

Docket #F.D. 30400-10/10/84 - Pages- 1310 - 1367

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Wednesday, October 10, 1984

The hearing in the above-entitled matter was
convened pursuant to notice, at 9:00 a.m.

BEFORE :

JAMES E. HOPKINS,
Administrative Law Judge

1 APPEARANCES:

2
3 On behalf of Southern Pacific Corporation:

4 R.K. KNOWLTON, Esq.

5 Southern Pacific Corporation

6 224 South Michigan Avenue

7 Chicago, Ill. 60604
89 On behalf of the Atchison, Topeka & Santa Fe
10 Railway Company:

11 DENNIS W. WILSON, Esq.

12 GUS SVOLCS, Esq.

13 MILTON E. NELSON, JR., Esq.

14 Atchison, Topeka & Santa Fe Railway Company

15 80 East Jackson Boulevard

16 Chicago, Ill.
1718 On behalf of Southern Pacific Transportation
19 Company:

20 THORND A. MILLER, Esq.

21 DOUGLAS E. STEPHENSON, Esq.

22 MICHAEL A. SMITH, Esq.

23 Southern Pacific Transportation Company

24 One Market Plaza

25 San Francisco, Cal. 94105

1 APPEARANCES: (Continued)

2
3 On behalf of Santa Fe Southern Pacific Corporation:4
5 PAUL MOATES, Esq.

6 TERENCE HYNES, Esq.

7 RONALD S. FLAGG, Esq.

8 Sidley & Austin

9 1722 Eye Street, N.W.

10 Washington, D.C. 20006

11
12 EDEN MARTIN, Esq.

13 Sidley & Austin

14 One First National Plaza

15 Chicago, Illinois

16
17 On behalf of the Missouri-Kansas-Texas
18 Railroad:

19 ROBERT N. KHARASCH, Esq.

20 ROBERT H. MORSE, Esq.

21 EDWARD P. GREENBERG, Esq.

22 KATHLEEN MAHON, Esq.

23 Galland, Kharasch, Morse & Garfinkle

24 1054 31st Street, N.W.

25 Washington, D.C. 20007

1 APPEARANCES: (Continued)

2
3 MICHAEL E. ROOPER, Esq.
4 Missouri-Kansas-Texas Railroad Company
5 701 Commerce Street
6 Dallas, Texas 75202
7

8 On behalf of Amtrak:

9 PETER S. CRAIG, Esq.
10 FREDERICK C. OHLY, Esq.
11 Amtrak
12 400 North Capitol Street, N.W.
13 Washington, D.C. 20001
14

15 On behalf of Sunkist Growers, Inc.:

16 BARRY ROBERTS, Esq.
17 Tigert & Roberts
18 600 Maryland Avenue, N.W.
19 Washington, D.C. 20024
20
21
22
23
24
25

1 APPEARANCES: (Continued)

2
3 On behalf of Richard B. Ogilvie, the
4 Trustee of the Chicago, Milwaukee,
5 St. Paul & Pacific Railroad Company:

6 WILLIAM I. PHILLIPS, Esq.

7 WILLIAM C. SIPPEL, Esq.

8 ELLEN KIRSCHENBAUM, Esq.

9 888 Union Station

10 Chicago, Ill. 60606

11
12 On behalf of the Denver and Rio Grande
13 Western Railroad Company:

14 KENDALL T. SANFORD, Esq.

15 P.O. Box 5482

16 Denver, Colo. 80217

17
18 E. BARRETT PRETYMAN, JR., Esq.

19 G.W. MAYO, Esq.

20 THOMAS LEAVY, Esq.

21 ERIC A. VON SALZEN, Esq.

22 Hogan & Hartson

23 815 Connecticut Avenue, N.W.

24 Washington, D.C. 20006

25

1 APPEARANCES: (Continued)

2
3 On behalf of Conrail:

4 EDWARD B. HYMSON, Esq.

5 Conrail

6 1138 Six Penn Center

7 Philadelphia, Pa. 19103

8
9 On behalf of the Railway Labor
10 Executives' Association:11
12 KIMBERLEY A. MADIGAN, Esq.

13 Railway Labor Executives' Association

14 1050 17th Street, N.W.

15 Washington, D.C.

16
17 WILLIAM G. MAHONEY, Esq.

18 JOHN O'B. CLARKE, JR., Esq.

19 WILLIAM HIRNEY, Esq.

20 JOHN J. DELANEY, Esq.

21 Highsaw & Mahoney

22 1050 17th Street, N.W.

23 Washington, D.C. 20036
24
25

1 APPEARANCES: (Continued)
2

3 On behalf of Fig Garden New Town:

4 L. JOHN CSBORN, Esq.

5 ELIZABETH A. CAMPBELL, Esq.

6 1660 L Street, N.W., Suite 1000

7 Washington, D.C. 20036
8

9 On behalf of The Kansas City

10 Southern Railway Company:
11

12 MORRIS BAKER, Esq.

13 JOSEPH AUERBACH, Esq.

14 ROBERT L. CALHOUN, Esq.

15 VICTOR M. BATERA, Esq.

16 Sullivan & Worcester

17 One Post Office Square

18 Boston, Mass. 02109
19

20 ROBERT K. DREILING, Esq.

21 Law Department

22 Kansas City Southern Railway Company

23 301 W. 11th Street

24 Kansas City, Missouri 64152
25

1 APPEARANCES: (Continued)

2
3 On behalf of Rancho Limited Partnerships:

4 WILLIAM W. BECKER, Esq.

5 Landfield, Becker & Green

6 1220-19th Street, N.W.

7 Washington, D.C. 20036

8
9 On behalf of Texas Mexican Railway:

10 CHARLES WHITE, Esq.

11 PATRICIA WHITE, Esq.

12 Arnall Golden & Gregory

13 1000 Potomac Street, N.W.

14 Washington, D.C. 20007

15
16 On behalf of the People of the State of California,
17 the California State Public Utilities Commission,
18 and California State Department of Transportation:

19 VINCENT MacKENZIE, Esq.

20 350 McAllister, Room 5083

21 San Francisco, Cal. 94102
22
23
24
25

1 APPEARANCES: (Continued)

2
3 On behalf of the U.S. Department of Transportation:

4 MARY BENNETT REED, Esq.

5 G. JOSEPH KING, Esq.

6 400 Seventh Street, N.W.

7 Washington, D.C. 20590

8
9 On behalf of the Union Pacific Railroad Company
10 and the Missouri Pacific Railroad Company:

11 CHARLES MILLER, Esq.

12 VIRGINIA G. WATKIN, Esq.

13 ARVID E. ROACH, Esq.

14 GREGG H. LEVY, Esq.

15 Covington & Eurling

16 1201 Pennsylvania Ave., N.W., Box 7566

17 Washington, D.C. 20044

18
19 On behalf of the Chicago & North Western
20 Transportation Company:

21 WILLIAM C. EVANS, Esq.

22 JAMES P. DALEY, Esq.

23 STUART F. GASSNER, Esq.

24 Suite 100, 1660 L Street, N.W.

25 Washington, D.C. 20036

1
2
3
4
5
6
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10
11
12
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14
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17
18
19
20
21
22
23
24
25

On behalf of the U.S. Department of Justice:

DCNNA M. KCOFERSTEIN, Esq.

JAMES RATNER, Esq.

414 F Street, N.W.

Washington, D.C.

On behalf of Patrick W. Simmons:

GCRDCN P. MacDOUGALL, Esq.

1120 Connecticut Ave., N.W.

Washington, D.C. 20036

C O N T E N T S

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Jack P. Edwards				
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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Carl J. Liba				
By Mr. Wilson			1556	
By Mr. Kevin MacKenzie				1559
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E X H I B I T S

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MKT-C-17,18 and 19		1358
TM-C-1		1359
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1 efficient?

2 A The Bay Area and New Orleans? It's -- we
3 think it's efficient, yes.

4 Q Now, the SP serves the Gulf ports of New
5 Orleans, Lake Charles, Beaumont, Port Arthur, Houston,
6 and Galveston; is that correct?

7 A That's correct.

8 Q Does the Santa Fe serve those ports?

9 A Not all of them, no.

10 Q Which ports does not the Santa Fe serve?

11 A They do not serve New Orleans. They do serve
12 -- they do not serve Port Arthur. They do serve
13 Galveston and they do serve -- I don't recall the last
14 one you mentioned.

15 Q Now, would it be fair to say that, considering
16 the land bridge traffic, the ports of Houston/Galveston
17 and New Orleans are the most significant Gulf ports?

18 A For land bridge?

19 Q Yes.

20 A Yes.

21 Q Now, I would like to confine ourselves to the
22 movement between the California points and the
23 southeastern United States via the New Orleans gateway.
24 In order to compete with the SP, the Santa Fe has to
25 interline its traffic to get it to New Orleans; is that

1 correct?

2 A Well, they have choices other than with the
3 SP.

4 Q Right, but it has to interline its traffic
5 with some railroad?

6 A To get to New Orleans, that's correct.

7 Q Now, are you familiar with the Santa Fe's
8 interchange with KCS at Dallas, Texas?

9 A From our discussion. I listened to the
10 testimony the other day, so yes.

11 Q Aside from your hearing testimony in this
12 courtroom, have you had occasion to consider the joint
13 KCS-Santa Fe route via Dallas, Texas?

14 A What do you mean by "consider"?

15 Q In the course of your work.

16 A You mean to evaluate using?

17 Q Let me restate the question. In the course of
18 your work, do you have occasion to compare the
19 efficiency of SP routes with competing rail routes?

20 A We compared transit times, mostly just train
21 schedules, from time to time.

22 Q Have you had occasion to compare your SP route
23 from Los Angeles to New Orleans with the Santa Fe-KCS
24 joint line route from Los Angeles to New Orleans from a
25 transit time standpoint?

1 A No, I haven't.

2 Q Would you have any judgment as to whether the
3 joint KCS-Santa Fe route between L.A. and New Orleans is
4 a competitive route, competitive with that afforded by
5 the SP?

6 A I would assume that it is competitive.

7 Q Now, for land bridge traffic, I take it the
8 Santa Fe would also have to rely, in order to reach the
9 port of New Orleans, it would have to rely upon its
10 interline operations?

11 A Yes. We just said that a minute ago.

12 Q We were talking about the traffic to the
13 southeastern United States.

14 A Well, it's going to have to interline with
15 someone to get to New Orleans, that's correct.

16 Q Now, are you aware that the joint line
17 operation between the Santa Fe and the KCS over Dallas
18 is on a run-through train basis?

19 A I heard that the other day. I was not aware
20 of that prior.

21 Q In your judgment, would that tend to make it a
22 more efficient route than if it had no run-through
23 operation?

24 A I don't have any experience on the operating
25 side. I wouldn't know from an operating standpoint.

1 Q Well, in your judgment wouldn't a run-through
2 train operation cut down on the transit time involved?

3 A Conceptually, once again conceptually, I would
4 agree with you.

5 Q Well, Mr. Edwards, hasn't it been your
6 testimony here in these proceedings that the benefit of
7 a single line operation is that you eliminate the time
8 consumed in interchange?

9 A Absolutely.

10 Q And would not a run-through train operation
11 also cut back on the time consumed in interchange?

12 A I just said, conceptually I would agree with
13 you. I just don't have any operating experience in that
14 area.

15 Q Now, does the SP have any run-through
16 operations with the southeastern carriers?

17 A Not that I know of.

18 Q Does it have any run-through operations that
19 involve the traffic moving between the California ports
20 and the southeastern United States with any carrier?

21 A I don't know. I just don't know.

22 Q Do you have an operation with the CSX motor
23 carrier subsidiary, do you know?

24 A What kind of operation?

25 Q A train operation that involves the movement

1 of TOFC traffic between the southeastern United States
2 into California?

3 A I don't know.

4 Q You gave some testimony yesterday concerning
5 the availability of motor carrier and other mode
6 alternatives to the SP shippers. Let me ask you this:
7 If we were measuring the SP's share of traffic moving
8 within a given transportation corridor, would the number
9 of ton-miles, the amount of ton-miles carried by the SP
10 during a given period of time, be a fair way to measure
11 the extent of their participation?

12 A In the total market? All the ton-miles
13 moved?

14 Q Yes.

15 A Would that be by commodity or in total?

16 Q Whichever you want. If we were measuring it
17 by commodity, would it be a fair measure?

18 A Yes. I mean, I would think so.

19 Q And if we were measuring it by all commodities
20 moving within a transportation corridor, would it be a
21 fair measure?

22 A I typically, when I measure market share, if
23 you will, I attempt to measure market share, I try to do
24 it by commodity, a general commodity group.

25 Q So you are saying you've had no experience in

1 measuring total traffic moving within a given
2 transportation corridor?

3 A Only because it's very difficult to get access
4 to the total tonnage, including all barge and all truck
5 and all rail. We've had a little difficulty doing
6 that.

7 Q Would the amount of ton-miles be a more
8 accurate measurement than, let's say, the number of cars
9 moved?

10 A Revenue ton-miles?

11 Q Yes.

12 A Yes, I think it would.

13 Q And would it be a more accurate measurement
14 than simply the number of tons handled?

15 A I'm hesitating, because typically we use --
16 when I think of market share, I use tons rather than
17 revenue ton-miles. So I don't know whether it would be
18 more accurate or not. My discipline has been tons
19 rather than the other item.

20 Q If you were trying to convert the number of
21 tons handled down to the bottom line of your financial
22 statement to determine the impact upon revenues, would
23 you use tons or ton-miles, revenue ton-miles?

24 A Revenue ton-miles.

25 Q Now, I'm going to be talking here -- I am

1 referring to your testimony yesterday on
2 cross-examination with respect to the availability of
3 motor carrier competition and the value to a shipper of
4 having access to various modes.

5 Have you made any judgment of the amount of
6 ton-miles which the rail carriers in the United States
7 enjoy generally versus the ton-miles carried by motor
8 carriers in the United States?

9 A Yes. I believe that Mr. Liba's statement,
10 Table 5 -- well, no, it's Mr. Baker's statement, Table 5
11 -- has a summary of that. And if I remember, even in
12 the prelude of that it indicates that total number of
13 revenue ton-miles in the United States for rail was
14 about \$500 billion and the total revenue ton-miles for
15 trucks, including private carriage, was in excess of
16 \$900 billion.

17 Q Okay. Do you have any judgment as to who has
18 the largest share in the short haul market?

19 A I don't have the precise numbers. I don't
20 recall the numbers, no.

21 Q Do you have any individual judgment based upon
22 your experience?

23 A My experience would be that, on a very short
24 haul basis, would be that the trucks would have a
25 larger, more predominant market share.

1 Q Do you have any judgment of which mode has the
2 largest share on a long haul basis?

3 A Well now, you see, I wouldn't generalize there
4 and say it was the rail or the trucks. That might be
5 like a 50-50. It might be very, very close.

6 Q Now, I take it -- strike that.

7 Do you have any judgment, independent
8 judgment, considering all traffic handled by all modes
9 -- and by all modes, Mr. Edwards, I'm referring now to
10 motor carriers and rail carriers and also water carriers
11 and air carriers, et cetera.

12 Do you have any judgment as to which mode has
13 the largest share of all intercity freight traffic
14 measured in ton-miles?

15 A All modes, my judgment would be that it would
16 be close between barge and truck.

17 Q I take it from what you're saying, then, that
18 it would be your judgment --

19 A Barge including ocean also.

20 Q Let me get that straight. If we were to
21 divide the two, which would be first, motor carrier or
22 water carrier?

23 A Motor carrier.

24 Q And then I take it water carrier you would
25 rank in the second place?

1 A Once again, if everything moved, yes, I
2 would.

3 Q And where would you rank the rail carriers?

4 A Next.

5 Q Third?

6 A Yes.

7 MR. DREILING: Your Honor, I don't believe I
8 have any further questions. Thank you.

9 JUDGE HOPKINS: Who will be next?

10 MR. LEVY: Your Honor, my name is Gregg Levy
11 with Covington & Burling. I'd like to enter my
12 appearance with Union Pacific and Missouri Pacific.

13 CROSS EXAMINATION

14 BY MR. LEVY:

15 Q Good morning, Mr. Edwards.

16 A Good morning, Mr. Levy.

17 Q Mr. Edwards, as I understand it, today and in
18 the recent past Santa Fe and Southern Pacific have
19 sought to obtain their long hauls whenever possible for
20 transcontinental freight; is that correct?

21 A In my testimony on page 5, I make reference to
22 that. Now, whenever possible means whenever practical,
23 whenever they make economic sense, whenever it makes
24 service sense, whenever it meets the needs of the
25 customers.

1 There's a mix there that's required to define
2 what "whenever possible" is. It doesn't mean that we
3 just always randomly go out and maximize our long haul
4 whenever possible. There are factors that influence
5 it.

6 Q For traffic moving via the El Paso gateway,
7 that has generally resulted in a decline in the
8 interchange between Missouri Pacific and Southern
9 Pacific, has it not?

10 A I'm not sure of that.

11 Q You are familiar, though, with the fact that
12 -- well, let me ask this question: How long have you
13 been vice president at Southern Pacific?

14 A A year and a half.

15 Q And during that period there has been a
16 precipitous decline in movements, eastbound movements
17 from Southern Pacific to Missouri Pacific at the El Paso
18 gateway, has there not?

19 A I'm not familiar with the precise statistics,
20 but I think you're correct.

21 Q As of this point, the El Paso gateway has
22 become predominantly a westbound gateway, has it not?

23 A With the Union Pacific?

24 Q That's right. The traffic moves predominantly
25 from the Union Pacific to the Southern Pacific, with

1 very little traffic moving in the opposite direction,
2 isn't that correct?

3 A I don't know that for a fact. Whether the UP
4 uses El Paso eastbound or westbound is up to the UP.

5 Q Are you familiar with the extent to which
6 westbound movements at the El Paso gateway exceed
7 eastbound movements between Southern Pacific and Union
8 Pacific?

9 A No, I'm not.

10 Q Do you think that a ratio of seven to one for
11 such traffic would be an unreasonable estimate for the
12 interchange between Southern Pacific and Missouri
13 Pacific at the El Paso gateway?

14 MR. SMITH: Objection, Your Honor. The
15 witness has said he didn't know.

16 JUDGE HOPKINS: Do you know?

17 THE WITNESS: Whether it's unreasonable or
18 not?

19 JUDGE HOPKINS: Yes.

20 THE WITNESS: I just have an opinion. I don't
21 know whether it's unreasonable or not.

22 JUDGE HOPKINS: He doesn't appear to know.

23 BY MR. LIVY: (Resuming)

24 Q Do you know, Mr. Edwards, the extent to which
25 Southern Pacific's deliveries to Missouri Pacific at El

1 Fasc have declined in the period since the Union
2 Pacific-Missouri Pacific merger?

3 A To the extent?

4 Q Yes.

5 A No, I just testified I don't know whether it's
6 gone down or gone up or remained status quo.

7 Q So you're generally unfamiliar with the
8 relationship between westbound and eastbound movements
9 at El Paso and with the trend in movements at El Paso
10 over the last two years?

11 A No, what I said before was whether it's
12 declined or increased over the last year or six months
13 has been a choice of the Union Pacific and the choice of
14 our customers.

15 Q Well, the choice of your customers in terms of
16 eastbound movements. What has been responsible for the
17 decline in movements?

18 JUDGE HOPKINS: First of all, the question is
19 has there been a decline; do you know?

20 THE WITNESS: I just don't know.

21 JUDGE HOPKINS: The problem is, if he doesn't
22 know how can we go from there?

23 MR. LEVY: I just want to make sure that we
24 have communicated on the two things about which he
25 claims to be unfamiliar. That is, the decline in

1 traffic delivered from the SP to Missouri Pacific at El
2 Pasc over the last year and a half when you've been vice
3 president of the Southern Pacific.

4 THE WITNESS: The decline in traffic, right.
5 You asked me how much it is. I just don't know.

6 BY MR. LEVY: (Resuming)

7 Q I'm not interested in a number, Mr. Edwards.
8 Would you agree with me that it's been significant or
9 substantial?

10 A Since I don't know the relative numbers, I
11 can't agree whether it's been a lot or a little.

12 Q The other area in which I'm interested is the
13 relationship between eastbound and westbound traffic at
14 El Pasc. Would you agree with me that traffic received
15 from the Southern Pacific by Missouri Pacific at El Paso
16 is quite small compared to the amount of traffic that is
17 delivered to Southern Pacific by Missouri Pacific at El
18 Pasc, or are you unfamiliar with that subject as well?

19 A I haven't seen any numbers on it, so I don't
20 know whether it's in balance or not in balance.

21 MR. LEVY: There's no point in my asking any
22 other questions.

23 JUDGE HOPKINS: That's what I was going to
24 say. Is that all?

25 MR. LEVY: I have nothing else.

1 JUDGE HOPKINS: Who will be next? Mr.
2 Roberts?

3 CROSS EXAMINATION

4 BY MR. ROBERTS:

5 Q Mr. Edwards, my name is Barry Roberts. I
6 represent Sunkist Growers.

7 A Good morning, Mr. Roberts.

8 Q Mr. Edwards, were you in the hearing room last
9 week when I asked Mr. McNear about the use of the Ogden
10 gateway for perishable traffic?

11 A Yes, I was.

12 Q And do you recall me asking Mr. McNear as to
13 why the use of the Ogden gateway for perishable traffic
14 originating in the northern and central San Joaquin
15 Valley had been discontinued?

16 A Yes.

17 Q Can you tell us why?

18 A I think, if I recall the testimony and the
19 questions, you stated that several years, three or four
20 years ago, there was a service across that corridor that
21 had excellent transit time, and back in those days three
22 or four years ago we had a run called the Salad Bowl
23 Express.

24 In fact, some of our customers, my old
25 customers or my old growers, I should say, used to run

1 on the Salad Bowl Express. It was, as you stated, a
2 very efficient transit time at competitive rates.

3 In the last couple of years, the Union Pacific
4 reviewed the numbers, their minimum economic revenue
5 requirements to move traffic over that corridor, and
6 they started -- they changed their rate structure. And
7 what that did is, it made traffic moving, say, from
8 north of Fresno non-competitive with respect to rate,
9 competitive rate.

10 Now, there's still a route there today.
11 There's still a route. It's just at a non-competitive
12 rate. Traffic south of Fresno, of course, goes via our
13 railroad south and across and up to Kansas City and on
14 to the eastern markets.

15 We have attempted to work with the D&RGW to
16 re-establish a competitive rate and reopen traffic
17 moving from north of Fresno back over the Ogden gateway,
18 and we're very close, I think, to having something
19 reconcilable.

20 Q So as I understand your testimony, the
21 unavailability of that efficient route to perishable
22 shippers you would testify, then, is entirely the fault
23 of the Union Pacific?

24 A Well, the total collective competitive rate
25 made it a non-competitive route. That's what I would

1 say, yes.

2 Q And it's your testimony that the route is
3 still open, although it is simply the rate that prevents
4 us from using it?

5 A That's the way I see it. That's my perception
6 of it, yes, it is.

7 Q And would you be surprised if we could produce
8 material from Southern Pacific that shows that that
9 route is no longer open, period?

10 A Yes, I would.

11 Q Can you tell us for the record what the policy
12 of the merged carriers will be with respect to the
13 routing of perishable traffic?

14 A The joint routing of the perishable traffic is
15 embodied in the statement that was presented yesterday
16 by Mr. Fitzgerald and the policy statement that was
17 handed out a week ago Monday.

18 Q Does that mean we are going to have the
19 efficient Ogden route back at a competitive price, or
20 does that mean that we don't?

21 A I sure hope that in the next week or two weeks
22 that you have back an Ogden route in conjunction with
23 the D&FGW for traffic north of Fresno, the northern San
24 Joaquin Valley. I don't think we need to wait for the
25 merger to have that happen. We are working hard to get

1 that re-established now.

2 Q Turning to page 6 of your statement, you
3 itemize certain what you consider to be benefits to
4 customers of the system from the merger. Number seven,
5 of course, indicates that perishable shippers will have
6 new improved single line service from northern coastal
7 growing areas to Chicago.

8 Would you tell us what that new service is?

9 A Well, yes. Those shippers -- there's two
10 groups of shippers in northern California. One, of
11 course, is over in the Salinas Valley. That would be
12 east of Monterey, in that growing area, where there's a
13 large number of fresh vegetable crops are grown there.
14 In fact, it's a little marketbasket. That would be one
15 area.

16 That area would have access intermodally via
17 the Santa Fe system, the single route system, to the
18 eastern markets through Chicago and also through the
19 various other gateways that we have outlined, including
20 Memphis, that would get us to the southeastern markets.
21 So that would be one pocket of very important northern
22 California growers that would benefit from this
23 particular merger.

24 Q Don't those growers have that single line TOFC
25 service to Chicago right now on the Santa Fe?

1 A Some do and some don't. I don't think that
2 they are broadly covered. Some of them absolutely do,
3 but not all of them are covered.

4 The other group, of course, deals with the San
5 Joaquin Valley, and we're hoping to attract business in
6 the San Joaquin Valley through our single route via
7 Barstow and across the United States, which we believe
8 will be a very efficient single line route to the
9 eastern markets.

10 But at the same time, as I have already
11 stated, we're not going to wait in establishing an Ogden
12 alternative or option for the northern San Joaquin
13 growers.

14 Q Perhaps we ought to distinguish. Are you
15 talking about the TOFC service or are you talking about
16 refrigerated boxcar service?

17 A Okay. Well, let's just separate them. On the
18 refrigerated boxcars, as you well know, predominantly
19 what the Southern Pacific currently -- is how it handles
20 its perishables. We have a pretty good-sized fleet,
21 about 4,000 cars, I believe.

22 The Santa Fe has a much smaller fleet.
23 Predominantly, they work on the TOFC side. So for those
24 customers of ours who are going to be working on the
25 boxcar, the reefer car, they will have the ability to

1 have the single line service to the Chicago markets and
2 beyond.

3 So those types of customers are the ones I was
4 talking about, that are Southern Pacific customers; and
5 any Santa Fe customers that want to use mechanical
6 equipment also.

7 Q So the new route that you say would be
8 available is that mechanical boxcar shippers now located
9 on the Southern Pacific would basically have the
10 existing Santa Fe route into Chicago?

11 A And any Santa Fe customers that wished to take
12 advantage of this mechanical fleet that also want to
13 have access on a single line basis to the southeast
14 market.

15 Q Does the Southern Pacific right now have any
16 substantial share of the TOFC market in perishables?

17 A Perishables, no, sir, we don't.

18 Q Who has most of that market?

19 A Most of the truck market?

20 Q The TOFC, piggyback.

21 A I've never seen any market share. I would
22 imagine it is split between the UP, the Santa Fe, and
23 us, I would imagine.

24 Q You mentioned the mechanical refrigerated
25 cars. Can you tell us what your plans and the plans of

1 the merged railroad will be with respect to the upkeep,
2 maintenance, refurbishment, generally the continued
3 availability of that equipment?

4 A As I said, we have 4,000 cars roughly. We
5 spent about \$4 million this year in maintenance and
6 trying to continue to bring those cars up to speed, to
7 have more use for shipments. We fully intend to keep
8 those cars in good running order.

9 There has been no general plan with regard to
10 how those cars are going to be utilized five years from
11 now or six years from now, so I can't answer your
12 question there, because we haven't sat down and
13 discussed that type of an issue. Those cars are good,
14 though, for the next -- you know, to 1990.

15 Q My understanding -- and I think the record
16 will be clear -- from Mr. Cena's testimony as president
17 of Santa Fe was that their policy is generally to phase
18 their mechanical cars out and put perishable shippers in
19 piggyback. Has that been the Southern Pacific's
20 policy?

21 A No, it has not. We have that fleet of cars
22 and our policy has been trying to utilize the equipment
23 or the assets that we have. And it's a tough sale to
24 try to convince customers to use mechanical reefers.
25 Whether we keep them or not and whether we continue to

1 have them is really up to our customer base. They will
2 make the decision. If they use them we'll keep them.

3 Q Do you know if you or others in the Southern
4 Pacific -- and by "others" I mean those in responsible
5 positions -- have had discussions, meetings, with their
6 counterparts in the Santa Fe with respect to what the
7 future policy will be?

8 A No, we have not. I have not had with my
9 counterpart; I should state that.

10 Q Are you aware of any such discussions?

11 A No, none whatsoever.

12 Q Do you know if there will be any witness in
13 this proceeding -- and perhaps I should address this
14 question to counsel -- who can tell us what the policy
15 of the merged carriers will be. I believe the --

16 A With respect to the boxcars?

17 Q With respect to the continued availability of
18 mechanically refrigerated boxcars to perishable shippers
19 in California.

20 JUDGE HOPKINS: I think he's referring to
21 counsel.

22 MR. ROBERTS: If counsel can direct me to
23 another witness, then we can get on. Is there a witness
24 who will be able to tell us?

25 MR. MOATES: Can we have a moment?

1 JUDGE HOPKINS: Sure.

2 (Pause.)

3 MR. SMITH: I think Mr. Lawson, who is going
4 to be the next witness, can address that subject.

5 MR. ROBERTS: Your Honor, I hadn't requested
6 to cross-examine Mr. Lawson, but perhaps it would be
7 appropriate for me --

8 JUDGE HOPKINS: I don't think Mr. Smith will
9 object.

10 MR. SMITH: No.

11 MR. ROBERTS: I don't think he'll be surprised
12 at what the question will be.

13 BY MR. ROBERTS: (Resuming)

14 Q Just one last question, Mr. Edwards. At the
15 bottom of page 9 of your statement you indicate that
16 it's contemplated that the marketing department of the
17 new company will be organized along commodity lines.
18 Can you tell us how shippers of fresh fruits and
19 vegetables will be dealt with by the new company?

20 A No, I can't. You know, as I said, that is an
21 issue, an organizational issue, that we have not
22 discussed. There are thousands of organizational issues
23 that we have not discussed. Each company, as you well
24 know, handles and deals with our customers differently.
25 The Southern Pacific has a company called Pacific Food

1 Express, which is responsible for pricing, marketing and
2 sales of our fresh fruit and vegetables through the
3 mechanical reefers.

4 Santa Fe handles everything internally within
5 their marketing and sales and traffic function. So we
6 have a different style there. Quite honestly, we have
7 not reconciled how we will approach it in the future.

8 I would imagine -- well, I shouldn't even
9 imagine. I just don't know.

10 Q I guess we'll take our chances.

11 A I wouldn't characterize it as that, taking
12 your chances.

13 MR. ROBERTS: Thank you, Your Honor. I have
14 no further questions.

15 JUDGE HOPKINS: Thank you.

16 Mr. MacKenzie.

17 CROSS EXAMINATION

18 BY MR. VINCENT MACKENZIE:

19 Q Hello, Mr. Edwards.

20 A Hello, Mr. MacKenzie.

21 Q Mr. Edwards, in response to some questions
22 from UF counsel regarding the efforts that Santa Fe
23 presently use to maximize their long haul, you gave the
24 conditions under which that policy is utilized. I
25 didn't understand what would be the policy post-merger.

1 Is it Santa Fe's policy post-merger also to,
2 under the same circumstances, to maximize the long haul
3 wherever possible?

4 A When you say Santa Fe, you mean the new merged
5 company, the SFSP?

6 Q Right.

7 A Well, let me be clear on that. We discussed
8 the policy yesterday and the policy is that we are not
9 going to maximize our long haul wherever possible. The
10 policy is that we are going to look at each set of
11 conditions, each set of economic factors: what it takes
12 to get the business, what is the most efficient way to
13 route the traffic.

14 And those and other factors will be blended
15 together to come out with that route or those sets of
16 routes, those sets of options that will be used, and not
17 the blindness of just long haul no matter what. In
18 fact, as we have testified, most of our business is
19 interline business. Over 50 percent of our business is
20 interline business. So the need to work with other
21 railroads to get business is paramount.

22 Q I understand that, Mr. Edwards. But will you
23 not be maximizing the greatest revenue that you can
24 obtain from any testimony haul?

25 A No.

1 MR. SMITH: Your Honor, excuse me. I want to
2 just make an objection here and point out that Exhibit
3 SFSP-C-2, which is the joint SFSP joint route and rate
4 policy, was sponsored by Mr. Fitzgerald. Mr. Fitzgerald
5 is the only witness who was authorized by SFSP to
6 address the subject of what the merged company's policy
7 is going to be.

8 I would just make that objection, and any
9 questions to this witness are not appropriate.

10 JUDGE HOPKINS: Mr. MacKenzie?

11 MR. VINCENT MacKENZIE: Your Honor, I think on
12 page 5, the last paragraph, the witness himself has
13 raised the ambiguity at least of whether or not in the
14 future there will be an attempt to maximize revenue or
15 maximize the long haul. They talk about today and what
16 the policy is, and then they seem to intimate that that
17 policy will not be pursued, but rather some sort of a
18 goodwill policy in the future.

19 I'm trying to find out, will they continue to
20 try to, as any railroad I guess would, maximize the
21 revenue in the future for any shipment.

22 JUDGE HOPKINS: I will allow that question.

23 THE WITNESS: I've tried to say we're not
24 going to do that and the reasons we're not going to do
25 it. Today the Southern Pacific, for example, enters

1 into many types of business, many proposals with
2 customers, where we don't even remotely attempt to
3 maximize our revenue.

4 Let me give you two specific examples. One,
5 of course, is our joint solicitation agreement with the
6 D&RGW. If we were only interested in maximizing our
7 revenue, we would route our traffic, we would force our
8 traffic long haul. In fact, we don't. In fact, our
9 whole general routing policy always gives the option of
10 the Ogden gateway.

11 So if we were just simply focused on that --
12 another quick example is, just the other day we just bid
13 on -- instead of bidding on a 1,000 mile haul, we bid on
14 a 3.6 mile haul. Now, if we really wanted to maximize
15 revenue we would have stayed with the 1,000 mile haul.
16 It didn't make economic sense. It wasn't the best
17 combination or blend of factors. And it's also -- what
18 I've just stated, it wasn't the best blend.

19 BY MR. VINCENT MacKENZIE: (Resuming)

20 Q But wasn't that for a different purpose or
21 objective, of retaining that traffic continuously in the
22 future, which has to do with maximizing revenue, right?
23 In other words, you did it perhaps not under the
24 circumstance of maximizing the revenue on that
25 particular shipment, but as you expected those shipments

1 to continue in the future, or those shippers or that
2 shipper, the purpose was to retain that traffic and to
3 maximize revenue?

4 A Retaining traffic and maximizing revenue do
5 not go hand in hand necessarily. In fact, we will take
6 the former over the latter an day of the week.

7 Q So it is overriding that you will retain the
8 traffic, even though under the circumstance it may
9 result in lower revenues than you otherwise would
10 obtain?

11 A And we do it every day. Retaining the traffic
12 is better than losing the traffic.

13 Q Thank you.

14 With your past knowledge and experience as a
15 shipper's representative and in your present position as
16 chief marketing officer -- I assume we can classify you
17 as that -- I assume you believe that the central
18 corridor of the overland route is an important route for
19 northern California-Oregon shippers moving and receiving
20 goods to and from the Midwest and the East?

21 A It's one of their options, certainly.

22 Q Isn't it an important route for them?

23 A Well, I guess you'd have to -- you know, if
24 you're a northwest shipper, to use your example, if
25 you're a northwest shipper --

1 Q I'm sorry, I didn't say northwest.

2 A Oh, I thought you said northwest.

3 Q I said northern California, southern Oregon
4 region.

5 A Ah, southern Oregon, okay. If you were a
6 lumber shipper in northern California or southern
7 Oregon, you would like to have -- the Ogden would be an
8 important route, and of course up over Portland with the
9 PN or the UP would be an important route.

10 Q Regardless of who ships it, it's an important
11 route for shippers to retain, correct?

12 A Yes.

13 Q Mr. Edwards, do you have within your knowledge
14 the number of rail shippers located within California
15 that are exclusively served by the Southern Pacific?

16 A No. We have the total number that Mr. McNear
17 talked about last week. We are now developing that
18 specifically, that number, for you, the exclusive
19 shippers served by the SP in California only. So we are
20 printing off the total and giving you a total. We're
21 running all the data processing and so forth to get that
22 number for you.

23 Q And who will present that data in this
24 proceeding; what witness?

25 A Well, it depends on when it's ready. I would

1 assume whenever it's ready we'll present it as quickly
2 as we could to you.

3 JUDGE HOPKINS: Are you addressing counsel
4 now?

5 MR. VINCENT MacKENZIE: Yes. May I ask, is
6 there a specific witness to present this data?

7 MR. SMITH: You want to know the number of
8 exclusively served Southern Pacific customers in
9 California?

10 MR. VINCENT MacKENZIE: Yes.

11 MR. SMITH: We're willing to provide that. I
12 don't know that we need to have a witness.

13 JUDGE HOPKINS: I think Mr. Edwards indicated
14 that they were --

15 MR. SMITH: What I'm saying is we can provide
16 it. We'll stipulate to it.

17 JUDGE HOPKINS: You'll provide it by counsel's
18 exhibit without a specific witness? Did you want a
19 specific witness to question?

20 MR. VINCENT MacKENZIE: It depends on the
21 nature of the material they give me. It may very well
22 be that it will suffice by itself, but there may be some
23 follow-up questions.

24 MR. SMITH: I certainly am not going to commit
25 to bring Mr. Edwards back.

1 JUDGE HOPKINS: Excuse me. With the number of
2 witnesses you're going to have, I'm sure there must be
3 some witness, if you get this within the next two and a
4 half weeks, that you can provide.

5 MR. SMITH: Probably the best one would be Mr.
6 Frank Guerin, who is an SP person who is testifying in
7 the traffic diversion study phase.

8 JUDGE HOPKINS: Thank you. I'm sure Mr.
9 MacKenzie would be willing to have him testify, if
10 necessary, on that.

11 MR. VINCENT MacKENZIE: Your Honor, may that
12 be slightly expanded, if it's not too much trouble for
13 Applicants, to include exclusive Oregon rail shippers as
14 well?

15 JUDGE HOPKINS: Are you working on that, or
16 have you been asked?

17 THE WITNESS: We weren't asked. We can work
18 on that. We need exclusive Oregon ones too, okay.

19 JUDGE HOPKINS: Thank you.

20 BY MR. VINCENT MacKENZIE: (Resuming)

21 Q Mr. Edwards, on page 4 of your prepared
22 testimony, in the first paragraph, which begins on the
23 preceding page, about a third of the way down you talk
24 about shippers' beliefs and feelings so far as their
25 shipments, their shipping services are concerned and the

1 price. And then you conclude the sentence by saying,
2 "just as they" -- that is, shippers -- "are often
3 willing to pay a higher transportation price to obtain
4 superior service."

5 Have you yet defined "superior service" in
6 this proceeding? If not, would you so give that
7 definition?

8 A I'm sorry, are you on page 4?

9 Q Yes. It's six, seven lines down the page.

10 JUDGE HOPKINS: The first full sentence.

11 THE WITNESS: Ah. I was reading at the
12 bottom.

13 Yes, I will. Superior service, you know,
14 obviously can be defined in hours or days or minutes.
15 It varies for every customer, every situation. But for
16 example, to give a specific example, if you take a
17 grocery shipment truck versus rail, if the truck is
18 moving directly to their warehouse compared to a rail
19 car moving directly to the warehouse, you can easily
20 calculate the difference in the interest carrying cost
21 between the two, the amount of warehouse space that is
22 required and additional handling.

23 You add those totals up, you have a total
24 delivery cost, and you do the same thing rail versus
25 truck. It's not uncommon -- it's not uncommon, because

1 of the total cost being lower with the truck because of
2 the speed and flexibility, et cetera, et cetera, a
3 shipper, a grocery shipper, will pay 25 cents, 50 cents
4 a hundredweight more for that same shipment for that
5 same point to point, because his total logistical cost
6 is equal to or less than the other alternative.

7 BY MR. VINCENT MacKENZIE: (Resuming)

8 Q Was that the exclusive area you are dealing
9 with there, that shippers will perceive what their total
10 delivered cost is going to be in this shipment and if
11 they perceive it, even in conjunction with higher
12 transportation cost, as being a net benefit to them,
13 they will be willing to pay the higher transportation
14 cost?

15 A Yes, sir, that's what I was trying to describe
16 in this paragraph.

17 Q That's the exclusive area you're talking about
18 when you're talking about superior service?

19 A Service as a portion of the total
20 transportation package, yes, because it influences the
21 total cost.
22
23
24
25

1 Q In the future, postmerger, do you intend to
2 tell your salesman to go out and obtain the highest rate
3 they can obtain under the circumstances if you are
4 offering the superior service to the shipper?

5 A No, we are not going to go out and tell them
6 to charge the highest rate. We are going to tell them
7 to go out and get the business, and obviously we are
8 going to tell them to get it at the rate that maximizes
9 the return to our organization.

10 Q And if under the circumstances you don't have
11 any competition, will you tell them to charge as much of
12 the rate as they can get under the circumstances?

13 A You know, I just can't think of any place we
14 don't have competition. You even get it in a market
15 where you have 90 percent market share or 95 percent
16 market share. That 5 percent or that 10 percent creates
17 a cap or a limit on what you can do competitively. So I
18 just can't think of an example where we don't have it.

19 MR. VINCENT MAC KENZIE: Thank you.

20 JUDGE HOPKINS: Is that all? Is that all for
21 protestants?

22 MR. SMITH: I have a few redirect.

23 JUDGE HOPKINS: Mr. Smith.

24 REDIRECT EXAMINATION

25 BY MR. SMITH:

1 Q Mr. Edwards, yesterday, in questioning from
2 Mr. Kharasch, you were talking about -- there were some
3 questions about whether a connecting line's concurrence
4 is required before a joint line rate could be changed,
5 and you said yes, the consent of a connecting line is
6 required for a change in a published through rate or for
7 a joint line contract rate.

8 Is the connecting line's concurrence required
9 before a carrier can enter into an allowance contract
10 with a shipper?

11 A Allowance contract. No, actually, a railroad
12 can enter into an allowance contract on a joint line
13 rate and effectively lower the joint line rate through
14 an individual action by a railroad with an allowance,
15 can effectively lower that joint line rate to whatever
16 rate, he can lower it to the single line rate, he can
17 lower it below the single line rate, he can lower it as
18 much as he wants, and he can do it independently in
19 order to solicit the traffic.

20 Q Is that a common practice in your experience?

21 A Very common.

22 Q Another question. Do you recall this morning
23 Mr. Dreiling was asking you how you analyzed "market
24 share," and you, I think, said that you usually
25 considered commodity groups in making such an analysis.

1 Would you say that commodity groups are the only way to
2 analyze market share?

3 A No, absolutely not. I was trying to refer to
4 my opinion, or my reflection of that question was, what
5 is my opinion of how I personally think of it? There
6 are a lot of ways to do it, and we talked about revenue
7 and revenue ton miles by commodity.

8 You can do it in larger segments or smaller
9 segments, depending on exactly what type of a
10 presentation you are dealing with. They are all
11 applicable and valid.

12 Q For example, do various commodities in
13 different commodity groups often have similar
14 transportation characteristics?

15 A Yes, certainly.

16 MR. SMITH: I think that is all I have. Thank
17 you.

18 JUDGE HOPKINS: Any other questions? Mr.
19 Kharasch?

20 RE-CROSS EXAMINATION

21 BY MR. KHARASCH:

22 Q Just one on the testimony about joint line
23 rates. Is it correct to conclude, then, Mr. Edwards,
24 that under Staggers Act contract freedoms, the existence
25 of joint line rates permits price competition between

1 the two railroads in the example you were citing?

2 A The existence of joint line rate contracts?

3 Q No. Let's break the question into a
4 fundamental part and a question. Two railroads agree on
5 a rate of \$250 between Point A and Point B, and it is a
6 joint line rate.

7 A Right.

8 Q You pointed out in your redirect examination
9 that one of those two railroads could make an allowance
10 contract with the shipper and give back to the shipper
11 part of that line's division.

12 A Independently. That's correct.

13 Q Independently. And that allowance contract,
14 the right to have allowance contracts is one of the
15 freedoms of the Staggers Act. Is that correct?

16 A Yes, sir.

17 Q So does it follow that under the Staggers Act
18 the existence of joint line rates permits price
19 competition between the two railroads in your example?

20 A I can't think of anything under the Staggers
21 Act that doesn't enhance or permit competition.

22 Q Can you answer my question directly?

23 A The existence of joint line rates. Would you
24 please reask the question?

25 Q We have examined the basis of your testimony

1 on redirect about giving of allowance contracts. Would
2 you agree that that is a freedom that arrived under the
3 Staggers Act? Correct?

4 A Yes.

5 Q Prior to the Staggers Act, if the two
6 railroads, agreeing on a joint line rate, two railroads
7 had agreed on a joint line rate, there was no way one
8 railroad could lower the rate without the other
9 railroad's concurrence. Is that correct?

10 A That's correct.

11 Q Under the Staggers Act, one or the other
12 railroad may offer an allowance contract which
13 effectively lowers the amount paid by the shipper.

14 A So far I agree.

15 Q Would you agree that the railroad offering the
16 allowance contract is entering into price competition
17 with the other railroad participating in the joint line
18 movement?

19 A Yes, I would.

20 MR. KHARASCH: Thank you.

21 JUDGE HOPKINS: Thank you. Is that all? You
22 are excused, sir.

23 (Witness excused.)

24 MR. SMITH: I would move the admission of Mr.
25 Edwards' verified statement.

1 JUDGE HOPKINS: I think you had counsel's
2 exhibits, too, didn't you? I think counsel's -- weren't
3 there two counsel's exhibits with this witness?

4 MR. SMITH: No.

5 MR. DREILING: Your Honor, I don't think I
6 moved the introduction of KCS-C-10, and I do so at this
7 time.

8 JUDGE HOPKINS: Mr. Edwards' testimony is
9 received. Yours is received.

10 (The document referred to,
11 previously marked for
12 identification as Exhibit
13 Number KCS-C-10, was
14 received in evidence.)

15 MR. KHAFASCH: I move the admission of
16 MKT-C-17, 18, and 19.

17 JUDGE HOPKINS: Yours are received.

18 (The documents referred to,
19 previously marked for
20 identification as Exhibits
21 Number MKT-C-17, 18, and 19,
22 were received in evidence.)

23 MS. WHITE: Your Honor, I am here for the
24 Texas Mexican Railroad.

25 JUDGE HOPKINS: Yours is received in evidence,

1 too.

2 (The document referred to,
3 previously marked for
4 identification as TM-C-1,
5 was received in evidence.)

6 JUDGE HOPKINS: Off the record.

7 (Whereupon, a discussion was held off the
8 record.)

9 JUDGE HOPKINS: On the record.

10 MR. KHARASCH: Your Honor, in the off the
11 record discussion, I referred to the tariff, the Santa
12 Fe tariff publishing routing restrictions, the cover
13 page and one page of which had been discussed with Mr.
14 Fitzgerald. At that time, the counsel for the Santa Fe
15 had objected that wasn't the whole tariff.

16 I now have the whole nine-page tariff. I see
17 nothing else in it that is relevant, but I am glad to
18 offer copies of that for the record now if the
19 applicant's counsel would state that there is anything
20 more relevant in it that should be in the record to
21 complete it.

22 JUDGE HOPKINS: The applicant stated
23 previously he doesn't see the need for it, is my
24 understanding. Is that correct?

25 MR. WILSON: Yes. Without stating that it

1 might not be relevant, I don't see the need to put the
2 entire document in the record, Your Honor.

3 JUDGE HOPKINS: Thank you.

4 MR. KHARASCH: Second, Your Honor, Exhibit
5 MKT-C-15 has been marked as a confidential exhibit,
6 although testimony was given as to it. It is important
7 for preparation of opposition testimony that traffic
8 officers, that is, Mr. Castler, Mr. Dimmerman, and Mr.
9 Sheridan of the MKT, see these figures in order to
10 prepare their opposition testimony.

11 I believe, as I have stated before, these are
12 simply summaries of the revenue required by the Santa Fe
13 under the contract to tie together the grain shipments
14 from Santa Fe territory, and I ask now that those three
15 traffic officers be given access to this confidential
16 exhibit.

17 MR. WILSON: Your Honor, applicants have no
18 objection to giving access to the exhibit to the three
19 traffic officers, but strongly object to Mr. Kharasch's
20 phrase that the contract tied together any traffic
21 shipments.

22 MR. KHARASCH: I will let that contract speak
23 for itself, confidentially.

24 JUDGE HOPKINS: As long as there is the
25 agreement, that is all we are interested in right now.

1 We don't need any more argument on it. Let's call the
2 next witness.

3 MR. WILSON: Your Honor, applicants call the
4 next witness, Mr. A.J. Lawson, general manager, market
5 development and research, of the Atchison, Topeka, and
6 Santa Fe Railway.

7 JUDGE HOPKINS: Thank you.

8 MR. WILSON: Your Honor, I am distributing
9 copies of Mr. Lawson's verified statement.
10 Whereupon,

11 A.J. LAWSON

12 was called as a witness, and having been first duly
13 sworn, took the stand, was examined, and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. WILSON:

17 Q Mr. Lawson, you have before you a multipaged
18 exhibit that was signed by you and verified on the 17th
19 of March, 1984. Is that correct?

20 A It is.

21 Q Is that your verified statement in this
22 proceeding?

23 A It is.

24 Q Do you have any modifications you would like
25 to make to it at this time?

1 A Yes, I do.

2 Q Would you state those for the record, please?

3 A On Page 8, Line 3, at the end of the sentence,
4 the number 21 should be changed to 20. On Page 9,
5 toward the end of the first paragraph, the figure 7.5
6 million should be 3.5 million. And in Appendix A, Page
7 2, toward the lower half of the page, Memphis to Los
8 Angeles, the second entry has a double asterisk by it.
9 That double asterisk should be removed.

10 Q With those modifications, is your statement
11 true and correct to the best of your knowledge and
12 belief?

13 A It is.

14 MR. WILSON: I tender the witness for cross
15 examination.

16 JUDGE HOPKINS: Who is going to start?

17 MR. VON SALZEN: Your Honor, Eric Von Salzen,
18 Denver and Rio Grande Western.

19 CROSS EXAMINATION

20 BY MR. VON SALZEN:

21 Q Mr. Lawson, on Pages 4 through 8 of your
22 testimony, you describe in summary fashion the various
23 steps in the truck to rail diversion study, some of
24 which were made by Reebie Associates and some of which
25 were made by personnel of either the Santa Fe or the

1 Southern Pacific.

2 Who was in overall charge of this project, you
3 or someone from Reebie?

4 A We were in charge of the project.

5 Q By we, do you mean you personally?

6 A The railroad, and I was a coordinator.

7 Q As the person in charge of the overall
8 project, did you involve yourself in the Reebie steps of
9 the project?

10 A I involved myself in the general methodology
11 and procedures that went into the development of the
12 numbers. We checked some of the numbers. I did not run
13 all of the numbers.

14 Q When you say you checked some of the numbers,
15 that came from Reebie, I take it?

16 A Yes.

17 Q How extensive a verification program did you
18 have?

19 A As I said before, the methodology was approved
20 by us, and the calculations, we went through a number of
21 the calculations to see that the calculation did in fact
22 produce the result that you see in the appendix.

23 Q Did you find any errors in Reebie's work?

24 A You are talking mathematical or procedural?

25 Q Let's take it one at a time. First

1 mathematical.

2 A I am not aware that there are any mathematical
3 errors.

4 Q I am not suggesting that there are now. I am
5 asking whether your review procedure turned up any
6 errors in the process which were then corrected.

7 A There were a number of people working on
8 this. I don't have any personal knowledge of any
9 errors. There were other people involved, and so I
10 can't answer for them.

11 Q And with respect to procedural or
12 methodological errors, did you turn up anything in this
13 review process?

14 A No, I believe it is a good procedure and a
15 good methodology.

16 Q Are you personally familiar with how the
17 Reebie shipper preference model works as opposed to what
18 it is supposed to do?

19 A I have a general knowledge of how it works.

20 Q Could you tell us what your general
21 understanding of the way that model works is?

22 A The -- I believe you are referring to the
23 matrix, and that matrix has two axes, price and time,
24 but implicit in that matrix are a number of other
25 factors, and those factors would include things like

1 reliability and competition in the marketplace,
2 imperfect knowledge in the marketplace. There are a
3 number of factors that are implicit in that that are
4 part of that preference model.

5 Q Is it your understanding that that model takes
6 all those factors into account in evaluating shipper
7 preferences?

8 A It is.

9 Q And that that was done in this study?

10 A That is true.

11 Q Calling your attention to Page 6 of your
12 verified statement, the second paragraph beginning on
13 that page begins with the words, "The next step was to
14 review." Do you see where I am referring?

15 A Yes, I do.

16 Q And later on in the same paragraph, about the
17 fifth line from the bottom, the sentence begins, "The
18 review produced the decision that," and so forth. What
19 person, entity, or group was it that made the decision
20 that is referred to in that paragraph?

21 A Let me tell you how that worked. After we
22 identified certain traffic flows, I and some other
23 members of my group sat with the people developing the
24 operating plan. This is people both with the Santa Fe
25 Company and the Southern Pacific Company. And we

1 presented to them the volumes that we felt were
2 potential in these lanes.

3 And we also presented to them the service
4 improvements that we thought was necessary to get the
5 business. They then told us whether or not they would
6 make the service improvement, and that is how that
7 worked.

8 Q So the decision as to whether or not the
9 necessary service improvement would be made was an
10 operating decision?

11 A Yes, that's true.

12 Q On the next page, Page 7 of your verified
13 statement, this is where you come to the bottom line and
14 the conclusion, I take it, of the diversion judgment
15 process. Who is it who takes responsibility for the
16 ultimate decision as to how much traffic could be
17 diverted to this new service?

18 A Are you referring to some specific language in
19 here?

20 Q I am referring essentially to the first two
21 paragraphs on Page 7.

22 A Would you say your question again, please?

23 Q My question is -- well, to back up, am I
24 correctly reading those two paragraphs as summarizing
25 the process that led to a final estimate of divertible

1 traffic?

2 A Well, these statements are correct.

3 Q Then my question simply is, who was
4 responsible for making the ultimate judgment as to how
5 much traffic could be diverted as a result of this new
6 TOFC service?

7 A Well, the procedure that we have discussed
8 before ended up with a final number, and that number was
9 adopted and is presented in Appendix B.

10 Q Let me approach it this way. Let me tell you
11 how I read the statement, and you tell me if I am
12 wrong. I read this statement as saying that after going
13 through the various steps that are outlined in Pages 4
14 through 6 of your verified statement, you come to the
15 point that the results of those various steps are fed
16 into the Reebie shipper preference model, and that the
17 model projected the maximum amount of TOFC -- the
18 maximum amount of diversions that could be anticipated
19 as a result of this new service, and that that maximum
20 amount was then halved through application of the .5
21 factor.

22 And therefore leaving aside the .5 factor for
23 a moment, the projected maximum came out of the
24 computer, the Reebie computer model.

25 A It was the result of all of the data that had

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1 been fed into that, and the methodology we approved,
2 yes.

3 Q Now, who developed the .5 factor?

4 A The .5 factor is a factor that Reelie has used
5 in previous studies. They have used them in studies
6 before the Commission. It has been accepted. We
7 discussed it thoroughly, and I am in agreement with it.

8 Q Let's turn back to Page 2 of your statement.
9 In the second paragraph on that page, the fifth line
10 from the bottom, there is a reference to the expedited
11 schedules necessary to complete successfully for truck
12 traffic. Do you see that point? It is in the second
13 paragraph on the page, about the fifth line from the
14 bottom, expedited schedules.

15 A Okay.

16 Q Why don't you just read the context?

17 A Okay, thank you.

18 (Pause.)

19 A Okay.

20 Q Now, I take it the expedited schedules are
21 necessary because you are trying to attract shippers who
22 are now using trucks because they want more expeditious
23 transportation than they are now able to get through
24 rail service, correct?

25 A That's true.

1 Q Now, your study, as I understand it, considers
2 whether some of this truck traffic can be attractive to
3 the use of TOFC service. Did you consider in your study
4 whether you could design non-TOFC rail service that
5 could attract this traffic from the shippers?

6 A After the merger?

7 Q That's correct.

8 A The purpose of this study was to look at the
9 truck markets and to determine if we could compete via
10 piggyback. The reasons we did that, my experience has
11 been that we have very, very little luck, if any, in
12 competing in any other way.

13 Q Why is that?

14 A Primarily service. It is a well known fact we
15 provide better service via piggyback than we do via
16 boxcar.

17 Q At the top of Page 4 of your verified
18 statement, the last word of the first line is
19 "increased," and it goes on to say, to use the phrase
20 "increased rail competition." You might want to read
21 that whole sentence, which carries over from Page 3.

22 (Pause.)

23 Q Do you see where I am referring to?

24 A Yes, I do.

25 Q Now, in that sentence, what do you mean when

1 you say increased rail competition? Is that intermodal,
2 intramodal, or both, or neither?

3 A The context of this statement is talking about
4 this perishable program that I was personally involved
5 in, and there is no question I don't think in anybody's
6 mind as to where the competition is on that. It is the
7 motor carrier, and that is the point of the context of
8 this statement.

9 Q But that statement is being used, as I read
10 your testimony, to illustrate the broader point, that
11 improved rail service, good market planning, and
12 increased rail competition can and will attract traffic
13 from other carriers. That broader point is not limited
14 to perishables, is it?

15 A No, it is not.

16 Q And my question is, in considering the ability
17 of the merged carrier to attract traffic from motor
18 carriers, do you give any consideration in your study to
19 the existence or non-existence of intramodal rail
20 competition in the markets that you are dealing with?

21 A I think it is implicit in the study. We have
22 defined traffic that the motor carriers have. And to me
23 that says very clearly that there is no intramodal
24 competition. The railroads don't have that traffic.

25 Q They don't have the specific movements that

1 are going by truck. I grant you that. But it is true,
2 is it not, that there is rail traffic in existence today
3 between the origin and destination pairs that are laid
4 out in your Appendix 1?

5 A It would be my contention that the ultimate
6 competition in those cases is really the truck. There
7 would have been no intermodal service had there not been
8 the advent of the growth of the truck.

9 Q I think we are not communicating. Let's take
10 a hypothetical origin and destination pair which we will
11 call A and B as one of the origin and destination pairs
12 that you are studying in your study, and you are going
13 to examine the truck traffic between those two pairs,
14 and the potential for diverting some of that truck
15 traffic to a new or improved TOFC service provided by
16 the merged carrier, correct?

17 A Yes.

18 Q Now, in making your analysis, would you or did
19 you give any consideration to whether the merged carrier
20 would be the sole rail carrier operating between Points
21 A and B, or whether there would be one or two or more
22 other rail carriers operating between those two points?

23 A I made no judgment about that other than I am
24 sure that the other existing carriers in those lanes
25 would continue to operate, and continue to be -- to

1 handle the traffic that they are handling now that the
2 trucks don't have.

3 Q If in fact there were or would be other
4 carriers operating in those lanes, in some instances, I
5 am sure you will agree with me that there would not be
6 other carriers operating, other rail carriers operating
7 in some of those lanes.

8 A I am not sure about that. I think by and
9 large that there are other rail carriers.

10 Q Accept hypothetically for the moment that
11 there might be a lane, A to B, in which after the merger
12 the only rail carrier operating would be SFSP.

13 A In your hypothetical?

14 Q In my hypothetical. That factor would not be
15 a factor considered in your study. Is that correct?

16 A I hear what you are saying, but I am not clear
17 on what you are saying.

18 Q All I am asking is, in evaluating the ability
19 of SFSP to attract the truck traffic now moving in
20 Corridor A to B, is it correct to say that the existence
21 or the non-existence of another rail carrier in that
22 lane is not a part of your study?

23 A It was a part of the study to the extent that
24 we determined what other piggyback schedules were, and
25 the determination, I believe, in every case was that

1 none of the existing piggyback services were competitive
2 with the motor carrier, so to that extent we did take
3 that into consideration.

4 Q Thank you. I think that answers my question.
5 And not to let that thread be loose, so that if in your
6 study, in that particular lane, there was no other rail
7 carrier operating piggyback service, then there was
8 nothing for you to look at with respect to intramodal
9 competition in that lane. Is that correct?

10 A In your hypothetical?

11 Q That's correct. No, no, in your study. I am
12 saying, you have told me that in your study you looked
13 at other rail carriers' piggyback schedules. I am
14 saying, if there were no other piggyback carrier in that
15 corridor, then there was nothing for you to look at with
16 respect to intramodal competition?

17 A We established before that it is my
18 recollection that there are other rail carriers in the
19 corridors that are in this exhibit, and then you
20 presented the hypothetical and we went from there.

21 Q Is it your recollection that there is
22 piggyback service in all of the lanes that you have
23 under study, competing piggyback service from other
24 carriers other than SFSP?

25 A I could be wrong on that, but I think the

1 majority of them, there were.

2 Q I really don't want to debate the specific
3 number of lanes with you, because I don't have the
4 figures in front of me. In any event, it is laid out in
5 the record, but if you will accept at least
6 hypothetically the proposition that there was at least
7 one lane in your study in which there was no non-SFSP
8 piggyback service now being provided, would you just
9 accept that as a basis for my question, in that
10 situation, then, there was nothing for you to look at
11 with respect to competition from other railroads in
12 doing your study?

13 A Well, in the case that you present, if there
14 was no other rail carrier there, certainly we could not
15 look at it, but I think the essence of this is that
16 competition is not the other rail carriers. The
17 competition is the motor carriers.

18 Q I agree with that. But if there were or were
19 not another rail carrier in that lane, that would not
20 affect your ultimate diversion decision?

21 A That is true.

22 Q That is all I was trying to understand. If
23 you will turn to Page 6 of your verified statement, in
24 the first paragraph on that page, starting about midway
25 down, the sentence begins, "From the service standpoint,

1 we wanted to be certain to take credit only for truck
2 traffic which would be diverted because of incremental
3 service improvements made available by the proposed
4 merger," and so forth. Do you see that sentence?

5 A Yes, sir.

6 Q What is it about the proposed merger that
7 makes these diversions possible? In other words, is it
8 that the merger makes it possible to serve both origin
9 and destination points? Is it that the merger makes a
10 better route available? What is it about the merger
11 that makes this service possible?

12 A Well, it is generally the efficiencies that
13 are pointed out in various testimony, and also in
14 various exhibits in the study. It is the ability that
15 we have of taking advantage of multiple intermodal
16 facilities that we have.

17 As an example, in Los Angeles, we have a major
18 intermodal facility. The Southern Pacific has one.
19 Both of those will be kept in existence. They will be
20 used for different directional traffic flows. There are
21 certainly some efficiencies there, and there are a
22 number of other things like that that are implicit and
23 explicit throughout the various documents that have been
24 presented.

25 Q Subject to the check of my mathematics, I

1 count in Appendix 1 that 19 of the 26 origin-destination
2 pairs that are listed there premerger are served by SF
3 and ATSF, either direct or interline, by TOFC service.
4 Assuming I am roughly correct in that count, I take it
5 you would agree that it is not the expansion of the
6 route network that results from the merger that makes
7 possible at least those 19 new TOFC services. Is that
8 correct?

9 A That is correct.

10 Q Would you describe -- you have given the
11 example of TOFC terminals in Los Angeles that can be
12 used more efficiently as a result of the merger. Is
13 that the kind of efficiency you are talking about, or
14 are there other kinds of efficiencies that make the
15 merged carrier capable of obtaining these diversions?

16 A There is various testimony by our operating
17 witnesses in here about lesser train miles and better
18 use of equipment, better scheduling, certainly better
19 reliability, which is a very important factor. A number
20 of things like that that make that possible.

21 Q If Santa Fe today serves an origin and
22 destination for you in one of your lanes, why would the
23 merger make the merged company capable of providing more
24 reliable service than Santa Fe is able to provide?

25 A Say the question again.

1 Q If Santa Fe is providing TCFC service today
2 between -- within one of your lanes, why would the
3 merger make it possible for that service to be provided
4 more reliably?

5 A I think it is all of the things that I
6 mentioned before. The efficiencies that result from the
7 coordination of facilities. There is a blending of
8 route structures. There are cases where we will be
9 running over the SP line and cases where the SP will be
10 running over our line. It will be a lower mileage
11 arrangement. There are a number of factors like that.

12 Q Would it be possible at least for the new or
13 improved SFSP schedules that are shown in your Appendix
14 A to be adopted without a merger through, for example,
15 something like runthrough train service?

16 A I don't really think so. If there were, we
17 would have done that, I believe.

18 Q What would prevent Santa Fe and Southern
19 Pacific from establishing a runthrough train service in
20 any of these lanes?

21 A Nothing would prevent us from doing it. We
22 probably could do it. What I am saying is, we haven't
23 seen that there's been any way that we could do that at
24 this point, and the way that we will be able to do it
25 after the merger are for the reasons that I expressed

1 before, the use of each other's lines and facilities and
2 those types of things that are not going to occur any
3 other way.

4 Q You say they are not going to occur any other
5 way. And I am trying to find out why they are not going
6 to occur any other way. Two independent railroads can
7 agree, can they not, that one can operate over the lines
8 of another so that they can provide the best route to
9 shippers, can they not?

10 A That is an inefficient way of doing things,
11 from my estimation as a marketing person.

12 Q What I want to know is why that is inefficient
13 compared to a merger.

14 A Say it again, please.

15 Q You said that it is inefficient for the two
16 railroads independently to cooperate to provide this
17 service.

18 A No.

19 Q And I want to know why that is inefficient.

20 A We have said a number of different things in
21 here, and you are sort of blending things together, I
22 think.

23 Q We lawyers have a way of doing that.

24 A Yes, you do. You really do. The statements I
25 said before stand. If you want to ask, you know,

1 rephrase the question, we will start at it again. But I
2 think I have answered your questions.

3 Q All right. Let me try to rephrase the
4 question so that we can both communicate with each
5 other. I just happen to have opened your Appendix A to
6 Page 2. Would you do the same?

7 Now, just at random, the first
8 origin-destination pair you have is Los Angeles to
9 Houston. Both Southern Pacific and Santa Fe currently
10 have TOFC schedules in that lane, correct?

11 A Yes.

12 Q And you are going to create a new schedule as
13 a result of the merger, and that will have a train
14 leaving at 2:00 a.m. on Day One and arriving at Houston
15 at 5:00 a.m. on Day Three, and the result of that will
16 be a 30-minute reduction in transit time compared to the
17 existing Southern Pacific schedule and a five-hour
18 reduction in the existing Santa Fe schedule, as I read
19 this, and then there is a second train that is also
20 identified.

21 My question is, what is there that the merger
22 does for you that makes it possible to have this train
23 leaving LA at 2:00 a.m. and so forth?

24 MR. WILSON: Objection. I think that has been
25 asked and answered. The witness has already explained

1 the Hobart Yard changing operations caused by the
2 merger. I don't think we need to go through these
3 things time and time again.

4 JUDGE HOPKINS: We are using a specific one
5 right now. If he can answer on the specific, go ahead
6 and do it.

7 MR. WILSON: Okay, but I thought that he
8 specifically --

9 JUDGE HOPKINS: He was referring to something
10 else previously, even though he mentioned that. Let him
11 use the specific. Go ahead.

12 BY MR. VON SALZEN: (Resuming)

13 Q Now, perhaps counsel is right. Is that the
14 reason, because you have got --

15 JUDGE HOPKINS: He has answered anyway. Go
16 ahead.

17 THE WITNESS: Will you start over, please?

18 BY MR. VON SALZEN: (Resuming)

19 Q Sometimes counsel confuses things, and
20 sometimes counsel clarifies things. Has your counsel
21 clarified this question?

22 A I don't even know what the question is at this
23 point in time.

24 Q All right. Let's try again. After the
25 proposed merger, your study indicates that a TOFC train

1 could be established that leaves Los Angeles at 2:00
2 a.m. in the morning, and arrives on the third day at
3 5:00 a.m. in Houston, and that that is a new or improved
4 schedule that will help the merged carrier divert
5 traffic away from trucks, if I am correctly
6 understanding that. Am I?

7 A Yes.

8 Q Now, I take it that today both Southern
9 Pacific and Santa Fe would like to attract and are
10 indeed trying to attract traffic away from trucks
11 wherever they can. Is that not also part of your
12 testimony?

13 A Yes.

14 Q So there is some reason, I take it, that today
15 Santa Fe and Southern Pacific have not gotten together
16 and as two independent railroads cooperated and
17 established a train that does those same things that are
18 shown in that entry.

19 My question is, what are the factors that lead
20 them not to do that today?

21 A Okay. Well, to do that, it would have to be a
22 joint line rate which would be -- would have two
23 effects. It would have the effect on service, and it
24 would have the effect on contribution to the two
25 individual railroads. That is the answer.

1 Q I don't understand why that means it doesn't
2 happen today.

3 A Well, I don't know the particulars of this
4 corridor, but based on what I have just got through
5 saying, that the service would be even worse than it is
6 today with the joint line route, and the contribution
7 available for the two participating carriers would be
8 worse than it is today, and in a case like that, you
9 might be better off without the traffic.

10 Q You would hypothesize a train leaving Los
11 Angeles that would have a locomotive in front of it that
12 would say SFSP on it after the merger, correct?

13 A I don't know what it is going to say.

14 Q Well, let's assume it says SFSP, and if that
15 same train left LA at 2:00 a.m. with a locomotive on the
16 front that said Santa Fe, and operated over exactly the
17 same route that you are contemplating it would operate
18 under postmerger and arrived at Houston on a runthrough
19 basis at 5:00 a.m. on the third day, from the shipper's
20 point of view, isn't that the same service?

21 A Well, you have presented a hypothetical there,
22 and you have done a lot of things. You have got us
23 running on their railroad and them running on our
24 railroad, and those aren't entirely practical things to
25 do when you are dealing with service-oriented traffic,

1 service-sensitive traffic.

2 Another thing, I have heard the term
3 runthrough train used here this week, and I think there
4 has been a wrong connotation put on that. They are sort
5 of equating that to unit trains, and that is not what
6 they are. A runthrough train is nothing more than
7 generally a sharing of power.

8 There has been some discussion here about this
9 MKT runthrough train. I have had an occasion to check
10 that, and while we promote it as well as we can, it
11 falls short of the connotation that has been put on it
12 in this testimony about the validity of a runthrough
13 train. You know, it is the best we can do, but it falls
14 really far short of servicing our customers.

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1 Q I don't know anything about the MKT's
2 run-through service, and I will let Mr. Kharasch deal
3 with that particular question.

4 In response to my question, is the fact that
5 Santa Fe and Southern Pacific are competitors in the
6 Los Angeles to Houston route a factor in why it is
7 impractical for them to provide that service today,
8 cooperatively?

9 A We work with the SP in instances where there
10 is benefits to do that. I think I've answered your
11 question as to why it's not a practical thing to do in
12 the example that you are working on here.

13 Q If that's your answer, sir, then that's the
14 best answer there's going to be in the record.

15 JUDGE HOPKINS: I think this might be a good
16 time to take a 15-minute recess.

17 (Recess.)

18 JUDGE HOPKINS: Back on the record.

19 Mr. Von Salzen.

20 MR. VON SALZEN: Thank you, Your Honor.

21 BY MR. VON SALZEN: (Resuming)

22 Q Mr. Lawson, on page 10 -- excuse me, page 8,
23 the second full paragraph, beginning with the word
24 "finally," it refers to a 10 percent price reduction in
25 the Dallas to Los Angeles lane. Do you see that?

1 A Yes.

2 Q Now, at present, as I understand your Appendix
3 A, both Santa Fe and Southern Pacific are running TCFC
4 service in that lane. So my question is, do you mean a
5 10 percent cut in Santa Fe's current price or SP's
6 current price?

7 A The way the price was used in the model, the
8 two railroads separately provided their prices to
9 Reelie, and he used the lowest price of the two. So it
10 would be a reduction of that price.

11 Q So you wouldn't know how much of a cut that
12 would represent in the higher of the two prices?

13 A No, not offhand I don't.

14 Q Is that discernable from your work papers?

15 A Those prices would have been given to Reelie,
16 and he would have those prices, yes.

17 Q We are to inquire of Mr. Liba on that point
18 then?

19 A It's something that I'm sure could be dug up.
20 Whether he has it on the tip of his tongue or not, I
21 don't know.

22 Q But in any event, it was somebody's judgment,
23 I take it, that in order to obtain the desired truck to
24 rail diversions in this particular lane, it was
25 necessary to cut prices by 10 percent. Is that

1 correct?

2 A Let me look at this.

3 (Pause.)

4 Yes.

5 Q And whose judgment was that?

6 A I was part of the decision process on that,
7 along with our pricing people.

8 Q But that was a judgment made by Santa Fe
9 personnel, not by the Reebie model?

10 A That's right.

11 Q And it was the judgment of the Santa Fe people
12 that the two-hour reduction in transit time that is
13 shown for that lane from about 43 hours to 41 hours on
14 Appendix A, page 2, would not be sufficient to attract
15 that traffic at the current rates.

16 A That's what the model projected.

17 Q The model said you couldn't get the diversions
18 at the current rates, and then you made the judgment
19 that you would cut the price by 10 percent in order to
20 get the traffic? Is that the way it worked?

21 A Yes.

22 Q Was that assumption of a 10 percent price cut
23 fed back through the model to see if the model picked
24 rail at that point?

25 A There were various sensitivity analyses run,

1 and yes, that's true.

2 Q Let me just see if I understand. In all of
3 the other lanes that you were dealing with in your
4 study, the rail rates were already low enough that if
5 you could provide the service improvements that your
6 operating identified, and the shorter transit times, and
7 whatever else was involved here, then the judgment was
8 that you could get these diversions without lowering
9 prices further.

10 Is that the way it worked?

11 A Yes.

12 Q And this was the only exception to that?

13 A Yes.

14 Q And was this -- all right, that's clear.

15 Let me just touch briefly on the changes you
16 have made to your testimony to see if we can understand
17 the way they were made.

18 On page 8, you changed 21 to 20, and on page 2
19 of Appendix A, you deleted a double asterisk from the
20 Memphis, Tennessee to Los Angeles lane. Are those two
21 changes reflecting the same fact?

22 A No, I don't think so.

23 Q Tell me the reason for the change on page 8,
24 then.

25 A The reason for the change from 21 to 20 is

1 that that, in fact, is what the number is when you add
2 these up off of this appendix. And so it was a
3 miscount.

4 Q In other words, as this Apperdx A was printed
5 originally, it had 20 sets of double asterisks, not 21?

6 MR. WILSON: Counsel, for the record, I think
7 we should clear this up. Your original assumption was
8 correct. There were 21 double asterisks originally.
9 When we removed one double asterisk in Appendix A, then
10 there are only 20.

11 JUDGE HOPKINS: Thank you.

12 BY MR. VON SALZEN: (Resuming)

13 Q That's what I thought. And that is the
14 Memphis, Tennessee/Los Angeles, California lane that
15 appears on page 2 of Appendix A?

16 A Yes. I answered your question incorrectly
17 before.

18 Q So that is now not considered one of the
19 major --

20 A It is not one where we took traffic
21 diversions.

22 Q Now, on page 9, you changed \$7.5 million in
23 net annual revenues to \$3.5 million in net annual
24 revenues.

25 Can you tell me why that change was made?

1 A This is a calculation that was made by our
2 witnesses covering the cost, and there is some errata
3 that have been produced, that this is a reflection of
4 that.

5 Q So you don't take responsibility for this
6 error? You are just reporting it?

7 A That's right. I am not -- I won't quarrel
8 with your word "error." It is a change. They'll
9 explain why it occurred.

10 Q So that I understand it, however, on page 8 in
11 the last line where you talk about gross annual revenues
12 of \$45 million from these diversions -- and then over on
13 page 9 -- you are now saying, if I understand you
14 correctly, that you're going to get \$3.5 million net
15 revenues out of that gross.

16 A Yes.

17 Q So that is, if my calculation is correct,
18 incremental cost of handling approximately 92.3 percent
19 or thereabouts? Does that sound reasonable to you?

20 A I'm sorry, I wasn't able to follow that.

21 Q The difference between the gross and the net
22 is cost of handling that traffic; correct?

23 A Yes.

24 Q And as it turns out, according to my
25 calculation which I will ask you to accept for the sake

1 of this question, the net income stated on page 9 is
2 equal to 7.7 percent of the gross income stated on
3 page 8. So I reverse that and say that's a 92.3 percent
4 incremental cost of handling.

5 Assuming my calculation is correct, does that
6 sound like a reasonable cost of handling this kind of
7 traffic to you?

8 A The numbers speak for themselves. If the
9 calculations work out that way, I would accept them.

10 Q Those were the only changes you made, I
11 believe.

12 A Yes, I think so.

13 MR. VON SALZEN: Thank you. I have no further
14 questions, Your Honor.

15 JUDGE HOPKINS: Thank you.

16 Who will be next? Mr. Calhoun.

17 BY MR. CALHOUN:

18 Q Mr. Lawson, my name is Bob Calhoun,
19 representing Kansas City Southern.

20 MR. CALHOUN: Your Honor, we have a couple of
21 exhibits here which are going to be used for both Mr.
22 Lawson and Mr. Liba, which I would like to have marked
23 for identification as KCS-H-11 and KCS-H-12.

24 JUDGE HOPKINS: What is the H, rather than
25 counsel's?

1 MR. CALHOUN: All right, C.

2 JUDGE HOPKINS: KCS-C-11 and C-12 will be
3 marked for identification.

4 (The documents referred to
5 were marked Exhibit Nos.
6 KCS-C-11 and KCS-C-12 for
7 identification.)

8 MR. CALHOUN: Just by way of explanation,
9 KCS-C-11, the first page is a portion of the timetable
10 of Santa Fe Railroad which has been previously
11 introduced in a larger part as KCS-C-2 earlier in these
12 proceedings.

13 The balance of that exhibit are, as indicated,
14 work papers from Mr. Liba's files. A lot of that
15 material is also in Appendix A of your exhibit, Mr.
16 Lawson. We found it easier to use it this way because
17 it has train numbers on it.

18 KCS-C-12, one page, is a page taken out of --
19 as is shown there -- Exhibit 1313 of the Applicant's
20 operating plan, which I think is SFSP 4, Volume I. The
21 balance of those pages are, I believe, Mr. Lawson, from
22 your work papers.

23 TDI -- the pages that are marked TDI at the
24 bottom of pages KCS-C-12 are from Mr. Lawson's work
25 papers. And we will be referring to those from time to

1 time, and will try not to confuse things too much.

2 BY MR. CALHOUN: (Resuming)

3 Q Mr. Lawson, as I understand it from your
4 verified statement in the first page, you in effect are
5 responsible for all of the -- basically research and
6 development on marketing and forecasting for Santa Fe
7 Railroad. Is that correct?

8 A I do this function for the traffic department
9 The planning effort is really coordinated at a higher
10 level in the corporation. And all of the departments
11 participate in a functional way in developing the plan.
12 So with that explanation --

13 Q What is the higher level within the
14 corporation? What is it called?

15 A The planning effort goes from the field level,
16 all the way up through vice presidential levels, to
17 president of the railroad, to the chairman, Mr.
18 Schmidt.

19 Q You report to Mr. Fitzgerald, is that right?

20 A Yes, I do.

21 Q And Mr. Fitzgerald reports to who?

22 A Mr. Cena.

23 Q And Mr. Cena is on up to Mr. Schmidt?

24 A Yes.

25 Q Did you or anybody on your staff have any role
a

1 in the preparation of the document prepared for the
2 Santa Fe Board of Directors that has been previously
3 identified in this record as KCS-H-1? C-1, rather.

4 A Repeat the first part of your question.

5 Q Did you or anybody in your staff, in planning
6 or marketing staff, have any role in preparing the
7 document for the Santa Fe's Board of Directors that has
8 been previously designated in this record as KCS-C-1?

9 A And what document is that, sir? I haven't
10 been here.

11 Q It's a fairly lengthy document that was
12 submitted in the course of Mr. Schmidt's
13 cross-examination, which is a document generally
14 referred to as a report to the Santa Fe's Board of
15 Directors.

16 A Okay. I did hear some reference to that. I
17 have had no involvement in that. Mr. Fitzgerald
18 testified that a member of my staff, a Mr. Zdanky, was
19 used -- was involved in the project.

20 He was, to use an Army term, I guess, on
21 temporary duty working in the Executive Department. I
22 have no knowledge of the report. I have not seen it. I
23 had no conversations with him about it.

24 Q Do you happen to know who a Mr. Terry J. Booth
25 is, who has prominently mentioned in connection with

1 that document from time to time?

2 A I do know who he is.

3 Q Could you describe that for the record,
4 please?

5 A I don't know what his title is. He is -- he
6 works for the chairman.

7 Q Is he a planner or a marketeer, an economist,
8 or do you know?

9 A He is -- I don't know what his educational
10 background is. He would be doing economic type studies
11 for the chairman. I would not describe him as a
12 marketing person.

13 Q But he does not interact with your department
14 in any way?

15 A No.

16 Q Turning to another subject, are you familiar
17 with a motor carrier application that's been filed in
18 this case, grey book designated as SFP 5?

19 A I don't believe that I am.

20 Q Do you have any responsibilities in your
21 general area of market research for the motor carrier
22 operations of the Santa Fe at all?

23 A NO.

24 Q Who does?

25 MR. WILSON: Excuse me. For clarification,

1 what motor carrier operations of the Santa Fe do you
2 have in mind?

3 MR. CALHOUN: Well, at the time you filed the
4 application, Mr. Wilson, I believe the Santa Fe had a
5 trucking company. That was going to be my next
6 question. As I understand it's all gone.

7 THE WITNESS: It's gone.

8 BY MR. CALHOUN: (Resuming)

9 Q For purposes of the question right now, let's
10 assume you still have it, because at the time the
11 application was filed you did.

12 Who is responsible for -- or was responsible
13 for --

14 A Well, it wasn't me. I'll tell you that. I'm
15 not sure what the chain of command was, whether the head
16 of that reported directly to the chairman of industries
17 or if there was some involvement, some connection with
18 the railroad. I'm not clear on that.

19 Q In any case, your department, and for that
20 matter, all the people that are working with you are
21 responsible only for activities of the railroad as a
22 railroad.

23 A That's true.

24 Q So to the extent the motor carrier operations
25 might do something different, you would not know

1 anything about that or be responsible for that?

2 A That's true.

3 Q All right.

4 In preparing -- and from now on, some of these
5 questions, I think, are going to kind of cross-rough a
6 bit with Mr. Liba's testimony, so if your counsel wants
7 to give a copy of his verified statement, I'm going to
8 have some questions from time to time that I think are
9 going to require you to look at that.

10 Do you have that with you there, in addition
11 to your own?

12 A I do.

13 Q You don't need it right at this moment. I
14 just want to see that you have it.

15 In preparing your verified statement, did you
16 take into account -- strike that. Let me start over
17 again.

18 In your work with Mr. Liba and other people
19 associated with Reebie & Associates, did you take into
20 account recent changes in the policy of this Commission
21 concerning relaxation of MT barriers to railroads
22 entering the trucking field?

23 A No, I didn't. As you have just pointed out a
24 minute ago, we have just gotten rid of our trucking
25 company. So, no, I did not give any consideration --

1 Q Well, the Southern Pacific has not gotten rid
2 of its trucking company, though, has it?

3 A I don't know.

4 Q There are other railroads who are in this case
5 who have trucking subsidiaries, do they not?

6 A I believe that's correct.

7 Q Now, in the last paragraph of your verified
8 statement where you say: "The purpose of this statement
9 is to explain the study," and then skipping down a line,
10 "of the revenues which we expect to gain from our truck
11 competitors."

12 A What page are you on?

13 Q Page 1, the last paragraph on page 1. If you
14 look down there, the third line from the bottom, you use
15 the phrase, "our truck competitors."

16 And my question is, does truck competitors,
17 for purposes of this statement and for the study which
18 you describe in it, does that include, let's say, real
19 truckers as distinct from truckers that the railroads
20 might own or control?

21 Let me try it a little differently. When you
22 are talking about truck competitors and truck
23 competition, are we talking about the entire motor
24 carrier industry, or only those motor carriers which
25 operate independently of any affiliation with a

1 railroad?

2 A The study took into consideration traffic that
3 is reported as truck traffic. If there would be a -- I
4 don't know how that is reported, quite frankly. If it's
5 a truck subsidiary of a railroad, I would assume that
6 that would be reported as truck tonnage.

7 Q Would Mr. Liba possibly know about that?

8 A Possibly.

9 Q I'll move on.

10 Would you turn to page 4 of your verified
11 statement? Focus, if you will, on the second full
12 paragraph in that statement and the second sentence in
13 that paragraph which says: "I believe the merger will
14 enable to become competitive for much of the freight
15 traffic which we have lost to truck competition over the
16 years."

17 What base did you start with in measuring the
18 truck competition that you're up against? What traffic
19 base?

20 A My general knowledge of what's been going on
21 in the marketplace over a number of years -- I think
22 it's well established -- of the fierce competition that
23 the truckers are providing to us.

24 Q Let me try it a different way. Elsewhere in
25 your statement -- and the previous counsel went into

1 this issue with you a bit -- you indicate that the study
2 shows that the merged company has the potential, I think
3 after the third year, of diverting some \$45 million
4 worth of traffic.

5 Are you with me that far?

6 A Yes.

7 Q And I believe with the correction that you
8 just made, that would accrue incremental net revenues of
9 some \$3-1/2 million.

10 Now, what I'm trying to determine is, what
11 larger number is that derived from? When you say \$45
12 million, I'm trying to get an order of magnitude of
13 whether that's a lot or a little in terms of what you're
14 up against. Half a billion dollars worth of business
15 out there you're trying to compete with, or how much?

16 A I don't think I know the answer to that.

17 Q It says in your statement that, "We will
18 become competitive for much of," and I'm trying to get
19 some quantitative idea of what the word "much" means.

20 A Well, we are certainly going to make every
21 effort to get the traffic that has been demonstrated in
22 these traffic lanes. We are also going to do our best
23 to provide more competition and better service through
24 the efficiencies of the merger in other corridors.

25 We didn't take any credit for that in the

1 traffic diversion study. I would hope that that does
2 occur.

3 Q Well, I think the purpose of this line of
4 questioning is, there is testimony that's been submitted
5 in this record that will be, subject to the exact
6 number, some \$220 million worth of diversion from other
7 railroads. And I am sure they will all point out why
8 that number is not right or right, but they will have a
9 base to measure that number against.

10 By contrast, in talking about \$45 million from
11 the trucking industry, when you use the word "much," it
12 usually means more than a little, but not all of it.
13 And I'm not sure more than what, much more, or much
14 less. That's what I'm trying to get a feel for.

15 Basically, you don't know?

16 A I think that's what I'm telling you. I do't
17 know what the number is. But I would tell you, as a
18 marketing person, that this is a good step for us. I
19 consider getting additional business in one traffic lane
20 to be a good step, and I pat my people on the back when
21 they are able to do that.

22 And if we are able to compete in 27 lanes that
23 we are not able to compete in now, then I think that is a
24 major step.

25 Q What do you regard as an idea operating ratio

1 for a railroad?

2 A I don't have an answer to a question like that.

3 Q Were you here when Mr. Schmidt testified?

4 A No, I was not.

5 Q I don't have a transcript here right with me,
6 but just taking my summary -- and not as a fact of the
7 matter -- but it's my recollection that Mr. Schmidt said
8 one of the primary concerns that motivated this merger
9 was the creeping up of the Santa Fe's operating ratio to
10 recognize major efficiencies in the railroad business.

11 It was my recollection that he was concerned
12 that it was starting to creep well over 80 percent.

13 Now, the --

14 A I think the number is higher than that.

15 MR. WILSON: I do, too, counsel.

16 THE WITNESS: It's probably over 90 percent.

17 BY MR. CALHOUN: (Resuming)

18 Q So, in other words, you would not regard 93
19 percent as a bad number then?

20 A I'm not in a position to answer.

21 Q Turn to page 7 of your statement. I believe
22 in -- you state on page 7 of the preference model and
23 the matrix that goes with that, that was developed out
24 of that, essentially attempting to show intersections
25 between price and transit times and where those create

1 certain ideal intersections, the study showed you had a
2 potential to take some of that business back.

3 Is that a fairly accurate summary of what the
4 matrix was designed to show?

5 A It's a generalization of it. I think I said
6 there were a lot of other factors that the matrix did
7 take into account. But what you said is part of it.

8 Q That was a question I was intrigued by. I
9 believe the way you put it is, it implies certain other
10 factors. What might some of those other factors be?

11 A Reliability is a major factor in that case. I
12 think probably Mr. Liba of Reebie can tell you of the
13 other factors. That was a project that they did for the
14 FRA a number of years ago, and it's been a well-accepted
15 model both by them and within the industry. And I think
16 he can probably answer your more detailed questions on
17 that.

18 Q On that same page where you refer to -- and
19 I'm referring, I guess, to the second full paragraph
20 there which starts out with the phrase, "This initial
21 estimate," and so forth. You have this .5 adjustment
22 factor which is used in Mr. Liba's testimony, and he
23 indicates why it's a reliable factor.

24 But you state that you believe this to be a
25 realistic estimate of the amount of the new truck

1 traffic which the merged system would gain.

2 Did you try -- your, or anybody in your staff
3 -- try to independently verify that .5 factor?

4 A The logic that goes behind that factor is
5 reasonable to me, based on my experience in the
6 industry. I believe that Reebie has done some
7 verifications of that.

8 Q I am focusing on your words, not his words.
9 In other words, I will ask Mr. Liba the same question
10 somewhat differently. But the impression one gets when
11 I believe this to be a realistic estimate is you
12 independently. And that's what I'm trying to
13 determine. Did you independently try to satisfy
14 yourself that that's a realistic fact or just Reebie
15 sounded persuasive to you?

16 A No. He went through the reasoning for it, and
17 that has been introduced in other studies before the
18 Commission, and that has been accepted and is acceptable
19 to me.

20 Q In other words, it's realistic because it is
21 accepted here?

22 A It's realistic for all of the reasons that I
23 mentioned before, including that.

24 Q Is the Santa Fe Railroad, either through your
25 department or any other department in the railroad, has

1 it ever done any -- what I would call reality testing of
2 models of this sort, whether it is Reebie's or anybody
3 else in terms of knowing what goes on in the real world
4 of trucking, the intermodal competition?

5 Have you done any studies of intermodal
6 competition independent of the Reebie study at all?

7 A Say the question again, the last part?

8 Q You're saying that the Reebie produces a
9 realistic answer. What I'm asking is, has the Santa Fe
10 ever done any independent studies of intermodal
11 competition that would support this estimate or any
12 different estimate?

13 A Well, let me answer you this way. We do
14 compete with the truck lines now as best we can. We do
15 make adjustments, and we know that there will be
16 competitive responses to that.

17 The responses could be by other railroads, it
18 could be by the truck lines. In fact, they generally
19 are. And, based on my experience, I know that there is
20 a discount like this involved, and I'm fully satisfied
21 with this.

22 Q But you don't know whether 50 percent is a
23 proper discount, or whether it might be 40 or 60?

24 A It's my judgment that it is.

25 Q We've had a number of other large railroad

1 mergers approved by this Commission in recent years, and
2 all of those have focused, more or less, on the same
3 question. Have you undertaken to examine, for example,
4 the Union Pacific/Missouri Pacific merger and their
5 success or lack of success in attracting business away
6 from trucks?

7 A I thought you were going to ask another
8 question, so would you say it again?

9 Q The question basically is, we have a real
10 world example of somebody, and that is to say, the
11 UP/MoPac merger which is precisely the same kind of
12 study was put in.

13 A No, that's not true.

14 Q Well, the same kind of answer was developed.
15 We're going to divert a certain amount of traffic away
16 from --

17 A It was a completely different type of study.

18 Q What I'm asking you is, have you or your
19 department gone and looked at the UP/MoPac system now
20 that it is operational, and tried to ascertain whether
21 they have been successful in attracting business away
22 from the trucks?

23 A I don't know the answer to that.

24 Q In terms of the \$45 million gross revenues
25 that you estimate will be diverted, what assumptions

1 were being made about the level of railroad rates in the
2 future?

3 A It was existing rates, as was pointed out
4 before except in one instance.

5 Q Are you assuming over the three years this
6 will require it to take hold, that railroad rates will
7 not go up?

8 A This is a snapshot point in time thing. For
9 the point of the study, you have to get everything down
10 to a reference. And it would be my judgment that there
11 will continue to be competition, very fierce
12 competition, and we'll react to that as best we can.

13 I think the important thing there is that we
14 are going to be providing some additional competition
15 for the shipper, and if there is additional competition
16 between the trucks and the railroads later in their
17 piggyback, that's a benefit to the shipper.

18 And we are trying to create shipper benefits.

19 Q That's not necessarily a benefit to the
20 railroad, is it, unless you are going to raise your
21 rates?

22 A If we obtain the business and we still
23 participate in that business -- we have a choice of not
24 participating in it. If we choose to participate in it,
25 even at a lower rate level, it's my judgment that we've

1 made a decision that we want that business, and if the
2 rate continues to go down, that is a benefit to the
3 shipper.

4 Q Is your TOFC business you are now conducting
5 profitable?

6 A Yes, it is.

7 Q Here's where I am going to have to ask you to
8 look at Mr. Liba's testimony. Let's stay on page 8 here
9 for a second. You were asked a question about the 10
10 percent adjustment.

11 A Is this my statement?

12 Q Yes. Look at page 8 of your own statement
13 first. You were asked the question about the 10 percent
14 reduction from Dallas to Los Angeles. Now, that again
15 was existing rates, 1982 rates?

16 A Yes.

17 Q So it is assumed for purposes of this study,
18 that there will be no changes, at least upward in that
19 rate over the three years that this would take effect?

20 MR. WILSON: Objection, counsel. I think that
21 was asked and answered. The witness can reexplain it if
22 you would like.

23 JUDGE HOPKINS: Go ahead.

24 THE WITNESS: I think I did explain it
25 before. It was a snapshot, a point in time. If things

1 happen differently during the three-year period, we will
2 evaluate and react to it.

3 BY MR. CALHOUN: (Resuming)

4 Q Okay.

5 Would you turn to Appendix B of your
6 statement? I'm going to have to ask you also to look at
7 Exhibit 13 of Mr. Liba's statement which is on page 36
8 of his statement. Do you see, down at the bottom, where
9 it says 10 percent lower rate, and you see the number in
10 there? Would you like to read that? Is it
11 \$1,733,000.95?

12 A No. No, 95 cents. One million, seven.

13 Q I'm sorry. \$95. 1,733,095.

14 A Yes, sir.

15 Q Now, would you look over at Appendix B for the
16 same city pairs?

17 A Okay.

18 Q I'm missing something. I don't think they're
19 the same numbers, are they?

20 A Please?

21 Q They're not the same numbers, are they?

22 A No, they're not, and I'll tell you why they're
23 not the same. If you look on -- well, the Exhibit 13
24 that you're looking at -- because we made a 10 percent
25 reduction, we also had to make that reduction in the

1 existing traffic that we had. And so the figure you see
2 in Appendix B, which is 1.2 million, is the difference
3 between the 5.6 that is shown for the 10 percent
4 reduction, and the number right above that which is a
5 4.4. And that's the 1.2 million.

6 Q You subtracted out the existing traffic and
7 made the adjustment?

8 A When we took the 10 percent reduction, we took
9 it on the traffic that we had.

10 Q That's the only place that was done?

11 A Yes, sir.

12 Q Okay. That clears that up. It was not clear
13 in the testimony.

14 The next question. I think the last questions
15 I'm liable to have, have to do with some of these train
16 schedules we went into, and you're going to need to
17 refer from time to time to the exhibits I handed out
18 earlier having to do with the KCS-H-11 and 12 -- or C-11
19 and 12, I'm sorry.

20 Did you furnish all of -- and by you, I mean
21 the Santa Fe, not necessarily you personally -- furnish
22 all of the scheduling and other operating information
23 for Mr. Liba's statement?

24 A You are referring to the schedules that are in
25 Appendix A?

1 Q Appendix A of your testimony, and they can
2 also be found --

3 A It's the same thing in his testimony?

4 Q Yes.

5 A Yes, we did.

6 Q You'll also find them in the KCS-11 in
7 somewhat different form. I just made it a little easier
8 to follow there for the purposes of my question.

9 Would you take a look at page 1 of the
10 exhibit, KCS-C-11? I think, as I previously indicated,
11 this is a portion of a Santa Fe system timetable that
12 was introduced earlier in this proceeding.

13 What does the top of that say?

14 A Train 579?

15 Q No. From where to where?

16 A Dallas to Richmond.

17 Q Is that the same train that's depicted in
18 Exhibit 5 of Mr. Liba's statement, if you want to take a
19 look at Exhibit 5 of his statement? That's on page 16.

20 Do you see over there on the lefthand side
21 where it says 579, 288?

22 A It appears to be the same. No. The one in
23 your exhibit is Dallas to Richmond. The one in Exhibit
24 5 is Dallas to Los Angeles.

25 Q All right. Would you read down at the bottom

1 there, where it says KCS-C-11, first page, where it says
2 total schedule -- and I believe it says down there,
3 Dallas to Los Angeles. Do you see that?

4 A Yes. It's kind of hard to see, but I see it.
5 Yes. I do see it.

6 Q What does it say after Dallas to Los Angeles?

7 A 61 hours.

8 Q What does it say at Exhibit 5 for the same
9 train?

10 A Dallas to Los Angeles, it says 75 hours.

11 Q Is there a reason why that is so?

12 A Well, I would imagine one of our operating
13 people could explain it. I'm not sure that I can right
14 here. What you've done is you've got a through schedule
15 here that shows Dallas to Richmond, and there is some
16 representation on here about how the traffic would go to
17 Los Angeles.

18 Now, whether these are the same things or not,
19 certainly the times are different, I'll acknowledge
20 that. I think if you need any further clarification on
21 it, you're going to need to talk to an operating
22 person.

23 Q Yes. But this is information that was given
24 to Mr. Liba, was it not, for purposes of his study?

25 A The 75 hours?

1 Q Yes.

2 A It was.

3 Q And it allowed him to say that by -- and I'll
4 quote from page 17 of his study -- that "this
5 effectively improves the service from Dallas to Los
6 Angeles by a full day."

7 A If he said that, I'm sure that's correct. The
8 schedule that he is talking about there is a previous SP
9 schedule that had a departure time of 12:01 a.m. and is
10 shown, according to the computer here, as 0030 because
11 of the intricacies of the computer. But what is being
12 compared there is -- we're not really comparing
13 schedules here; we are comparing door-to-door service.

14 And in this particular lane, the prior
15 services, the best service gave you a 3:00 a.m. arrival
16 availability, and the new schedule gives you a 2:00 a.m.
17 availability, and that's a 24-hour improvement.

18 Q Where are you getting all that from? I'm
19 sorry I'm not following you.

20 A Well, I am interpreting that from the
21 schedules that you presented to me. And that's also on,
22 I think, on page 2 of Mr. Liba's Appendix 1.

23 Q That's the one where you had to cut the 10
24 percent lower rate? Even though you were improving the
25 service by a day, you still had to cut the rate to get

1 the business?

2 A Yes.

3 Q I'm a little confused here. Did Mr. Liba get
4 75 hours to Los Angeles, or did he get 61 hours, or do
5 you know?

6 A He was given schedules that showed a 75-hour
7 schedule, a 43-hour schedule, a 48-hour schedule, and an
8 83-hour schedule via various railroads.

9 Q All right. We've already established that the
10 75 is apparently not correct. Are we in agreement on
11 that?

12 A Not entirely. The schedule that is down here,
13 it is my understanding, is the schedule that is run
14 Dallas to L.A. with the KCS and its train 579 and train
15 288. And that's what the schedule is.

16 Q Well, from where to where?

17 A From Dallas to Los Angeles. That's what you
18 were talking about.

19 Q No. The KCS portion does not run from Dallas
20 from Los Angeles. That runs the other way, doesn't it
21 -- New Orleans to Dallas?

22 A I thought you were questioning -- we're
23 talking about --

24 Q I guess maybe I'm not making myself clear.
25 The railroad's own timetable says 61 hours for his

1 corridor. The numbers you gave Mr. Liba say 75.

2 MR. WILSON: Objection, counsel. I don't
3 think your assumption is at all accurate. You have
4 produced a schedule for train 579.

5 That's one of the two trains necessary to
6 provide service from Dallas to Los Angeles. As Mr.
7 Lawson testified, that service is on train 579 and then
8 train 288. So it would be necessary for you to also
9 consult and produce a timetable for train 288, add those
10 two numbers together, and then find out what the total
11 transit time is.

12 MR. CALHOUN: Mr. Wilson, I'm not trying to go
13 behind your own timetable, but it says Dallas to Los
14 Angeles, 61 hours. That's what I'm focusing on.

15 MR. WILSON: It sounds to me like that
16 question is a question for an operating witness.
17 Whether that's a connection with a Los Angeles train or
18 what it means isn't really appropriate to ask Mr.
19 Lawson.

20 THE WITNESS: Even if it were, the 61 hours
21 wouldn't make any difference in the truck diversion in
22 this case. It would make absolutely no difference
23 whatsoever.

24 BY MR. CALHOUN: (Resuming)

25 Q I'm not going to get into that with you right

1 now. Let's stay with Mr. -- that same Exhibit 5. You
2 mentioned, I think just a few minutes ago, about the
3 so-called -- what's shown in this exhibit as DALAT,
4 D-A-L-A-T, train which is an existing Southern Pacific
5 train.

6 We are, I guess, unable to find that train.
7 Let me refer you to page 1 of KCS-C-12 which is out of
8 the operating plan and purports to show the 1983
9 Southern Pacific schedules, westbound.

10 If you look down -- and this is hard to read
11 also, and I apologize for the small print, even though
12 it's not my document.

13 A I probably couldn't read it if it was bigger
14 than this, to be honest with you.

15 Q Maybe we can learn how to read these things
16 together. I think if you look over there on the lower
17 lefthand corner, you will see the word DALAT and MPLAT
18 and other similar acronyms.

19 A Yes.

20 Q Do you see that train anywhere on that
21 schedule?

22 A What train are we talking about?

23 Q DALAT. The one that is in Mr. Liba's
24 Exhibit 5. That again was given to Mr. Liba by your
25 operating people, through you, as you earlier

1 testified.

2 A Now, wait a minute. Just a minute. I'm not
3 even sure how to read this. Let me look it.

4 Q Do you see a DALAT train there. I'm not
5 asking you to read the whole thing. Just do you see the
6 word DALAT anywhere in that chart?

7 (Pause.)

8 I don't think it's any easier to read in
9 there, frankly.

10 MR. WILSON: Your Honor, for clarification, it
11 seems to me that this exhibit in the operating plan
12 shows 1983 Southern Pacific schedule. Since our study
13 year, as Mr. Lawson indicated, was 1982, I believe that
14 the schedules that were used were 1982 schedules.

15 So I don't know whether Southern Pacific
16 redesignated a train or whether this is incomplete or
17 what. But we're not comparing apples and apples.

18 MR. CALHOUN: Your Honor, I have the highest
19 regard for Mr. Wilson's talents in these matters, but I
20 don't think he's the witness.

21 BY MR. CALHOUN: (Resuming)

22 Q Is that your testimony? Do you want to adopt
23 Mr. --

24 JUDGE HOPKINS: He is not. Let the witness
25 state the basis.

1 THE WITNESS: I cannot find it on the document
2 that you have produced, okay? Let me finish my
3 statement. I have a hard time reading this. I don't
4 know the context of it. I will find for you the DAIA
5 train and SFSP-4, page 153, and that train is in there.

6 BY MR. CALHOUN: (Resuming)

7 Q Yes, but that is shown, is it not, Mr. Lawson,
8 as a new train?

9 A Well, it's a revision of a train, new or
10 rescheduled. It is a rescheduled train, regardless of
11 what you want to call it.

12 MR. CALHOUN: Your Honor, I'm sorry to take a
13 lot of time which really has to do with the operating
14 plan. I think Mr. Wilson is right about this.

15 But we have just to lay some foundation. I
16 have a good more of this. I'm not sure how much is
17 productive. It's my understanding -- and, Mr. Lawson,
18 correct me if I'm wrong -- that you previously testified
19 when Rio Grande's counsel was cross-examining you, that
20 the chain of command of inputting to Mr. Liba was the
21 operating people. You identified for the operating
22 people certain traffic that you could divert from
23 truckers.

24 You went back and you designed a new schedule
25 and matched it up against your existing schedules, and

1 then out of that you were able to develop the diversion
2 numbers.

3 Is that a correct characterization of the
4 process?

5 A That's true.

6 Q Am I also correct that the operating people
7 provided all of this information, these schedules we are
8 talking about, to you and your staff, and you in turn
9 handed them over to Mr. Libe and Reebie?

10 A Well, let me say this. They provided us or
11 assured us that they would run certain departure times
12 and certain arrival times. They didn't tell me that it
13 was a DALAT or a PPQRST or a 1-2-3. They did not do
14 that

15 But I have found for you the train that you're
16 talking about, and it is in the operating plan, and I
17 don't think I can go much further.

18 Q You agree with me, it says new train, doesn't
19 it? It does say revised schedule or old train,
20 revised? It says new train, whereas Exhibit 5 says
21 existing train. Isn't there a difference?

22 A My sheet has an "E" by it, which says it's a
23 reschedule.

24 Q Then this is wrong?

25 A The schedule is not wrong. The semantics

1 might be wrong.

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1 The shipper is still going to have a nice
2 train to run his traffic on.

3 Q Okay. Would you look at KCS-C-11, and would
4 you look at some work papers -- well, this is the
5 schedule again. It's the schedule put together the way
6 I put it together. No, excuse me. Set that aside. We
7 have one more on PLAs here. You might as well get that
8 yellow book back.

9 If you look at KCS-C-12 -- and again, this is
10 the operating plan, the excerpt out of your operating
11 plan, 1983 schedule -- I think Mr. Wilson observed -- I
12 will not call it testimony -- observed that possibly
13 your study was done on 1982 schedules. Do you adopt Mr.
14 Wilson's statement as your own?

15 A I don't know if that's a correct
16 characterization of that or not. It was based on the
17 information provided to me by the people responsible for
18 putting the schedules and the operating plan together,
19 and what label you want to put on that --

20 Q I'm asking, were you given '82 scheduling
21 information. We have '83 here.

22 A I was given schedule information. I don't
23 know the label you put on it.

24 Q You don't know whether it was '82 schedules or
25 '83 schedules or something that someone made up? You

1 don't know?

2 A Well, they certainly are something that was
3 made up. The schedule that I described for you before
4 does exist. You happen to have pulled one page out of a
5 schedule book, and there are more trains than one that
6 move in that traffic.

7 JUDGE HOPKINS: The question is you don't know
8 whether '82 or '83 --

9 THE WITNESS: No, sir, I don't.

10 MR. CALHOUN: Thank you.

11 BY MR. CALHOUN: (Resuming)

12 Q All right. Looking over on that same exhibit
13 you will see a train that says MPLAT, leaves at 11:30
14 p.m. That is also an existing train, at least so it
15 says there.

16 Do you know whether that train in fact stops
17 at Dallas or not even though it is shown there?

18 A Which one is this?

19 Q The one that is called MPLAT.

20 M-P-L-A-T?

21 Q Right. MPLAT. That's a Southern Pacific
22 train, and you may or may not know what they do on the
23 railroad.

24 A I don't know the answer to that question.

25 Q Would it surprise you to know that there is

1 some question whether it even stops at Dallas? Would it
2 further surprise you that it doesn't originate in Dallas
3 but in fact originates at El Paso, Texas?

4 A I told you that I don't know about the SP
5 schedule.

6 JUDGE HOPKINS: So you wouldn't be surprised.

7 BY MR. CALHOUN: (Resuming)

8 Q Now we're ready to go back to KCS-C-11, and
9 that is the schedules which were the same as your
10 schedules, I think, at Appendix A in a slightly
11 different form.

12 Excuse me just a second, Mr. Lawson.

13 (Pause.)

14 If you will look, Mr. Lawson, down at -- we
15 have been talking about traffic going from -- trains
16 going from Dallas to Los Angeles. Let's talk about
17 going the other way, and that is Los Angeles to Dallas.

18 A I have just solved your other question about
19 the El Paso part of it.

20 Q All right.

21 A That MPLAT train is a Missouri Pacific-SP
22 train that would move over El Paso, and the SP would
23 assemble it over El Paso. So it's a connecting train
24 with the Missouri Pacific, and that makes sense to me.

25 Q All right. It's a joint line movement. It's

1 not a Southern Pacific movement exclusively.

2 A It's a joint line to Dallas.

3 Q You understand the nature of the question. It
4 says SP. And when we want to look at a competing
5 railroad's route, we have an example on the other side.

6 Okay. We are ready to go to something
7 different. We have been talking about Dallas to Los
8 Angeles. Now, I've asked you to look at the top of the
9 portion of KCS-C-11, which I think is really another way
10 of stating your Exhibit A where it says Los Angeles to
11 Dallas -- that's the reverse direction -- train 878-975.

12 A You're talking about this?

13 Q That's right. It would be Mr. Rebbie's work
14 paper, TDR-526.

15 Can you tell us about what the transit time
16 that is shown on there is?

17 A On this statement? It shows 57 hours. Is
18 that what you're referring to?

19 Q No. I'm talking about -- well, all right, 57,
20 that's right.

21 Over on Exhibit 5 --

22 A Exhibit 5? This is of Mr. Liba's?

23 Q Exhibit 5, go back to that.

24 A Of Mr. Liba's?

25 Q Of Mr. Liba's, the one we have been looking at.

1 A Just a minute.

2 (Pause.)

3 Q You look down at the bottom of that exhibit --

4 A This is Dallas to Los Angeles?

5 Q Look up there again. We're talking about the
6 75-hour schedule. We talked about that a bit ago.

7 A Dallas to Los Angeles.

8 Q You see on there, do you not, 57 hours.

9 A But that's Los Angeles to Dallas.

10 Q That's right. Why should it take 18 hours
11 more to go one direction than the other. Even allowing
12 for the fact that you have to roll up a mountain one way
13 and roll down the other, why should it take, you know,
14 18 hours more to go from west to east than it does east
15 to west?

16 A You're asking the wrong person, I think. I'm
17 sorry. I'm not being flip with you. I don't know the
18 answer to that.

19 Q Well, you will have to allow, will you not,
20 that attempts to cast some doubt on the credibility of
21 Mr. Liba's work, if he doesn't have credible numbers to
22 work with?

23 A I think one answer to that might be that in
24 the westbound direction I know that we do classify that
25 as a priority train and that we are running a lot of --

1 it is run without interruption much more frequently than
2 the other train. I can tell you that that eastbound
3 train a lot of times never gets to Dallas because there
4 is not enough traffic on there. It gets curtailed
5 before it ever gets to Dallas. In fact, six times in
6 September the train was annulled entirely because there
7 was no volume for it.

8 Q This train did not ever handle any of your
9 minibridge or landbridge traffic that's been talked
10 about in your testimony and Mr. Liba's testimony? You
11 never use it for that or container CCFC traffic?

12 A I honestly don't know the answer to that.

13 Q Let me see if I can shorten this down before
14 we both lose our voice. If you will turn to what is in
15 that same exhibit to what is number TDF-550 -- and we'll
16 be talking about 560 in that same package, and 598 --
17 these are documents we obtained from the repository in
18 Chicago, and they look like worksheets similar to Mr.
19 Liba's Exhibit 5. He says you offered this as a sample,
20 and these are some additional ones.

21 A Could you wait just a minute, please?

22 Q Oh, sure.

23 A You are talking where, Houston?

24 Q I'm not talking about anything in particular.
25 Look at KCS-C-11, and look in that exhibit, referencing

1 the page numbers at the bottom --

2 A 550.

3 Q We want to look at 550, 560, and I want to
4 look at 598; and they are all in that package of
5 documents that you should have in front of you that have
6 been marked as part of that exhibit.

7 Now, these documents are very similar, are
8 they not, to the sample that Mr. Liba included in
9 Exhibit 5 of his testimony, the same kinds of
10 worksheets, are they not?

11 A Same type of worksheet.

12 Q Just for different corridors.

13 A Yes.

14 Q Who prepared these documents, these sheets, do
15 you know?

16 A We furnished the schedule information. Is
17 that your question?

18 Q These weren't written out by someone in Santa
19 Fe and handed to Mr. Liba. You gave them the
20 information?

21 A We wrote out the schedules, yes. I can't
22 remember whether we wrote them on this form or gave them
23 in a letter, but the product is ours.

24 Q Did you use these for your testimony -- now,
25 not for his -- but did you rely on any of this kind of

1 information in preparing your testimony?

2 A Well, we looked at the existing schedules,
3 existing in these corridors, and this is representative
4 of the type of information that we looked at.

5 Q You will recall the question was asked you by
6 counsel for Rio Grande on page 6 of your testimony in
7 the last paragraph, and I believe by way of summary he
8 was asking you to describe the review process which is
9 not described who did it, but I think it was determined
10 that it was kind of a joint effort on the part of Santa
11 Fe personnel and Mr. Beebie.

12 My question essentially is while you were
13 making that review determination did you have sheets
14 like this in front of you to work with? Did you use
15 them at all in making the determination, and was that
16 determination, in turn, poured into this testimony?

17 A Whether we had them in front of us at that
18 time or not, but as I testified before, it was part of
19 the consideration that went into developing the data.

20 Q Would you take a look at the document TDR-560,
21 the corridor sheet showing Memphis to the Bay Area.
22 What do you show as the transit time? I just ask you to
23 read a few numbers into the record for me. Any train
24 that is shown on the far left corner, which is shown as
25 Burlington Northern-Santa Fe movement, what's the

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1 transit time shown there?

2 A I wonder if I might preface my answer by
3 saying I don't believe we took any diversions in this
4 corridor.

5 Q Yes, that's right. This is just establishing
6 foundation.

7 A Sixty-two and a half hours.

8 Q All right. Now, if you will look at 550, this
9 is Houston to Bay Area. Now, what do you show as the
10 transit time there for the Santa Fe service, both
11 existing and the improvement, or with the merger --
12 after the merger?

13 A The Santa Fe-BN?

14 Q No. Santa Fe -- you should have in front of
15 you Houston to Bay Area corridor sheet. Are you looking
16 at the right sheet? It should be number 550.

17 A No, I don't.

18 Q It's in that same package.

19 A Houston-Bay Area.

20 Q Do you see in the lefthand where it says Santa
21 Fe 588?

22 A Yes.

23 Q And the transit time there is shown as what?

24 A Sixty-seven hours.

25 Q Now, down at the bottom of the page a proposed

1 schedule, SFSP operation, which is the operating plan
2 under the merger, and that shows what?

3 A Sixty-three and a half hours.

4 Q Now, if you will look at number 598 in this
5 same package -- this is the last one, I might add; I'm
6 not trying to determine whether you people know how to
7 read -- will you look at the Santa Fe movement there?
8 This is Dallas to Bay Area. What does it show there?

9 A It says 72 hours and 45 minutes.

10 Q On that same page I notice that there's
11 something on the bottom that's been crossed out that
12 showed 62, and then over on -- in handwriting on that
13 same page there is the word "requested," and the times
14 have been changed, the departure times and arrival
15 times. The transit time has not been changed. That is
16 62. Who put the word "okay" on that? Is that you?

17 A Just a minute, please. It doesn't look like
18 -- well, it's hard to tell. Let me see if I can
19 recollect what this was all about.

20 MR. CALHOUN: Your Honor, if you're planning
21 to break at 12:30, I plan on being done at that time.

22 JUDGE HOPKINS: I plan on breaking at 12:30.
23 I'm glad you'll be done at that time, Mr. Calhoun.

24 THE WITNESS: That doesn't look like my
25 writing. My recollection of what happened there was

1 that we had this schedule that's crossed out that our
2 operating people agreed to that, and then later on
3 reccnsideration, for whatever reason, they made this
4 change.

5 BY MR. CALHOUN: (Resuming)

6 Q Would you happen to know whether if you are
7 going from -- is it closer to go from San Francisco to
8 Memphis than it is from Houston?

9 A Say that again.

10 Q By railroad, is it a shorter distance via
11 railroad from Memphis to San Francisco than it is from
12 Houston to San Francisco?

13 A I don't know. You're talking mileage? I
14 don't know.

15 Q Well, just -- I'll let you look it up on a map
16 and take a guess. That's what the Commission put it up
17 there for.

18 A Well, I think that might be a bad judgment on
19 my part.

20 Q Well, the question I think we're trying to
21 determine, assume with me, if you will, that that is
22 true. Why is the running time, single line over the
23 existing Santa Fe route from Dallas to the Bay Area
24 greater than the joint line movement from Memphis for
25 the Burlington Northern?

1 A Why is --

2 Q Today -- let me start over again. Today,
3 Santa Fe operates a train Dallas to the Bay Area or San
4 Francisco, the Richmond area. It takes 72 hours and
5 some minutes to get there. It also operates a joint
6 service from Memphis, Tennessee to the Bay Area, San
7 Francisco or Richmond. It takes 62 hours. Under the
8 merger it will still take 62 hours from Memphis, but you
9 will reduce the time from 72 to 62 in the Dallas
10 corridor.

11 What prompts my curiosity, I guess, about this
12 is that you testified in response again to questions
13 from Denver-Rio Grande counsel, if I can get my notes
14 correct, something to the effect that runthrough service
15 and joint line service was inefficient and not the way
16 you would market railroad service.

17 Now, how is it that the Burlington Northern
18 and the Santa Fe seem to run a fairly efficient service
19 from Memphis, and your railroad cannot run an equally
20 efficient service over your own railroad from Dallas?

21 A Well, I hope it will improve. I don't know
22 the answer as to why. I hope they will improve upon
23 that after the merger.

24 Q You testified, did you not, that joint service
25 was inherently more inefficient than single-line service?

1 A Did I say it that way?

2 Q Well, you said what you said. I'll let the
3 record speak for itself.

4 A I'm willing to do that.

5 JUDGE HOPKINS: If you didn't say it before,
6 you're saying it now.

7 THE WITNESS: I'm willing to let the record
8 stay with what I said.

9 BY MR. CALHOUN: (Resuming)

10 Q Let me ask my own question, then, without
11 relying on someone else's answer. Now, do you believe
12 the single-line service -- I'm sorry -- the joint-line
13 service is inherently more inefficient than single-line
14 service?

15 A My testimony in here has to do with the truck
16 diversion, and we have had other witnesses testify on
17 that.

18 Q Well, I believe you said in response to some
19 question about runthrough trains if they were better,
20 you would have done them, and you said that they were
21 not better.

22 Now, I grant you it's not within the scope of
23 your testimony, but you volunteered an answer, in any
24 event, on that whole subject. There was quite a series
25 of questions -- and I will let my colleague correct me

1 if I am wrong -- but I think he asked you several
2 questions about the inherent value of joint-line service
3 and run through service with other railroads as against
4 either single-line service via SP or SF or the two
5 together. And I believe it is essentially your
6 testimony that it's always better to have everything
7 move on your own railroad, and the joint-line service
8 and runthrough train service, even though you have tried
9 to make it better, doesn't work as well. That's what I
10 heard.

11 A You're making a generalization, and
12 generalizations are generally inaccurate.

13 Q Are there exceptions to what I just said?

14 A I'm sure there are exceptions.

15 Q Would the connection that the Santa Fe has
16 with the Kansas City Southern at Dallas be an example of
17 an exception?

18 A That it's efficient or inefficient.

19 Q Is it efficient?

20 A No, it is not.

21 Q It is not?

22 A No, it is not.

23 Q Why is that?

24 A I think I made a slip of the tongue before.
25 When I was talking about an inefficient runthrough, I

1 meant to say the KCS. I may inadvertently --

2 JUDGE HOPKINS: I knew Mr. Kharasch would pick
3 that up.

4 MR. KHARASCH: I was waiting for my motion to
5 strike, Your Honor, and I think I don't have to make it.

6 JUDGE HOPKINS: I knew you would.

7 THE WITNESS: I think I did say that, and what
8 I was referring to was specifically our MKT runthrough
9 eastbound.

10 MR. KHARASCH: You said MKT again.

11 THE WITNESS: Well, when I say that, think of
12 KCS.

13 JUDGE HOPKINS: I think he'll want you to say
14 KCS.

15 THE WITNESS: I want to say KCS, okay. That
16 runthrough, the terminology gives a connotation in the
17 marketplace that we want customers to think of as a
18 good, efficient service, because it's the best we can do
19 right now. But in point of fact, it's not efficient.
20 The train gets switched at Cleburne, it gets switched at
21 Dallas before we get to you. My understanding is that
22 you run two trains between Dallas and New Orleans, and
23 many times you annul trains and consolidate them onto
24 that connection, runthrough connection at Dallas.
25 There's all types of switching in there. The train gets

1 annulled many times because there is not enough traffic.

2 So my answer to that has to be no, it is not
3 an efficient runthrough.

4 BY MR. CALHOUN: (Resuming)

5 Q Do you know all of what you just said of your
6 own knowledge?

7 A It absolutely is.

8 Q I didn't ask you that. I asked you, all of
9 this rhetoric that you have just said, do you know all
10 of that of your own knowledge?

11 A Yes, I do.

12 Q This is not withstanding the fact that you
13 have consistently testified in answer to my questions
14 that you don't know anything about what the operating
15 department does?

16 A I was here in the hearing room when that
17 question was raised earlier, and it wasn't by you but by
18 one of your cohorts, and so I checked into that, and the
19 answer that I have just given you is the response to the
20 lack of efficiency of that particular runthrough.

21 Q May I ask you -- we are going a little bit
22 astray here, but since you brought it up, may I ask who
23 you checked it with?

24 A I called my office and had them check into the
25 details of the train.

1 Q All right. So on that you will pass yourself
2 off as an expert on operations.

3 A No, I will not. I am telling you -- I am
4 responding to the generic question of runthroughs, and
5 I'm giving you a specific example when a runthrough is
6 an inefficient operation.

7 MR. CALHCUN: Your Honor, I know this
8 Commission is quite tolerant of allowing hearsay
9 testimony to come in, but I think what you have just
10 heard is a classic example of why there is a hearsay
11 rule. We have a man here who has testified he is not an
12 operating expert does not know the schedules, how
13 they're put together, how the railroad operates.
14 However, he is prepared to testify quite vociferously
15 and at great length about how inefficient the operations
16 of a joint movement are involving the Kansas City
17 Southern, based apparently on a phone call to his
18 people, and I have no idea who those people are. And as
19 far as I'm concerned, all that testimony ought to be
20 just plain struck out.

21 MR. WILSON: As far as I'm concerned, Your
22 Honor, counsel's characterization of Mr. Lawson's
23 testimony ought to be struck out. He did not say he
24 didn't know anything about the operations of the
25 railroad. He specifically said he dealt with operations

1 daily in his work, that he worked with the operating
2 department in developing these schedules, that he is
3 familiar with the schedules and the operations on Santa
4 Fe. So the opposite of counsel's characterization is in
5 fact the fact, and therefore, I think the statement
6 should stay in.

7 JUDGE HOPKINS: I'm going to allow the
8 statement to stay in, but I also have to take into
9 account what he has stated previously, and that is in
10 the record as to how much importance we will give to his
11 testimony on any of these aspects.

12 BY MR. CALHOUN: (Resuming)

13 Q Do you know who Mr. Wourk is?

14 A Yes.

15 Q Who he is?

16 A Mr. Work is assistant vice president in the
17 traffic department. He reports to Mr. Fitzgerald.

18 Q Were you here when Mr. Fitzgerald testified?

19 A Part of it, not all of it.

20 Q Are you aware of the fact that Mr. Fitzgerald
21 in response to questions about what we have just been
22 talking about -- and that is, KCS-Santa Fe at Dallas --
23 referred to Mr. Wourk as one of the hercs of the Santa
24 Fe because of this service?

25 A I was not here when that was said.

1 Q Well, I suggest it would be useful for you to
2 read the record there, because your railroad is not of
3 one mind about the value of the service. I think that's
4 one way of putting it, and I will just let it go at that.

5 JUDGE HOPKINS: We are all testifying here,
6 Mr. Calhoun, aren't we? I think we will stop the
7 testifying on all sides. Let's go ahead with questions.

8 MR. CALHOUN: I have about two more questions
9 and then we're done.

10 BY MR. CALHOUN: (Resuming)

11 Q Let's see. We have gone through the matrix
12 business. Oh, when you were explaining the change --

13 A I'm sorry. I couldn't hear you.

14 Q Let me flip very quickly to page 9 of your
15 testimony, and this is with reference to one of the
16 charges you made for -- or typographical changes you
17 made at the outset. You changed this number to 3 1/2
18 million, do you recall that?

19 A Yes.

20 Q I believe you testified in response to a
21 question from Rio Grande counsel that you get that
22 information from your costing people? You were just
23 reporting the number. In other words, it's not one you
24 developed.

25 A Yes, that's true.

1 Q Will there be -- I think I should direct this
2 question to Mr. Wilson.

3 Will there be a witness who will be able to
4 explain that change?

5 A Yes.

6 MR. WILSON: Yes. Mr. Sjostrand and Mr.
7 Fritts, who developed the cost information and will be
8 testifying later, can explain to you the reasons why
9 that number was adjusted. It was adjusted in the errata
10 that we filed some weeks ago, Your Honor.

11 MR. CALHOUN: I think that's all, Your Honor.
12 Thank you.

13 Thank you. Mr. Lawson.

14 JUDGE HOPKINS: Who would be next? If we can,
15 I would like to go until 12:30.

16 MR. RATNER: I guess we would be next.

17 MR. STEPHENSON: Your Honor, while the
18 Department of Justice is getting located at the table,
19 the interest that I have seen portrayed by several of
20 the parties in schedules and proposed operations prompts
21 this remark.

22 We have looked at the requests of the various
23 protestants insofar as they have scheduled a certain
24 amount of time or have requested a certain amount of
25 time to cross examine certain of our operating

1 witnesses, and we have noticed that what seems to us to
2 be a surprising amount of time has been requested of
3 Messrs. Fitzgerald and Lacy, the two operating vice
4 presidents of the railroad.

5 I should point out to everyone -- and I'll
6 make this remark again later on so the people who aren't
7 here will know this -- Mr. Neal Owen is the principal
8 spokesman for the companies concerning the details of
9 the operating plan, and Mr. Owen is the man to whom
10 questions of the kind we have heard from KCS on several
11 different occasions concerning schedule should be
12 presented to Mr. Owen, not to Mr. Fitzgerald and Mr.
13 Lacy, because I'm afraid that a lot of people are going
14 to be saving up detailed questions for Mr. Lacy and Mr.
15 Fitzgerald and are going to find that they don't have
16 that specific knowledge of who is going to be blocking
17 for whom. So I'm just putting everybody on notice now.

18 JUDGE HOPKINS: Thank you for letting us know,
19 counsel.

20 Go ahead.

21 BY MR. RATNER:

22 Q Mr. Lawson, my name is James Ratner. I'm with
23 the United States Department of Justice.

24 The point of your diversion study is to
25 determine whether traffic moving by truck might move by

1 rail instead, is that correct?

2 A Yes, sir.

3 Q And the process of the diversion study
4 involves a consideration of the factors that would
5 significantly affect a shipper's choice as to which mode.

6 A Yes, that's true.

7 Q Would you say that the price or the rate that
8 the shipper pays is an important factor affecting which
9 mode he chooses?

10 A It's one of a number of factors.

11 Q The price of TOFC service is going to vary
12 depending on the location of a shipper to a railroad,
13 isn't it?

14 A The total door-to-door cost to him would, yes,
15 it would.

16 Q And why is that?

17 A Generally our services are ramp to ramp, and
18 then there is the cost of getting it from his door to
19 our ramp, and then the same thing on the other end.

20 Q And that's why drayage and brokerage are added
21 in along with the line haul cost?

22 A Yes, sir, that's right.

23 Q So for shippers that have lower drayage and
24 lower brokerage costs, they're in a better position in a
25 way to use rail than shippers who are further away,

1 isn't that correct, in terms of price?

2 A Would you say that again?

3 Q In terms of price, shippers that are close to
4 the railroad and have lower drayage and/or lower
5 brokerage fees have an advantage over shippers who are
6 further away and pay higher costs.

7 A To the extent that something would make the
8 total cost of shipper A lower than B other than the rail
9 rate, that would be true, yes.

10 Q Shippers who are close to railroads and have
11 little or no drayage charges will have a lower TOFC
12 price than shippers who are far from railroads and pay
13 higher drayage fees.

14 A They won't have a lower TOFC. They'll have a
15 lower total cost, yes, sir.

16 Q Fine. So holding the service constant for a
17 moment, the total rail price that you've been talking
18 about for those shippers that are close to railroads
19 might go up quite a bit before they would be similar to
20 a shipper that is far from a railroad.

21 A The percentage of the change in the total
22 cost, is that --

23 Q I wasn't looking for a percentage, but if you
24 face a lower price because you aren't paying drayage
25 costs, that price that you're facing could go up quite a

1 large amount before you or equivalent to somebody who is
2 paying a higher drayage cost, depending on what the
3 drayage cost it.

4 A I think that's right.

5 Q What aren't you sure of?

6 A Well, I'm a little confused by the example,
7 but I think I generally agree with what you're saying.

8 Q In addition to price, service is an important
9 factor which affects the mode that a shipper chooses, is
10 that right?

11 A Yes, sir.

12 Q There are many aspects to service, is that
13 right?

14 A Yes, sir.

15 Q Time in transit is an aspect of service?

16 A It's an aspect of it, yes, sir.

17 Q The time of day of delivery or the time of day
18 of pickup is also an aspect of service?

19 A That would affect the total door-to-door time.

20 Q And it would affect for some shippers their
21 consideration of which mode to choose depending on what
22 is offered by the various modes?

23 A It could do that.

24 Q Is the safety of the product being transported
25 a factor that shippers may consider when deciding which

1 mode to use?

2 A Yes, sir, it is.

3 Q Is the ability of a particular mode to
4 accommodate certain volumes a factor which shippers may
5 consider when choosing a mode?

6 A The ability of the carrier to handle it?

7 Q A particular mode to handle the volumes that
8 the shipper desires.

9 A Yes, it would.

10 Q It's the ability to accommodate a commodity of
11 a particular size as distinct from the volume of the
12 commodity? Is that a factor that if it varies from mode
13 to mode would affect which mode a shipper chooses?

14 A That can be a factor.

15 Q Is the frequency of service that a particular
16 mode would offer a factor which a shipper may consider
17 when deciding which mode to choose?

18 A In the overall aspect of how that would affect
19 total door-to-door time, yes.

20 Q Can you think of any other service factors
21 that I haven't mentioned?

22 A I think you've done a pretty good job.

23 Q Many of these factors are all present at once
24 for shippers when they consider which mode to choose,
25 isn't that correct?

1 A They are. They may or may not consider them
2 all for particular movements. Some might have greater
3 or lesser importance.

4 Q Some factors are important to some shippers;
5 other factors are important to other shippers?

6 A Yes, sir.

7 Q Is it fair to say for each shipper there is a
8 matrix of shipper preference factors, and the modal
9 choice will be determined by that shipper balancing out
10 all the various factors and looking at the different
11 modal offerings that are available to him?

12 A Yes.

13 Q And price and all these service factors are
14 all included in that matrix?

15 A Yes.

16 Q In your diversion study, in your testimony you
17 found that the amount of diversion varied from city pair
18 to city pair, didn't you?

19 A Yes.

20 Q So improved rail service might have a
21 substantial influence in getting shippers to change
22 their mode on some city pairs and might not have much of
23 an effect on another city pair.

24 A I think that's -- I think that would be true.

25 Q What part of it do you have a question about?

1 A Well, ask the question again, please.

2 Q Is it true that improved rail service might
3 have a substantial effect in getting --

4 A It would depend on, you know, the other
5 competition. You can improve a schedule in one point
6 and still not be competitive, if I'm answering your
7 question. You could improve it at another and be
8 competitive.

9 Q Does it depend on the shipper preference
10 factors? Holding aside competition for a moment, does
11 improved rail service vary from city pair to city pair
12 in terms of the amount of diversion based solely on the
13 shipper preference factors?

14 A The city pair, is that what you're asking me?

15 Q Yes.

16 A I think generally the -- I don't know the city
17 pair would have an effect on that. We would take into
18 consideration to greater or lesser extent the various
19 factors that you mentioned before. I don't know that
20 that would -- that the city pair would have any effect
21 on that.

22 Q I'll take one more crack at it. Assuming the
23 rail is already offering the best service and rail
24 improves its service, the amount of diversion that may
25 occur because of that improved service may vary from

1 city pair to city pair depending on the choices of the
2 shippers?

3 A The railroad already has the best service in
4 that market?

5 Q That's right.

6 A Better than truck?

7 Q Yes.

8 A And they improved it further?

9 Q Yes.

10 A And then the rest of your question was?

11 Q It may vary by city pair as to how much of a
12 diversion there is, depending on the preferences and
13 choices of shippers.

14 A It could.

15 Q Is it fair to say that the converse of that,
16 that if rail service deteriorates or price increases,
17 that on some routes there might be a diversion to truck,
18 and on other routes there might not be much of a
19 diversion?

20 A Again, I think it would depend on all of those
21 factors that you mentioned.

22 Q So I'll ask you whether there might not be as
23 much diversion on some routes than there might be on
24 others, is that correct?

25 A I think that's correct.

1 Q To put it another way, then, if rail service
2 deteriorated or the rail price went up, there may be
3 diversion for some shippers and no diversion for other
4 shippers?

5 A That could occur, but it would seem to me that
6 if the price and service both deteriorated that there
7 would be a loss of traffic, generally speaking.

8 Q If only the price rose, for example, though?

9 A If only the price rose and the service stayed
10 the same?

11 Q Then there would be diversion of some shippers?

12 A There could be.

13 Q And perhaps no diversion of other shippers?

14 A I think that could occur.

15 Q In the diversion study you propose to change
16 some of the current existing TOFC service and offer
17 different departure times and transit times and arrival
18 times, is that right?

19 A Yes, sir.

20 Q It's possible that some shippers would prefer
21 the old schedule to the new schedule, isn't it?

22 A That we would be giving them a better service
23 whether they would still like the old service? I don't
24 think so. I mean just the definition of "better" I
25 think --

1 JUDGE HOPKINS: Excuse me. Are you talking
2 about schedule times or what?

3 MR. RATNER: I'm talking about the entire
4 package, which is a different departure time, a
5 different transit time, and a different arrival time.

6 BY MR. RATNER: (Resuming)

7 Q Based on those changes, even though it may be
8 a faster transit time, for example, it is possible that
9 some shippers would have preferred the original
10 departure time or the original arrival time, for
11 example, to the new, improved schedule.

12 A Well, our definition of improvement here, I
13 think, generally speaking is faster schedule, and it's
14 also an improvement, as I would term it from my
15 experience in marketing, as an improved departure time
16 and/or arrival time. It would be my feeling that the
17 shipper would accept this over what the existing
18 schedule would be.

19 Is that responsive?

20 Q It responds somewhat, but I'm a little bit
21 confused. If departure time is a shipper preference
22 factor and you were changing the departure time, are you
23 telling me that for all shippers in every case where you
24 have changed the departure time there will be -- in that
25 universe of shippers there will be zero that would have

1 preferred the original time to the new time?

2 A I think so. In most cases, my recollection,
3 the departure times were later departure times, and so
4 there would have been no disbenefit to the shipper, and
5 the total door-to-door time was an improvement which
6 would be a benefit for him. So I would say that he
7 would like our -- it is my judgment that he would like
8 our changed schedule.

9 Q How about the arrival time? When you change
10 the arrival time is that always going to be better for
11 the shipper?

12 A I said before we try to take into
13 consideration improvement in departure and/or arrival.
14 There is some of both, and there is some of one or the
15 other in there. Generally, again, it's the door-to-door
16 time that we have shown an improvement to the shipper
17 here, and I would say that it is a benefit to him.

18 Q Is it possible to conclude for any particular
19 city pair movement or for any group of shippers that
20 significant diversion from truck to rail or from rail to
21 truck will occur just on the basis of fact that two
22 modes exist and one of the modes changes the service?

23 A Is it possible to do what?

24 Q Is it possible to conclude that a significant
25 diversion from truck to rail or rail to truck will occur

1 whenever one of the modes changes its price or service
2 offerings?

3 A It would be my experience that where a new
4 offering comes into the marketplace that there is
5 improvement of price or schedule or both. I shouldn't
6 say generally -- our shippers are very rational
7 businessmen, and I would say that they would take
8 advantage of it.

9 Q But depending on the price or the service
10 offering and depending on who the shippers were, there
11 may or may not be any diversion?

12 A Where we have offered an improvement?

13 Q Where either mode offers a change.

14 A Yes. Well, I think we've taken that into
15 consideration in here by the way we have applied that
16 discount factor to that. That is one of the things that
17 drove that decision, the .5 decision.

18 Q I understand, but I wasn't asking you whether
19 you had taken it into consideration. I was asking you
20 whether it was possible --

21 A My answer to that is yes for that reason.

22 Q Now I'm confused. Your answer is yes?

23 A What's your question?

24 Q I'll start over with a question. Is it
25 possible to conclude that significant diversion will

1 occur simply because one or another mode changes its
2 price and service offerings?

3 JUDGE HOPKINS: He answered that question.

4 MR. WILSON: He said yes to that.

5 MR. RATNER: The answer is yes? Fine.

6 Your Honor, we can take a break right now.

7 JUDGE HOPKINS: Do you have much more? I'm
8 just asking.

9 MR. RATNER: I'd say about 15 or 20 minutes.

10 JUDGE HOPKINS: All right. Let's recess until
11 1:30.

12 (Whereupon, at 12:30 p.m., the hearing was
13 recessed for lunch, to be reconvened at 1:30 p.m., the
14 same day.)
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AFTERNOON SESSION

(1:30 P.M.)

JUDGE HOPKINS: Let's get back on the record.

Mr. Ratner?

Whereupon,

A.J. LAWSON,

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand, was examined, and testified further as follows:

CROSS EXAMINATION - RESUMED

BY MR. RATNER:

Q Good afternoon, Mr. Lawson.

A Good afternoon, sir.

Q On Page 2 of your testimony, the second sentence, you indicate that Santa Fe, like all other railroads, has lost significant freight traffic to truck over the years. Do you see that?

A Yes, I do.

Q What is your support for that?

A I think that is general knowledge in the marketplace. I might take it a step further and tell you that this year our experience has been that even though there has been growth in the economy, that we have not experienced the same growth with our traffic. It has been very disappointing.

1 When you look at industrial production, and
2 then you look at the record of the railroads and the
3 Santa Fe individually, it is clear to me that the Santa
4 Fe is not participating in the growth.

5 Q So then you mean you have lost significant
6 potential freight traffic rather than significant actual
7 traffic?

8 A No. The industrial production would indicate
9 that the traffic has in fact actually grown, and that we
10 have not grown with it.

11 Q Have you lost tonnage that trucks have picked
12 up, or have you simply not participated in growth in the
13 same way trucks have?

14 A What I was referring to is that the railroads
15 have not grown in proportion in general and the
16 railroads in the western district and the Santa Fe
17 particularly.

18 Q They have not grown?

19 A Yes, they have not shared in the growth.

20 Q Also on Page 2 you refer to innovative new
21 TOFC equipment.

22 A Yes.

23 Q Second paragraph. In terms of the shipper
24 preference factors that we were discussing earlier, Mr.
25 Lawson, how does the innovative new TOFC equipment help

1 traffic go by rail instead of by truck?

2 A I think it adds to the reliability factor of
3 providing the service.

4 Q Any other way?

5 A In this case, it gives us lower costs that
6 enables us to compete harder.

7 Q How does it give you lower costs?

8 A It is a much more efficient flatcar
9 arrangement. I don't know if you are familiar with it,
10 but it is an articulated car that you want to get into
11 -- it does in fact produce fuel savings and other types
12 of operating characteristics that do in fact reduce the
13 cost of providing the service.

14 Q In general, in terms of the shipper preference
15 factors, what advantages can rail TOFC offer over truck
16 to shippers?

17 A Price, service, and reliability where we can
18 perform those in an acceptable manner.

19 Q And with respect to at least certain shippers
20 then, rail has price advantages over trucks?

21 A There would be examples of that, plus it
22 presents another competitive factor in the marketplace
23 for the shipper to consider.

24 Q I understand. I was asking about advantages.
25 We are comparing rail and truck, head to head, where

1 rail has an advantage in TOFC service.

2 A I am sorry. Would you say that again?

3 Q Yes. In general, comparing truck and TOFC
4 rail head to head, what advantages does TOFC rail have
5 over truck that they can offer to shippers?

6 A Well, again, our offering is price and
7 service, equipment availability, a second option in the
8 marketplace, alternative service.

9 Q Is there any particular factor that makes --
10 that gives rail an advantage over truck?

11 A Oh, I think the fact that we are hauling
12 multiple units, economics of scale relative to a single
13 truck moving over the highway.

14 Q Is another way to say that that especially for
15 long haul rail has a cost advantage over truck?

16 A We are able to compete better in long haul
17 markets as a general rule than we are in shorter haul
18 markets. There would be an implication there that our
19 cost structure would allow us to do that.

20 Q In your opinion, does rail have a long haul
21 cost advantage over truck?

22 A I think it depends on circumstances, the
23 corridor, the balance, a lot of other factors. I just
24 don't think there is one answer to that, sir.

25 Q On Page 9 you refer to rail as a more fuel

1 efficient, less costly mode. I assume you mean more
2 fuel efficient and less costly as compared to motor
3 carrier?

4 A Let me find my statement. Can you direct me?

5 Q Yes, the second sentence of the last
6 paragraph.

7 A And your question was?

8 Q My first question was, when you say rail is a
9 more fuel efficient, less costly mode, you mean compared
10 to trucks, don't you?

11 A Yes, sir.

12 Q In what ways is rail a less costly mode than
13 trucks?

14 A I think because of the economies of scale that
15 I was mentioning before. We are handling multiple units
16 as opposed to a single over the road.

17 Q In this statement, are you referring to TOFC
18 rail or rail in general?

19 A Well, this statement is directed specifically
20 at my study with the intermodal issue, because we are
21 comparing comparable shipment sizes.

22 Q Does it hold true for rail in general?

23 A Again, I think that depends on the
24 circumstances. Shipment size, frequency, volumes, those
25 types of things.

1 Q In a case where the shipper preference factor
2 that the shipper values the most is price and rail has a
3 cost advantage over truck, is it fair to say that there
4 may be rail service to that shipper because of rail's
5 cost advantage that could not be provided by truck?

6 A You have a number of --

7 MR. WILSON: I object to the question,
8 counsel. I think it is compound.

9 MR. RAKER: It certainly is compound. Let's
10 do it again.

11 JUDGE HOPKINS: Thank you.

12 BY MR. RATNER: (Resuming)

13 Q Can you accept an example where the
14 determinant of mode for a shipper is going to be the
15 rate?

16 A Yes, there are instances.

17 Q In an instance like that where rail has a cost
18 advantage over truck that you have described, are there
19 circumstances where that shipper would be served by rail
20 but would not be served by truck?

21 A You are talking about a movement where you say
22 we have a cost advantage or the rate is lower, and then
23 you are asking --

24 Q Would the rate for rail be lower than the rate
25 for truck because of the rail cost advantage?

1 A Will the rate for rail be lower than the rate
2 for truck? It may or may not be. You know, the rates
3 are different in different corridors for different
4 circumstances. All rates are not some percentage of
5 cost. You know, they are market oriented and
6 competitively oriented. So I think that is the best
7 that I can answer your question. I don't think there is
8 one single answer to that, unless again I am not
9 following what you are asking me.

10 Q Can you give me an example of a case where --
11 maybe I misunderstood you. Can you give me an example
12 of a case where rail has a cost advantage over truck,
13 and has a higher rate than truck?

14 A Not where we are handling the business.

15 Q So that would be a very rare circumstance?

16 A Yes.

17 Q And it would be considerably less rare where
18 rail had a cost advantage over truck and had a lower
19 rate than truck? Is that correct?

20 A We have a cost advantage, and it would be rare
21 that we would have a price advantage?

22 Q Are there circumstances where rail has a cost
23 advantage over truck and has a lower rate than trucks?

24 A Yes. I am sorry, I was having trouble
25 following you.

1 Q That is okay. It may very well be the
2 question. On Page 2 and 3 you discuss a program that
3 Santa Fe engaged in involving customer ownership of
4 trailers. Is that right?

5 A Yes, sir.

6 Q And if I understand this correctly, you have
7 estimated a shift of 44,000 trailers annually from truck
8 to rail that is occurring in part because of this
9 program?

10 A The number on Page 3 for the year in question
11 is almost 50,000. It is 49,500. And it did in fact
12 occur because of that.

13 Q Right. I said 44,000 because you say it
14 increased from 4,900 to 49,000.

15 A The first year of the program is 4,900. Yes.

16 Q Are other shippers receptive to this program?

17 A Very much.

18 Q So you say it is working well?

19 A Yes, sir.

20 Q Are you going to try this type of program, or
21 do you have this type of program in areas other than
22 perishables?

23 A There are other -- those options are available
24 now. We have various kinds of options with types of
25 service we offer and types of equipment, and this

1 particular one is a program where the ownership of the
2 equipment is part of the shipper's responsibility, and
3 to the extent that we can develop a program like that,
4 in fact, yes, we do have another program like that. We
5 have done some of that with flat bed trailers on lumber,
6 and so it is an area where we have tried to be more
7 competitive in that marketplace.

8 Q Unless I misunderstand this program, shippers
9 are facing two costs associated with your program. They
10 are facing the rail rate cost, and in addition they are
11 facing at least some investment cost associated with
12 buying or owning trailers. Is that correct?

13 A That is correct. Might I say, in there is any
14 question on that, this was a cooperative program that we
15 entered into with a number of shipper and shipper
16 associations, and it was a program that the shippers
17 actually came to our president and said, you people are
18 not in the markets any more.

19 All we have got is truck, and we want you to
20 get back in, develop a program for us, and so we have
21 done that in sort of a joint effort with them. Their
22 commitment is the equipment and other things, and ours
23 is a service and price angle.

24 Q So the combined investment price that they pay
25 plus the line haul is still attractive enough so that

1 they choose rail rather than motor carrier? Is that
2 correct?

3 A Yes, sir.

4 Q Still with the perishable example, for this
5 increase in traffic, do you know how much of the
6 increase in traffic came at the expense of truck?

7 A As far as I am concerned, it is basically all
8 truck oriented. There could be some exceptions to
9 that. A big portion of it is.

10 Q You don't know how much of it came from
11 another railroad?

12 A I don't think any of it -- well, this is
13 traffic basically that was moving highway, and we have
14 captured that.

15 Q Is any of it moving boxcar or other equipment
16 on Santa Fe that has switched to trailers?

17 A Yes, I would say that there has been traffic
18 where the shipper has seen for either a price or service
19 reason or shipment size reason where his only other
20 alternative was boxcar versus truck before, he now has
21 the three alternatives.

22 Q Mr. Lawson, you have been asked this before,
23 and I will try to cover this briefly. On Page 4, you
24 indicate that -- the first full paragraph, first
25 sentence, "Southern Pacific has also become an

1 aggressive competitor against motor carriers."

2 A Yes.

3 Q Can you agree with me that there are city pair
4 movements whereby the Santa Fe and Southern Pacific
5 carry TOFC traffic?

6 A I am sure that is true.

7 Q So to the extent that Santa Fe is trying to
8 gain new TOFC traffic, they are trying to get it both
9 from trucks and from Southern Pacific in those city
10 pairs, aren't they?

11 A Well, really, I think the definition of
12 piggyback or intermodal is that no matter how you cut
13 it, we are competing with a motor carrier, and that any
14 actions that take place in the market are really
15 responsive to what is going on with the trucker, and
16 that is what we are competing with.

17 Q Is Santa Fe uninterested in getting intermodal
18 traffic that is now currently moving on Southern
19 Pacific?

20 A We are interested in getting any traffic that
21 we can.

22 Q You don't know where it comes from, do you?

23 A As long as we can make a contribution on the
24 traffic, and if the shipper decides that this is a
25 better option for him, we will certainly handle the

1 traffic.

2 Q To be a little clearer then, if Santa Fe
3 successfully diverts the trailers to Santa Fe, it
4 doesn't matter to Santa Fe whether the trailers come
5 from truck or whether they come from Southern Pacific?

6 A Well, in this particular case, this study
7 involved traffic that railroads do not have, and that is
8 the basis for my study here. And -- am I not
9 responding? I am sorry.

10 Q I don't think you actually are responding. I
11 understand that that may not be the basis of your study,
12 but I was asking you a question as an employee of Santa
13 Fe concerned with obtaining TOFC traffic. Does Santa Fe
14 care or make any distinction as to whether the traffic
15 that they divert comes from truck or from Southern
16 Pacific?

17 A I think the answer to that is no.

18 Q And similarly, Santa Fe doesn't want to lose
19 any TOFC traffic either to truck or to Southern
20 Pacific. Isn't that right?

21 A We don't want to lose any traffic.

22 Q It doesn't make a difference who you lose it
23 to?

24 A No, sir.

25 Q Has Santa Fe diverted TOFC traffic from

1 Southern Pacific in the past successfully?

2 MR. WILSON: Objection, Your Honor. Now we
3 are really talking about rail traffic diversions. This
4 is way beyond Mr. Lawson's verified statement, as has
5 been a number of questions by counsel, which I have not
6 objected to, but now we are specifically talking about
7 rail traffic diversions. We have witnesses that studied
8 rail traffic diversions, and I do think that the hearing
9 would move along quite a bit faster if counsel could
10 reserve questions on rail traffic diversion for rail
11 traffic diversion witnesses, and not ask them of
12 witnesses that are covering different topics in their
13 verified statements.

14 JUDGE HOPKINS: Mr. Ratner, what does this
15 have to do with this man's testimony?

16 MR. RATNER: Two things. One is, he is an
17 expert in diversion between truck and rail, and you
18 can't take one without the other. We are basically just
19 trying to understand the significance of diversion, how
20 much is moving by truck, whether it also occurs from
21 rail, and also to the extent that he is an expert in it,
22 we have questions that move beyond the diversion --

23 JUDGE HOPKINS: He indicated of course there
24 would be some that would be diverted from rail. I
25 thought he stated that.

1 MR. RATNER: All right, Your Honor. I will
2 move on.

3 BY MR. RATNER: (Resuming)

4 Q I think you have been asked this before, Mr.
5 Lawson. I didn't quite understand your answer. You
6 were asked this morning if you only looked at traffic
7 that would be divertible from truck to rail TOFC. Is
8 that right?

9 A We looked at the existing service in the
10 marketplace by other rail carriers. We considered the
11 traffic that other rail carriers had that was identified
12 by the Reebie Transearch Data Base which comes from the
13 way bill sample, and so we were aware of other traffic,
14 other rail traffic.

15 Q Perhaps you didn't understand my question. I
16 was asking if something could potentially be diverted
17 from truck to non-TOFC rail, did you consider that at
18 all?

19 A Whether it could be diverted from truck to the
20 railroad boxcar or something like that?

21 Q That is right.

22 A Did I take that into consideration? Is that
23 your question?

24 Q Yes, that is my question.

25 A No, sir, I didn't.

1 Q I think you have already answered this, but I
2 didn't understand your answer as to why not.

3 A Well, it would be my judgment that if there
4 were an opportunity to do that, we would be handling it
5 in boxcar now. It is either shipment size or some
6 customer preference that it is moving in a truckload
7 size, which probably is not compatible with a boxcar or
8 a covered hopper car or something like that, so my
9 judgment would be that we are going after a motor
10 carrier's shipment size that requires a service
11 sensitivity that we could probably not provide any way
12 other than intermodally.

13 Q Starting on Page 5, you describe a process by
14 which city pairs with potential for truck to rail
15 diversion were identified, and you basically say in the
16 third sentence of the second paragraph that these data
17 enabled us to select those flows where truck volumes
18 would be sufficient to justify new or improved rail TOFC
19 service.

20 Have you found that sentence?

21 A No, I don't --

22 Q Third sentence of the second paragraph.

23 A The second paragraph? Is it the second main
24 paragraph?

25 Q Yes.

1 A Okay. I am in the wrong paragraph. Just a
2 minute.

3 (Pause.)

4 A Okay, yes. I am with you. I am sorry.

5 Q That is all right. What is the sufficient
6 volume?

7 A All right. The way that was determined, we
8 identified volumes in various lanes, and this is when we
9 got with our operating people, and we said, these are
10 our potential volumes, and this is a service that we
11 think is necessary to be competitive in the market. Can
12 you provide that service?

13 Q You don't have specific knowledge about what
14 the level of volume is that is sufficient?

15 A No, that is a judgment that is made by the
16 operating plan in formulating the total operating
17 characteristics of the railroad.

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1 Q You described in a couple of places in your
2 testimony that the diversion study that you did is
3 designed to measure only incremental impacts resulting
4 from the merger itself, is that right?

5 A Yes, sir.

6 Q Is it fair to say the reason you do that is to
7 ensure that diversions which are not resulting from the
8 merger are somehow not calculated in with that?

9 A We didn't want to take credit for something
10 that would not occur because of the merger.

11 Q If something could be achieved by one or other
12 of the railroads without the merger, then it shouldn't
13 be considered as a diversion benefit occurring from the
14 merger, is that right?

15 A I would say so.

16 Q Did you do any testing for any of the improved
17 schedules to determine whether either of the railroads
18 alone could achieve the proposed new schedules?

19 A The schedules we have put in are either new
20 schedules or replacing schedules that have been
21 unreliable in the past, and knowing that they have been
22 unreliable and unacceptable, that was enough for me,
23 based on my knowledge of how shippers react.

24 Q So when you projected a new proposed schedule,
25 no test was done to consider whether either of the

1 railroads acting alone could implement and achieve that
2 schedule?

3 A No test was run, but it would be my judgment
4 that they could not, if that is worth anything.

5 Q I think you cited one example where there was
6 a price reduction.

7 A Yes, sir.

8 Q Was any test done to consider whether either
9 railroad acting alone could have enacted that price
10 reduction?

11 A I think there was both a price and a service
12 reduction in that corridor. I'm pretty sure there was.

13 Q Was there any test as far as the price element
14 of that goes, as to whether a non-merged Southern
15 Pacific or a non-merged Santa Fe could have achieved
16 that?

17 A Not particularly for this study.

18 Q Page 9 of your testimony, you indicate that 60
19 percent of the total estimated truck to rail diversion
20 is going to come in the first year and 80 percent in the
21 second year, 100 percent in the third year. What is the
22 basis for that prediction?

23 A I think it's generally my experience that when
24 you put in a new service or you're making some major
25 changes, like we would be in the merger, that it takes a

1 period of time for some of those things to develop.

2 Q At the bottom of the page you indicate you
3 believe that there are likely to be not only private but
4 public benefits as well associated with truck to rail
5 diversions.

6 A Yes, sir.

7 Q You agree with me, then, that there's a
8 difference between private and public benefits?

9 A Private by definition would be benefits
10 accruing to the railroad, and public to shippers and the
11 world at large. Is that your definition? I would agree
12 with that if that's your definition.

13 Q Would you agree with the definition that
14 public benefits are benefits which result in a resource
15 gain to society?

16 A You're getting kind of deep with me.

17 Q I'll accept your definition.

18 A Okay.

19 Q Last question for you: Do you agree with me
20 that there may be in some cases a very large private
21 benefit, but that that may mean almost no public benefit
22 associated with that particular activity?

23 MR. WILSON: I object to the question. I
24 don't think that the witness is testifying as an
25 economist, and I think perhaps he could reserve that

1 question for Dr. MacAvoy when he testifies next week.

2 JUDGE HOPKINS: Can you answer that question
3 in your own --

4 THE WITNESS: I'm not even sure I understood
5 the question. I'm getting tied up in the semantics of
6 public and private. It's more difficult to think up
7 here than it is out in back, out there.

8 BY MR. RATNER: (Resuming)

9 Q I understand from your testimony that you made
10 a distinction between private and public benefits. Is
11 that a fair understanding of your testimony?

12 A The context of the statement is private
13 benefits for the new merged system, and then the public
14 benefits would be for our customers, consumers at
15 large. That's the context of what I tried to say here.

16 Q Is it possible that diversions could cause
17 private benefits and not public benefits?

18 A I don't think so. I think that for a shipper
19 to make a decision to make a change, that there are in
20 fact benefits that would accrue to him or the product
21 he's selling or whatever.

22 MR. RATNER: Okay, thank you, Mr. Lawson. I
23 have no other questions.

24 JUDGE HOPKINS: Any other questions? Mr.
25 Roberts.

1 MR. ROBERTS: Counsel for the Department of
2 Transportation was kind enough to let me go out of
3 time.

4 CROSS EXAMINATION

5 BY MR. ROBERTS:

6 Q Mr. Lawson, my name is Barry Roberts. I
7 represent Sunkist Growers, Inc.

8 Mr. Lawson, were you in the room this morning
9 when I asked Mr. Edwards of the Southern Pacific as to
10 what shippers of perishable commodities can expect from
11 the merged carrier insofar as the availability of
12 mechanically refrigerated boxcar equipment beyond the
13 merger?

14 A Mr. Roberts, I was in the room, but I couldn't
15 hear the questioning or the answer. But I was here.

16 Q You are aware that your counsel has designated
17 you as the witness?

18 A I'm aware of that, yes. He owes me one.

19 Q Okay. Let me try to explain to you what I am
20 after, Mr. Lawson. It's been indicated to us that the
21 Santa Fe is in the process of phasing down its fleet of
22 refrigerated equipment and would prefer to have its
23 perishable traffic moved TCFC. Is that a correct
24 understanding?

25 A I think that's a general characteristic, yes.

1 Q And yet, Mr. Edwards, on behalf of the
2 Southern Pacific, I believe the record will show that he
3 testified that his company has a fleet of about 4,000
4 mechanically refrigerated cars that they are continuing
5 to maintain, refurbish, and urging the shippers to use.

6 What I'd like to know from you is, what can we
7 expect, if the merger is approved, from the merged
8 carriers with respect to the continued availability of
9 mechanically refrigerated boxcars?

10 A Let me give you my impression of that. I may
11 or may not be the right person to ask the question, but
12 it's my understanding that just within the last few
13 weeks our president Mr. Cena and my vice president Mr.
14 Fitzgerald have met with some of the people, including
15 your principal, Sunkist Growers, in California and that
16 they have answered that question to their satisfaction.

17 My general understanding of the response was
18 that, we will continue to offer both services as long as
19 it's a competitive, viable thing to do.

20 Does that answer your question?

21 Q Not entirely. Let me put this in
22 perspective. In response to certain questions by the
23 attorney that just preceded me from the Justice
24 Department, I think you indicated that traffic has come
25 to the TOFC mode both from the highway and from railroad

1 boxcars. Now, that would be true with respect to
2 perishables, wouldn't it?

3 A It would be true, and the statement would only
4 be qualified to a lesser extent for boxcars. It's my
5 contention that it's primarily from the highway.

6 Q Now, it is true that right now the Santa Fe
7 does not have any substantial percentage of the
8 perishable traffic moving in boxcars.

9 A Any MTC car?

10 Q Right.

11 A That's true.

12 Q On the other hand, are you aware that the
13 Southern Pacific has a substantial amount of perishable
14 traffic moving in PFE mechanically refrigerated
15 boxcars?

16 A I know that they have more than we do.

17 Q Now, are you not currently seeking to expand
18 your TOFC perishable business from those origin areas
19 that are now served by the Southern Pacific in
20 mechanically refrigerated boxcars?

21 A We offer the service, as far as it is
22 economically possible, for the owners of the trailers.
23 And they are owned and controlled by the shippers. And
24 some of it would come from areas that are served by the
25 SP and not served by the Santa Fe particularly.

1 Q So that today we have competitive service not
2 only between and among the two Applicant carriers, but
3 it appears that each Applicant carrier, looking for cur
4 traffic, is offering a competing mode. Now, what are we
5 going to expect when the merger -- if the merger takes
6 place?

7 A Well, I'm not sure that I agree with your
8 characterization of the competing mode. It's my
9 contention that primarily the traffic that's moving
10 intermodally is truck-oriented traffic. It didn't come
11 out of a boxcar.

12 I will agree that there is some, as an example
13 your client, who ships MTC car and then also was one of
14 our first customers in the Plan 3 operation, does have a
15 commitment to trailers. And he exercises his judgment
16 on whatever influences that judgment to his best
17 advantage.

18 But I don't really agree with that, the
19 characterization that you made.

20 Q Returning to my original question, then, are
21 you in a position, are you the right one to definitively
22 explain for the record what the policy will be with
23 respect to the continued availability of the competing
24 modes in the event the merger takes place? Or must I
25 once again ask who is the appropriate witness?

1 MR. WILSON: I would like a clarification on
2 what you mean by "the continued availability of the
3 competing modes." Do you mean the new railroad's
4 competition against trucks? I don't understand what you
5 mean.

6 BY MR. ROBERTS: (Resuming)

7 Q Right now we have available mechanically
8 refrigerated boxcars to ship fresh perishable produce.
9 We also have available refrigerated trailers that would
10 move in TOFC service, and we of course also have
11 available refrigerated trailers over the road highway
12 service.

13 Now, we know that we are going to have
14 continued competition from the over the road truckers.
15 What I am trying to find out is, if the merger takes
16 place, if we will continue to have the availability of
17 what is now competing service? In other words, the
18 competition not only between the SP and the Santa Fe,
19 but between the boxcar and the piggyback.

20 I hope that makes it clear.

21 A And you're asking me, am I the right person to
22 answer that question?

23 Q Are we going to have the competing
24 alternatives?

25 A That's a policy issue, and I've answered you

1 as best I can. I'm telling you that the two top people
2 in my company have met with your principals and it was
3 my understanding that they have answered that question
4 to their satisfaction.

5 JUDGE HOPKINS: Do you know what the answer
6 is?

7 BY MR. ROBERTS: (Resuming)

8 Q Who can answer that question for the record in
9 this proceeding?

10 JUDGE HOPKINS: Does he know what the answer
11 is?

12 THE WITNESS: I don't know the definitive
13 answer that was given to them. The people who met with
14 them were President Cena and Vice President Fitzgerald.

15 MR. ROBERTS: Your Honor, once again --

16 JUDGE HOPKINS: Is there anybody that can give
17 this gentleman the answer?

18 MR. STEPHENSON: This is the first time, Your
19 Honor, that that question has been raised in this
20 forum. He didn't ask that question of Mr. Cena or any
21 of the other witnesses.

22 JUDGE HOPKINS: Aside from that, is there
23 anybody that can give this gentleman the answer?
24 Another witness if not this witness?

25 MR. WILSON: Other than the obvious answer

1 that I think Mr. Lawson could give him, which he already
2 has given him, I don't think that -- I mean, if counsel
3 wants a policy witness to answer this question, he
4 should have asked the policy witnesses. They have
5 appeared, testified, and are gone.

6 This witness can testify with respect to what
7 the policy of the new company logically would be, given
8 the marketplace that it's competing in.

9 JUDGE HOPKINS: Mr. Roberts, what about your
10 own company? I mean, the people you represent,
11 Sunkist. If they attended a meeting, wouldn't they have
12 received some answer? Have you discussed it with them?

13 MR. ROBERTS: Yes, Your Honor, and that's why
14 I'm here.

15 JUDGE HOPKINS: So they don't have a
16 definitive answer.

17 MR. ROBERTS: Assurances and things that we
18 are told in the context of a sales presentation is far
19 different than the kind of assurance we would like on the
20 record.

21 Now, insofar as me not asking a policy
22 witness, I believe I asked the president of the Santa
23 Fe, Mr. Cena, what the policy will be. I believe I
24 asked the same question of Mr. McNear. I believe I
25 asked the same policy question of Mr. Edwards. And now

1 I am asking the same question of Mr. Lawson.

2 I still don't know, if the merger is approved,
3 if my client will have available what is today competing
4 alternatives between mechanically refrigerated cars and
5 refrigerated TOFC trailers. All we know is that we'll
6 continue to have truck competition.

7 JUDGE HOPKINS: Well, what is your belief as
8 to the intent?

9 THE WITNESS: Okay. My belief about the
10 intent is that as long as those cars are economically,
11 efficiently, mechanically serviceable, and as long as
12 there's a demand for them -- and let me say that the
13 demand for those MTC cars is terrible. Our experience
14 on the Santa Fe shows when we did have a large number of
15 cars was, we were lucky to get four or five or six trips
16 a year out of them.

17 In today's market, that car probably costs
18 \$100,000. And so the best that I can answer you is that
19 if the market will support the investment in that type
20 of equipment, I would say that we would be happy to
21 provide it to you, and with those conditions. I don't
22 believe I can answer you any differently than that,
23 sir.

24 MR. ROBERTS: I have no further questions,
25 Your Honor. But if there is another witness who might

1 more definitively tell us what the policy will be of the
2 merged carriers -- I understand Mr. Lawson has explained
3 to us his perspective from the standpoint of the Santa
4 Fe, but if they could tell us what the policy would be
5 of the merged carriers, I think we would be most
6 appreciative.

7 JUDGE HOPKINS: Are you talking about the
8 merged carriers or just Santa Fe?

9 THE WITNESS: I threw in the experience factor
10 of the use factor, but I would say that would be --

11 JUDGE HOPKINS: You're talking about the
12 merged carrier?

13 THE WITNESS: Yes.

14 MR. ROBERTS: I have no further questions.
15 Thank you.

16 JUDGE HOPKINS: Ms. Reed.

17 CROSS EXAMINATION

18 BY MS. REED:

19 Q Good afternoon, Mr. Lawson. My name is Mary
20 Reed. I'm appearing on behalf of the U.S. Department of
21 Transportation.

22 I have provided you with a copy of a document
23 marked DCT-C-1, which is entitled "The Responses to
24 Questions Posed by the United States Department of
25 Transportation Concerning Truck Diversion Study

1 Presented by A.J. Lawson and Carl Liba." Have you had
2 an opportunity to review that document?

3 A This particular document?

4 Q Yes, sir.

5 A Yes, to some extent.

6 Q Were you responsible for preparing the
7 responses to the questions presented by the Department
8 as set forth in this document?

9 A To some extent I was.

10 Q Who else was responsible for preparing the
11 responses?

12 A Mr. Liba.

13 Q To the extent that you were responsible for
14 preparing the responses, are they accurate?

15 A Yes, they are.

16 Q I have several other questions I would like to
17 ask you.

18 JUDGE HOPKINS: This document will be marked
19 DOT-C-1 for identification.

20 (The document referred to
21 was marked Exhibit No.
22 DOT-C-1 for
23 identification.)

24 BY MS. REED: (Resuming)

25 Q Does the Santa Fe compete with the motor

1 carriers for less than truckload traffic?

2 A Yes, we do.

3 Q To what extent?

4 A We have customers, various freight forwarders
5 and associations, some of which their primary business
6 is LTL business and some of which sort of it is a
7 secondary issue for them. We offer price and service to
8 them and we do handle some LTL business through that
9 way.

10 Q How much of your total TOFC traffic would be
11 LTL traffic?

12 A I'm not sure I know the --

13 Q Can you give me a percentage, or
14 trailerloads?

15 A A small percentage.

16 Q A very small percentage?

17 A Yes.

18 Q Do you know how far traffic is drayed to a
19 railhead?

20 A It can be any distance from across the street
21 to -- we were talking before about this perishables
22 program. Some of that moves all the way -- I'm not sure
23 I would call it a drayage, but it does move via highway
24 all the way from, for example, the East Coast to
25 Chicago, and then goes rail beyond that. So it can be

1 variable.

2 Q How far is traffic usually used by motor
3 carrier to a railhead in the California area? I'm
4 talking now about Santa Fe.

5 A Again, that varies. It can be across the
6 street and it can be 60, 70, 80, maybe 100 miles away.

7 Q Does it depend on how long it takes to truck
8 the traffic to a railhead, or is it based on mileage?

9 A I think it's more a factor of the total
10 logistics of the entire movement. You can't just
11 isolate the drayage part and say you've made a decision
12 because of that. You would look at the total logistics
13 dock to dock to make that decision. It would be
14 different in various circumstances.

15 Q In DOT-C-1, the answer to the last question,
16 number 15 on page 8, in the response you indicate that
17 -- were you responsible for preparing the response to
18 question 15 as far as the time of delivery?

19 A I may have been. Can I read it?

20 Q Sure.

21 (Pause.)

22 A I had input into this, yes, I did.

23 Q My question is, with regard to the closing of
24 the ramps at the shippers' or receivers' facilities --
25 and you indicate that they generally close at 5:00

1 o'clock p.m., the last sentence of your response.

2 A All right.

3 Q Is that correct, that the ramps are usually
4 closed at 5:00 o'clock p.m.

5 A No, I don't think they're saying ramps are
6 closed. Let me read this.

7 They're saying receiving docks. This would be
8 the shipper or the consignee's receiving dock. The
9 place that the traffic is coming from or going to, not
10 the railroad operation.

11 Q Where it is delivered to the receiver or the
12 consignee?

13 A Yes.

14 Q Those docks are usually closed at 5:00 o'clock
15 p.m.

16 A As a general rule.

17 Q Does the consignee or receiver consider
18 traffic delivered by 3:00 o'clock p.m. as being
19 delivered that day, or is that too late for it to be
20 unloaded before they close at 5:00 o'clock?

21 A If he receives it at his dock?

22 Q At 3:00 o'clock p.m.; do they have time to
23 unload it?

24 A There could be examples where they do that.

25 Q Is that generally true, that it is considered

1 by the receiver to be delivered that day, or is it
2 considered to be delivered the next day?

3 A If he can in fact unload it, he would consider
4 it as being that day. If not, then he would consider it
5 as the next day.

6 MS. REED: That's all the questions I have.

7 JUDGE HOPKINS: Thank you.

8 Mr. Wilson, do you have any?

9 MR. WILSON: Yes, I have some brief redirect,
10 Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WILSON:

13 Q During the KCS cross-examination there was
14 discussion of train schedules. What were the sources of
15 the train schedules used in the truck to rail diversion
16 study?

17 A I didn't know the answer to that, but I have
18 checked on it and, based on the information that I
19 received from my office, the representation of period of
20 time was October 1983.

21 Q October of '83. And then what documents were
22 locked at?

23 A This came from train schedule books.

24 Q Is that the case for all of the railroads?

25 A Yes. Yes, that would be true for all of the

1 railroads that are represented in those corridors.

2 Q Okay. In the Department of Justice
3 cross-examination, Mr. Ratner was concerned that
4 shippers react differently to new price and service
5 options when they are made available in different
6 traffic lanes.

7 By first question is, why do shippers react
8 differently to new price and service options in
9 different traffic lanes?

10 A Well, he listed a number of reasons for that,
11 which I agreed with. And those reasons are taken into
12 consideration in the shipper preference model that was
13 used, or matrix that was used, in developing the study.
14 And it's based on interviews with shippers, so it would
15 represent their reasoning or the reasons for making
16 diversions.

17 Q Okay. And in the Rio Grande cross-examination
18 something came up about consideration of other railroad
19 TOFC service options in the traffic lanes we studied.
20 To what extent did the study consider other railroad
21 TOFC service options in the various traffic lanes that
22 were examined?

23 A I thought that I had answered that question.
24 We did look at all of the other TOFC service
25 availability, and in addition we looked at the traffic

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1 as quantified by the Beebie Transearch data base for the
2 other railroads.

3 Q Okay. And then one last question from Ric
4 Grande had to do with estimate by counsel that in 19 of
5 the 27 traffic lanes we already, one or the other
6 railroad, already had single line service. I'd like for
7 you to look, if you could, at your Appendix E and tell
8 me in which of the 27 lanes studied was the expansion of
9 the route network of either SP or Santa Fe one of the
10 reasons for our projected diversions?

11 A Expansion of the route network? I don't think
12 that there are any.

13 Q I must have misphrased the question, I'm
14 sorry. In which of these lanes did the fact that either
15 Santa Fe or Southern Pacific acquired for the first time
16 new single line service -- well, offer shippers a
17 different route and cause the diversions that are
18 projected in your traffic study?

19 A You interrupted yourself.

20 MR. WILSON: Never mind. I'll forget it. It
21 doesn't matter.

22 At any rate, that's all the redirect I have.

23 JUDGE HOPKINS: Any recross?

24 MR. CALHOUN: Your Honor, I wonder if I might
25 ask Mr. Lawson a couple of questions about one question

1 Mr. Wilson asked him about schedules. I hesitate to get
2 into this subject again.

3 JUDGE HOPKINS: Well, try.

4 RECROSS EXAMINATION

5 BY MR. CALHOUN:

6 Q Mr. Lawson, did I hear you correctly, in
7 response to a question by Mr. Wilson, that the schedules
8 that were used in your testimony and carried forward in
9 Mr. Liba's testimony was October 1983; is that correct?

10 A The schedules that I used in developing our
11 study were based on October 1983 schedules.

12 Q Those would be the so-called existing
13 schedule, as you use that term in the papers?

14 A I'm scrry?

15 Q Are those the so-called "existing schedules"
16 when I see that phrase, "existing schedules"?

17 A Yes.

18 Q Let me just show your counsel first and hand
19 it up to you. This document I have here in my hand has
20 been previously introduced in this record as KCS-C-2,
21 and a page out of that was shown to you this morning as
22 part of KCS-C-11.

23 MR. CALHOUN: Mr. Wilson, I shall show that to
24 you and if you want to show that to Mr. Lawson, I'm
25 going to ask him a couple of questions about it.

1 MR. WILSON: Okay.

2 THE WITNESS: This one with the picture on
3 it?

4 BY MR. CALHOUN: (Resuming)

5 Q Yes.

6 Is that the timetable we are talking about?

7 A I made a phone call to Mr. John Sward, who
8 works for me, who was the person that developed these
9 schedules, and I asked him: John, what was the point in
10 time of the schedules? And he told me October 1983.
11 And that's the best that I can answer you.

12 Q What's the date on that timetable, for the
13 record?

14 A The date on this page says October 1, 1983,
15 which, may I also continue, that in terms of
16 publication, this may or may not have been the schedule
17 that was actually in effect. It's kind of like anything
18 else that's published. I don't know, it could have been
19 an April schedule that was published in October. I
20 don't know that.

21 Q All right. Could I get you to look at the
22 first page of, I think it's, KCS-C-11, which is a page
23 out of that timetable? That one, yes.

24 Can you tell me what the date is on that
25 page?

1 A It says October 1, 1983.

2 Q So we still don't know, really, whether you
3 used that timetable or some other in that year; is that
4 correct?

5 A I don't know about this particular, if this is
6 representative of the schedule that was in effect in
7 1983 or not. The paper says October 1, I will
8 acknowledge that.

9 Q I trust your company does not lie. When it
10 says '83, you can take their word for it.

11 A No, the difference that I'm trying to make
12 here is a point in time difference. You can put in a
13 schedule in October that from a paper schedule
14 standpoint could have a different date on it, and that's
15 as clear as I can answer you.

16 You are -- you are questioning on are these
17 two things the same, and I'm telling you I don't know
18 the answer to that.

19 MR. CALHCUN: Okay, thank you.

20 JUDGE HOPKINS: Any other questions?

21 (No response.)

22 JUDGE HOPKINS: You're excused, sir.

23 (Witness excused.)

24 JUDGE HOPKINS: Any objection to Mr. Lawson's
25 statement being received?

1 (No response.)

2 JUDGE HOPKINS: It will be received in
3 evidence.

4 MR. WILSON: Thank you, Your Honor.

5 MR. CALHOUN: Your Honor, is it appropriate
6 for me to move the admission of these two exhibits now
7 or to wait until --

8 JUDGE HOPKINS: You don't have any objection,
9 do you?

10 MR. WILSON: No.

11 JUDGE HOPKINS: They will be received in
12 evidence.

13 (The documents previously
14 marked Exhibit Nos. KCS-C-11
15 and KCS-C-12 for
16 identification were received
17 in evidence.)

18 JUDGE HOPKINS: What about DOT-1? Any
19 objection?

20 MR. WILSON: Well, actually, I believe we
21 should ask Mr. Iiba about this before it goes in,
22 because Mr. Lawson and Mr. Iiba were jointly
23 responsible.

24 JUDGE HOPKINS: Thank you.

25 MR. WILSON: Your Honor, Applicants call as

1 their next witness Carl Liba, Vice President of Reebie
2 Associates.

3 (Witness sworn.)

4 Whereupon,

5 CARL J. LIBA

6 was called as a witness by counsel for Applicants and,
7 having been first duly sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. WILSON:

11 Q Mr. Liba, you have before you a 38-page
12 document entitled verified statement of Carl J. Liba.
13 Is this your verified statement in this proceeding?

14 A Yes, it is.

15 Q Sir, do you have any corrections or
16 modifications you would like to make to that statement
17 at this time?

18 A Your Honor, I have four modifications I would
19 like to make to the verified statement, the first of
20 which is on page 14 of the text. Three lines from the
21 bottom, change the word "replace" to "improve".

22 And on the second line from the bottom, change
23 "providing" to "adding."

24 The other three changes are in Appendix 1,
25 which is a listing of our diversions. On page 8, the

1 last line, under the "TL" column change the 0.0 to 0.1.
2 On page 18, change the present schedule showing
3 departure of 0400 to 0900.

4 And the last change is on page 26. Change the
5 proposed schedule arrival time from 6:00 a.m. to 5:00
6 a.m.

7 Q With those changes, Mr. Liba, is your verified
8 statement and appendices true and correct to the best of
9 your knowledge and belief?

10 A They are complete.

11 MR. WILSON: Thank you.

12 I tender the witness for cross-examination.

13 JUDGE HOPKINS: Who's going to start?

14 MR. KEVIN MacKENZIE: Your Honor, Kevin
15 MacKenzie for the Denver & Rio Grande. Your Honor, I
16 would ask that the documents I'm handing you be marked
17 for identification as DRGW-C and DRGW-C-8.

18 JUDGE HOPKINS: They will be marked for
19 identification.

20 (The documents referred to
21 were marked Exhibit Nos.
22 DRGW-C-7 and DRGW-C-8 for
23 identification.)

24 CROSS EXAMINATION

25 BY MR. Kevin Mac Kenzie

1 Q Now, Mr. Liba, could you tell us on what data
2 you based your truck to rail diversion study?

3 A There were a number of different sources of
4 information used in the entire study. A listing of
5 those would encompass at least the following. I don't
6 know if I can be entirely complete without reference.

7 First of all, we utilized truck flow
8 information out of our Transearch data base to identify
9 the volume of truck flows.

10 Secondly, we utilized the rail information out
11 of the Transearch data base to identify the existing
12 rail TOFC flows in total.

13 Third, we identified the existing Santa
14 Fe-Southern Pacific TOFC flows from information files
15 filed by the two railroads. We identified the schedules
16 that were presently in effect or that would be proposed
17 to be in effect from information provided by the
18 railroad.

19 We identified the truck cost information that
20 we had from output from our truck cost analysis model.
21 We identified the existing rail rates applicable to the
22 TOFC moves from rail rate files provided by the
23 railroads. We identified the diversion procedure from a
24 model which we developed called the shipper preference
25 model.

1 There were other inputs to the study in
2 selected areas. For instance, for the gateway
3 disaggregation, in order to pin down the TCFC flows,
4 those were from special studies done by the terminal
5 people at the Santa Fe and Southern Pacific Railroads.
6 Information on drayage and brokerage, items such as that
7 were provided from intermodal people at the two
8 railroads.

9 That should be at least 90 percent of the
10 sources. There may be more, but that gives you an idea
11 of the diverse number of sources that were utilized.

12 Q Now, Mr. Liba, with respect to the information
13 that was provided to you by the Santa Fe and the
14 Southern Pacific personnel, do you know yourself whether
15 that information was accurate?

16 A The working assumption present in our people
17 was that the information provided to us was the best
18 that could be available. You have to recall that the
19 present schedule information was largely judged to be
20 largely ineffective in diverting additional truck
21 traffic and that changes would have to be made. So it
22 wasn't really a part, other than a descriptive base, of
23 the analysis.

24 Q So that, if I understand you correctly, you
25 assumed that the information provided to you by Santa Fe

1 and Southern Pacific was accurate?

2 A That's correct.

3 Q And you did not perform any independent
4 verification of that information?

5 A There was no rigorous examination of the data
6 provided by the two railroads.

7 Q Mr. Liba, let me direct your attention to what
8 has been marked for identification as DRGW-C-7, a
9 three-page document which I will represent to you we
10 have obtained from the Chicago document depository.

11 A Yes.

12 Q Can you identify this document, Mr. Liba?

13 A Only indirectly. It looks to be worksheets of
14 Mr. Lawson's to guide him in discussions with us at some
15 of our progress meetings during the course of the
16 study.

17 Q I take it that Mr. Lawson is the author of
18 this document?

19 A I'm not sure, but I think so.

20 Q Are you aware that this document was included
21 in the file for your work papers in the Chicago
22 depository?

23 A I'm aware that all of Mr. Lawson's work papers
24 from the file were included and I'm familiar with the
25 contents of the document, yes.

1 Q You are familiar with the contents of this
2 document?

3 A Yes.

4 Q Now, let me also direct your attention to what
5 has been marked for identification as DRGW-C-8, and I
6 would ask you to compare the two documents, DRGW-C-7 and
7 DRGW-C-8, and tell me if you perceive any differences
8 between those two documents?

9 A It appears that the differences between the
10 two documents are in the marginal comments.

11 Q And also that DRGW-C-8 is more legible in
12 certain places?

13 A Yes.

14 Q Now, Mr. Liba, directing your attention to
15 DRGW-C-8, the more legible version that we have here, if
16 I understand this document correctly it describes the
17 procedure that were followed for your truck to rail
18 diversion study; is that correct?

19 A Yes, sir.

20 Q Does it accurately describe those procedures?

21 A This work document was fairly early in the
22 study. At that time, for instance, at step one, we were
23 considering defining TOFC as partly ex-truck traffic,
24 and that methodological step was dropped. We considered
25 all traffic, all TOFC traffic, to be ex-truck traffic.

1 Q Mr. Liba, if you would review this document
2 briefly, can you tell me whether there are any other
3 procedures described here that would change the course
4 of your study?

5 MR. WILSON: I object to that. We did not
6 receive advance notice of this document. I think it
7 could take quite a while to review all of the steps here
8 on the witness stand and discuss for each step to what
9 extent we followed in the actual study what was set out
10 in a very preliminary outline.

11 JUDGE HOPKINS: I understand he said he knows
12 the document. If he knows the document, it appears to
13 me he can answer it.

14 MR. WILSON: Well, I just was thinking that it
15 would take a good deal of time, but that's all right.

16 JUDGE HOPKINS: It won't take much time, will
17 it?

18 THE WITNESS: No, I don't think so.

19 JUDGE HOPKINS: Thank you.

20 THE WITNESS: The only other exception I can
21 see was listed as step four, the corridor balance ratios
22 for rail TOFC. That step was also dropped when it
23 became apparent that the diversions would not be large
24 enough to really correct a lot of the imbalances.

25 BY MR. KEVIN MacKENZIE: (Resuming)

1 Q Now, Mr. Liba, a minute ago you made reference
2 to what you said was ex-truck traffic. Could you tell
3 me what that term means?

4 A Yes. The railroads have by and large put in
5 TOFC to be competitive with trucks. At the same time, a
6 major problem that the railroads have faced is that some
7 of the traffic has flowed out of boxcars or reefer cars
8 into TOFC service.

9 Our initial approach was to try to define how
10 much of the traffic had been boxcar traffic and how much
11 was ex-truck traffic. Upon further thought and
12 discussions with the Santa Fe marketing and intermodal
13 people, the Southern Pacific marketing and intermodal
14 people, we jointly arrived at the conclusion that once
15 the shipment was in a van whether it was TOFC or over
16 the road, it was really in the truck market. That's why
17 we in effect suppressed that element of the analysis.

18 Q So for purposes of your study you assumed that
19 the traffic you were studying did not come from rail
20 carloads or reefers or other --

21 A No, we didn't. We just eliminated --

22 Q Perhaps I didn't understand.

23 A We eliminated the consideration of where it
24 came from and said, now that it is in a van it is truck
25 competitive, because if the railroad was not able to

1 provide a truly competitive, an acceptably competitive
2 product to the shipper, the shipper could route the
3 shipment over the road as easily as he could route it
4 down to the ramp for an intermodal move.

5 So the source really didn't make any
6 difference.

7 Q Mr. Iiba, let me direct your attention to page
8 5 of your verified statement, and particularly to the
9 last paragraph on page 5, the second sentence, where you
10 say:

11 "Thus, intermodal, TOFC and COFC service have
12 stepped into the market as a bright hope for limiting
13 further erosion from the railroads of merchandise and
14 manufactured type freight traffic, as well as perishable
15 food products traffic, much of which had been shifting
16 out of boxcars and onto the highways."

17 A Yes.

18 Q If I understand your study, you focused on how
19 the traffic that you describe in this paragraph on page
20 5 could be regained by rail TOFC service; is that
21 correct?

22 A That's correct. The primary thrust of the
23 study was to look at how much truck traffic would be
24 brought back to the railroad, irrespective of whether
25 the traffic had been rail before or not. And of course,

1 there's a time dimension to that because some of these
2 shifts may have taken place rail to truck five years
3 ago, ten years ago.

4 Q Now, in addition to the commodities that you
5 have mentioned here at page 5, did you also focus on how
6 bulk commodities that are currently moving by truck
7 could be regained by rail service?

8 A No. There was a step in the analysis in which
9 we extracted from the total traffic flow, total truck
10 traffic flow, those commodities which don't conveniently
11 fit into vans or van type shipments for TOFC moves. We
12 term it containerizable flows.

13 Mr. Fitzgerald yesterday described it as
14 material on pallets. There are shipments that are
15 moving in hopper trucks, such as grain. Those have been
16 excluded. There are shipments of pipe and steel beams,
17 for instance. Those have been excluded. Shipments
18 moving in certain types of tank trucks have been
19 excluded.

20 There are some of those commodities still in,
21 but a portion has also been removed, since they are not
22 readily amenable to existing TOFC type services. This
23 isn't to say that the railroads aren't trying to take
24 steps to regain some of that traffic now. But for the
25 course of this study, we confined it to those types of

1 commodities which would move primarily in vans.

2 Q If I understand correctly, what you have said
3 is that there are certain commodities that are currently
4 moving by truck that you excluded because they could not
5 be moved by TOFC service?

6 A That's a shorter way of saying what I said,
7 yes.

8 Q Mr. Liba, let me direct your attention now to
9 Appendix 1 to your verified statement, and in particular
10 I believe it's page 1, which relates to the Los Angeles
11 to Dallas traffic lane.

12 A Yes, sir.

13 Q Now, on this page, on the left-hand side there
14 is a column which says "TOFC Share" with a percentage.
15 Do you see that?

16 A Yes, sir.

17 Q And next to -- or on the line for SFSP, it
18 indicates 54 percent.

19 A Yes, sir.

20 Q Do I understand correctly that that means
21 that, of the traffic in this traffic lane that you've
22 examined, SFSP will carry 54 percent of that traffic?

23 A That is not entirely correct. Of the portion
24 of the total flow that we are looking at in this
25 analysis, which is a portion of the truck flow; if there

1 were water in this corridor, which there probably is
2 not, that's excluded also.

3 So in that sector of the traffic, this report
4 says that the SFSP has currently 51 TOFC vans out of a
5 total flow of 94 vans per day, of which 40 are truckload
6 and three are LTL.

7 Q So that, of the traffic that you examined,
8 excluding the traffic that you did not examine, SFSP has
9 54 percent of that traffic in this particular traffic
10 lane?

11 A That's correct.

12 Q And immediately below that, for total railroad
13 the figure is also 54 percent, is it not?

14 A Yes, sir.

15 Q And I take it that that means that, of the
16 traffic that you examined, SFSP is carrying 100 percent
17 of the traffic that is moving by rail?

18 A Yes, sir. Based upon the extraction of data
19 from the waybill sample looking for TOFC traffic in that
20 lane, we were unable to identify any that was not
21 already moving in SFSP schedules.

22 Q Mr. Liba, let me direct your attention now to
23 the line which begins "TL Volume." "TL," as I
24 understand it, stands for trailerload?

25 A Truckload.

1 Q So this is truck traffic?

2 A That is current truck traffic, yes.

3 Q Under the column "Dollars Per Van," there is
4 the number 1358. Does that figure represent truck costs
5 or truck rate?

6 A That represents truck costs. We represent
7 that rates would have been a more effective way to go.
8 However, the existence of so much private and contract
9 and exempt carriage at virtually every lane means there
10 are no effective rates available for public view. As a
11 surrogate for rates, then, we took truck costs, and
12 truck costs were produced by our truck cost model, which
13 was made specific to the type of movement, the traffic
14 lane, the balance ratio.

15 To tie into reality, we had the Santa Fe and
16 the Southern Pacific rates. That's what tied us back in
17 on that side of the equation.

18 Q I take it, then, that for the LTL line --
19 which would be less than truckload?

20 A The less than truckload, yes.

21 Q The figure 1499 in the column "Dollars Per
22 Van" also is a truck cost figure?

23 A Yes, it's a truck cost figure. But you have
24 to recognize that it is just for the line haul portion
25 of the move, the portion of the haul for which

1 substitutability between modes is possible. It doesn't
2 include the cross-dock handling, the breakbulk and
3 consolidation efforts, and pickup and delivery from the
4 original shipper of the small shipment to the ultimate
5 receiver of the small shipment.

6 It's the move after those collection and
7 distribution functions. It's between the consolidation
8 dock and the breakbulk dock. So it's a line haul cost
9 and not a full, in effect, door to door charge.

10 Q Mr. Liba, if I understand your verified
11 statement, the costs that appear on this page for
12 truckload volume and less than truckload volume are not
13 what you have described as full truck costs; is that
14 correct?

15 A That's correct. During the study year 1982,
16 in recognition of what I have termed the erosive forces
17 impacting the trucking industry -- if you're familiar
18 with any of the ATA publications, you have probably seen
19 it. They refer to it as the effects of recession,
20 deregulation, and inflation.

21 And in order to retain markets, market shares
22 and hence volume, a lot of them have tended to discount
23 their prices, even to the point where they are running
24 at below cost. As a matter of fact, during 1982 there
25 have been a significant number of trucking company

1 failures because of that reason.

2 So the dollars per van we show on our reports
3 are discounted slightly to reflect that situation.

4 Q So that if you were to take full truck costs,
5 they would be higher than the figures that appear here
6 under the "Dollars Per Van" column?

7 A That's correct.

8 Q And Mr. Liba, let me ask you this. With
9 respect to the line that says "SFSP Volume" under the
10 "Dollars Per Van" column, the figure 1110 appears. Is
11 that a rail cost or a rail rate?

12 A That is a rail rate, plus allowance for
13 drayage, plus an allowance for brokerage, reflective of
14 the fact that the railroads tend to deal mainly in a
15 third party relationship with the ultimate
16 shipper-receiver. They pay a broker for assembling
17 their traffic. The drayage and the brokerage are stated
18 in the statement.

19 Q So that this figure of 1110 does include
20 drayage and brokerage charges?

21 A That's correct.

22 Q In conducting your study, Mr. Liba, did you
23 examine the relationship between rail costs and rail
24 rates?

25 A No, we did not.

1 Q And in performing your study, in those traffic
2 lanes where there were other railroads participating in
3 TOFC service, did you assume that the rates for those
4 other railroads were the same as the rates for the SFSP
5 system?

6 A We looked at the railroads or considered
7 railroads also participating in the lane in three ways.
8 We considered their volumes in that determination of
9 current shares; we looked at their schedules to make
10 sure that the schedules that were put together were
11 competitive or better, sufficient to meet truck
12 competition; and third, we allowed for competitive
13 reactions from other carriers, including railroads, to
14 the proposals inherent in this marketing plan, in
15 effect, that is present in these pages.

16 So we considered those, but we did not
17 consider what prices the other railroads were charging.

18 Q You did not consider that fact?

19 A We did not.

20 Q Now, Mr. Liba, turning over to the next page,
21 page 2 of the appendix to your verified statement, the
22 traffic lane from Dallas to Los Angeles, I note towards
23 the bottom of the page that the line "Ten Percent Lower
24 Rate" is circled. Could you tell us what the
25 significance of circling that line is?

1 A The program, the shipper diversion program
2 that produces this report, has a sensitivity test built
3 into it, and it will examine any range of rate discounts
4 or service changes that you want. In effect, it
5 reiterates the steps in the program in order to examine
6 the change.

7 S So on this sheet you can see several of those
8 sensitivity tests run on the lane, and basically the
9 Santa Fe chose to compete in this lane by using the ten
10 percent lower rate, and it was circled to indicate which
11 was the choice they made in accepting the results of our
12 analysis.

13 Q Now, when you refer to the ten percent lower
14 rate, that is a rate that is ten percent lower than
15 what?

16 A The base rate would be that rate, in effect
17 the lowest of the two, either Southern Pacific or Santa
18 Fe, charge in that lane. In this particular lane,
19 Dallas to Los Angeles, it was undoubtedly an SP rate.
20 The ten percent discount is on that portion of the
21 total. It's not a ten percent discount of the 1440 you
22 see, but of just the rail rate within that, because the
23 brokerage wouldn't change and the drayage costs wouldn't
24 change.

25 Q Mr. Liba, do you know at this time what the

1 rail rate is that you discounted?

2 A My understanding is that the Plan 2-1/2 rate
3 that was used in that corridor was \$1,190 per van, and
4 that's on a terminal to terminal move, Plan 2-1/2.

5 Q Now, Mr. Liba, let me direct your attention to
6 pages 25 through 28 of the appendix to your verified
7 statement, which show the traffic lanes from Salinas to,
8 respectively, Chicago, Baltimore, New York, and Boston.
9 On each of those pages, I note that under the dollars
10 per van column on the SFSP line you have listed the Plan
11 3 price.

12 Could you tell us what Plan 3 is?

13 A Well, Plan 3 is a different service
14 arrangement of the railroads, and it relates to the
15 perishable program described by Mr. Lawson earlier. The
16 Plan 3 basis, the railroad provides a service, but a
17 different party provides the van and the service is only
18 provided on a door to door basis. So you have the other
19 impacts of drayage and brokerage requirements as well,

20 So that in the consideration of what dollars
21 the shipper would face in looking at possibly shifting
22 his traffic from over the road movement to a rail move,
23 he has to consider the cost of the trailer, and since
24 it's a refrigerated trailer the cost of renting that and
25 maintaining it, plus the drayage cost, brokerage fees,

1 things such as that.

2 Q Now, with respect to the Salinas to Chicago
3 traffic lane, page 25, what would the Plan 3 price be?

4 A My understanding is that the present rate is
5 at \$1,069 on a Plan 3 basis.

6 Q And with respect to the Salinas to Baltimore
7 traffic lane at page 26, what would the Plan 3 price
8 be?

9 A Well, that becomes a little more complex,
10 because now you're getting into an interline arrangement
11 and proportional rates are in effect across Chicago.
12 And so you have a combination of Santa Fe and Southern
13 Pacific rates, and our understanding is the rate is
14 about \$1,619 there.

15 Q And continuing, with respect to the Salinas to
16 New York traffic lane, what would the Plan 3 price be
17 for that?

18 A That one is about 1690, 1-6-9-0.

19 Q And again, continuing with respect to the
20 Salinas to Boston traffic lane?

21 A Yes, that's somewhat higher. That is 1859.

22 We should also understand that the Brokerage
23 fees that are present in this are also somewhat higher,
24 and it varies. Depending on where you are in the
25 harvest season, the produce broker will extract a

1 different price. He will generally price the offering
2 he is making on behalf of the railroad to something say
3 10 or 20 percent below what the truck is offering, in
4 order to get the business into his billfold and into the
5 railroad's billfold as well.

6 Q Mr. Liba, could you tell us where you got the
7 prices that you used for your study?

8 A I think I've said already, it was from the
9 files of information provided by the two railroads.

10 Q Mr. Liba, specifically with respect to your
11 testimony today, we note that the prices are not listed
12 on these particular pages of your verified statement,
13 and I was wondering whether you are basing the prices on
14 your own recollection or do you have some written source
15 that indicates what the Plan 3 prices are?

16 A I have some notes that I made from our work
17 papers, that I brought in. The rate information I think
18 was included in our files, the work files.

19 MR. KEVIN MacKENZIE: Thank you, Mr. Liba.

20 JUDGE HOPKINS: This is a good time for a
21 recess. We'll take a 15-minute recess.

22 (Recess.)
23
24
25

1 JUDGE HOPKINS: Back on the record.

2 DR. GREENBERG: Your Honor, before you resume,
3 I wonder if I could have my appearance, please, for the
4 MKT Railroad? My name is Edward D. Greenberg of the law
5 firm of Galland, Kharasch, Morse and Garfinkle, and here
6 for the MKT.

7 JUDGE HOPKINS: Thank you.

8 MR. BATERA: Your Honor, I would also like to
9 enter my appearance. My name is Victor M. Batera for
10 the firm of Sullivan and Worcester, 1 Post Office
11 Square, Boston, Massachusetts, and I represent Kansas
12 City Southern.

13 JUDGE HOPKINS: Thank you.

14 Who's going to be the next questioner?

15 Mr. Calhoun.

16 BY MR. CALHOUN:

17 Q Mr. Liba, my name is Bob Calhoun, appearing
18 here for Kansas City Southern Railroad.

19 Do you have in front of you there or handy the
20 document that has been marked for identification, and I
21 guess has now been admitted into the record, DOT-C-1?

22 A Yes, sir.

23 Q It was not clear, I think, in questions asked
24 of Mr. Lawson how much of this is your work and how much
25 is Mr. Lawson's. Are you prepared to answer questions

1 on anything that pertains to your testimony?

2 A Yes, I am.

3 Q Would you turn to page 6 of that document?
4 And this also will pertain to page 1 of your verified
5 statement.

6 You see there at the bottom of the response to
7 question 12 where it says, "Reebie Associates have
8 worked in the context of consolidation," and so forth,
9 and it lists a group of railroads after that.

10 A Yes, sir.

11 Q Could you describe what type of work your firm
12 or you personally have done for the Union
13 Pacific-MoPac-Western Pacific system?

14 A Basically, our work in that case was related
15 to their merger application, and we were doing work for
16 the Federal Railroad Administration, Department of
17 Transportation in developing their view of that merger.

18 Q All right. You did not work for the
19 applicants?

20 A No.

21 Q You worked for the FRA. How about in the
22 Boston & Maine?

23 A In the Boston & Maine we have worked in two
24 ways: one, in providing data to them to identify truck
25 flows, and secondly, in providing a description of their

1 operations and future of intermodal potential for their
2 lines to the regional planning commission up in New
3 England.

4 Q In the Burlington Northern?

5 A The Burlington Northern, we're somewhat more
6 directly involved. There we have been providing data to
7 a system and their ongoing program for a hub center
8 traffic flow concentration and also for identifying
9 truck flows for direction of their marketing efforts.

10 Q Let me go back to the UP-MoPac study. I think
11 you mentioned you did this for the FRA?

12 A Yes.

13 Q You did not do any work for Richard J. Barber
14 or any other consultants for the UP in that case?

15 A No, we did not.

16 Q Was the work you did for the FRA in the
17 UP-MoPac case similar to what you have done for the
18 applicants in this proceeding, the same kind of
19 analysis, the model?

20 A I have to respond to that in two steps. One,
21 my firm was involved; I was not directly involved. But
22 secondly, the approach was generally the same, yes.

23 Q Well, was the shipper preference model that is
24 described in your verified statement, that I think the
25 FRA is the source of that document, was that done by

1 Reebie & Associates for DOT originally, or is that
2 something that --

3 A No. We developed that for the FRA.

4 Q Did you use that model in the UP case?

5 A I believe our people did, yes.

6 Q All right. So in a sense, the shipper
7 preference model that was used here, and it was used by
8 you in the UP-MoPac case, is essentially the same model?

9 A Yes. Basically, the approach there was to
10 determine if the estimates that were developed by the UP
11 were reasonable.

12 Q On page 1 of your verified statement you
13 mention that you were -- that you presented prepared
14 testimony on this subject in the Grand Trunk-Milwaukee
15 consolidation. For whom did you do that work? For
16 which party?

17 A Basically, we were working with and for the
18 Grand Trunk, and we prepared it -- I can't recall the
19 name of the law firm at this time.

20 Q All right. Now, I think I indicated to your
21 counsel I might have one or two questions on the way the
22 Commission decided that case. Did you get a chance to
23 -- are you familiar with the Commission decision that
24 has really come out in this case?

25 A On the Milwaukee?

1 Q Yes.

2 A Roughly familiar.

3 Q Well, my question essentially is do you recall
4 whether the issues in that case that the Commission
5 focused on were intramodal competition -- that is to
6 say, between railroad carriers -- or intermodal
7 competition?

8 A I'd have to say that my recollection of that
9 case is that the decision was primarily based upon
10 intramodal competition and was basically oriented around
11 which of the potential buyers for the Milwaukee provided
12 the best, in effect, deal for the Trustee.

13 Q Is that not also -- well, not the Trustee
14 part, but in terms of the competition situation, was not
15 that also true in the UP-MoPac case, the principal focus
16 of the Commission was on intramodal competition, the
17 impact of the merger on that competition?

18 A The key word in your question is "principal
19 reason." While the -- while my perception that the
20 weighting the Commission gives to the decision is
21 largely related to intramodal, the Commission also
22 requires an investigation of intermodal competition as
23 well, and that's what we are addressing in this study.

24 Q I want to turn to page 16 of your verified
25 statement. I will not undertake to exhaust you as I did

1 Mr. Lawson about the exotics of scheduling in the
2 operating plan.

3 You have there, I think, in front of you or
4 have been provided the exhibits previously identified as
5 KCS-C-11 and 12, do you not?

6 A Yes, sir, I do.

7 Q Let me just take you through one page, and I
8 will illustrate the point. If you will look at page 1
9 of the document marked KCS-C-11 --

10 A Could I get a copy of that?

11 (Pause.)

12 Q I've prefaced my question -- I'm not sure
13 whether you heard my cross examination with Mr. Lawson
14 and particularly the redirect and recross that we had
15 here this afternoon -- insofar as we were able to
16 determine, you were given schedules by Mr. Lawson, is
17 that right?

18 A That's correct.

19 Q Operating schedules?

20 A Yes.

21 Q Do you know what month of what year those
22 schedules were based on, of your own knowledge?

23 A Let me preface that by saying that the
24 existing schedule information was used purely as
25 descriptive material in our analysis, and it wasn't used

1 in any other way. And I just accepted them as being
2 representative of what was currently being provided.

3 In our approach we were careful to utilize
4 primarily the identification of how fast a truck is able
5 to move a shipment between origin and destination, and
6 then you can figure a rail service to be competitive
7 with that. And it is our opinion that most of the rail
8 service provided in these corridors, whether SPSF or any
9 other railroad, is really not competitive at this time.

10 Q Well, just bear with me on Exhibit 5 and
11 KCS-C-11. Look down there - I'm sorry the print is
12 somewhat bad there -- but where it says "Total Schedule"
13 under train 579 about halfway down the page. It says
14 "Total Schedule." This document here.

15 A Page 1? I'm sorry. Yes.

16 Q Where it says New Orleans-Dallas, 23.

17 A Yes.

18 Q Dallas-Richmond, 72; Dallas to Los Angeles, 61.

19 A Yes. I think the key element on that page is
20 in that full paragraph called "Description." The real
21 telling element is in the last sentence there. It says,
22 "Southern California traffic will connect Barstow on a
23 first available connection." And that says to me at
24 least -- and I'm not an operating person, but I've
25 certainly been involved in railroad operations in my

1 career -- that more often than not they're not going to
2 make 61 hours. So I would judge that the reflection we
3 had on the page of train 579 with this connection 288,
4 75 hours, was probably the more realistic measure of
5 what is really achieved.

6 Q Were you given that number by Mr. Lawson, or
7 is that what you thought it ought to be?

8 A The material provided on Exhibit 5 was given
9 to me by Mr. Lawson. It differs from the schedule
10 information you provided by identifying the connecting
11 train. There's no connecting train identified on this.

12 Q Not by number, but it does indicate there is a
13 train, does it not, the first available connection? Let
14 me move over to what is referred to as the DALAT train
15 on that same page. I believe in most instances your
16 study presupposes that there's got to be a significant
17 time -- the matrix analysis is what I'm thinking of that
18 your model is built on -- presupposes that a railroad
19 has got to have either better prices or better service
20 or both.

21 A That's correct.

22 Q And that a major element in better service is
23 better transit times. Are we all together on that?

24 A Partially at that point. It's not only a
25 question of transit times. It's a question of departure

1 time and arrival time. The problem with that DALAT
2 schedule that you're looking at is it provides a 5:00
3 p.m. arrival in Los Angeles, and that effectively is
4 third morning delivery.

5 Q All right. So the fact that there's only an
6 hour and a half difference between the so-called DALAT
7 train and the so-called proposed schedule down at the
8 bottom is, in your mind, taken care of by that fact?
9 There's only an hour and a half difference in there.
10 Are you saying that the departure time offsets that very
11 small change?

12 A It's a combination of better departure time
13 plus, most importantly, the arrival time allowing the
14 train to arrive in the morning so that some morning
15 deliveries to ultimate customers can be accomplished.

16 Q Are you aware of the fact that that Dallas-Los
17 Angeles service is joint with Kansas City Southern at
18 Dallas to what is called the Big D connection?

19 A No, I'm not.

20 Q You did not take that -- well, let me pursue
21 that a second. You were asked some questions by counsel
22 for the Denver-Rio Grande Railroad. Let's turn back to
23 that exhibit again just a second -- not that exhibit.
24 I'm sorry. To I guess it would be page 3 of your
25 Appendix 1, which again is the same pair. Page 1 and 2

1 of these printouts shows Dallas and Los Angeles and Los
2 Angeles and Dallas.

3 A Yes, sir.

4 Q I think Mr. MacKenzie asked you the question,
5 just to understand how the chart reads, that you show
6 today or under the merger, rather, that SF and SP would
7 have 54 percent of the traffic -- this is before any
8 changes in that corridor -- and that the total railroad
9 percentage in that corridor would be 54 percent.

10 By that are we to understand that this is
11 because they're the only railroads in that corridor. Is
12 that what that's supposed to mean? Those two numbers
13 are identical. Does that mean they have it all?

14 A Basically, that was our finding, yes.

15 Q The same thing is true on the next page where
16 you're showing the reverse direction?

17 A That is correct.

18 Q Does this take into account at all the fact
19 that the Santa Fe, if we were to extend this corridor to
20 New Orleans, which you do not do, would you have taken
21 into account the fact that Santa Fe does not go to New
22 Orleans on its own tracks, but requires the KCS as a
23 connection, whereas the Southern Pacific does not
24 require any interline service? Would that make any
25 difference?

1 A No. As I explained earlier when we were
2 trying to identify how much traffic railroads currently
3 had in the corridor, we had to take account of the fact
4 that a certain amount of traffic is either rebuilt or
5 interlined, and it goes on to ultimate destination. A
6 certain amount of the traffic that the Santa Fe reported
7 as going into Dallas was actually connection traffic to
8 the Kansas City Southern.

9 Q But you don't figure that in here at all?

10 A We deducted the Santa Fe traffic, and it was
11 handed off to the Kansas City Southern to come up with
12 the numbers here.

13 Q Which numbers? The 54?

14 A No.

15 Q Forty?

16 A The original source data that we had.

17 Q Before you generated this document you made
18 that subtraction?

19 A Yes.

20 Q This is simply traffic that originates, say,
21 at Dallas on that railroad?

22 A The traffic we list here is entirely local to
23 this city pair.

24 Q All right. So it does not count New Orleans
25 or any eastern cities or anything else.

1 A No, it does not.

2 Q All right. Let's take a look at page 4 of
3 your verified statement. You're discussing here, I
4 think as Mr. Lawson did to some extent, about the Fuel
5 Foiler and certain of the other innovations that the
6 Santa Fe and the Southern Pacific have developed in
7 recent years in single-line railroads to combat
8 intermodal competition. And you specifically mention on
9 page 4 the so-called Fuel Foiler train. That train
10 operates only between Chicago and Los Angeles, does it
11 not?

12 A That's correct.

13 Q Does the Santa Fe, to your knowledge, have any
14 similar type service in the southern corridor we've just
15 been describing, Dallas and Los Angeles and that general
16 --

17 A My understanding is that it does not.

18 Q Do you know why not?

19 A Yes, I do. Basically, they don't have the
20 volume to support that type of new investment in the
21 corridor.

22 Q Do they have the same intensity of intermodal
23 competition in that corridor as they do between Chicago
24 and the West Coast?

25 A I would say they do.

1 Q But you don't know, or do you?

2 A I do know. It's in my report, sir.

3 Q Where would we find that in your report?

4 A Right on the top of the output page. If you
5 look at Los Angeles-Dallas, page 1, you see the total of
6 traffic that is in that corridor. Truckload volume was
7 identified as 40 truckloads per day, LTL at three
8 truckloads per day, so you have the measure of
9 competition.

10 Q Also on that same page you're describing the
11 SP's marketing efforts toward diverting oceanward
12 container traffic to the minibridge trains. Is that
13 just -- what is the purpose of saying that? That has
14 nothing to do with truck-rail competition, does it?

15 A If you follow the trend of thought in the
16 outline of the report, you see that we step through and
17 identify the fact that COFC is a form of intermodal
18 competition, but we go on to say that that form of
19 competition is primarily oriented at water competition
20 and not at truck competition; and therefore, we
21 disregarded it. At this point we're still looking at it
22 because it is one of the bright spots in the traffic
23 picture.

24 Q Let me start with some trepidation because I'm
25 not a modelbuilder, but let me try it anyway. The

1 methodology and some of the things that go into your
2 study -- to what extent do you -- well, this might be
3 best asked by looking at -- if you look at question and
4 response in DOT-C-1, which is on page 5 of that
5 document, my question is essentially the same as the
6 DOT's, but let me phrase it somewhat differently.

7 To what extent do you reality test this
8 model? And that is to say, you go out and interview
9 shippers and truckers and find out what's really going
10 on as distinct from just massaging numbers.

11 A On the contrary, the origin of the model was
12 in an extensive survey procedure conducted for the FEA
13 in the middle of a big intermodal study we conducted for
14 them, the National Intermodal Network Feasibility
15 Study. We conducted shipper interviews with shippers
16 and many different commodities, many different traffic
17 lanes, and put together the composite picture which is
18 the heart of the shipper diversion model, the matrix.

19 Basically, there are two points I would like
20 to make. One is that when a shipment gets into a truck,
21 regardless of what the commodity is or where the
22 location is, it's -- you have the same type of
23 competition, you have the same type of decision rules
24 being made.

25 Q But let me just focus you a little bit on the

1 last sentence in response to question 9. "This
2 conclusion is based on continuing field work." What
3 does continuing field work entail?

4 A We have conducted a number of intermodal
5 studies for public and private clients since the
6 conclusion of the study which resulted in that shipper
7 model. And basically, we have found that although the
8 cost and service offerings of the carriers have changed,
9 the prices have gone up, different types of operators
10 are present in the intermodal picture, the basic
11 parameters of the decisional rule stays the same. The
12 shipper is still looking for the tradeoff between cost
13 and service.

14 And basically we have found that as time has
15 gone and as time has resulted in deregulation, resulted
16 in railroad mergers, resulted in equipment changes to
17 meet the impacts of inflation, fuel prices, et cetera,
18 everybody has become more aware of the cost-service
19 tradeoffs and of the modal capabilities that they're
20 looking for in looking at modal choices. Logistics is
21 the rule now. It's not the exception.

22 Q Do you really go out and interview shippers on
23 a continuing basis?

24 A Yes.

25 Q Do you interview truckers on a regular basis?

1 A We have a client base of over 100 companies we
2 deal with on a continuous basis, advising them on modal
3 choice.

4 Q Would you turn to page 22 of your statement?
5 I recognize that you have to do all this, as Mr. Lawson
6 put it, in the way of a snapshot because you have to
7 start somewhere, and apparently '82 is where you decided
8 to start this thing. On the other hand, representation
9 is made in your study and in his statement that three
10 years after this merger is consummated, that certain
11 things will happen, including \$45 million more money
12 than you've got today.

13 How do you take into account, judgmentally or
14 otherwise, the effect of the new size and weight Highway
15 Act provisions that went in in '82? Is that reflected
16 anywhere in here?

17 A The study was based entirely on 1982
18 conditions, and basically we don't include the impact of
19 the new truck size and weight loss.

20 Q So to that extent --

21 MR. WILSON: Excuse me, counsel. I'm not sure
22 he's finished with the answer.

23 THE WITNESS: I stopped for a breath. On the
24 other hand, we don't reflect the impact of railroad
25 changes that are being made to accommodate these new

1 sizes. Everybody is moving toward new types of
2 equipment in order to accommodate the longer van sizes,
3 the wider van sizes. So there are changes being made on
4 both sides of the equation. That doesn't necessarily
5 mean, then, that the results that we pictured in terms
6 of 1982 are going to be invalid in 1985 or '87. It does
7 say perhaps the dollar values that we have shown would
8 change.

9 BY MR. CALHOUN: (Resuming)

10 Q Well, on that last point, would you turn to
11 the exhibit that's been marked KCS-C-12? That would be
12 the second page in.

13 A This is the extract that shows --

14 Q Can you identify this document for the
15 record? It is from the depository. It is identified
16 numerically as TDL 284. Beyond that I'm going to ask
17 you if you can tell me whose it is and where it comes
18 from?

19 A I have not seen it before. I recognize some
20 of the --

21 MR. WILSON: Your Honor, on the basis of Mr.
22 Liba's answer that he had not seen before, I would point
23 out that this is designated TDL, which means it's Mr.
24 Lawson's work papers. It seems to me that whatever line
25 of questioning we're about to experience here should

1 have been directed to Mr. Lawson rather than to Mr. Liba.

2 JUDGE HOPKINS: Well, let's wait until we see
3 what he's going to ask before you state that.

4 MR. CALHOUN: The witness has already
5 indicated that his study was based on material furnished
6 to him by Mr. Lawson and his staff, and I was going to
7 ask -- he said he's never seen this document before. On
8 the other hand, he testifies on page 22 that, "We
9 assumed a truck-trailer length of 42.5, reflecting a mix
10 of 40-foot and 45-foot trailers."

11 THE WITNESS: Yes, sir.

12 BY MR. CALHOUN: (Resuming)

13 Q Now, Mr. Lawson -- if this indeed, Mr.
14 Lawson's paper or something of the railroad, is saying
15 that these are not compatible with what we already have,
16 is he not, or is whoever?

17 A Well, my reading of the document indicates
18 that it's just what I've been saying before: the
19 railroad is starting to adjust to these new sizes. They
20 say, in effect, that they are buying 45-foot trailers.
21 "We have recently expanded our fleet by adding 400
22 45-foot insulated trailers, 300 of which are 102-inch
23 width." So they are moving to these new truck sizes,
24 van sizes, as fast as the trucks are.

25 Q Doesn't the next sentence say, "The railroad

1 industry is reluctant to develop a new flat car standard
2 until the motor carrier industry settles on a
3 standard?" Which is to say the progress in the railroad
4 industry is measured by the trucking industry rather
5 than the other way around?

6 A To a certain extent the railroad has always
7 been reactive to the marketplace. This is another
8 indication of that.

9 Q Do we have any way -- Mr. Wilson, you've
10 indicated you think this is Mr. Lawson's paper? I have
11 no way unless I go back and ask him.

12 MR. WILSON: The mark on the bottom of the
13 page says TDL, which is Mr. Lawson's work papers.

14 MR. CALHOUN: Well, let it be identified in
15 that fashion, and beyond that the offer will remain
16 mysterious, I guess.

17 BY MR. CALHOUN: (Resuming)

18 Q Mr. Lawson this morning was asked a series of
19 questions about the model that you used, some of which
20 were referred over to you. Am I correct that the model
21 primarily seeks to develop an intersection between
22 service and transit times, on the one hand, and pricing
23 on the other? Where you get the most ideal
24 configuration of those two is where you have a candidate
25 for a possible diversion? Is that a short summary of

1 how that process works?

2 A The model does, I think, three important
3 things. First, it computes the differences between the
4 present offerings in order to develop inputs to that
5 section of the model. Second, it takes the market share
6 and adjusts it based upon the current market position of
7 all railroads in the corridor and the market position of
8 the Santa FE-SP. And then it goes on to adjust for the
9 details of the schedule, the amount of traffic available
10 for the given departure time. So it does more than just
11 access the single value in intersection of --

12 Q Are all those values actually built into the
13 model?

14 A Yes, sir.

15 Q I think Mr. Lawson used the words that they
16 were implied in the model. I wasn't quite sure what
17 that meant. In other words, you're saying those factors
18 are actually programmed mathematically and
19 quantitatively into the model?

20 A The service aspects, the allowance for the
21 drayage time and terminal time, the allowance for
22 availability depending on departure time.

23 Q Let me ask you to look at page 30 of your
24 verified statement for a second. I think we're getting
25 confused.

1 Now, you indicated to me earlier that Reelie &
2 Associates was basically the developer of the FRA's
3 National Intermodal Network Feasibility Study, I
4 believe, which is what your -- the only thing I see on
5 that page that says is it reports the nature or maximum
6 share of the truck market that a specific TOFC service
7 and price offering should have. I don't see any mention
8 of those other things you just rattled off.

9 Now, where would one know about that? Is that
10 just something that falls out of the model, or do you
11 have to have some --

12 MR. WILSON: Which model are you referring to?

13 MR. CALHOUN: The FRA model. I will start
14 with that, because that's the one that led to this one.

15 THE WITNESS: Okay. I turn back to Exhibit 10
16 on page 29. That shows the flow of the entire model.
17 It shows how you input study values, and the program
18 compares rates and develops savings, compares the
19 service offering, develops the market share, adjusts it
20 in terms of volume available, et cetera.

21 The two major data files that are input are
22 the market share data file and the availability data
23 file. The shipper matrix that you see in Exhibit 11 on
24 page 31 can be characterized as a three-dimensional
25 matrix. The plane that is presented here in two

1 dimensions is one representing equal reliability between
2 the modes.

3 There are other planes representing lesser
4 reliability that we have not used in this study, but it
5 would help to define why railroad market shares perhaps
6 aren't up to what their full potential is.

7 Q But ultimately, isn't it true that the only
8 two factors that really are considered of importance in
9 your analysis is price and transit time?

10 A Yes. But those are general terms encompassing
11 drayage -- from the price point of view, the drayage,
12 the rail rate and brokerage fee. And then from the
13 service side includes the allowance for drayage time,
14 terminal time and the provision of service overall at a
15 level of reliability equal to that of truck. So it's
16 not very simply price and service. Those are included
17 within those two terms.

18 Q Somehow or another I'm not sure I followed
19 that, but I think it's best not to pursue it either. I
20 want to turn over to the next page, 32, and also to
21 DOT-C-1 on page 6.

22 As I understand, after you have done all this
23 calculation that we were just going over, then they're,
24 in effect, discounted essentially 50 percent to take
25 into account these other factors of shipper inertia and

1 so forth?

2 A That's correct.

3 Q All right. ICT asked the question -- I also
4 ask it -- is why 50 percent. Have you ever done any --
5 I will read from their question to you: "What analysis
6 that was performed to arrive at that figure? What
7 followup analysis performed to confirm that a .5 factor
8 accurately truckers' competitive response?"

9 A It is not only truckers' competitive response;
10 it is other railroads as well, plus the fact that
11 there's going to be a decay in the results caused by
12 pre-existence of contracts or investments that preclude
13 modal changes and the existence of imperfect marketing.
14 We verified the use of a factor such as that through
15 interviews we have run with shippers in specific
16 corridors with regard to new and proposed intermodal
17 operations.

18 Q Is that what you call analysis, in other
19 words? It says here just simply a good deal of thought
20 and judgment.

21 A Well, that's a euphemism for analysis, yes.

22 Q There is no particular reason, though, why it
23 is 50 percent and not 45 percent or 55 percent? Why
24 that number? It looks very good, but I'm just curious
25 as to why that number.

1 A Just because it most closely represents what
2 has actually occurred. You can get a raw feel for the
3 same thing by looking at the traffic growth in railroads
4 in total. The TOFC traffic is up 10 or 12 percent this
5 year versus last versus the year before, et cetera. In
6 spite of all of that growth, however, you can look back
7 in the traffic statistics such as we have published
8 here, and there's still a lot of truck traffic still out
9 there, so you're not getting a full yield from all the
10 programs that the railroads put together.

11 Q Within that 50 percent is there any particular
12 factor that, say, is 50 percent of the 50 percent, like
13 shipper inertia? Have you broken that 50 percent down
14 beyond that in terms of the various factors you list
15 here on page 32?

16 A No, we have not.

17 Q It's just kind of a hunch judgment that 50
18 percent is what it ought to be, taking all of those into
19 account?

20 A I don't know if you've ever conducted any
21 shipper interviews, but when you do, you get a
22 collection of a great many anecdotal stories about their
23 reaction to service provided by the railroad to this day
24 or that day, and there's difficulty in abstracting
25 individual values for each of those stories.

1 Q Did you contact any shippers at all for this
2 study?

3 A No, we did not. We considered the fact that
4 the basis for the model was in shipper interviews, and
5 as a result, we didn't see a need to contact individual
6 shippers during this one.

7 Q Have you reviewed any of the shipper
8 statements that have been submitted by the applicants or
9 any other railroad in this proceeding?

10 A I have seen the shipper applications, yes.

11 Q You have not reviewed them?

12 A Just a cursory review.

13 Q Would you turn to another part of KCS-C-12,
14 and it's page numbered 408. I think Mr. Wilson will
15 agree this is a legitimate work paper of yours, since
16 your name is on it.

17 A Yes, sir.

18 Q Perhaps I'm confused about what you're trying
19 to tell Mr. Wilson there. In the second paragraph, the
20 last line -- you see where I'm reading -- which says --
21 you are talking about interline schedules and
22 interchange time. You see where I'm reading? It says,
23 "These requirements would vary. A minimal allowance of
24 4 to 6 hours should be provided for interchange."

25 A Yes, sir.

1 Q Now, how do you square that with what you say
2 at the bottom of page 33 where you're allowing for two
3 hours?

4 A A two-hour allowance is at the origin and
5 destination of the move, and that is the allowance for
6 the movement of the van from the door or dock of the
7 shipper into the TOFC ramp and the necessary handling
8 required at that point. It's a mean value. Some
9 shippers will be closer; other shippers are further away.

10 The 4 to 6 hours in my letter of January 6th
11 relates to the condition existing at, say, Chicago or
12 St. Louis, New Orleans where trailers are unloaded and
13 trucked across town to a terminal of another railroad
14 for further movement beyond. They are two different
15 items.

16 I might say that the 4 to 6 hours indicated in
17 the letter were never used in the study because we
18 didn't identify diversions possible utilizing the rubber
19 tire interchange.

20 MR. CALHOUN: I think that's all, Your Honor,
21 that we have.

22 Thank you very much, Mr. Liba.

23 JUDGE HOPKINS: Who will be next?

24 BY MS. KOOPERSTEIN:

25 Q Good afternoon, Mr. Liba. My name is Donna

1 Kooperstein, and I represent the United States
2 Department of Justice.

3 Would you please turn to page 5 of your
4 testimony? On the bottom of that page you discuss the
5 decline in refrigerator traffic and boxcar traffic. Do
6 you see that?

7 A Yes.

8 Q This traffic is not necessarily lost to
9 trucks, is it?

10 A Trucks have about a 90 percent share of that
11 traffic.

12 Q Trucks have retained about a 90 percent share
13 of the traffic that the rails have lost on boxcars and
14 refrigerator car traffic?

15 A No. The share of -- the truck share of the
16 total market is about 90 percent -- perishables, that
17 is. Manufactured items might be somewhat different.

18 Q You don't know what the share is of the
19 manufactured items?

20 A There is no easy answer to that.

21 Q Could some of the traffic that has declined --
22 could some of the traffic have switched from boxcar and
23 refrigerator car traffic to rail TOFC service?

24 A As Mr. Lawson has testified, they have made
25 efforts to try to get some of the traffic into TOFC or

1 back from truck into TOFC.

2 Q Is it your understanding that they have
3 obtained some of that traffic?

4 A My understanding is that most of the traffic
5 that is left -- of the perishables business that is left
6 on the railroad is moving in TOFC.

7 Q Could you look at page 6, Exhibit 1, Table 2?

8 A Yes.

9 Q This table shows a steady growth in TOFC
10 traffic for SF and SF, doesn't it?

11 A Yes, it does.

12 Q Would you expect that growth to continue?

13 A Yes, I would.

14 Q And does this table indicate that the traffic
15 growth wasn't adversely affected by the recession in
16 1981 and '82?

17 A That is correct.

18 Q Mr. Liba, you began your analysis with
19 focusing on discrete traffic lanes, is that correct?

20 A That's correct.

21 Q Why did you begin at that point?

22 A That's because that's how the competition is
23 arrayed. You compete on a specific city pair basis.

24 Q What did you do after you isolated the
25 specific traffic lanes?

1 A As I explained earlier, we had a large data
2 collection effort to identify all of the particulars of
3 the traffic lane, how much truck traffic could be
4 carried by TOFC was there in the lane, what its service
5 and rate or cost levels were, how much traffic is the
6 railroad currently handling, what market share did it
7 have -- things such as that.

8 Q Thank you. I think you interpreted my
9 question as broader than it was.

10 Did you -- after you identified the traffic
11 lanes did you proceed to use the BEAs for your analysis?

12 A BEAs were a level of traffic identification.

13 Q And did you then group your BEAs together?

14 A Yes. The map shown in Appendix 1 indicates
15 the groupings that were used. Groupings roughly
16 represent the gathering areas that were used in
17 describing the traffic handled in the diversion.

18 Q So were these groupings based on your analysis
19 of the traffic flows themselves?

20 A It's a complication of the traffic flows and
21 the economics of the lane; that is, could the railroad
22 reach back and compete into that larger market area in
23 handling the flow.

24 Q You made a separate assessment for truckload
25 and LTL traffic, didn't you?

1 A That's correct.

2 Q Why did you do that?

3 A Because there are two distinctly different
4 types of competition. The truckload traffic is largely
5 carried by different types of carriers. It can be
6 carried by LTL, by exempt operators or private truck
7 operators, whereas the LTL traffic is largely carried by
8 regular common carrier type carriers.

9 Q Are there different -- are there cost
10 differences for each?

11 A Oh, yes. Because of the fact that the regular
12 route common carriers are more heavily unionized as a
13 rule than are the private operators, you'll have higher
14 costs associated with it because of the union scale
15 compared to the lesser level of earnings of ordinary
16 truck drivers, non-unionized. Secondly, because of the
17 fact that the operations are between terminals of the
18 regular route common carriers and their networks you
19 will tend to have higher load factors, which means lower
20 MT returns, than you would have in the normal truckload
21 traffic as well.

22 Q So given these cost differences, you
23 determined that it was important to do a separate
24 analysis for these -- for LTL and for TL?

25 A That's right. You have to remember they are

1 distinctly different shipment sizes. A shipment size in
2 LTL is defined as anything less than 10,000 pounds,
3 whereas a shipment size of truckload is anything that
4 will fill up a complete van. So they're really two
5 different and distinctly different types of markets.

6 Q If you hadn't make this segregation between
7 the two, would it have distorted your results?

8 A It would have been a level of aggregation that
9 could have cast some doubt on the validity of the
10 analysis because of the differences.

11 Q I think some of this has been covered before,
12 but I'm just going to try to go into it quickly. In the
13 diversion model you tried to assess when and in what
14 quantities truck traffic would be diverted to rail TOFC,
15 is that correct?

16 A That's correct.

17 Q And you had to identify factors that affected
18 a shipper's choice as to which mode to use, is that
19 correct?

20 A That's correct.

21 Q You identified price as a factor, is that
22 correct?

23 A Yes. I explained the price includes a lot of
24 interior factors.

25 Q Do you believe that price is an important

1 factor?

2 A Let me answer that by saying if you look at
3 the reports, you will see that it's not as important a
4 factor for van-type shipments than one might ordinarily
5 think. Price is important nonetheless.

6 Q Would you have expected to see diversion to
7 rail if its price was higher than truck and its service
8 was comparable?

9 A There is some amount of shipper demand for
10 TOFC service in situations such as that, provided that
11 the reliability, consistency and everything related to
12 service are at an equal level. So yes, that can
13 happen. You can have TOFC diversions if the service is
14 equal and the price is higher than truck.

15 Q Would you expect to see much diversions in
16 that case?

17 A No, I would not.

18 Q Do you consider service to be an important
19 factor?

20 A Service is a very important factor.

21 Q In your study you used time in transit, time
22 of pickup and delivery, is that correct?

23 A That's correct.

24 Q Did you use any other service components?

25 A Implicitly the assumption was that the service

1 would be of equal reliability, and that includes
2 consistency, loss and damage, cargo billing, responsive
3 of salesmen in calls, such as that -- equal service
4 levels across a wide spectrum of considerations.

5 Q So to determine whether a particular shipper
6 would switch from truck to rail, we would need to have a
7 price comparison, is that correct?

8 A That's correct.

9 Q A service comparison?

10 A That's correct.

11 Q We'd need to know how important price was to
12 the shipper?

13 A We aggregate that together in the context of
14 that diversion model. That is an average of shipper
15 responses to those types of questions. So some shippers
16 would have more price sensitivity than others; some
17 would have more service sensitivity than others. But
18 once the shipment tends to be in a trailer, you tend to
19 have a homogenous response to the price-service question.

20 Q And so we also need to know how important
21 service is to the shipper?

22 A That's correct.

23 Q Is there anything else we would need to know?
24
25

1 A If you're doing a truly microanalysis, as a
2 railroad would do if it was specifically fashioning a
3 service, you would need to know a great many things such
4 as the location of the customer vis a vis the terminal,
5 the specific rates that were being used, items such as
6 that.

7 The program we put together here is an
8 indication of the depth that you would have to go into,
9 but the depth that a good marketing program would have
10 would be even finer than this. This is a very
11 micro-study, but even more micro would be required.

12 Q So it seems to be a fairly complex issue.

13 A It is indeed complex.

14 Q From all this, can we conclude that the modal
15 decisions vary between shippers?

16 A There is a variance between shippers, but
17 there is a uniformity of response within similar
18 commodity characteristics and shipment volumes.

19 Q Would you agree that it's not possible to
20 conclude that just because a new rail TOFC service would
21 be offered, shippers using truck would switch to that
22 service?

23 A It takes a lot more than just offering the
24 service to make it acceptable. The service has to be
25 configured correctly in terms of both price and service

1 and reliability in order for it to be acceptable.

2 So just providing a service doesn't mean
3 traffic will necessarily follow.

4 Q So simply the fact that rail TOFC service is
5 available doesn't mean it's a good substitute for truck
6 transportation to the shippers.

7 A The railroads have had TOFC service available
8 for over 25 years. While it is growing, it is still a
9 very small portion of the total intercity competitive
10 fabric. It only represents about 5 percent of total
11 tonnage.

12 Q Does that mean the answer is yes?

13 MF. WILSON: Excuse me, counselor. Could you
14 repeat your question?

15 MS. KOOPERSTEIN: Certainly.

16 BY MS. KOOPERSTEIN: (Resuming)

17 Q Simply the fact that rail TOFC service is
18 available doesn't mean that it's a good substitute for
19 truck transportation, does it?

20 A That's correct.

21 Q Would you also agree that simply the fact that
22 truck transportation is available doesn't mean it's a
23 good substitute for a shipper presently rail TOFC?

24 A No, I would not agree to that. Shippers use
25 trucks for good economic reasons.

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1 Q Well, wouldn't it depend on the service and
2 rate factors that we discussed previously?

3 A Shippers shift to trucks because they offer a
4 more competitive price and service offering, or both,
5 than the rail does.

6 Q If the trucks were not offering a more
7 competitive rate or service, would shippers necessarily
8 switch to it?

9 A If they were not, the trucks wouldn't be
10 used.

11 Q Could you look at your matrix chart?

12 A Exhibit 11?

13 Q Exhibit 11. There are certain figures in that
14 chart that indicate that even where rail TOFC service
15 has a higher price and is slower, shippers would still
16 use the rail TOFC service. Do you see those figures?

17 A If you come up from the central portion of the
18 chart, the intersection of the base values in terms of
19 the rate comparison and transit time difference, there
20 would be some amount of shippers that would take
21 advantage of TOFC, even though it is a little bit slower
22 and a little bit more expensive. Yes.

23 Q Well, why is that?

24 A Shippers would do that in order to diversify
25 their shipping patterns and in that way develop a

1 competitive wedge that they could use against, say, the
2 motor carriers in order to keep prices in line.

3 Q Could you give me any examples of commodities
4 where that would be important to a shipper?

5 A The railroads have found a base of some amount
6 of traffic in canned goods. Railroads are used TOFC
7 with canned goods because they can develop a heavier
8 load in TOFC than they can in over-the-road trailer.
9 That's an example.

10 They would be willing to pay a little bit more
11 for that.

12 Q Does this model include any other service
13 attributes besides transit time?

14 A Yes, it does. The transit time, as I said,
15 includes the total shipment time required from door to
16 door. It's not a ramp-to-ramp measure.

17 Secondly, the values you see there have an
18 assumption of equal reliability and consistency. These
19 are two very important considerations which, in turn,
20 cover a great many subsidiary aspects as well.

21 Q Still looking at Exhibit 11, would you lock
22 down the column minus 20, and then go across to plus
23 1.5, to come up with the number 70 percent?

24 A That would be one day slower, and at a rate
25 savings of 20 percent, shippers would be willing to let

1 TOFC rise to about 70 percent market share.

2 Q Okay. Does this chart indicate that if the
3 rail price was increased to the minus 15, so that it's
4 just 15 percent cheaper, that there would still be 55
5 percent of the shippers using rail?

6 A It's not 55 percent of shippers; it is more of
7 a volume weighted measure. It would be 55 percent
8 market share.

9 Q Fifty-five percent market share. Does it
10 indicate that?

11 A Yes, it does.

12 Q Is the share measured in volume?

13 A Yes, it is. As we use it in the study, it is
14 oriented toward percent of trucks available.

15 Q Would you look at page 14? In the first full
16 paragraph, you mention that you assumed the new merged
17 rail system would provide truck competitive service at a
18 high level of reliability. Do you see that?

19 A Yes.

20 Q What was the basis for that assumption?

21 A One, we knew that without a high level of
22 reliability, equal reliability, it's not likely to
23 obtain the market shares that are indicated. And
24 second, the fact that Mr. Lawson indicated that the
25 merged company would obligate itself to this level of

1 reliability.

2 Q Do you believe the railroads strive now to
3 provide a high level of reliability in TOFC service?

4 A I would say in the corridors where they have
5 enough volume, they do.

6 Q Would you turn to page 32, please? I just
7 want to ask you a few questions about that .5 factor
8 again. You assumed that trucks and other rail TOFC
9 competitors would be able to lower price and provide
10 better service in response to improved TOFC service
11 offered by the merged parties; is that correct?

12 A We assumed that if the merged company provided
13 the service levels and rate levels that were indicated,
14 that it is likely that another railroad would parallel
15 the offering and that the trucks would, at least for the
16 short term, endeavor to keep the traffic as well.

17 Q Have you noticed this happen in the past in
18 this market?

19 A Could I ask a question in response to your
20 question?

21 Q Sure.

22 A Did you say in this market?

23 Q In the TOFC market.

24 A Yes. I think you can see it in some of the
25 schedule comparison sheets. There have been ongoing

1 competitive efforts by railways to provide equal
2 offerings in select markets.

3 Q Do you believe the TOFC market is competitive
4 now?

5 A I think on the face of it, you have to admit
6 it's competitive. Otherwise, the traffic wouldn't be
7 there.

8 Q I guess what I'm wondering is if the trucks
9 and rail had the ability to reduce their prices, why
10 aren't they doing it now?

11 A Both sets of carriers are bound by economic
12 rules governing their behavior. They have to be able to
13 earn enough off of the traffic in order to replace their
14 equipment or invest in their right-of-way, whatever it
15 may be.

16 So, for a short term, you can operate below
17 cost, but over the long term, you have to earn a
18 reasonable profit. So you can't expect a pricing battle
19 to go on forever, and to go down to normal steps.

20 Q Are you assuming that the competitors to SFSP
21 will only reduce their prices in the short term?

22 A In the analysis that we have, there are two
23 considerations. One, there is a volume of shippers that
24 will continue to move the traffic at higher costs.
25 That's one working assumption. We don't gather all the

1 traffic, and that's one reason.

2 The second is that if there are rate responses
3 that drift below cost, that over a period of time they
4 will come back up to these levels.

5 Q Do you think that some of the competitors will
6 respond by pricing below cost?

7 A The short answer is yes.

8 Q So that is one of the reasons for your .5
9 factor?

10 A That's right. There are other carriers that
11 can operate at competitive levels without going below
12 cost either.

13 Q Then they can lower their prices now, couldn't
14 they?

15 A That's right.

16 Q Well, why haven't they done that?

17 A They haven't found a need to.

18 MS. KOOPERSTEIN: Thank you. I have no
19 further questions.

20 JUDGE HOPKINS: Ms. Reed.

21 BY MS. REED:

22 Q Good afternoon, Mr. Liba. My name is Mary
23 Reed. I'm appearing on behalf of the U.S. Department of
24 Transportation.

25 Do you have before you a document that has

1 been marked DOT-C-1?

2 A Yes, I do.

3 Q And did you participate in preparing the
4 response?

5 A Yes, I did.

6 Q Are they true and correct to the best of your
7 knowledge?

8 A Yes, they are.

9 Q I have a couple of followup questions in
10 response to Question No. 7, which is the updating of the
11 1977 Census of Transportation. And I would like to
12 pursue with you how you updated the modal share, truck
13 versus rail, since 1977.

14 Would you go into a little bit of detail for
15 me, please?

16 A Yes. The only portion of the 1977 Census that
17 was used by us in developing Transearch was the portion
18 on truck flows. We had better information available on
19 the rail, better information available on water. So it
20 was only the truck that we used.

21 The update process looks at total production
22 trends. Those are FRB indices. And then we look at
23 what is happening on the local geographic level by
24 looking at industry trends based upon Department of
25 Commerce projections.

1 So we're looking at total traffic measurements
2 in both of those cases. And that inherently then
3 adjusts the modal split, the changes in modal split that
4 may have occurred over time.

5 Q These indices just discuss the amount of
6 production, don't they? They don't talk about which
7 mode was used.

8 A That's correct. They are total market
9 measurements.

10 Q So you took a look at the total pie, so to
11 speak, and looked at the amount that you knew was moving
12 by rail and the amount you knew was moving by motor
13 carrier from published sources, and assumed that the
14 rest of it moved by truck; is that correct?

15 A That's correct. In addition, we make checks
16 at the commodity levels to make sure that we are
17 measuring correctly. And there again, we are looking at
18 truck measurements only, again because we have good rail
19 sources and good water sources.

20 Q In looking at the amount of truck traffic
21 potentially divertable to rail, did you put any
22 geographic limits on the railroad's gathering area?

23 A It's a combination of geographic and economic
24 limits. The fact that we had \$100 drayage charge
25 effectively limits the radius for the mean shipment to

1 something around 60 to 100 miles. It can be a little
2 bit more because we are using average figures, and
3 depending on the road condition of the drayage truck,
4 you might go a little bit further.

5 If you notice the way the areas are shaped,
6 they are generally elliptical, with the ellipse
7 extending out from the direction of the main rail haul
8 to take advantage of the fact that a longer haul can
9 gather from a longer radius.

10 Q So you compare the -- you looked at the
11 distance from your TOFC rail ramp to determine the
12 gathering area?

13 MS. REED: Thank you very much, that's all I
14 have.

15 JUDGE HOPKINS: Mr. McKenzie.

16 MR. VINCEN: MAC KENZIE: No questions.

17 JUDGE HOPKINS: Mr. Wilson.

18 MR. WILSON: I do have some brief redirect.

19 REDIRECT EXAMINATION

20 BY MR. WILSON:

21 Q Mr. Liba, during the Department of Justice
22 examination, you were asked about the TOFC market. Do
23 you equate the TOFC market with the containerizable
24 traffic market?

25 A Yes, we do. It's basically a portion of the

1 same. The containerizable market consists of traffic
2 moved by trucks and vans, by railroads and vans, by
3 water carriers in containers. So that's part of the
4 same market mix.

5 Q You also discussed the fact that it was
6 appropriate to treat truckload traffic and
7 less-than-truckload traffic differently. Was this
8 because those two types of traffic are, in effect, in
9 different transportation markets?

10 A Basically, yes. The LTL is in the small
11 shipment market, and the truckload market is in the
12 containerizable market.

13 In addition, as I testified earlier, they have
14 very different service and pricing arrangements
15 associated with them.

16 Q Okay.

17 You also had a question about the reliability
18 of rail service in certain lanes. Do the railroads
19 separately have enough volume in the traffic lanes that
20 you studied, the 27 traffic lanes that you studied, to
21 provide reliable rail TOFC service today?

22 A My response to that, based upon the statistics
23 that we gathered in the course of the study, indicated
24 that they do not; and hence, they offer unreliable
25 service.

1 In addition, I know in selected corridors it's
2 worse than that, because the service is oriented around
3 container traffic which is centered on mainly price
4 considerations, and it tends to originate and terminate
5 in port areas as opposed to the areas where the
6 truckload traffic is more generally available.

7 For instance, in the Los Angeles/Houston area,
8 most of the traffic in that lane is container traffic,
9 and as a result the service provided for truckload
10 traffic in TOFC is highly unreliable.

11 Q Okay.

12 Will the merged system, however, have enough
13 volume to provide reliable TOFC service in the traffic
14 lanes that you studied?

15 A My consideration of that leads me to believe
16 that yes, they will, because they'll be consolidating
17 volume from the two roads. In addition, they'll be
18 picking up some of this additional traffic.

19 The total of those three will give them a
20 traffic lane volume that will enable them to generate
21 the reliable service.

22 Q Okay.

23 Could you refer to DRGW-C-8, please? Are
24 there any other differences in the study you undertook
25 from the outline that is listed here, other than those

1 three differences, I believe, that you testified to
2 earlier?

3 A Yes. Since I spoke earlier, I reviewed it in
4 more detail. And as I said, this was an early-on
5 identification of the process. We did not do
6 essentially step 5, step 6-C, step 8, 9-B, and 10-E.

7 MR. WILSON: Thank you. Those were all the
8 questions I have.

9 JUDGE HOPKINS: Any other questions?

10 RE-CROSS EXAMINATION

11 BY MR. KEVIN MAC KENZIE:

12 Q Mr. Liba, if I could ask you a brief question
13 relating to that, just so that I understand correctly,
14 would you again repeat for me the steps in DRGW-C-8 that
15 you did not perform, beginning from the top, if you
16 would?

17 A Okay. As I stated earlier, we did not do
18 step 1. We did not do step 4, 5, 6-C, step 8, 9-B, and
19 10-E.

20 MR. KEVIN MAC KENZIE: Thank you.

21 JUDGE HOPKINS: Any other, Mr. Calhoun?

22 BY MR. CALHOUN:

23 Q Mr. Liba, referring back to the question Mr.
24 Wilson put to you about the container traffic between
25 Houston and Los Angeles, I believe you said that most of

1 the TOFC traffic is container traffic in that corridor?

2 A No. Most of the traffic on TOFC/COFC trains
3 in that corridor is COFC traffic oriented towards the
4 marine --

5 Q I'm sorry. That's what I meant. Most of the
6 containerized traffic. What does "most" mean, or "much"
7 mean? I think that was the original word. Do you have
8 a percentage?

9 A The assumption in the study was in COFC was
10 considered to be import/export traffic and not germane
11 to this particular analysis, and therefore not included
12 within the market measurements that we did.

13 We excluded COFC --

14 Q Excuse me. I'm trying to get a handle on a
15 number. Let's suppose that you're talking about 100
16 percent.

17 A That's right.

18 Q How much of the TOFC/COFC traffic in that
19 corridor is containers, as distinct from trailer and
20 flatcars? You used the word "most" or "much," and I'm
21 trying to get a number behind the word "most" and
22 "much."

23 A I know the number of trailers in that
24 container, but because we took out the COFC, I don't
25 have the figures with me as to how much COFC is in that

1 corridor.

2 We assumed that all COFC was excluded.

3 Q How do you know it is "most" then? Are you
4 just guessing, or you just don't have it with you?

5 A No. I misunderstood what I said. I said we
6 excluded totally --

7 Q I understand that.

8 A In Los Angeles/Houston, I said most of the
9 traffic is COFC in that corridor currently. I know
10 specifically, and have data with me right here in
11 Exhibit 1 on the TCFC portion. I don't have the data
12 with me on how much of the rest was COFC.

13 Q Is most of it COFC or most of it TOFC? Maybe
14 I'm having trouble understanding. I thought you said
15 COFC.

16 A Most of the traffic in that lane is COFC.

17 Q All right. Container on flatcar.

18 A Container on flatcar.

19 Q We still don't know what the percentages are.
20 It's more than 50 percent I take it -- would you say?

21 A Yes, it is more than 50 percent.

22 Q All right.

23 Did you do a similar analysis on the corridor
24 -- well, you recall I had asked you some questions
25 dealing with the Big D, Dallas, KCS-Dallas,

1 Los Angeles --

2 MR. WILSON: I object, Your Honor. This is
3 beynd the scope of redirect.

4 JUDGE HOPKINS: It sure is, Mr. Calhoun.

5 MR. CALHCUN: Can we get the number on the
6 Houston-Los Angeles that he doesn't have with him, Mr.
7 Wilson?

8 MR. WILSON: I don't think I understand your
9 question.

10 MR. CALHOUN: He has with him the TOFC
11 number. He has stated that most or much -- he stated it
12 two different ways -- of that traffic is container on
13 flatcar traffic. He doesn't happen to have that
14 percentage with him, but apparently it does exist.

15 He had to have the total, and then he had to
16 subtract out the container traffic in order to do the
17 analysis. That's apparently somewhere else. It's just
18 not in the room here.

19 If we could get that number from you, it would
20 be appreciated.

21 JUDGE HOPKINS: I think Mr. Liba understands,
22 if you have any question on that, Mr. Wilson. If you
23 would.

24 MR. WILSON: I believe, Your Honor, that the
25 traffic flow of container traffic in the markets that

1 Houston and Los Angeles are in is set forth in our
2 testimony. And I would refer counsel to -- I believe
3 it's SFSP-20 is the document, and I believe it's --
4 well, it's the first market shown there.

5 And by looking at that, those figures which I
6 don't know right now, counsel could see exactly what the
7 tonnage flow for --

8 JUDGE HOPKINS: Are they divided up into
9 COFC?

10 MR. WILSON: Yes. The COFC traffic is listed
11 there, Your Honor.

12 JUDGE HOPKINS: And the total traffic?

13 MR. WILSON: Well, the total COFC traffic.

14 JUDGE HOPKINS: But they're talking about TOFC
15 and COFC, as I understand it.

16 MR. CALHOUN: Mr. Wilson opened this whole
17 thing up. The witness's testimony says he excluded COFC
18 traffic from the study for the reasons his testimony
19 states. Right?

20 All right. The question, Mr. Wilson, I
21 believe you asked on redirect was to get some idea of
22 how much -- you know, what was COFC and what was TOFC?

23 MR. WILSON: No, I didn't ask that question at
24 all. Actually, I probably should have objected to your
25 line of questions about five minutes ago.

1 JUDGE HOPKINS: But Mr. Liba answered it that
2 way.

3 MR. CALHCUN: He answered it that way, and now
4 you're telling me --

5 JUDGE HOPKINS: Since he answered in that way,
6 I don't see any reason why you can't give him what he is
7 asking for.

8 MR. WILSON: We can give him the data that I
9 just referred to, Your Honor. We'll supply that.

10 JUDGE HOPKINS: Thank you.

11 Will that provide you with what you are
12 referring to?

13 MR. CALHOUN: It's not responsive to the
14 question.

15 JUDGE HOPKINS: I'm not talking about the
16 specific referring you to the exhibit. I'm talking
17 about he will give it.

18 Mr. Liba, I should think, would be willing to
19 give that. Can you give that?

20 THE WITNESS: Yes.

21 JUDGE HOPKINS: Mr. Liba's going to give it to
22 you, so what's the argument? You won the case so you
23 don't need to argue.

24 MR. RAKER: Excuse me, Your Honor, I didn't
25 hear that.

1 JUDGE HOPKINS: Not the total case. We're
2 talking about this specific instance.

3 MR. RAKER: Only the battle, not the war, Your
4 Honor.

5 JUDGE HOPKINS: Are there any more questions
6 of this gentleman?

7 MR. WILSON: Your Honor, I would move the
8 admission of Mr. Liba's verified statement?

9 JUDGE HOPKINS: Any objection?

10 It will be received in evidence.

11 There are a few more documents.

12 MS. REED: Your Honor, we would move the
13 admission of DOT-C-1.

14 JUDGE HOPKINS: Any objection?

15 It will be received.

16 (The document referred to,
17 previously marked Exhibit
18 DOT-C-1 for identification,
19 was received in evidence.)

20 MR. KEVIN MAC KENZIE: Your Honor, we move the
21 admission of DRGW-C-7 and C-8.

22 JUDGE HOPKINS: They will be received in
23 evidence.

24 (The documents referred to,
25 previously marked Exhibits

1 DRGW-C-7 and C-8 for
2 identification, were
3 received in evidence.)

4 MR. CALHOUN: Am I correct that KCS-11 and 12,
5 I think those were received earlier.

6 JUDGE HOPKINS: Those were received earlier
7 with the last.

8 Off the record a minute.

9 (Discussion off the record.)

10 JUDGE HOPKINS: We'll start again at 9:00
11 o'clock tomorrow morning. We will be in recess until
12 9:00 o'clock. You're excused.

13 (Witness excused.)

14 (Whereupon, at 4:45 o'clock p.m. the hearing
15 in the above-entitled matter was recessed, to reconvene
16 at 9:00 o'clock a.m. the following morning, Thursday,
17 October 11, 1984.)

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