

*Transportation*

(3) of clause 16, which is the clause by which a captive shipper shall be determined and the clause by which the maximum rate shall be fixed. This is probably one of the most important clauses so far as regulatory control and rate-fixing provisions are concerned.

Is it not a fact that under new section 336 the rate referred to is not one fixed by a carrier but by the commission?

**Mr. Pickersgill:** That is right.

**Mr. Baldwin:** That being the case, how would it be possible for the commission under clause 16 to review a rate so established? The only two bases on which this can be done are covered in paragraphs (a) and (b) of subclause (2), where there is an act or omission on the part of a carrier or two or more carriers. I do not think an act or omission under clause 16 can be related to what a carrier does pursuant to an agreement made under new section 336. If the rate is one to be established by the carrier that is all right, but if it is established by the commission am I not correct in assuming that clause 16 could not be applied to what will be new section 336? Would the minister comment in that regard?

**Mr. Pickersgill:** I should think that would be correct. If the commission itself established a maximum rate under section 336, that being an act of the commission perhaps it could not very well be reviewed by the commission and could be subject to an appeal to the Governor in Council. If it was felt the commission had erred in law in fixing the rate an appeal to the courts would be involved. That would be the recourse once the commission itself had acted. Here we are talking about rates that are not maximum in the technical sense but rates that might be considered to be prejudicial to the public interest as defined in the general terms of clause 1 and as redefined here in almost identical language. The commission can interfere with what the carrier has done but I do not see how it could interfere with what it had done itself.

**Mr. Bell (Saint John-Albert):** To follow that up, I think the minister has said at various times that clause 16 would be a balance in respect of many evils that might occur as a result of new section 336.

**Mr. Pickersgill:** That is not quite the way I would put it. The position I take is that new section 336 provides that there will be a maximum rate which can be established in respect of captive shippers. As the hon. member for Qu'Appelle pointed out very well last night in

his argument, many bulk shippers will never be protected by this kind of a maximum rate. What they need is an assurance that there will be no unfairness in respect of the rate established under similar conditions. We have sought to give this assurance by accepting the spirit of the amendment suggested by the hon. member for Peace River and supported by the hon. member for Qu'Appelle. That is what is fundamentally provided here.

● (6:10 p.m.)

**Mr. Baldwin:** I was not present during the committee hearings and I must rely on the transcript of the discussion which took place between the minister and Mr. Frawley who was appearing for the province of Alberta. Mr. Frawley expressed very serious concern about the effect of new section 336, particularly as it has the effect of narrowing section 336 of the present Railway Act which does provide some measure of protection in respect of equalization. That, of course, has been taken care of to a limited extent in clause 1. But, quite frankly, from that exchange and from what has been said since, I was under the impression until a short time ago that clause 16 was also to include the right of review with respect to the establishment of maximum rate control under section 336.

In those circumstances I will have to review my position in the matter. For example, the amendment moved by the minister provides, by new paragraph (a) of subclause (3) of clause 16:

"whether the tolls or conditions specified for the carriage of traffic under the rate so established are such as to create

(i) an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or

(ii) an undue obstacle to the interchange of commodities between points in Canada or an unreasonable discouragement of the development of primary or secondary industries or of export trade in or from any region of Canada;"

This provision will not apply to any arrangement or agreement establishing a rate under new section 336. I do not know whether the minister has received any information from his officials in this connection and whether any estimate has ever been made as to the extent of traffic which may be covered by section 336. It is my understanding that a very substantial amount of the traffic is likely to be included under this particular method of establishing tolls.

If there is to be no opportunity for review by the commission in this respect, save the