into the proposed categories, it is estimated that of its present customers, the following would qualify in each category:

2 Million	0
4 million	2
10 Million	2
20 Million	3

Therefore, Dahlen has a total of seven customers who qualify for the new plan if it were put into effect today.

27. Although the actual number of firms which would qualify is small, they do constitute a large percentage of Dahlen's business. In the A and B categories, there were five customers, who account for between 25 and 30 percent of Dahlen's total volume of A and B products.. In the case of C products, there were only two customers who would qualify, but they constituted more than one-half of Dahlen's volume in C and D products.

28. Under the present incentive plan, Dahlen has only four units operating under it. During 1983, it had a maximum of eight units and a minimum of four units.

29. It is impossible to estimate, based upon the evidence in the record, Dahlen's overall Minnesota intrastate petroleum operating ratio if the plan

were put into effect. Dahlen did not attempt to do this, nor did any other party. Not only is it impossible to predict for the first year (when at least the number of qualifying customers is known), but it is also not possible to predict it for future years (because it is unknown how many customers might qualify during the first year and begin to use the rate in the second year after its inception). Even if it were assumed that all seven of the presently qualifying customers did switch to the new plan, Dahlen was unable to predict the net effect, other than to say that some of them would pay higher rates, while others would pay lower rates. See Memorandum.

30. Dahlen does anticipate that the offering of this plan will increase its traffic by between 20 and 25 percent, but has no study to support this estimate. It believes that the plan will be attractive to persons presently using private carriage. Some of those persons' patterns do not allow for the

use of the present incentive rate, and Dahlen hopes that the more liberal rules available under this plan would attract persons who cannot use the present incentive plan.

31. one of the major differences between the existing plan and the proposed plan is that the proposed plan does not require the use of one piece of equipment exclusively. It allows for the combining of tenders from a number of different terminals. Tib take an extreme case, a shipper with 19 million gallons at a Twin Cities' terminal, and the balance scattered over various out-state terminals, would be able to receive the full 17 1/2 percent discount from the regular rates. This is in contrast to the old plan, which, although not specifically requiring that the incentive tractor-trailer unit serve only one terminal, did, as a practical matter, inhibit the use of the plan at terminals where there was insufficient volume.

32. Dahlen is the largest petroleum common carrier in Minnesota. It has equipment terminals in Minnesota, Iowa and Wisconsin, and serves a total of 39 states, although its business is centered in five of them.

33. Dahlen has authority to serve every petroleum origin point in Minnesota. These consist of the following: Winona, Eyota, Mankato, Marshall, the Twin Cities (Pine Bend, St. Paul Park, St. Paul and Roseville), Sauk Centre, Alexandria, Moorhead, Duluth (Esko), and Wrenshall. From each of those, Dahlen has authority to serve all points in Minnesota. It also has authority to haul all classes of petroleum products (at least those that issue in this proceeding).

34. Dahlen has 97 tractors and an unknown (but larger) number of trailers.

35. It operates seven terminal facilities in the state, at the following locations: Duluth (Carleton), Fergus Falls, Alexandria, Twin Cities (Newport), Eyota, Mankato and Marshall. The only loading origins not served by a nearby terminal are Winona and Moorhead.

## Supporting Shippers

36. South Minnesota Oil Company is located in Albert Lea. It is a petroleum jobber, supplying retailers, commercial customers and consumers with gas, distillates, and motor oils. It has recently expanded into the convenience store business. It began on June 1, 1971, as a Shell jobber and a tire store, and has expanded since then. Shell would deliver its product to South's storage facility, who would then deliver it to customers. Shell used common carriers and private carriage. Following the shortages and allocations of 1973, Shell switched South to rack pricing. It then became South's responsibility to transport the product. South opted for private carriage, and bought its own trucks. It continued to operate this way until 1982.

37. In 1982, South started using Dahlen because Dahlen gave it the incentive rate (82 1/2 percent of the regular rate) as well as serving all origins. South received excellent service from Dahlen. However, sometime in

February of 1984, South learned it could no longer use the present incentive rate because it was attempting to make deliveries from too many points. South was forced to pay Dahlen's regular rates, and so began investigating Iowa common carriers and Iowa rates. South began doing its hauling from Iowa to Minnesota, using Milford and Clear Lake as Iowa origins. It was cheaper to do this than to pay the regular Minnesota rates. Ads carriage from Iowa has taken place with Iowa based carriers.

38. South believes it would fit into the 12 1/2 percent: discount bracket under the proposed plan, but is uncertain as to whether it would revert to using Dahlen or not if the plan were adopted. It would consider using Dahlen in lieu of Iowa carriers or going back to private carriage, but in no event would it consider using Dahlen without a discount of at least 12 1/2 percent off regular rates.

39. Koch Fuels, Inc. , is a nation-wide marketer of fuel oil and gasoline, which it sells both at wholesale and retail. Its headquartered in Wichita, Kansas.

40. Koch supports the Petition based upon the added flexibility of the proposed plan as compared to the existing incentive plan. Koch believes that large volumes that could be moved in a short time frame are excluded from the existing incentive program because it requires 13 consecutive weeks of operation on a virtually continuous basis. The Dahlen proposal, on the other hand, would allow volumes to be spread out over the year, but still offer the discount rates. Koch, like South, found it to be actually more economical, ,mile-for-mile, to use a typical interstate scale from Iowa than the current regular Minnesota rate. !Me use of Dahlen's proposed incentive rate scale would bring the intrastate rates into a more competitive position with the Iowa interstate rates. Koch has used Dahlen in the past, and has qualified for the existing incentive rates in some past years, but now is paying regular

rates. It has also, in the past, use- private carriage, and if there is no change in the Minnesota rates, it might go back to using private carriage. if the Dahlen proposal were adopted, Koch would definitely forestall any plans to go back to private carriage.

41. Despite the fact that Koch believes it would qualify for the largest discount (17 1/2 percent), Koch would consider a number of factors before tendering all of its business with Dahlen. While it "wouldn't turn down a bargain", it hesitates to place all of its transport-- with one carrier. It would look at service-oriented factors in choosing carriers.

42. One of the reasons Koch gave for its dislike of the existing incentive rate structure is that most gasoline stations will not accept any off-hour deliveries. Therefore, in order to keep an incentive unit busy under the current system, Koch had to find industrial customers to take deliveries at night, or else pay the penalty.

43. Mobil Oil Corporation supports the Dahlen plan, in part, but opposes in in part.

44 Mobil transports, in private carriage, over 40 million gallons per year. Its total volume in Minnesota is over 60 million gallons, 43 million of which are handled in private carriage, and 17 million of which are handled by common carriers.

Mobil uses private carriage 94 percent of the time within the Twin Cities area, despite the fact that its 'target ratio' of private carriage is close to 50 percent in other Midwest markets.

45. Under the Dahlen proposal as currently structured, Mobil would not qualify for any discount, because it uses a total of four different common carriers. All of its traffic in common carriage is presently being shipped at regular rates because the existing incentive rate structure has only an 'extremely narrow application' for both shippers and carriers. The existing rate is 'useless' to Mobil.

46. Mobil computed that the delivered price of its 'average' gasoline shipment (8,000 gallons, 30 one-way miles) moving via common carrier within Minnesota would cost \$128.00. Cost of the same delivery in South Dakota would be \$107.20, in North Dakota \$112.80, in Wisconsin \$105.12, and in Iowa \$99.20. A simple average of the adjoining states is \$21.92 cheaper than Minnesota regular rates. For an 8,000 gallon delivery, that works out to 0.27 cents per gallon. Mobil computed that for a 60 million gallon operation, the Minnesota regular rates constitute a 'penalty' of \$162,000. Mobil does not use private carriage in Iowa or North Dakota because of lower common carriage rates. The two states with the highest common carrier rates are Minnesota and Texas, and those are the two states where Mobil uses private carriage the most. Mobil favors the adoption of the Dahlen plan insofar as it would reduce the comparative costs of Minnesota transport versus those of other states.

47. Mobil adopted rack pricing in April of 1982, and the change has resulted in increased private carriage by distributors. Mobil believes that

the Dahlen plan would reduce rates to the point where some private carriers would be encouraged to abandon their trucks in favor of a returned common carriers.

48. Mobil was opposed to the one year qualifying period, at least in the form in which it was proposed by Dahlen. Mobil urged that the qualifying gallonage include gallons routed by either the shipper or the consignee, regardless of who pays. More importantly, Mobil believed that the basic concept of the qualifying period ought to be scrapped in favor of a pledge to ship in the future. In other words, Mobil believes that it ought to be allowed to qualify for the reduced rates by pledging that it would ship at least X-gallons in the next 12 months. Mobil did not believe that a bond was necessary to insure its pledge.

#### Opposing Carriers

49. Transport, Inc., is a common carrier with headquarters in Moorhead. Like Dahlen, it has authority to serve the entire state from all petroleum origins. It both supports and opposes the Dahlen plan.

50. Transport believes in the concept of volume rates. It uses such rates in interstate commerce, as well as in the State of North Dakota. It believes that the existing Minnesota incentive rate plan needs adjustment. Transport, Inc., favors collective ratemaking as a means to alter the existing incentive rate structure, rather than any independent action by Dahlen or any other carrier. It believes that independent actions will result in chaos.

51. Transport finds that the most serious deficiency with the Dahlen plan is the concept of the qualifying period. It argues that such a requirement is not cost-based, and merely gives a windfall to a carrier which imposes the rule. Instead, it favors a plan whereby a shipper would agree to tender a certain volume, but if they failed to meet up to their agreement, there would be a retroactive rate adjustment.

52. The Dahlen plan deters the selection of a carrier based on service, because the rate reductions are so significant that a shipper (such as Mobil) would go with Dahlen in order to get the discount, despite the fact that they might like the service of Transport, Inc., better.

53. If the goal is to reduce the amount of private carriage, then both prepaid and collect shipments from one supplier should be combined into a single tender, and billed at the discount rate. This would more quickly reduce the amount of private carriage. Transport, Inc., has used such a system with Mobil Oil, and has not had any problems with disputes between the shipper and the consignee over who should pay any arrearages.

54. If the Dahlen plan were changed to allow a pledge-rather than the qualifying period gallonage, the plan would be more palatable to Transport, Inc.

55. Penrose Transport, Inc., is headquartered in Parkers Prairie, Minnesota. That is also the location of its sole terminal. It owns 10 tractors and 12 trailers, but only operates three or four at a time because of

lack of business. It has state-wide authority from some terminals, but only limited authority at others. It has only one customer for whom it hauled more than 2 million gallons last year, out of a total of 25 to 30 customers.

56. Penrose is opposed to the Dahlen proposal, favoring instead uniform (but lower) rates. It believes that the existing rates are too high now, and that is why "jobbers are using private carriage. Its solution to reverse this trend is lowering the rates, but on a uniform basis, because the discount rates offered under the Dahlen plan would be a "big advantage" to a jobber.

57. Indianhead Truck Line, Incorporated, is based in St. Paul. It has authority from all origins to virtually all counties, and has terminals and equipment placed throughout the state. It favors a change from the existing incentive rate structure, but that change should be accomplished through collective rate-making and result in a uniform rate, rather than independent action. It believes that the concept of a volume program is a good idea, but questions a number of the particulars of the Dahlen plan because not enough is known about the plan's impact on the industry without a collective discussion. For example, it pointed out that it believes the costs of

operation will vary from terminal to terminal, and that in order to properly analyze any discount program, the plan must be specific about the volume, the equipment needed, the terminal investment, and a number of other costs on a site specific basis. However, it is not sure (without further information) whether a uniform Minnesota plan should be on an origin-by-origin basis, or on a state-wide basis. That is exactly the kind of information it believes ought to be gathered during a collective ratemaking proceeding.

58. Indianhead believes that the goal of the Dahlen plan is to get business for Dahlen. indianhead opposes the qualification period concept, and favors pledges instead. If, at the end of 12 months, the actual gallonage shipped were less than the pledge, then the billing could be recomputed and resubmitted.

59. Ruan Transport Corporation also believes in the concept of volume tenders, but has problems with the specifics of the Dahlen proposal. In particular, it opposes the one year qualification period, favoring either a pledge (its first choice) or, if necessary, a bond.

60. Halberg Construction and Supply, Inc., d/b/a Kirscher Transport Company, is based based in Virginia. It owns 20 tractors, and 21 trailers, with terminals in Virginia and Duluth. It has authority to serve Wrenshall, Esko (Duluth) and some TWin Cities points, as well as Mentor, Alexandria, Benson, Glenwood, and Vernon Center. It also has interstate authority to provide service from Superior, but is not authorized to serve any Minnesota origins with interstate business.

61. hi 1983, Kirscher carried only 15 million gallons of Group A and B products, and 2 million gallons of Group C and D products. None of its customers tendered it enough to qualify for the discounts lproposed under the Dahlen plan. It does not have any units in the existing incentive plan scheme.

62. Kirscher feels it could not respond to the Dahlen plan by adopting a similar one because it has limited amounts of equipment, and could not set up at all points. It opined that if Dahlen and the oil companies got together, it would be hard for independent oil jobbers (Kirscher's customers) to compete, and so Kirscher would lose customers. It fears that if the Dahlen plan were approved, its customers might go to Dahlen (or have their suppliers select Dahlen) in order to qualify for the discount.

It believes a majority of any volume increase for Dahlen under the plan would come from existing common carriers, not from private carriage, and that the Dahlen proposal would result in a monopoly. It foresees definite harm to small carriers who do not own large amounts of equipment, and who do not work with large oil companies. Kirscher foresees its noncompetitiveness resulting from equipment limitations and terminal limitations.

63. Consodel, Inc., and G & T Trucking Company are related corporations based in Elko, Minnesota. Between them, they own approximately 52 tractors, and 37 trailers. The equipment is based in Elko, with some in Mora. The equipment in Elko services Twin City petroleum origins, but Mora and Superior

are asphalt origins. In addition to the Twin Cities, petroleum origins include Wrenschall, and for interstate traffic, both LaCrosse and Superior. G & T has authority to transport petroleum products to all counties in the state from both the Metro Area and Wrenschell. Consodel has authority from the Metro Area only. G & T, in addition, has 20 state interstate authority.

64. Most of the combined gallonage is in C and D products, with C products constituting 26 million gallons, both intrastate and interstate, for 1983. In comparison, for the same year, they shipped more than 2 million gallons of B products, and 433,000 gallons of A products.

65. In A and B products, they have 107 different customers, but only one who would qualify under the Dahlen plan, and that would be at the lowest bracket. In the C Group, one customer would be greater than 8 million, and four would be greater than 1.5 million, out of a total of 75 customers. None of their customers presently use the existing incentive rate program.

66. The basis for their opposition to the Dahlen plan is that it would eliminate small carriers who do not have authority to haul from all, or at least most, of the petroleum origins. Under the present system, a shipper has no incentive to give traffic to any one carrier (other than selecting based on quality of service). Therefore, shippers are able to divide their business up in a number of ways. But if the Dahlen plan were adopted, shippers would have a definite economic incentive to ship as much as possible with Dahlen, in order to take advantage of the discounts. This would have the practical effect of taking business away from the existing smaller carriers.

67. These two companies dispute Dahlen's projection that most of its increase traffic will come from private carriage, rather than from existing common carriers. They believe that a 17 1/2 percent discount is not enough to cause a private carriage shipper to abandon his investment in private carriage and transfer to Dahlen. But the largest basis for their objection was their

lack of authority to serve all, or at least, most of the state-wide origins.  
Even if they were able to get authority to do so, they would need a terminal at each and, most likely, equipment permanently stationed at each.

68. Jensen transport, Inc., is headquartered at Mankato. It opposes the Dahlen plan, but favors a single uniform rate lower than the present regular rate.

69. Jensen maintains terminals in Albert Lea and Mankato. It receives product at the Twin Cities, Eyota, Mankato, and Marshall. From the Twin Cities, it has authority to serve only the Metro Area and points south. It has authority to serve 20 southern counties, but no authority to serve the northern part of the state. It has interstate authority to serve Minnesota and six other states, and does receive product at Clear Lake and Milford, Iowa.

70. Jensen has 26 tractors, and 17 petroleum trailers. Its customers tend to be small, and it carried about 33.7 million gallons of A and B product in 1983. Using the Dahlen plan's volume, it had one customer who tendered

more than 4 million, two customers who tendered more than 2 million, but 89 customers who tendered less than 2 million. Most of its customers are jobbers.

71. Jensen fears that if the Dahlen plan is adopted, it would lose what little 'slop' business it does presently enjoy from the major oil companies. Moreover, it fears that the majors will tell the jobbers to go to the cheapest source and, one way or another, they would qualify for a discount. Jensen sees this plan is being bad for family operations because it would lead to a monopoly of four or five large carriers. Small jobbers that cannot qualify for a discount will be at competitive disadvantage against jobbers who are passed on all (or even part of) a large discount, and there will be an economic incentive for large shippers to go out and solicit enough other shipments to qualify for the maximum 17 1/2 percent discount. Jensen favors letting all segments of the industry share the business, and not concentrate it among a few companies.

72. Even if Jensen had authority to serve all points in the state, it might not be profitable for it to accept a 20 million gallon tender which was divided so that 15 million gallons were at Mankato, but- the remaining 5 million were scattered at other terminals. It would need enough volume at each terminal to justify having a truck there. It was estimated this would be between 5 and 7 million gallons at each terminal. Dahlen, on the other hand, has enough business from other customers so that it could (as it already does) handle such a tender with no problem.

73. Jensen believes that small jobbers using private carriage really can't afford to have their own equipment and incur the other costs of private carriage, but they are trying it anyway in order to compete for retail business.

74. Kane, Inc., Kane Transport, Inc., and Max Transport, Inc.,

(collectively referred to as 'Kane') are all headquartered in Sauk Centre. They believe in the concept of volume tenders, but object to some of the specifics of Dahlen's plan. They are relatively small, hauling a total of 4800 loads of A and B, and 700 loads of C. in 1983.

75. Kane believes that the concept of volume tender should replace the existing incentive rate, because private carriage has been increasing at the expense of common carriage. It attributes this to the failure of the existing incentive rate to take into account the small volumes (relative to 13 weeks, 132 hours per week) required by many shippers. Kane favors a volume tender plan which would not have a qualifying period, but would be based on a terminal-by-terminal computation. For example, 75 percent of its traffic is out of Alexandria. It believes that the best plan would require that all of the volume to be billed at a discount rate ought to come out of the same terminal. This would also mean that the size of the brackets would have to be decreased to reflect smaller volumes.

76. Wayne Transports, Inc., is based in Inver Grove Heights. It favors the concept of volume tenders, but does not believe that the Dahlen plan will lower the use of private carriage.

77. Wayne operates 59 tractors, and 72 petroleum trailers in Minnesota. of the 59 tractors, 56 are stationed in the Twin Cities, with the other three spread between Cook, Moose Lake, and St. Cloud. Approximately 90 percent of Wayne's petroleum revenues comes from the Twin Cities.

78. Wayne's authority is less extensive than Dahlen's. It has no authority to serve the Marshall origin, it is restricted out of Alexandria to 21 counties around Alexandria, and it is restricted against serving 28 counties in southern Minnesota from Koch. Just within the past two months, Wayne got authority to transport from Spring Valley, Mankato and Sauk Centre.

79. in 1983, Wayne transported 98.6 million gallons of A and B products, 8.3 million gallons of heavy, heating oils (Group C-1), and more than 178 million pounds of asphalt (Group C-2). It was unsure of how many of its customers had tendered enough for the Dahlen plan, but was sure that it had some. Wayne felt that it could not effectively respond to the Dahlen plan by adopting it because it did not have complete intrastate authority, nor did it have terminals or equipment at all origins. But Wayne does support the concept of volume tenders, and believes a plan could be developed to effectively counter the increase in private carriage. It is in the process of developing its own plan.

Qualifying Period: Transportation Department's Position

80. One of the major complaints about the Dahlen proposal was the concept of a qualifying year. As was discussed earlier, the primary reason that Dahlen advocated the concept of a qualifying period was a fear that without it, the Department of Transportation would be unable to enforce the rate system, and would thus oppose the Dahlen plan. But at the hearing, a representative of the Department of Transportation stated that he did not see any need for a qualifying period from the standpoint of the Department. A written pledge would be perfectly satisfactory to the Department.

81. The Department believes that collective ratemaking should be pursued in order to adjust incentive rates to current realities.

82. The Department can enforce the Dahlen proposal (with or without the qualifying period) if it is approved by the Board, but admits its problems with enforcing the existing incentive rate plan. However, it has added 10 additional personnel over the last two years, and has acquired new statutory authority.

83. In its post-hearing brief, Dahlen argued that Mn DOT's position on the qualifying period justified the deletion of this requirement from the proposal. In place of it, Dahlen argued that a pledge would be sufficient, and if actual volume falls short of establishing the discount rate based on the pledge, a rebilling would suffice to match the amount actually shipped with the appropriate discount rate.

84. It is found that deletion of the qualification period would enhance the plan's potential to divert traffic from private carriage. It would also remove an anticompetitive bias, in favor of Dahlen, that did exist in the original proposal.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Minnesota Transportation Regulation Board has jurisdiction over the subject matter of this proceeding.

2. Proper notice of the hearing was timely given to all interested and potentially interested parties, and all relevant, substantive and procedural requirements of law or rule have been fulfilled, and, therefore, the matter was properly before the Administrative Law Judge.

3. The existing combination of regular and incentive rates does not allow Dahlen an adequate operating ratio under honest, economical, and efficient management.

4. Depending upon the amount of business Dahlen is able to attract with its proposed plan, it may allow an adequate operating ratio under honest, economical, and efficient management.

5. Dahlen has demonstrated that the proposed rates are reasonable, and meet the tests set out in Minn. Stat. sec. 221.041 (1983 Supp.).

6. Amending the plan to eliminate the concept of a qualifying period would not violate the due process rights of any potentially affected person.  
See Memorandum.

7. Dahlen should be authorized to offer its volume tender discount plan as an additional rate for the carriage of petroleum products.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE A FINAL ORDER WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Board authorize Dahlen to offer its volume tender discount plan as an additional rate for the carriage of petroleum products, without the requirement that there be a qualifying period.

Dated this            day of July, 1984.

ALLAN W. KLEIN  
Administrative Law fudge

Reported: tape Recorded.

#### MEMORANDUM

I .

The evidence from opposing carriers did not allow for ---he preparation of traditional Findings of Fact because the substance of it was opinion, unsubstantiated by any studies or facts. Aside from such material as the limits of authority, origins actually served, quantities of equipment, etc., most of what the opposing shippers offered were opinions as to the impact of the Dahlen proposal upon them, their opinion about it the plan, and their ideas of the best way to meet the challenge of private carriage. The Judge believes that it is important for these opinions to be before the Board, and thus has stated them,- in Findings despite the fact that they were not based upon any "hard" evidence.

The Judge has accepted Dahlen's revenue and expense data despite the fact that a fair amount of time at the hearing was consumed in attempting to refute it. This was done because he believes that the data is essentially correct, although it did include a number of assumptions and estimates. The Judge believes that in light of the lack of actual experience under the proposed plan, such assumptions and estimates are necessary. None-theless, he found Dahlen's data to be essentially accurate, and does not believe that any of the matters raised by various objectors would materially alter the results.

III.

The Judge was disturbed by the anticompetitive bias, in favor of Dahlen, built into the qualifying period rule. Clearly, it- would serve to divert traffic from other carriers to Dahlen as shippers attempted to qualify for the discount rates in future years. It would provide a 'wind fall' to existing

Dahlen customers who could qualify. It would also have the intended effect of diverting traffic from private carriers to Dahlen. Once the Department of Transportation's representative stated that the Department would not require the qualifying period, Dahlen recommended that the rule be dropped.

Al obvious question arises, however, as to whether it would fair for the Board to allow Dahlen to adopt a plan without the qualifying period in light of the fact that it was a component of the original proposal. Although the issue is not clear cut, it is concluded that it would not be a denial of due process if the Board chose to allow Dahlen to adopt its plan absent the qualifying period.

The issue to be determined is whether, as a result of substantial evidence in the record deduced at a hearing, a rate petition for a petroleum carrier may be amended as herein suggested without depriving potential parties of adequate notice and, derivatively, due process.

Minn. Stat. S 221.041 (1983 Supp.) establishes an affirmative duty upon the Board to fix just, reasonable, and non-discriminatory rates' for regular route common carriers and petroleum carriers. The statute further provides that no such rate or fare may put into effect or changed or altered except upon hearing duly had and an order therefore by the Board.

Minn. Stat. S 221.165 (1983 Supp.) allows a motor carrier subject to collective ratemaking to petition the Board for the establishment of a rate or charge deviating from the collectively set rate. However, that motor carrier must comply with the appropriate ratemaking procedure, here, Minn. Stat. 221.041 (1983 Supp.).

Minn. Stat. S 221.041 (1983 Supp. ) does not prescribe the notice that must be given to interested persons prior to the conduct of the hearing. However, such a hearing is a contested case under the Minnesota Administrative Procedures Act. Minn. Stat. S 14.58 (1983 Supp.) provides: 'In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved . . . . The rules of the Office of Administrative Hearings which prescribe notice to be given in a contested case authorized the agency to publish the notice of hearing if they so choose or are required by law to do so, or to mail a copy of the notice of hearing to interested person. There are no specific rules applicable to the Transportation Regulation Board which prescribe the extent of the notice to be given of a regular route or petroleum carrier tariff proposal. Title PSC 40 merely requires that all tariffs be filed in accordance with the Rules of Tariff Circular MF No. 3 issued by the Interstate Commerce Commission except as such Circular may contravene

provisions of Minnesota Statutes and orders of the Board. The Rules of Practice of the Department of Public Service applicable to the Transportation Regulation Board provide for publication of notice in the Weekly Calendar of the Transportation Regulation Board. Moreover, in this case actual notice of the proceedings was twice mailed to each petroleum company carrier in the State of Minnesota.

Both the original Notice and the Notice of Reset referred to the proposal as follows:

Petition of Dahlen . . . for establishment of incentive rates based on annual volume tender applicable to Petroleum Products, Groups A, B, C and D, summarized as follows:

Total Gallons (Millions) Tendered During 12 Months

(Table of rate levels)

The table heading could be interpreted as referring to either the preceding 12 months, or the succeeding 12 months, but it appears more likely that a reader would infer that it referred to the succeeding 1-2 months. In any event, the Notice did not clearly indicate the concept of a qualifying period.

A prospective party in a contested case proceeding has a right to reasonable notice of the content of the proceeding so that he may prepare to meet the claims of the opposing party and to determine whether he chooses to participate in the proceeding as a party. North State Telephone (Co, Inc. v Alaska Public Utilities Commission, 522 P.2d 711, 714 (Ala. 1974). The guiding principle appears to be one of fundamental fairness and the issue is whether a person reading the contested case notice which summarizes the Petition would be misled to his prejudice as to his possible interests in the proceeding.

In Buckner Trucking, Inc. v. United States, 354 F.Supp. 1210, 1219 (D.C. Sd Tex. 1973), the court stated the applicable rule:

It is well established by both statute and judicial precedent that publication in the Federal Register is legally deemed notice to all interested persons (Citations omitted). The summary of notices published, including applications for certificates of public convenience and necessity, are necessarily required to be concise. (Citation omitted). However, due process of law requirements dictate that interested persons be afforded proper notice of administrative proceedings. (Citation omitted). Accordingly, the notice as published must reasonably apprise any interested person of the issues involved in the proceeding. (Citation omitted). Such notice is generally considered adequate in the absence of a showing that an interested person was misled. (Citation omitted). (Emphasis added).

The appropriate test was stated by the Court of Appeals of Illinois as follows:

Procedural due process requires that notice be given of the claim asserted. The right to a hearing includes not only the right to present evidence, but also a reasonable opportunity to know what claims must be defended against and what consequences are proposed. (Citations omitted). In order to be effectual, notice should be so full and clear as to disclose to persons of ordinary intelligence what is proposed. (Citations omitted). The test is whether the defendant should have anticipated the effects and orders possible. Tagg Bros. & Moorhead v. United States (1929), 280 U.S. 420, 439-440, 50 S.Ct. 220, 224-25, 74 L.Ed. 524.

Department of Revenue v. Jamb Discount, 13 Il.App.3d 301 N.E.2d 23, 27 (1973).

A factual situation somewhat similar to the instant proceeding was considered by the United States Supreme Court in Tagg Bros. & Moorhead v.

United States, 280 U.S. 420, 439-440, 50 S.Ct. 220, 224-225, 74 L.Ed. 524

In that proceeding, the Commissioner of Agriculture issued an order that a particular tariff would be investigated under a federal statute. The federal statute referenced gave the Commissioner the authority to fix appropriate rates. Although the notice of hearing made no specific reference to an intent to reduce tariff No. 1, that authority was in the Commissioner pursuant to a general statutory grant of power. The court held that the Plaintiff (who claimed surprise when the tariff was reduced) should have anticipated that the Secretary could exercise any power possessed with respect to the particular tariffs, including the right to reduce the tariff in question as a consequence of the hearing if the evidence before him lead him to believe that such a course was proper and desirable. Moorhead, supra, was cited with approval by the Illinois Court of Appeals in Department of Revenue v. Jamb Discount, supra, as stating the proposition that a prospective party should anticipate the affects and orders possible under the statutory authority vested in the Administrative agency.

Di summary, the rule appears to be roughly akin to that applicable to considerations underlying the substantial change rule in a rulemaking proceeding. The test is one of fundamental fairness: whether a person reading the notice of hearing would be put on sufficient alert to reasonably understand that their rights might be affected. That must be balanced against one of the primary purposes of a public hearing, which is to obtain comments on the proposal, including suggestions for changes.

Di Neuger in Zoning Board of the City of Stamford, 145 Conn. 625, 145 A.2d 738, 740-41 (1958), the Court states that notice of a hearing is sufficient if it fairly describes to the public the issues to be considered at the hearing and concludes that the notice of hearing is, not required to contain an accurate forecast of the precise action which will be taken upon

the subject matter referred to in the notice. The Court notes that the purpose of a hearing is to react to evidence received and that the public should be on notice that the deciding authority will determine questions of reasonableness with respect to the proof adduced at the hearing.

Even if there is a plausible argument that certain carriers might have intervened had the amendment been contained in the original petition, that is not necessarily a ground for requiring additional hearings. The touchstone of the argument of a lack of notice is actual prejudice. In Re Wilmarth Ldne of CU Project, 299 N.W.2d 731 (Minn. 1980); First National Bank of Shakopee v. Department of Commerce, 310 Minn. 127, 245 N.W.2d 8(61 (1976). Hence, for a person who may argue that he was deprived of a right to intervene by virtue of the amendment, reversal of a grant of the amendment in a subsequent court proceeding would require a showing of actual prejudice and prima facie showings of material evidence which could reasonably have resulted in a different decision by the Administrative agency. Here, small petroleum carriers (such as Jensen, Penrose and Kane) were involved as parties and their positions were thoroughly explored on the record. Jensen's testimony, in particular, frequently referred to 'Ma and Pa' carriers, which are the class who might claim prejudice here. The likelihood that an additional small carrier could later argue and establish prejudice is remote, because its views were likely presented by Jensen, Penrose and Kane.

On balance, the Judge concludes that it is permissible for the Board to allow, Dahlen to adopt its plan without the qualifying period. While this conclusion is contrary to the one which the Judge reached on a different amendment on the eve of the start of the hearing as outlined in Finding 5, then difference is then the existing parties had not prepared to rebut the newly proposed amendment, and without a continuance, there was insufficient time for them to prepare for the hearing. In the present case, the objecting parties (including the above-noted small carriers) not only had ample opportunity to present their views, but did, in fact, tell what they thought of the qualifying period and what ought to be done with it.

#### IV.

Finally, the Judge does not accept the argument that Dahlen's failure to demonstrate that its proposed rate structure (including the regular rate, the existing incentive rate and the new incentive rate) will be just and reasonable and will cover its costs, including an adequate ratio, because it has failed to provide an estimate of what its operating ratio would be after adoption of the proposed plan. Generation of this estimate would have required an estimation of how much traffic would move under each rate, and the cost of providing each service. While Dahlen could have posed a number of hypotheticals to demonstrate its overall operating ratio based upon a number of assumptions regarding how much traffic would move at each rate, without actual experience these hypotheticals would have been only examples. Given the fact that the lowest ratio of all of those presented is 94.40 percent, the Judge does not see how the presentation of such hypotheticals would alter the outcome. Moreover, the issue in this proceeding is not the overall profitability of Dahlen, but rather, the issue is the reasonableness of the specific rates proposed by its plan. The rates proposed in this plan must be compensatory irrespective of Dahlen's overall profitability,. Fresh Meat from

the Midwest to the East, 313 ICC 345, 371; Columbia Metals Co. v. A.T. & S.F.R. Go., 276 ICC 603.

However, this Petition for a deviation from the uniform rates does raise a policy question which must be answered by the Board. The question is whether, as a matter of policy, the Board ought to, allow a deviation from uniform rates which will (unless promptly followed by all) give a competitive advantage to one carrier over the others. The nEW Collective ratemaking statute, Minn. Stat. 221.165 (1983 Supp.) clearly provides for deviations from collectively set rates. It is hard to imagine that a carrier would independent petition for a deviation which was going to worsen its competitive position. Dahlen, certainly, predicts that its proposed plan would improve its competitive advantage over private carriers. common Sense suggests that the plan would improve its competitive position over other c n carriers as well. However, the concept of volume tenders has been accepted by both the ICC and by the Board's predecessor, the Railroad and Warehouse Commission (See decision of November 23, 1964, at pages 22-28). The Judge agrees with most of those who testified in the proceeding that the existing incentive plan no longer serves its intended purpose, and that a plan like Dahlen's more accurately reflects current realities. For whatever reason, common carriers in the industry were unable to agree on a proposal to alter the uniform rates. The Judge believes that Dahlen has justified its proposal under the statutory tests.

A.W.K.